STATE OF MINNESOTA **DISTRICT COURT**

COUNTY OF RAMSEY **SECOND JUDICIAL DISTRICT**

FILE # 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. **EIGHTH ORDER REGARDING INDICES**

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

The above matter came on for hearing on June 4, 1996, before the Honorable Kenneth J. Fitzpatrick. James S. Simonson, Esq., appeared and argued on behalf of Defendant R. J. Reynolds with respect to its[1] motion for clarification or modification of this Court's November 1, 1995, Order. Michael v. Ciresi, Esq., appeared and responded on behalf of Plaintiffs. The following also appeared and identified themselves as appearing on behalf of the party or parties set forth:

[1] While correspondence filed as an exhibit to the legal memoranda presented with respe this issue indicates that Defendant Lorillard Tobacco Company also wishes to redact certain ormation from its indices, Defendant R.J. Reynolds is the only defendant to bring a motion for rification or to present a legal memoranda (in fact, two) in support thereof. The only referenc the other defendants appears in a two-sentence footnote to Defendant R.J. Reynolds Tobacco pany's Memorandum Regarding Production Issues, dated May 29, 1996, stating that "the other domes endants . . . request the relief sought apply to all defendants."

Name	Party
Michael V. Ciresi	State of Minnesota and Blue Cross and Blue Shield of Minnesota
Roberta B. Walburn	State of Minnesota and Blue Cross and Blue Shield of Minnesota
Thomas L. Hamlin	State of Minnesota and Blue Cross and Blue Shield of Minnesota
Susan R. 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
Gary L. Wilson	State of Minnesota and Blue Cross and Blue Shield of Minnesota
Tara Sutton	State of Minnesota and Blue Cross and Blue Shield of Minnesota
David Klatske	State of Minnesota and Blue Cross and Blue Shield of Minnesota
Tom Gilde	Blue Cross and Blue Shield of Minnesota
Tom Purcel	State of Minnesota
Peter Sipkins	Philip Morris Incorporated
Laura Hines	Philip Morris Incorporated
Tom Silfen	Philip Morris Incorporated
Mark Helm	Philip Morris Incorporated
Paul Dieseth	Philip Morris Incorporated
Maurice Leiter	Philip Morris Incorporated
Julie Snow-Savranant	Philip Morris Incorporated
Mary Jo Stark	Philip Morris Incorporated
James Simonson	R. J. Reynolds Tobacco Company
Jeffrey Jones	R. J. Reynolds Tobacco Company
Jonathan Redgrave	R. J. Reynolds Tobacco Company
Tom McKim	R. J. Reynolds Tobacco Company
Deborah Bailey	R. J. Reynolds Tobacco Company
Jack Fribley	Brown and Williamson Tobacco Corp.
Richard Schneider	Brown and Williamson Tobacco Corp.
Gerald Svoboda	B.A.T. Industries, p.l.c.
John Gustafsson	B.A.T. Industries, p.l.c.
John Monica	Lorillard Tobacco Company
David Martin	Lorillard Tobacco company
Lawrence Savell	The American Tobacco Company
Byron Starns	The American Tobacco Company
Steven Kelley	Liggett Group, Inc.
Larry Purdy	The Council for Tobacco Research - U.S.A., Inc.
Hal Shillingstad	The Tobacco Institute, Inc.
George Flynn	The Tobacco Institute, Inc.

WHEREAS, the Court has presented the parties with numerous opportunities to present their theories and arguments with respect to the production of indices and databases, as the record reflects;

WHEREAS, the issue of production of the indices and databases is addressed in this Court's Orders filed March 30, 1995 ("Case Management Order"), July 14, 1995 ("'Depository' Order"), August 10, 1995 ("'In Camera' Order"), August 17, 1995 ("'Exemplar Disc' Order"), November 1, 1995 ("Order"), March 20, 1996 ("Order Amending the Case Management Order with Respect to Document Production, Foundation and Fact Depositions"), and March 22, 1996 ("Amended Order") (collectively the "Indices Orders");

WHEREAS, the Defendants have exhausted their appellate remedies with respect to the Order;

WHEREAS the parties seek clarification of certain portions of the Indices Orders;

Based on the file, record, arguments, and representations of counsel, it appearing that the provisions of this Order are justified and supported by good cause shown

IT IS HEREBY ORDERED:

1. Plaintiffs' requests for relief are DENIED in part and GRANTED in part as set forth below.

2. Defendants' requests for relief are DENIED in part and GRANTED in part as set forth below.

3. The motion of Defendant R. J. Reynolds Tobacco Company ("RJR") for clarification or modification of the Court's November 1, 1995, Order to exclude production, in its entirety, of any index of documents reflected in its Outside Attorney Database is hereby DENIED.

