STATE OF MINNESOTA
COUNTY OF RAMSEY
DISTRICT COURT
SECOND JUDICIAL DISTRICT

**The State of Minnesota By Hubert H. Humphrey, III, Its Attorney General, and Blue Cross and Blue Shield of Minnesota,**
Plaintiffs,

**v.**

**Philip Morris Incorporated, R.J. Reynolds Tobacco Company, Brown and Williamson Tobacco Corporation, B.A.T. Industries, p.l.c., British-American Tobacco Company Limited, BAT (U.K. & Export) Limited,**
**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.

File # C1-94-8565

**ORDER GRANTING PLAINTIFFS' MOTION TO COMPEL RELATING TO DEPOSITIONS OF BROWN AND WILLIAMSON TOBACCO CORPORATION AND THE AMERICAN TOBACCO COMPANY**

The above matter came on for hearing on May 6, 1997, before the Honorable Kenneth J. Fitzpatrick. Martha K. ("Marty") Wivell, Esq., appeared and argued on behalf of Plaintiffs. Jack M. Fribley, Esq., appeared and argued on behalf of Defendant Brown and Williamson Tobacco Corporation ("B&W"). John Getsinger, Esq., appeared and argued on behalf of Defendant The American Tobacco Company ("American"). The following also were present and identified themselves as appearing on behalf of the party or parties set forth opposite their names:

| *Name* | *Party* |
|---|---|
| Roberta B. Walburn | State of Minnesota and Blue Cross and Blue Shield of Minnesota |
| Cheryl Heilman | State of Minnesota |
| Peter Sipkins | Philip Morris Incorporated |
| James Simonson | R.J. Reynolds Tobacco Company |
| Jonathan Redgrave | R.J. Reynolds Tobacco Company |
| Gerald Svoboda | B.A.T. Industries, p.l.c |
| David Martin | Lorillard Tobacco Company |
| John Monica | Lorillard Tobacco Company |
| Byron Starns | The American Tobacco Company |
| David Tschida | The American Tobacco Company |
| Hal Shillingstad | The Tobacco Institute, Inc. |

David Phelps of the Minneapolis Star Tribune and other members of the public also attended and observed the proceedings.

The following are based on the review of the record and arguments of counsel. Plaintiffs' Motion to Compel Relating to Depositions of Brown & Williamson Tobacco Corporation and The American Tobacco Company is hereby GRANTED, to wit:

WHEREAS, Plaintiffs took the depositions of B&W and American pursuant to Rule 30.02(f), Minn. R. Civ. P., on the sole issue of the collection and production of documents;

## I. SCOPE OF SEARCH FOR RESPONSIVE DOCUMENTS

WHEREAS, Plaintiffs have produced sufficient evidence, including naming specific documents which had not been produced nor listed on privilege logs as of the date of the deposition, to demonstrate reasonable concern about the scope of B&W's search for responsive documents;

WHEREAS, the record shows that defense counsel repeatedly instructed the B&W deponent not to answer questions about the scope of B&W's document production, including questions concerning a "scope statement" or "extract listing" which was used by B&W to define the parameters of its search for and production of documents;

IT IS HEREBY ORDERED that, although the "scope statement" or "extract listing" is admittedly counsel's work product and therefore shall not be disclosed to the Plaintiffs absent the proper showing, Plaintiffs are entitled to query B&W's selected 30.02(f) deponent so as to obtain meaningful answers as to scope of B&W's search. B&W shall appear for a continuation of its deposition so that Plaintiffs can ask questions as to the scope of B&W's search for responsive documents. B&W is ordered, further, to have available at the deposition all of its "scope statements" and "extract listings" so that, should the need arise, the deponent may view such documents to refresh the deponent's memory as to the search parameters. B&W is ordered to appear for this continuation of its document collection/production

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deposition in Minneapolis at the first available date, unless, at the Plaintiff's option, another time and place shall be determined. This continuation of the B&W document collection/productions deposition shall be limited to no more than five (5) additional hours.

## II. TRANSFER OF DOCUMENTS

WHEREAS, the subject of alleged transfer of documents by the tobacco industry has been and continues to be at issue in this case;

WHEREAS, Plaintiffs' deposition of B&W revealed that B&W not only failed to respond to questions concerning scientific research transferred to the law firm of Shook, Hardy and Bacon, based in Kansas City, Missouri, but failed to disclose the fact that its answers to Plaintiffs' interrogatories were incomplete;

WHEREAS, B&W's counsel represented that its search was complete and that the "logs required" were served on Plaintiffs' counsel the day before this hearing;

IT IS HEREBY ORDERED that, to the extent it has not yet done so, within seven (7) days of this Order B&W shall complete its investigation as to the transfer of documents, whether such documents were transferred by B&W or by third parties. B&W shall immediately thereafter completely supplement its answers to all Plaintiffs' interrogatories regarding document transfers, and such supplemental answers shall be affirmed and acknowledged as true and complete by a B&W corporate officer. Such supplemental answers shall be accompanied by true and correct copies of all transferred documents in their entirety, without redaction. In addition to the above, the law firm of Shook, Hardy and Bacon shall file its affidavit with this court as to the scope of its search for responsive documents and its representation as to the results of its search.

