

IN THE CHANCERY COURT OF JACKSON COUNTY, MISSISSIPPI

**MIKE MOORE; ATTORNEY GENERAL, EX REL;
THE STATE OF MISSISSIPPI,**
Plaintiffs,

v.

**AMERICAN TOBACCO COMPANY; LIGGETT & MYERS,
INC.; LIGGETT GROUP, INC. ;CORR-WILLIAMS
TOBACCO COMPANY; LAUREL CIGAR & TOBACCO COMPANY;
LONG WHOLESALE; PHILIP MORRIS; WIGLEY & CULP; R.J.
REYNOLDS TOBACCO COMPANY; RJR NABISCO, INC.; LEWIS
BEAR COMPANY; BROWN AND WILLIAMSON TOBACCO CO.;
GENERIC PRODUCTS CORP.; HILL AND KNOWLTON, INC.;
LORILLARD TOBACCO COMPANY; LOEWS CORPORATION;
BATUS, INC.; MS MANUFACTURERS ASSOCIATION,**
Defendants.

Case Number 94-1429

**TRANSCRIPT OF THE PROCEEDINGS HAD AND DONE IN THE HEARING OF THE ABOVE STYLED AND
NUMBERED CAUSE, BEFORE THE HONORABLE WILLIAM H. MYERS, CHANCELLOR, ON THE 25TH DAY OF
SEPTEMBER, 1996.**

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TABLE OF CONTENTS

MOTIONS

STIPULATION.....	8
DEFENDANTS' MOTION TO COMPEL THE STATE TO PRODUCE WITNESSES KNOWLEDGEABLE ABOUT ALCOHOL AND DRUG RELATED ISSUES	16
COURT REPORTER'S CERTIFICATE.....	39

MR. SCRUGGS: May it please the court, Richard Scruggs on behalf of the State. We have made substantial progress in resolving the issues that were on the calendar today. We have reached an agreement either to stipulate or defer certain issues, save one. The one issue that we would like to argue today is what is number five on the list that was presented to the Judge, which was Defendants' Motion to Compel the State to Produce witnesses to testify about Alcohol and Drug Related Issues. All the other motions by both parties -- by both sides I should say, have either been stipulated or agreed to defer. And I will go through them if I might just so that there would be a clear record on that and then I would like to read or characterize the stipulation for the Court on the other issues.

THE COURT: Go ahead.

MR. SCRUGGS: On the State's Motion for Entry of an Order Allowing the State to Disclose the Identities of New Whistleblowers, only to the Court, to be kept under seal for future reference, which was filed on September 3, 1996. We are deferring that motion.

THE COURT: All right..

MR. SCRUGGS: On the Defendants' Motion to Compel a Supplemental Response to their Third Set of Interrogatories to the Plaintiff and Defendants' Response to Plaintiff's Motion to disclose New Whistleblowers for the Court, under seal, filed September 10, 1996, that also is being deferred. On the Motion for Sanctions for Attorneys Fees for the Attorney General's failure to Comply with the Court's April 18 and August 2, 1996 Orders. That is being deferred. On the Twenty Medicaid Recipient depositions, we are deferring that, your Honor, and we are going to try to negotiate some ground rules for identifying those twenty Medicaid recipients and what the ground rules for any discovery would be, subject to the Court's approval.

THE COURT: Okay.

MR. SCRUGGS: On the Defendants' Motion for Addendum to the Protective Order, that is being deferred pursuant to our stipulation we are going to get to in a moment. The Defendants' Motion to Compel the State to Produce Witnesses to Testify about Alcohol and Drug Related Issues, we will argue that today. On the Plaintiff's Motion to Compel Defendants, One, to Produce Documents in Response to Plaintiff's Second Request for Production of Documents to Defendants on general issues; and Two, to Furnish Plaintiff with Privileged Logs for Documents Withheld on Grounds of Privilege. That is also being subject to the stipulation and deferred. On the Plaintiff's Motion to Compel Discovery on the Prometheus Data Base, we have reached a stipulation on that. And on the Plaintiff's Motion to Compel Discovery of Document Indexes, we are deferring that. So of the eight motions that were scheduled today, your Honor, all but one we have resolved by stipulation or deferral.

