STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF RAMSEY | SECOND JUDICIAL DISTRICT

CASE TYPE: OTHER CIVIL

Court File No. C1-94-8565

The State of Minnesota,
By Hubert H. Humphrey, III,
Its Attorney General,

and

Blue Cross and Blue Shield of Minnesota,

Plaintiffs,

vs.

Philip Morris Incorporated,
R.J. Reynolds Tobacco Company,
Brown & 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.

ORDER WITH RESPECT TO CERTAIN ISSUES RAISED AT THE GENERAL STATUS CONFERENCE HEARD NOVEMBER 4, 1997

The above matter came on for a General Status Conference heard on November 4, 1997, before the Honorable Kenneth J. Fitzpatrick. Roberta Walburn, Esq., appeared and began arguments on behalf of Plaintiffs. R. Noel Clinard, Esq., appeared and began arguments on behalf of Philip Morris

Incorporated specifically and on behalf of all Defendants generally with the exception of Liggett Group, Inc. (herein "non-Liggett Defendants"). The following also were present at the hearing and identified themselves as appearing on behalf of the party or parties set forth opposite their names:

Name	Party
Michael Ciresi	State of Minnesota and Blue Cross and Blue Shield of Minnesota
Susan Richard Nelson	State of Minnesota and Blue Cross and Blue Shield of Minnesota
Corey Gordon	State of Minnesota and Blue Cross and Blue Shield of Minnesota
Tom Hamlin	State of Minnesota and Blue Cross and Blue Shield of Minnesota
Thomas Pursell	State of Minnesota
Doug Blanke	State of Minnesota
Tom Gilde	Blue Cross and Blue Shield of Minnesota
Peter W. Sipkins	Philip Morris Incorporated ("Philip Morris")
Paul Dieseth	Philip Morris Incorporated
Murray Garnick	Philip Morris Incorporated
Lonnie D. Nunley, III	Philip Morris Incorporated
Peter Biersteker	Philip Morris Incorporated
James Simonson	R. J. Reynolds Tobacco Company ("RJR")
Jonathan Redgrave	R. J. Reynolds Tobacco Company
Jeffrey J. Jones	R. J. Reynolds Tobacco Company
Robert C. Weber	R. J. Reynolds Tobacco Company
Jack M. Fribley	Brown & Williamson Corporation ("B&W")
James C. Munson	Brown & Williamson Corporation
Richard A. Schneider	Brown & Williamson Corporation
Gerald Svoboda	B.A.T. Industries, p.l.c. ("BAT Industries")
Patrick D. Bonner, Jr.	B.A.T. Industries, p.l.c.
Byron Starns	. British-American Tobacco Company Limited ("BATCO")
Tom McCormack	BATCO
David G. Martin	Lorillard Tobacco Company ("Lorillard")
Connie Iversen	Lorillard Tobacco Company
Craig Proctor	Lorillard Tobacco Company
John Getsinger	The American Tobacco Company ("American")
Mary T. Yelenick	The American Tobacco Company
Steven Kelley	Liggett Group, Inc. ("Liggett")
Larry Purdy	The Council for Tobacco Research - U.S.A., Inc. ("CTR")

George Flynn	The Tobacco Institute, Inc. ("TI")
George Anhang	The Tobacco Institute, Inc.

Members of the media also attended and observed the proceedings.

The parties announced that they have resolved or were close to resolution of certain agenda items, including issues relating to de-privileged documents including production of 4B indices, issues relating to site inspections of certain Defendants' manufacturing facilities, and issues relating to the status of statistical damage model experts. The parties also presented the Court with an update as to the status of the Revised Letter of Request pursuant to the Hague Convention in England. Finally, the Court heard argument with respect to disputed issues properly before it.

The Court makes the following **ORDER** based upon the record, arguments of counsel, and supplemental filings made by the parties:

A. SANCTIONS PURSUANT TO SPECIAL MASTER ORDER OF OCTOBER 27, 1997

WHEREAS, Special Master Gehan, having heard arguments of the parties and reviewed the record, made his findings and "recommended that Judge Fitzpatrick consider the imposition of sanctions against Defendants for their apparent deliberate disregard of the provisions of the Fifth Order" (see Order of Special Master Gehan Re: Joint Defense Agreements and Recommendation to Judge Fitzpatrick Re: Sanctions dated October 27, 1997 (CLAD # 1588));

WHEREAS, Plaintiffs moved for sanctions and to compel production of joint defense documents;

WHEREAS, the non-Liggett Defendants stated, in their November 3, 1997, Memorandum in Opposition to the Special Master's Recommendation of Sanctions relating to Joint Defense and Sharing

Agreements, that each would advise the Court and Plaintiffs, in writing, within ten (10) days, whether they are a party to any of the four Joint Defense Agreements (Exhibits 1-4) submitted to the Special Master on October 24, 1997;

WHEREAS, the Court finds that reasonable minds could not differ in their interpretation of the provisions contained in Special Master Gehan's Fifth Order;

WHEREAS, the Court makes the following preliminary findings upon the record and upon the recommendation of the Special Master:

> 1. Defendants Philip Morris Incorporated, R. J. Reynolds Tobacco Company, Brown & Williamson Tobacco Corporation, B.A.T. Industries p.l.c., British-American Tobacco Company Limited, Lorillard Tobacco Company, and The American Tobacco Company (by B&W Tobacco as successor to American) have willfully and deliberately disregarded and violated the provisions of the Fifth Order Establishing Procedures for the Review of Documents Subject to Privilege Claims dated September 12, 1997 (CLAD #1327) ("Fifth Order"), in failing to produce one or more of the joint defense agreements identified by the Special Master in his October 27, 1997, Order as Exhibits 1, 2, 3, and 4.
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> 2. The following law firms, all of which have appeared as counsel to the parties in this action, participated in the willful and deliberate disregard and violation of the Fifth Order by withholding two joint defense agreements to which counsel themselves were signatories: (a) Chadbourne & Parke LLP; (b) Covington & Burling; (c) Jones, Day, Reavis & Pogue; (d) King & Spalding; and (e) Shook, Hardy & Bacon LLP.

