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,

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.

PLAINTIFFS' PROPOSED
ADDENDUM TO PROTECTIVE ORDER
FOR HIGHLY SENSITIVE, TRADE SECRET MATERIALS OR INFORMATION

1. This Order supplements this Court's Protective Order of June 15, 1995 in order to provide additional protection for highly sensitive, trade secret materials or information. See Protective Order of June 15, 1995, at ¶ 16. All of the terms of this Court's June 15, 1995 Protective Order apply with equal force to the materials or information described in the present Order except to the extent that the present Order specifically provides further protection to such materials or information.

2. The further protections of this Order are limited to materials or information which are both trade secret and highly sensitive. "Trade secret" shall be as defined in Minn. Stat. § 325C.01, subd. 5. "Highly sensitive" shall be materials or information which is so proprietary or competitively sensitive that its disclosure to a competitor would cause irreparable competitive injury.

3. Any party may designate materials or information as "highly sensitive, trade secret" upon a good faith determination that the material or information meets the criteria of paragraph 2. However, nothing in this Order creates a presumption or implies that any material or information designated by a party as "highly sensitive, trade secret" actually meets the criteria of paragraph 2, and such determination may be made at a later time by this Court. See Protective Order of June 15, 1995, at ¶ 12.

4. The designation of "highly sensitive, trade secret" shall be made by placing or affixing on the material or information in a manner which will not interfere with its legibility the words "TRADE SECRET: MINNESOTA TOBACCO LITIGATION."

5. Highly sensitive, trade secret materials or information shall be produced in the following manner:

a. Highly sensitive, trade secret materials or information shall be placed and maintained within the trebly secured areas in the Minnesota depository and, with respect to defendant B.A.T Industries p.l.c., a similarly secure area in the Guildford, England depository, or

b. As an alternative to subparagraph (a) above, any party may at its option produce one copy of highly sensitive, trade secret materials or

information directly to opposing liaison counsel in Minnesota; provided, however, that if a party chooses to produce materials or information in this manner (as opposed to placing the materials or information in the appropriate depository), the producing party shall bear the cost of producing the materials or information (i.e. the cost of copying or reproducing).

c. Nothing herein shall relieve any party of any of the requirements for the production of documents as set forth in the prior orders of this Court, including but not limited to the Case Management Order of March 29, 1995 and the Order of July 14, 1995.

6. No person shall disclose or permit the disclosure of any highly sensitive, trade secret materials or information to any other person or entity, except in the following circumstances:

a. Disclosure may be made to the Court and its personnel.

b. Disclosure may be made to counsel in this action and staff persons employed by such counsel; provided that prior to disclosure, each such person must agree to be bound by the terms of this Order by executing the Confidentiality Agreement annexed hereto as Exhibit A.

c. Disclosure may be made to any officer, director, or employee of any party who is providing assistance in connection with this litigation, to the extent necessary to render such assistance; provided that:

i. Prior to disclosure, each such person must agree to be bound by the terms of this Order by executing the Confidentiality Agreement annexed hereto as Exhibit A, and

ii. Disclosure may <u>not</u> be made to any officer, director, or employee of any party which is a manufacturer of cigarettes, or which is currently a corporate affiliate of a manufacturer of cigarettes, absent agreement of the party producing and designating the highly sensitive, trade secret materials or information or order of the Court for good cause shown.

d. Disclosure may be made to persons whose depositions are taken by any party so long as such disclosure is made during the course of the deposition; provided that:

i. Prior to disclosure, each such person must agree to be

bound by the terms of this Order by executing the Confidentiality Agreement annexed hereto as Exhibit A, and

ii. Disclosure of highly sensitive, trade secret materials or information produced by one party may not be made to any deponent who is currently an officer, director, or employee of any other party which is a manufacturer of cigarettes, or which is currently a corporate affiliate of a manufacturer of cigarettes, absent agreement of the party producing and designating the highly sensitive, trade secret materials or information or order of the Court for good cause shown.

e. Disclosure may be made to consultants, investigators, or experts (collectively hereinafter referred to as "experts") employed by the parties or their counsel to assist in the preparation and trial of this litigation; provided that:

i. Prior to disclosure, each such person must agree to be bound by the terms of this Order by executing the Confidentiality Agreement annexed hereto as Exhibit A, and

ii. Disclosure of highly sensitive, trade secret materials or information produced by one party may not be made to any expert who is currently an officer, director, or employee of any other party which is a manufacturer of cigarettes, or which is currently a corporate affiliate of a manufacturer of cigarettes, absent agreement of the party producing and designating the highly sensitive, trade secret materials or information or order of the Court for good cause shown.

f. Disclosure may be made to any attorney representing a party to any other lawsuit relating to smoking and health; provided that prior to disclosure, such attorney and party must agree to bound by all of the provisions of this Order by executing, filing, and serving an Affidavit of Complaint with this Court, in the form attached hereto as Exhibit B. Such attorney and party shall thereafter be bound by all of the provisions of this Order and all of the terms of the Protective Order of June 15, 1995.

g. Disclosure may be made to any governmental agency or law enforcement agency; provided that prior to disclosure, an appropriate

representative of the agency must agree to be bound by all of the provisions of this Order by executing, filing, and serving an affidavit of Compliance with this Court, in the form attached hereto as Exhibit C. Such agencies shall thereafter be bound by all of the provisions of this Order and all of the terms of the Protective Order of June 15, 1995.

h. The Confidentiality Agreements executed pursuant to this paragraph shall be retained by lead counsel for the party seeking access to or seeking to use the materials or information.