Now, the stipulation is that the Plaintiff's -- and I'm going to try to generally characterize this -- Mr. Susman, Mr. Colingo and others can correct my characterization if it is wrong. The Plaintiff is agreeing to hold in abeyance Plaintiff's Second Document Request to the Defendants and to withdraw its Motion to Compel Production of those documents in exchange for which the Defendants who were involved in the litigation will produce the documents that were selected for copying by counsel for ABC and the litigation generally entitled *Philip Morris v. ABC*. And I assume that production will be within two weeks.

MR. SUSMAN: I think we can do it within two -- I think we can do it within two weeks.

MR. SCRUGGS: Within two weeks. All right. The Defendants will also produce to the State or counsel for the State on a continuing basis all documents selected for copying by Plaintiffs counsel in *Minnesota v. Members of the Tobacco Industry*. That is the Minnesota case. Those documents will be provided to counsel for the State on a timely and on-going basis as they are selected for copying by the State of Minnesota.

Of course, they will be subject to the Mississippi order, not the Minnesota order when they are produced. As to the Prometheus data base, that deals only with Philip Morris and Philip Morris has agreed to produce copies of all items in all fields for Mississippi public officials, but limited to Mississippi public officials. And we are deferring any further request for any further information pending our receipt of that.

The Defendants will produce in an electronic form the documents, or rather the data, for their customer bases. In Mississippi limited to Mississippi customers for each defendant, produced in an electronic form and we will work out the details of how that will be, what form that would be in, but it would be a form that is user friendly for the State's lawyers. The Defendants will produce the documents -- and I'm going to add some other things to it, but -- you can --

MR. SUSMAN: I'm sorry.

MR. SCRUGGS: -- come back in if I miss something. But the Defendants are going to produce documents that may be subject to the second document request, which they have agreed to produce. And what I'm suggesting is that in the past few days we received letters from the defendants agreeing to produce certain documents at certain locations, those documents will be produced as pursuant to their letters. The Defendants will produce to us what I think are generally termed the 4(b) indexes of documents that are in the Minnesota repository, document repository. These are indexes that the Defendants' themselves have prepared of documents that are in those data bases. We understand that those indexes --

MR. SUSMAN: That are in the depository.

MR. SCRUGGS: That are in the depository. In the Minnesota depository, That those indexes are organized by subject, category and by author and date in the form that we can use it. For documents that the Defendants have deemed to be of a sensitive nature in terms of trade secret, things that deal with their competitiveness, or other sensitive documents, which we understand are a fairly limited number by comparison with all of the documents that will be produced, the Defendants will segregate those documents, produce them in the offices of their local counsel. The documents will be subject to review by the lawyers for the State with no one else. The lawyers who review these documents, these sensitive documents, will be entitled to identify the documents primarily with the stickys for coming back and copying them later and writing down their Bates stamp number or any other identifying information, but no substantive information from the documents. In other words, if there is a formula or something like that, I want the

documents -- the lawyers for the State can't go in and copy the formula.

And then for documents that lawyers for the State feel like they need to go forward with the case, we will negotiate with the Defendants' lawyers for ground rules on using those documents, and failing any agreement, we would come back to the Court and ask guidance from the Court on how we would deal with those documents. I think that is it, now if I have left anything out, please correct me.

THE COURT: Anything further?

MR. SUSMAN: I think we agreed, just so we understand, that the electronic customer list, customer information that will be made available will be --

MR. SCRUGGS: Can also be --

MR. SUSMAN: -- can also be made available in the local counsels office under -- as highly sensitive information.

MR. SCRUGGS: Yes. That is correct.

MR. SUSMAN: And this agreement is on behalf of Philip Morris, Reynolds and Brown and Williamson. And we are waiting to hear from Lorillard. I mean, we assume it will be forthcoming shortly this afternoon.

MR. UPSHAW: Well, The American Tobacco Company will agree to all of this, but it is subject to that letter I have written you, Dick. I have told you what we can do and can't do. We don't have the data base like everyone else and we are trying to create it now. And it's going to be on a rollover basis like we have told you and we will do that.