WHEREAS, sanctions against the parties and counsel in violation of the Fifth Order are appropriate and include, but are not limited to, monetary sanctions, pursuant to Rules 11, 16, and 37 of the Minnesota Rules of Civil Procedure; accordingly, the Court takes the matter of sanctions under advisement;

THEREFORE, IT IS HEREBY ORDERED

1. Within five (5) days from the date of filing of this Order, each Defendant shall produce

each and every document, notice, memoranda, note, recording, or memorialization of any type or in any form in their possession, custody, or under their control, including but not limited to those in the possession, custody, or control of their outside counsel or any corporate affiliate, that contains, embodies, reflects, or alludes to any joint defense agreements or understandings (whether oral, written, "hinted at" or suggested in any fashion) with any other defendant (or corporate affiliate, past or present, of any other defendant) to this action, from 1954 to the present. Defendants and each of their counsel who have appeared in this action shall conduct the search for such information to the greatest scope necessary to reveal each and every and any memorialization that in any way possible may have any possible relevance, interest, or vague association with the issue of joint defense or "sharing" agreements. All such information shall be produced within fifteen (15) days of the date of filing of this Order.

2. To assist the Court in determining the sanctions appropriate for this willful violation of the Court's Order, Plaintiffs shall within fifteen (15) days submit their affidavit of costs and expenses, including reasonable attorneys' fees, incurred with respect to Defendants' disregard of the Fifth Order.

B. PRODUCTION OF DEPOSITION OF DR. GARY HUBER

WHEREAS, Plaintiffs stated that the deposition of Dr. Gary Huber, from the related litigation underway in the State of Texas, has not been produced within the time limits established by the Orders of this Court;

WHEREAS, Defendants explained that they could not produce the deposition because it is under seal pursuant to a sealed order of Judge Folsom but that the deposition would be produced as soon as it was released from the seal;

WHEREAS, based upon the representations of counsel that the information would, if released

to this Court, remain under seal pending future orders

IT IS HEREBY ORDERED

1. Counsel for Defendants shall immediately request of Judge Folsom that copies of the following be submitted to this Court, said information to remain under seal pending further order:

(a) The deposition of Dr. Gary Huber;

(b) Each Order of Judge Folsom, his Court, or Magistrates appointed by his Court, that is relevant to the deposition of Dr. Gary Huber;

(c) Any other supplemental or supporting materials which Judge Folsom is willing to provide to this Court, such as exhibits, related documents, publications, charts, slides, videos, visual aids, audio tapes, diskettes, magnetic recordings, etc.

The request shall not be limited to those orders listed in the letter to Judge Folsom from Robert F. McDermott, Jr., dated November 12, 1997.

2. Defendants shall immediately correct the address provided to Judge Folsom for this Court. The correct address is: Hon. Kenneth J. Fitzpatrick, Judge of District Court, Ramsey County Courthouse, Chambers 1350, 15 West Kellogg Boulevard, St. Paul, MN 55102.

3. Defendants shall cooperate with Judge Folsom to facilitate the shipment of all materials selected by Judge Folsom directly from his Court to this Court via Federal Express or its equivalent; and Defendants shall bear the costs of shipping and handling, duplication, court services, and any associated costs incurred by Judge Folsom or his Court in responding to this request.

4. Defendants shall provide to this Court via CLAD a copy of the request delivered to Judge Folsom by the end of the day on Monday November 17, 1997.

C. ISSUES RELATING TO DEPOSITION OF DR. COLBY

WHEREAS, the parties presented a status report with respect to the rescheduling of this

deposition;

WHEREAS, counsel for Defendant RJR stated he requested and expected to receive Dr. Colby's consent to release of medical records pursuant to Plaintiffs' request and that he would keep the Court and counsel advised as to the deponent's availability for deposition;

IT IS HEREBY ORDERED

1. Defendant RJR shall provide the Court and counsel a report at least once every two weeks as to the medical condition of Dr. Colby and his availability for deposition;

2. Defendant RJR shall produce supporting affidavit(s) from Dr. Colby's attending physician(s) at least once every four weeks until Dr. Colby is available for deposition.

D. ISSUES RELATING TO COST-SHARING

WHEREAS, Defendants and Liggett have reached an agreement with respect to Liggett's payment of its portion of certain costs allocated among the parties pursuant to Orders of this Court;

WHEREAS, Plaintiffs seek a reallocation of said costs, noting that the BAT Defendants, formerly identifying themselves as one defendant "BAT Group" represented by common counsel, have of late differentiated themselves as BAT Industries, BATCO, and BATUKE with counsel now stating they represent one or another of the three entities;

WHEREAS, the parties represent that reallocation is appropriate and that they will work out remaining minor details;

THEREFORE, IT IS HEREBY ORDERED

1. Counsel shall file their agreed-upon revisions to the allocations of costs within thirty (30) days of this Order.

2. Said revisions shall become effective upon receipt and approval of the Court, unless the parties agree upon some date certain and state same in this submission.

Dated: November 14, 1997

BY THE COURT:

/s/ Kenneth J. Fitzpatrick
Kenneth J. Fitzpatrick
Judge of District Court