7. No materials or information shall be withheld from production in this litigation on the basis that they are confidential or highly sensitive, trade secret.

8. No materials or information shall be withheld on the basis that such materials or information are covered by a third-party confidentiality agreement. Such materials are hereby ordered produced, subject to the protections of this Court's order of June 15, 1996 and this Order.

9. No materials or information shall be produced on paper which is specially treated in any manner so as to limit the ability of the receiving party to copy or image the materials or information.

10. The further protections of this paragraph shall apply to material or information produced any defendant which meets the definition of paragraph 2 herein for highly sensitive, trade secret and which also relates to formulas for cigarettes or to certain material or information which post-dates the complaint in this action, as detailed in paragraph 10(a) below.

a. The "trade secret formula" designation shall be limited to materials or information which disclose formulas for cigarettes designed, manufactured or marketed by defendants or their corporate affiliates. The "trade secret formula" designation shall <u>not</u> apply to material or information relating to testing that could be performed by a third party on commercially-available cigarettes, including but not limited to quality control testing. The "trade secret formula" designation also may be used for materials or information which were written after the date of the complaint in this action (August 17, 1994).

b. This paragraph supplements this Court's Order of June 15, 1996 and the other provisions of this Order in order to provide additional protection for trade secret formula material or information. All of the terms of this Court's Order of June 15, 1996 and the present Order apply with equal force to trade secret formula material or information except to the extent that this paragraph 10 specifically provides further protection to such materials or information.

c. Any defendant may designate material or information as "trade secret formula" upon a good faith determination that the material or information meets the criteria of paragraphs 2 and 10(a). However, nothing in this Order creates a presumption or implies that any material or information designated by a defendant as "trade secret formula" actually meets the criteria of paragraphs 2 and 10(a), and such determination may be made at a later time by this Court. See Protective Order of June 15, 1995, at ¶ 12.

d. The designation of "trade secret formula" shall be made by placing or affixing on the material or information in a manner which will not interfere with its legibility the words "TRADE SECRET FORMULA: MINNESOTA TOBACCO LITIGATION."

e. Within 14 days of this Order, each defendant which has trade secret formula materials or information covered by a discovery request in this litigation shall notify the requesting party of the estimated volume of such materials or information.

f. No person shall disclose or permit the disclosure of any trade secret formula materials or information to any other person or entity, except in the following circumstances (after the execution of the appropriate Confidentiality Agreement or Affidavit of Compliance, attached hereto as Exhibits A and B):

i. Disclosure may be made to the Court and its personnel. Paragraphs 14 and 15 of the Order of June 15, 1996 shall apply to any such filing of trade secret formula information except that 1) the cover page of the filed document shall be marked: "Confidential -- Trade Secret Formula/(*designate identity of producing party, i.e. Philip Morris*) -- Subject

to Minnesota Protective Order", 2) unredacted copies of such filing shall be served only upon counsel for the producing party, and 3) counsel for other parties shall be served copies of such filing with the trade secret formula information redacted.

ii. Disclosure may be made to attorneys and staff at Robins, Kaplan, Miller & Ciresi ("RKM&C") who are actively involved in this litigation. RKM&C shall be permitted to maintain one copy of trade secret formula materials or information at its Minneapolis offices. Such materials or information shall be maintained in a locked filing cabinet(s) within a locked room(s) at RKM&C, except when being reviewed or utilized by a RKM&C attorney. Access to the filing cabinet(s) and room(s) at RKM&C shall be restricted to Michael V. Ciresi and Roberta B. Walburn; other attorneys and staff at RKM&C who are actively involved in the litigation may have access to the trade secret formula materials or information for review as necessary in the litigation only upon the express designation of either Mr. Ciresi or Ms. Walburn. A permanent record of individuals who have had access to these documents shall be maintained by RKM&C. Any notes by RKM&C relating to the trade secret formula materials or information shall be kept within the locked filing cabinet(s) within the locked room(s). Any computer indices or databases of the trade secret formula materials or information with substantive information beyond that included in defendants' "4B" indices shall have access restricted to Mr. Ciresi and Ms. Walburn; other attorneys and staff at RKM&C who are actively involved in the litigation may have access to such portions of indices or databases as necessary in the litigation only upon the express designation of either Mr. Ciresi or Ms. Walburn. RKM&C shall not make further copies of trade secret formula materials or information except 1) for filings with the Court, or 2) by consent of the producing party, or 3) by order of the Court.

iii. Attorneys at RKM&C may discuss trade secret formula materials with attorneys employed by the State of Minnesota ("the State") and Blue Cross and Blue Shield of Minnesota ("Blue Cross") who are providing assistance in connection with this litigation, to the extent necessary to

render such assistance; provided, however, that the actual trade secret formula documents themselves shall not be shown to such attorneys for the State and Blue Cross.