## III. SEARCH FOR AMERICAN DOCUMENTS

WHEREAS, American and/or its affiliates has been selling cigarettes for more than 90 years;

WHEREAS, Plaintiffs sought to discover the scope of document collection, believing that American's document production did not fully respond to its requests in light of its long history in the tobacco industry;

WHEREAS, American's corporate history, like that of Philip Morris, Inc.,[1] reveals the interrelated affiliations of American and its parent and sister subsidiaries. Like Defendant Philip Morris, American has changed names and gone through numerous corporate reorganizations that forge a series of links in a chain of related companies. Like Philip Morris, Inc., to Philip Morris International, Inc., CRC, FTR, etc., the relationship outlined below of American to American Brands, Inc., and Gallahers Limited in the United Kingdom is that of parent/subsidiary or sister subsidiary:

> In 1904, the company first incorporated as "The American Tobacco Company," a New Jersey corporation. In 1969, it changed its name to "American Brands, Inc." and remained a New Jersey corporation.
>
> In 1985, a corporate reorganization took place, and American Brands, Inc., New Jersey, merged into "The American Tobacco Company," a Delaware corporation and its successor in interest. The American Tobacco Company was a wholly-owned subsidiary of "American Brands, Inc.," a Delaware corporation. American Brands, Inc., is also parent to Gallahers Limited, a large tobacco company in the United Kingdom; Gallahers is thus a sister to The American Tobacco Company.
>
> In December of 1994, *months after this action was filed*, The American Tobacco Company (Delaware) was purchased by BAT. In 1995 BAT's The American Tobacco Company merged into B&W.

WHEREAS, pursuant to the *post-Complaint* sale and corporate reorganization, American documents were sent either to Chadbourne & Parke for storage (which firm has 20 million original documents) or to B&W or were destroyed;

WHEREAS, the record shows that the deponent selected by American, Lawrence Savell, an attorney with Chadbourne & Parke (a firm which has represented American for more than 50 years), could not answer, or was instructed by counsel not to

[1] This Court does not intend to reiterate the law with respect to discovery of documents held by parent or sister subsidiaries. The xxxes are directed to the Order of this Court dated March 25, 1997, Order Granting Plaintiffs' Motion To Compel Regarding Philip Morris International and Denying Defendants' Motion for Protective Order.

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answer, certain questions put to him by Plaintiffs with respect to document collection, retention, transfer, and production;

IT IS HEREBY ORDERED that Plaintiffs are entitled to complete, knowledgeable, and unevasive answers with respect to these matters:

A. *Written Discovery*: Within ten (10) days of filing this Order, American and/or B&W shall provide Plaintiffs complete, full, and unevasive written answers to the following; Defendants' answers shall specifically consider and include documents located at American Brands, Gallahers Limited, Chadbourne & Parke, and B&W:

1. Whether American Brands has ever conducted or sponsored smoking and health research or retained such research within its files. If the answer is "yes":

a) List the type of research conducted, whether an index listing any such research exists, the entity that has the index, and all entities that have either physical possession of or the legal right to the documents related to this research.

b) State whether the results of the research identified were ever disclosed to or shared with American or American's predecessors, successors, parents, affiliates, attorneys, or agents..

2. Documents indicate American conducted scientific research at the Medical College of Virginia and Bermuda Hundred or "Chester" facilities. The following questions concerning this research shall be answered:

a) Set forth the ownership history from the establishment of the facilities to the present.

b) Set forth all research of any kind conducted at the above-referenced facilities for or by American, its predecessors, successors, parents, or affiliates. For all research listed, set forth the type of research conducted, the dates of the research, and the entity that paid for the research.

c) For all research listed in 2. b) above, state whether reports or memoranda relating to the research were created, whether such reports or memoranda still exist, who currently possesses the reports or memoranda, whether all such documents have been produced in this litigation, and whether an index listing the research exists.

3. Whether Gallahers has ever conducted or sponsored smoking an health research. If the answer is "yes":

a) List the type of research conducted, whether an index listing any such research exists, the entity that has the index, and the entity that has either physical possession of or the legal right to the documents related to this research.

b) State whether the results of the research identified were ever disclosed or shared with American or American's predecessors, successors, parents, affiliates, attorneys, or agent.

4. List all the American Brands departments that have provided services over time to American, the types of services provided, and the time period during which such services were provided.

5. List all instances in which either physical possession or the legal right to possess American documents relating to smoking and health and/or the advertising, marketing, and promotion of cigarettes have been transferred to another entity, including American's predecessors, successors, parents, affiliates, attorneys, or agents other than the instances testified to by Mr. Savell in his 30.02(f) deposition. As to all such transfers, list the date of the transfers, describe the documents involved, state whether an index of

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documents transferred exists, who has possession of the index, the current physical location of the documents, and the entity that has current legal and/or physical possession of the documents.

6. Each document and index identified above shall be produced within fifteen (15) days of entry of this Order.

B. *Deposition Testimony*: If, after Plaintiffs receive and review Defendants' answers to the above-referenced questions, Plaintiffs deem it necessary, Defendants B&W and/or American shall present a deponent who is prepared to respond fully, completely, and unevasively with respect to document collection, retention, destruction, transfer, and production for continuation of their Rule 30.02(f) deposition. Should the deponent fail to fully, completely, and unevasively answer all questions put forth by counsel, the Plaintiffs may then solicit this Court to continue the deposition in Minneapolis in the presence of the Court, Special Master, or other person appointed by the Court. This continuation of the 30.02(f) deposition shall begin on the first available date thereafter and be limited to no more than ten (10) additional hours.

DATED: May 8, 1997

Kenneth J. Fitzpatrick
Judge of District Court

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