4. Defendant RJR's motion for leave to file, under seal, in camera, and ex parte, the Affidavit of Thomas F. McKim dated May 29, 1996, is hereby GRANTED.

5. Defendant RJR's request for an additional opportunity to present testimony, in camera and ex parte, is hereby DENIED.

6. Plaintiffs' request for an order requiring all defendants to produce listed fields of information without redactions is DENIED as redaction of certain information is clearly contemplated and allowed by the Indices Orders.

7. Plaintiffs' request for an order requiring all defendants to certify that the indices produced are those in existence at the time of this Court's in camera review is DENIED. Counsel of record in this action are officers of the Court and bound by the Professional Code of Ethics to comply with orders of the court. No evidence has yet been presented to this Court sufficient to show that any action taken by counsel violates the Professional Code of Ethics. This Court assumes that counsel of record will, upon the Court’s request, be able to affirmatively report to the Court that they have personally reviewed the information exchanged, submitted, or

filed in this action prior to its exchange, submission, or filing.

8. The Plaintiffs' request for clarification of the Indices Orders is GRANTED. The Indices Orders are hereby clarified as follows:

(a) Those columns or fields of information identified in all indices as expressly listed in the November 1, 1995, Order shall be produced <u>not later than June 11, 1996</u>.[2] RJR may not withhold in its entirety the Outside Attorney Database but must produce the information contained in the fields and columns identified in the November 1, 1995, Order. Production in compliance with the terms of this and the other seven Indices Orders shall not be deemed a waiver of any privileges.

(b) Uncorrupted versions of the indices and databases, as the indices and databases existed at the time they or exemplar disks thereof were presented to this Court for <u>in camera</u> review, shall be produced.[3] Accordingly, RJR may not withhold the Premier database in

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[2] "[P]roduction of indices . . . shall take place not later than t eks from the date of implementation of this Order." Order of November 1, 199

[3] "Each party shall produce an index of documents . . . to the tent that each party has an existing index of the documents." Case Managemen der, paragraph 5. "[E]ach party shall submit a copy of all existing indices e Court for <u>in camera</u> review." 'In Camera' Order, paragraph 1.

its entirety since, at the time of in camera review by this Court, RJR admitted that 25% of the documents were not contained on any other existing database. RJR may withhold only that portion ("75%") of the Premier database which, at the time of in camera inspection, was duplicative of information contained in another inspected database. As ordered, RJR shall produce that portion ("25%") of the Premier database which, at the time of in camera inspection, was admittedly not duplicated on another inspected database.

(c) Permitted redactions are limited to:

(i) Plaintiff State of Minnesota may redact all information contained in the column or field entitled "Comments." Defendants may redact all information EXCEPT that contained in columns or fields described in the Order. Such information, columns, and fields redacted need not be listed in a privilege log.[4]

(ii) Of the information contained in fields or columns ordered produced, the parties may redact information only pursuant to any Protective Order filed in this action, including but not limited to the Protective Order filed June 16, 1995 ("Protective Order"), and Addendum to Protective Order for Highly Sensitive Material or Information filed June 4, 1996 ("Addendum").[5] Accordingly, portions of the information contained in fields or columns ordered produced may be designated Confidential, Confidential - Category I, or Confidential - Category II, and protected according to the terms of the Protective Order and Addendum. If any redactions are made pursuant to such orders,

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[4] See Order of November 1, 1995, paragraph 10.

[5] See Case Management Order, paragraph 8.

> however, each and every such redaction shall be listed in the privilege log.[6] Specifically RJR may not redact wholesale the information contained in its title field. Based upon a review of the material submitted to the Court in camera, while a document may contain privileged information such as work product or trade secrets, the limited information contained in the title field does not itself reveal the mental impressions of counsel. The parties are reminded that this Order relates to production of portions of indices and databases only, not entire databases nor the indexed documents themselves.

9. Each index and database produced pursuant to this and the other seven Indices Orders shall be designated "Confidential: Minnesota Tobacco Litigation" and protected from general dissemination pursuant to the terms of the Protective Order unless and until this Court orders otherwise, for good cause shown. Information designated as "Confidential" may be disseminated, but only pursuant to the terms of the Protective Order.

10. This Order serves to clarify previous orders only; it does not alter or modify any previous Order of this Court in this action. This Court will countenance no further delay in production of the information contained in certain columns or fields of the indices and databases as they existed at the time of this Court's in camera examination.

DATED: June 7, 1996 */s/ Kenneth J. Fitzpatrick*

[6] See Case Management Order, paragraph 8.

Kenneth J. Fitzpatrick
CHIEF JUDGE

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