STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Case Type: Other Civil

THE STATE OF MINNESOTA,

COURT FILE NO. C1-94-8565

BY HUBERT H. HUMPHREY, III,
ITS ATTORNEY GENERAL,

and

BLUE CROSS AND BLUE SHIELD
OF MINNESOTA

Plaintiffs,

AFFIDAVIT OF MARK B. HELM

vs.

PHILIP MORRIS INCORPORATED,
R.J. REYNOLDS TOBACCO COMPANY,
BROWN & WILLIAMSON TOBACCO
CORPORATION, B.A.T. INDUSTRIES
P.L.C., LORILLARD TOBACCO COMPANY,
THE AMERICAN TOBACCO COMPANY,
LIGGETT GROUP, INC., THE COUNCIL
FOR TOBACCO RESEARCH - U.S.A., INC.,
and THE TOBACCO INSTITUTE, INC.,

Defendants.

STATE OF MINNESOTA)
)ss.
COUNTY OF HENNEPIN)

MARK B. HELM, being duly sworn on oath, deposes and states:

1. I am a partner with the firm of Munger, Tolles & Olson, and am one of the attorneys representing Philip Morris Incorporated in this matter. The facts stated herein are known to me of my own personal knowledge and, if called upon as a witness, I could and would testify competently to them.

2. Between June 19 and August 14, 1995, Plaintiffs served on Philip Morris their first three sets of Requests for Production of Documents in this action. Philip Morris served written responses on August 3, 1995, September 14, 1995 and September 28, 1995, respectively. Attached hereto as Exhibit A are true and correct copies of Philip Morris' responses, each of which accurately sets forth the requests to which the responses are made.

3. In its written responses, Philip Morris agreed (subject to certain other objections) to produce documents responsive to the requests referred to in its brief as "Marketing Requests" (a) authored by; (b) sent to; or (c) in the files of the company's directors, its CEO and President, research directors, members of the executive committee, or sixteen other individuals who had been named by Plaintiffs in other document requests. See, e.g., Response to Request No. 102.

4. Plaintiffs objected to this limitation. In hopes that Philip Morris and Plaintiffs could negotiate a mutually-agreeable limitation, counsel for Philip Morris then sent Plaintiffs' counsel corporate organization charts covering the marketing department, and invited them to propose an alternative limitation acceptable to them. Plaintiffs' counsel refused this request.

5. In light of their refusal, we proposed to limit our search for responsive advertising, marketing and promotion documents by searching: (a) all files maintained by persons in the marketing department with titles of Director or above; and (b) files that had been sent to storage by the predecessors or those persons. In making that proposal, I explained that those files are the most likely to contain documents discussing or referring to company policy on or thinking about the objectives, strategies and method in connection with advertising, marketing and promotion. Moreover, I explicitly noted that our proposal was without prejudice to Plaintiffs' right

to seek additional documents, or argue that a broader search should be conducted, after they had reviewed the documents uncovered in our top- and middle-level search. A true and correct copy of my February 16, 1996 letter communicating our proposal is attached hereto as Exhibit B.

6. By return letter, Plaintiffs' counsel asked a number of questions about the proposal we had made, including dates of service of the top- and middle-level personnel we had identified, etc. They also asked whether we would produce responsive documents from the entire marketing area by the end of May. A true and correct copy of counsel's February 22, 1996 letter is attached hereto as Exhibit C.

7. On April 2, 1996, I responded to counsel's inquiries by letter. I expanded on Philip Morris' previous proposal by suggesting that, in instances where a Director or Vice President relied on a subordinate to keep files, we would search the files of the subordinate. I offered to search files maintained in storage from any predecessor of current Director or Vice President going back to 1972 (before which Philip Morris does not have the organization charts necessary to identify predecessors). Moreover, I agreed that Philip Morris would search the files of the brand manager for Virginia Slims (who is not a Director or Vice President), because Plaintiffs had made a specific request for documents relating to that brand. On the issue of timing, I explained that Philip Morris could not commit to a particular date for production of this enormous mass of documents, but offered to put current advertising files at the "head of the line" whenever possible. A true and correct copy of my letter of April 2, 1996 is attached hereto as Exhibit D.

8. On April 5, 1996, Plaintiffs' counsel responded to Philip Morris' comprehensive offer. In their words, "It remains the plaintiffs' position that Philip Morris is obligated to search all of its potentially relevant files, including current files of individuals other than those specifically listed by you." A true and correct copy of the April 5, 1996 letter from Plaintiffs' counsel is attached hereto as Exhibit E.

9. In their April 5 letter to me, Plaintiffs' counsel -- in an apparent misunderstanding of what had been proposed -- asked how far back in

time Philip Morris was proposing to go in its review of active files within the marketing department. By return letter of the same date, I replied that Philip Morris was not proposing to impose any time restrictions on active files (i.e., files maintained in the headquarters building, as opposed to storage). A true and correct copy of my April 5, 1996 letter is attached as Exhibit F.

10. Nevertheless, Plaintiffs' counsel has refused to accept the proposal offered by Philip Morris. In a final letter dated April 15, they advised that they find Philip Morris' position unacceptable, and that they would expect a motion for a protective order. A true and correct copy of the April 15, 1996 letter is attached hereto as Exhibit G.

11. It is important to note that the above-described communications concerning advertising and marketing documents do not relate to actual advertisements published by Philip Morris. Philip Morris maintains a comprehensive archive of advertisements actually published and, in response to a document request, agreed to produce the advertisements requested by Plaintiffs. See Response to Request for Production No. 1 (sixth set).

FURTHER AFFIANT SAITH NOT.

Sworn and subscribed to before me
this 19th day of April, 1996.

/s/