STATE OF MINNESOTA
DISTRICT COURT
COUNTY OF RAMSEY
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 & 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,**
Defendants.

File #C1-94-8565

August 18, 1995

**STIPULATED ORDER AMENDING THE CASE MANAGEMENT ORDER WITH RESPECT TO DISCOVERY AND JURISDICTION MATTERS CONCERNING DEFENDANT BAT INDUSTRIES P.L.C.**

**Kenneth J. Fitzpatrick**, Chief Judge

1. Section III B, "Discovery Relating to the Motion of BAT Industries p.l.c. to Dismiss the Complaint," of the Case Management Order dated March 29, 1995 (the "CMO"), is no longer in effect and is hereby replaced by the following provisions.

2. Defendant BAT Industries p.l.c. ("BAT Industries") shall withdraw its pending motion to dismiss the Complaint against it for lack of personal jurisdiction, without prejudice, and shall answer the Complaint within 30 days of the entry of this amendment to the CMO. BAT Industries may assert lack of personal jurisdiction as an affirmative defense in its Answer to the Complaint, and neither its withdrawal of the motion to dismiss nor its participation in merits discovery as provided below, nor the establishment of any depository, nor any other action taken in furtherance of this Order, shall be deemed or construed to be either a waiver of its defense of lack of personal jurisdiction or a submission to the jurisdiction of this Court

3. Discovery relating to jurisdiction over BAT Industries shall be taken during merits discovery and shall be conducted pursuant to the merits discovery provisions of the CMO and other orders of the Court, except as otherwise provided herein. BAT Industries may seek summary judgment dismissing the claims against it based upon the defense of lack of personal jurisdiction either at the conclusion of discovery in this action or by agreement of plaintiffs and BAT Industries or by leave of the Court

4. Without prejudice to plaintiffs' right to serve additional discovery requests, the following discovery requests previously served by plaintiffs shall be deemed merits discovery requests: Plaintiffs' First and Second Requests for Production of Documents to BAT Industries and Brown & Williamson Tobacco Corporation ("B&W") Relating to the Jurisdiction Over BAT Industries and Plaintiffs' First and Second Set of Interrogatories to BAT Industries and B&W Relating to the Jurisdiction Over BAT Industries. BAT Industries shall have 30 days from the date the parties execute this Order to serve amended written responses and objections to this discovery, provided, however, that this Court shall have entered this Order in the interim

5 Without waiver of any other objections, BAT Industries shall not object to discovery requests on the ground that such requests seek to obtain documents or information from British-American Tobacco Company Limited ("BATCo") BAT Industries has obtained BATCo's consent to the disclosure of such documents or information and, where responsive, relevant and not otherwise objectionable, shall include such documents or information in response to discovery requests. BATCo is not a party to this action and provision of documents or information or the taking of any action in furtherance of this Order or other participation hereunder by BATCo shall not be deemed or construed to be either a submission to the jurisdiction by BATCo or a waiver of any defense of lack of personal jurisdiction by BATCo. This Order shall not obligate BAT Industries to seek or obtain discovery materials from any of its other subsidiaries. Plaintiffs reserve the right to seek such discovery at a later time and BAT Industries reserves the right to oppose such discovery, but the parties shall meet and confer on the matter of such discovery prior to any application to the Court. Notwithstanding the previous sentence, BAT

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Industries will produce documents and information to, from or relating to its other subsidiaries to the extent such documents and information are in the files of BAT Industries or BATCo and to the extent such documents and information are responsive, relevant and not otherwise objectionable. In addition, BAT Industries will seek and obtain discovery materials and information from its other subsidiaries if, and to the extent that, BAT Industries or BATCo has transferred responsive documents to other subsidiaries of BAT Industries for storage, warehousing, filing, indexing or destruction.

6. BAT Industries shall commence production of documents responsive to the discovery requests identified in Paragraph 4 as soon as practicable but in any event no later than September 1995. Production from BATCo's pre-1986 research and development files shall be completed by December 31, 1995, on the condition that BAT Industries is not obligated to create a document-by-document index of the documents contained within such files (see Paragraphs 7 and 8, below). As soon as practicable, BAT Industries and plaintiffs shall meet and confer to establish a further production schedule and to discuss the production of priority documents and privilege logs.