MR. SCRUGGS: All right.

MR. UPSHAW: But that is all we can do.

MR. MIKHAIL: That letter is subject to what Mr. Scruggs has stipulated to the Court.

MR. UPSHAW: Exactly.

MR. MIKHAIL: That letter is covered by that.

MR. UPSHAW: Right.

MR. SCRUGGS: That's right.

THE COURT: I believe there is something else back there, wait a minute.

MR. SCRUGGS: It has also been agreed among counsel that with reference to Plaintiff's sixth Document Request that we will attempt to pare that down to be more precise for specific documents rather than generic categories and to negotiate with the Defendants to try to pare down exactly what we are seeking there and try to come to an understanding of that. As part of the overall stipulation.

MR. SCARBORO: That's correct.

MR. SCRUGGS: As to the letters, one of the terms of the stipulation was that the Defendants would produce documents that they have written to us and said they would produce. Some of the Defendants have not written that letter yet, but have promised it by Friday. So it would include those documents and letters that we haven't received yet.

MR. MIKHAIL: They said in the responses they would produce them, but we asked for a letter confirming it and we haven't gotten letters from some of them, your Honor, so that is covered; is that right?

MR. SUSMAN: That's correct.

MR. MIKHAIL: Okay.

THE COURT: Okay Anything else we need to put in the record at this point?

MR. SCRUGGS: And I think we will get back to the court on -- is it Lorillard that we are waiting for?

MR. SUSMAN: Yes, but they should be in shortly. We could proceed with the fifth --

MR. SCRUGGS: we can just go ahead now if it please the Court.

MR. GALE: I'm sorry. I don't mean to interrupt your Honor, I represent Brown and Williamson, My name is Todd Gale. On these customer data bases, this is the first that I have heard of this particular issue. I don't believe there has been a document request served on us for customer data bases. I would have to go back and talk to my client about that issue, as to whether it even exists.

MR. SUSMAN: I believe this is a Philip Morris only issue about the customer data base. So I think we should reflect that what we talked about, the electronic customer data bases, applies to Philip Morris only.

MR. GALE: All right. Thank you.

MR. SCRUGGS: Good.

MR. PROCTOR: Yes. Your Honor, Gregg Proctor on behalf of Lorillard Tobacco Company, I just wanted to let the record reflect that Lorillard has agreed to the stipulation read into the record by Mr. Scruggs and Mr. Susman today so it is a joint stipulation.

MR. SCRUGGS: So Lorillard has indeed agreed?

MR. PROCTOR: Yes, we have.

MR. SCRUGGS: Thank you,

THE. COURT: Anything further? All right. court will stand adjourned.

COURT REPORTER'S CERTIFICATE

STATE OF MISSISSIPPI
COUNTY OF JACKSON

I, CANDACE C. LECHLER, Official Court Reporter or the 16th Chancery Court District of the State of Mississippi, do hereby certify that the foregoing thirty-eight (38) pages contain a full, true and correct transcription, to the best of my ability from an electronic recording, of the testimony and proceedings of Mike Moore; Attorney General, Ex Rel; the State of Mississippi, Plaintiffs v. American Tobacco Company, Liggett & Myers, Inc.; Liggett Group, Inc.; Corr-Williams Tobacco Company; Laurel Cigar & Tobacco Company; Long Wholesale; Wigley & Culp; R.J. Reynolds Tobacco Company; RJR Nabisco, Inc.; Lewis Bear Company; Brown and Williamson Tobacco Co.; Generic Products Corp.; Hill and Knowlton, Inc.; Lorillard Tobacco Company; Loews Corporation; Batus, Inc.; MS Manufacturers Association, Defendants, Cause No. 94-1429 before the Honorable William H. Myers, of the 16th Chancery Court District of Mississippi on the 25th day of September, 1996.

I do further certify that my certificate annexed hereto applies only to the original and certified transcript. The undersigned assumes no responsibility for the accuracy of any reproduced copies not made under my control or direction.

This the 25th day of September, 1996.

CANDACE C. LECHLER
Official Court Reporter