iv. Disclosure may be made to consultants, investigators, or experts (collectively hereinafter referred to as "experts") employed by RKM&C to assist in the preparation and trial of this litigation provided that 1) such experts may review such materials or information but may not be provided with copies of such materials or information absent consent of the producing party or further order of this Court, and 2) the identity and resume of any such expert shall be provided to the Court in camera and ex parte, along with an affirmation that such expert is not currently employed by a manufacturer of cigarettes or a corporate affiliate of a manufacturer of cigarettes, prior to disclosure.

v. Disclosure may be made to persons whose depositions are taken by plaintiffs so long as such disclosure is made during the course of the deposition, provided that the deponent 1) is a current or former officer, director, or employee of the producing party or a corporate affiliate of the producing party, or 2) the deponent is an expert retained by the producing party (individually or jointly by defendants), or 3) by consent of the producing party or further order of this Court. Any trade secret formula documents used as deposition exhibits shall be retained only by RKM&C and counsel for the producing party.

vi. Disclosure may be made to any other counsel of record in this litigation upon consent of the producing party (with notice to all other parties in this litigation) or by further order of this Court.

vii. Disclosure shall not be made to any attorney representing a party to any other lawsuit or to any governmental agency or law enforcement agency absent the consent of the producing party or further order of this Court (or another court of appropriate jurisdiction).

vii. No materials shall be withheld from production or in any way redacted on the basis that they contain trade secret formula information.

Dated: _____, 1996.

_____

Kenneth J. Fitzpatrick, Chief Judge

EXHIBIT A

CONFIDENTIALITY AGREEMENT

STATE OF _____)
) ss
COUNTY OF _____)

Being duly sworn, I hereby attest to my understanding that materials or information designated highly sensitive, trade secret will be provided to me pursuant to the terms and conditions and restrictions of the Protective Order of June 16, 1995 and the Addendum to Protective Order for Highly Sensitive, Trade Secret Materials or Information, dated _____, 1996, in State of Minnesota, et al v. Philip Morris Incorporated, et al, in the District Court for the County of Ramsey, State of Minnesota (hereinafter "Court"); that I have been given a copy of and have read the Orders of June 16, 1995 and _____, 1996 and have had their meaning and effect explained to me by the attorneys providing me with confidential and/or highly sensitive, trade secret materials or information, and that I hereby agree to be bound by these Orders and their terms. I further agree that I shall not disclose to others, except in accordance with these two orders, such confidential and/or highly sensitive, trade secret materials or information. I further agree and attest to my understanding that, in the event I fail to abide by the terms of the Protective Order, I may be subject to sanctions, including sanctions by way of contempt of court, imposed by the Court, for such a failure.

Dated: _____

_____
Signature

_____
Printed Name

Subscribed and sworn to
before me this _____
day of _____, 199__.
Witness my hand and
official seal.

_____
Notary Public

EXHIBIT B

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,

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.

AFFIDAVIT OF COMPLIANCE

STATE OF _____)
) ss
COUNTY OF _____)

COMES NOW _____, who being first duly sworn on oath, states the following:

1. I am an attorney licensed to practice in the State of _____.

2. I am one of the attorneys for the plaintiffs in the case of (insert caption, venue and court file number).

3. I hereby acknowledge receipt of and agree to be bound by the terms thereof of the Protective Order of June 16, 1995 and the Addendum to Protective Order for Highly Sensitive, Trade Secret Materials or Information, dated _____, 1996, in State of Minnesota, et al v. Philip Morris Incorporated, et al, in the District Court for the County of Ramsey, State of Minnesota, C1-94-8565, and I hereby submit to the jurisdiction of this Court for the purpose of enforcement of said Orders.

Dated: _____

_____
(Attorney)

Subscribed and sworn to
before me this _____
day of _____, 199__.
Witness my hand and
official seal.

_____
Notary Public

EXHIBIT C

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
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LIGGETT GROUP, INC.,
THE COUNCIL FOR TOBACCO RESEARCH - U.S.A., INC., and
THE TOBACCO INSTITUTE, INC.,

Defendants.

AFFIDAVIT OF COMPLIANCE

STATE OF _____)
) ss
COUNTY OF _____)

COMES NOW _____, who being first duly sworn on oath, states the following:

1. I am [insert name and title] and I am authorized to represent _____ [insert name of agency] for purposes of this Affidavit of Compliance.

2. I hereby acknowledge receipt and agree that _____ [insert name of agency] shall be bound by the terms of the Protective Order of June 16, 1995 and the Addendum to Protective Order for Highly Sensitive, Trade Secret Materials or Information, dated _____, 1996, in State of Minnesota, et al v. Philip Morris Incorporated, et al, in the District Court for the County of Ramsey, State of Minnesota, C1-94-8565, and _____ [insert name of agency] hereby submits to the jurisdiction of this Court for the purpose of enforcement of said Orders.

Dated: _____

_____
(Authorized Agent)

Subscribed and sworn to
before me this _____
day of _____, 199__.
Witness my hand and
official seal.

_____
Notary Public