7. When BAT Industries makes its initial deposit of documents into the depository, it shall contemporaneously provide to plaintiffs two indexes to BATCo's research and development files, which, based upon reasonable inquiry and present belief, are the only indexes that encompass this entire group of files. The first index is the BATCo Central File Register, which contains the following fields of information: file folder number, document type, date opened, date to review, box number, current owner, original owner, and title. The second index is the solicitors' file index of pre-1986 research and development files, which contains the following objective fields of information: site, file number, title, start date, finish date, location, file owner, file user, and pagination. None of the information in these designated fields shall be withheld from plaintiffs. As used herein, the term "file" means a file as kept in the ordinary course of business. To the extent that the working file has a title (as a working file), such title shall be provided to plaintiffs. To the extent that the working file did not originally have a title, BAT Industries shall provide to plaintiffs the name of the title assigned to the file during the collection and review of files. The provisions of Paragraph 4 A of the Order of July 17, 1995 shall apply to any other information from these indexes or to any other indexes covered by that Paragraph. BAT Industries shall comply with the provisions of Paragraph 4 A within 30 days from the date the parties execute this Order, provided, however, that this Court shall have entered this Order in the interim.

8. BAT Industries shall not be required to create an index of documents produced in discovery pursuant to paragraph 4 B of the Order of July 17, 1995. However, BAT Industries shall provide an index to the files containing such documents, along with the documents produced. This index shall contain at least the following standard information with respect to each file produced: site, file number, title, start date, finish date, location, file owner, file user, and pagination. If BAT Industries creates an index to the documents placed in the Guildford depository or to the documents selected for copying therefrom by plaintiffs, the following information shall be promptly provided to plaintiffs: author(s) of document; recipient(s) of document, including those receiving copies; date of document; type of document (e.g., memo, letter, news release, pamphlet, etc.); title of document (e.g., title, subject, or "re" line, etc.); and Bates identification number. If BAT Industries creates a partial index to the documents selected for copying by plaintiffs or an index to more than 15,000 other documents placed in the Guildford depository, the parties shall meet and confer regarding potential disclosure of the information set forth in the preceding sentence and the applicability of the attorney work-product privilege with respect thereto. Any unresolved differences may be submitted to the Court for determination.

9. Plaintiffs shall not be required to utilize the provisions of the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, or any other compulsory process, to obtain depositions of persons who at the time of such depositions are employed by or under the control of BAT Industries or BATCo, provided, however, that this paragraph shall not apply to persons employed by or under the control of subsidiaries of BAT Industries or BATCo.

10. The following procedures shall apply to the depository for documents produced by BAT Industries:

A. The depository referred to herein for the production of documents by BAT Industries shall be at Guildford, England All documents produced by BAT Industries in this action shall be deposited therein, unless the parties agree to a different method of production for particular documents.

B. The depository shall be open for inspection of documents from 8:00am

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to 8:00pm, Monday through Friday, exclusive of United Kingdom holidays, at the request of any party on written notice of five business days, unless the parties agree or the Court orders expanded or reduced hours. Each person entering the depository shall be required to identify himself or herself, by law firm and party represented, and sign in and sign out on a registration log.

C. All parties with access to the depository shall be allowed to view the entire depository at any time during which the depository is open and to select any box or group of boxes for immediate review. BAT Industries shall have the sole authority to physically remove the requested boxes from the depository shelves for viewing by an authorized party and to replace the requested boxes back on the depository shelves after viewing by the authorized party.

D. The cost of placing documents requested for production into the depository shall be borne by BAT Industries. The administrative costs and expenses of operating the depository shall be borne by BAT Industries.

E. The party selecting the documents shall choose the method of copying or imaging. The party selecting the documents shall also select the vendor for copying or imaging. All documents duplicated or imaged for the requesting party shall be copied or imaged off of the actual documents in the depository and not from documents maintained at a different location, absent agreement of the parties or order of the Court.

F. Regardless of the manner of copying or imaging, BAT Industries shall be entitled to receive promptly a record of which documents have been copied or imaged by the requesting party, or a duplicate set of the copies shall be provided to BAT Industries upon its request and at its expense.

G. Subject to the provisions of Paragraph 10(Q), the depository shall be equipped with a copy machine for the purpose of allowing parties reviewing documents to immediately copy and take with them a reasonable number of particular documents.

H. All documents in the depository shall be Bates numbered in accordance with the CMO and shall be placed in numbered boxes. Each box shall be labeled with a box number and the beginning and ending of Bates numbers of documents contained therein, with the labels clearly visible for viewing by walk-by inspection. In addition, BAT Industries shall maintain a list in each box of the beginning and ending of Bates numbers for the documents contained in each file within that box, as well as a master list maintained in the depository and distributed to all other parties containing the same information. Such lists shall be updated as necessary.

I. BAT Industries shall notify all other parties in writing within 48 hours of the placement of documents in the depository. Such notice shall include the beginning and ending of Bates numbers for the documents contained in each file, the box numbers, and the appropriate categories in the request for production to which the file contents are responsive, unless unduly burdensome, to designate multiple categories for each file.

J. BAT Industries shall maintain a written guide to the location of documents in the depository, for example, a guide to the location of files by box and Bates numbers.

K. BAT Industries shall maintain at the depository copies of all privilege logs and written discovery responses from BAT Industries in this litigation.

L. Once placed in the depository, documents shall not be removed from the depository, renumbered, reboxed or moved to a different location of the depository, absent agreement of the parties or order of the Court; provided, however, that

a. Pursuant to mutually acceptable arrangements to be

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agreed upon to ensure their security and integrity, documents may be removed from the depository for the purpose of making copies or images as requested by the reviewing party;

b. Documents may be reboxed or moved to a different location of the depository in order to keep documents in sequential Bates-numbered order as new documents are placed in the depository; however, any reboxing or moving done pursuant to this subparagraph shall be accompanied by immediate (48 hours) and explicit notice to all other parties of new Bates numbers, new box numbers and new locations. Where it is more convenient to do so, in lieu of reboxing to keep documents in sequential order, BAT Industries may place later produced documents in a box supplemental to the original box. For example, if box 1 has a Bates-number range of 100 to 500 and later produced documents belong in that box, these documents may be placed in box 1A and placed next to box 1.

M. The depository shall have at least one telephone and one dedicated line for computers or facsimile machines.

N. The receiving party shall have the right, for any depository document for which it has received a copy pursuant to this Order, to transmit the copy via facsimile from the depository at its own expense. Computer versions of documents shall not be transmitted from the depository itself. The receiving party shall have the right, for any depository document for which it has received a copy pursuant to this Order, to transmit the document via computer from any other location to any person authorized to receive the document.

O. The depository shall be reasonably heated and have restroom facilities on site. If necessary, reasonable arrangements to provide air conditioning shall be made.

P. The depository shall be equipped with tables and chairs to serve as a work space for persons reviewing documents. This work space shall be contiguous with (under the same roof as) the storage area for the documents.

Q. BAT Industries shall pre-designate files which include documents containing confidential information under the Protective Order dated June 16, 1995 (the "Protective Order"). The parties shall agree upon a procedure whereby upon receiving notice of plaintiffs' request for copies of documents contained in such pre-designated files, BAT Industries shall have a reasonable opportunity to make confidentiality designations with respect to the requested documents as set forth in Paragraph 6 of the Protective Order prior to or contemporaneously with the copying or imaging of such documents. Such confidentiality review shall not unreasonably delay plaintiffs' receipt of copies of the requested documents. In the alternative, the parties shall agree upon a procedure whereby plaintiffs may obtain immediate copies of particular documents, maintaining the confidentiality thereof for a reasonable period of time to enable BAT Industries to make final confidentiality designations with respect thereto. Plaintiffs shall not disseminate any document designated as confidential by BAT Industries to any non-United States attorney representing a party to any lawsuit pending in any jurisdiction outside of the United States, nor to any non-United States consultant, investigator or expert employed by such party, for use in any proceeding outside the United States except upon the expiration of thirty days notice to BAT Industries, during which time BAT Industries shall be entitled to seek appropriate relief from this Court. Any recipient of such confidential document shall be notified of and shall agree to be bound by the terms of this paragraph The provisions of this paragraph shall not otherwise alter or modify the parties' obligations to comply with any other provisions of the Protective Order.

R. Neither party is presently aware of any reason why BAT Industries shall not have the right to close the depository upon completion of

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document production, review and copying, provided, however, that, at a minimum, until ultimate resolution of this litigation with respect to BAT Industries, BAT Industries shall maintain possession of and keep intact the depository documents and shall afford access thereto in the event that circumstances warrant such access. Prior to such closure, BAT Industries and plaintiffs shall meet and confer to address closure, preservation and access matters in this litigation.

11. Each provision of this Stipulated Order is an essential and non-severable aspect of the parties' agreement hereto. In implementing the provisions of this Stipulated Order, the parties shall cooperate with each other and shall make good faith efforts to avoid burdening the Court with disputes regarding such implementation. In the event that either party has substantial grounds upon which to contend that implementation of this Stipulated Order has frustrated the discovery process or has caused substantial prejudice, that party may, after meeting and conferring with the other party, apply to the Court for modification of this Stipulated Order

12. Nothing in this Stipulated Order shall supersede any other existing or future Order in this litigation, except as expressly stated herein. This Stipulated Order shall have no effect upon document production or other discovery arrangements as between plaintiffs and the other defendants in this action and nothing in this Stipulated Order shall create any presumptions with respect thereto.

Dated August 15, 1995

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Dated August 14, 1995

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