

IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT, IN AND FOR PALM BEACH
COUNTY, FLORIDA - CIVIL DIVISION

**THE STATE OF FLORIDA; LAWTON M. CHILES,
JR., Individually and as GOVERNOR OF THE STATE
OF FLORIDA; DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION; and THE AGENCY
FOR HEALTH CARE ADMINISTRATION,**
Plaintiffs,

v.

**THE AMERICAN TOBACCO COMPANY;
REYNOLDS TOBACCO COMPANY;
RJR NABISCO, INC.; B.A.T. INDUSTRIES, PLC;
BATUS HOLDINGS, INC.; BROWN &
WILLIAMSON TOBACCO CORPORATION PHILIP
MORRIS COMPANIES, INC.;;
PHILIP MORRIS INCORPORATED (PHILIP
MORRIS U.S.A.); LIGGETT GROUP, INC.; LIGGETT
& MYERS, INC.; BROOKE GROUP, LIMITED; THE
BROOKE GROUP, LTD., INC.; LOEWS
CORPORATION; LORILLARD CORPORATION;
UNITED STATES TOBACCO COMPANY; UST INC.;;
THE COUNCIL FOR TOBACCO RESEARCH --
U.S.A., INC. (SUCCESSOR TO TOBACCO
INSTITUTE RESEARCH COMMITTEE); THE
TOBACCO INSTITUTE, INC.; HILL & KNOWLTON,
INC.; BRITISH AMERICAN TOBACCO CO., LTD.;;
and DOSAL TOBACCO CORP., INC.,**
Defendants.

Case No. CL 95-1466 AO

April 28, 1995

**ORDER ON DEFENDANT BROWN &
WILLIAMSON'S MOTION FOR TEMPORARY
SEALING OF CERTAIN DOCUMENTS FILED WITH
THE COURT AND FOR ORDER PREVENTING
FURTHER DISSEMINATION
BY PLAINTIFF'S COUNSEL**

Roger B. Colton, Circuit Judge

This cause came before the Court on April 20, 1995, upon Defendant Brown & Williamson Tobacco Corporation's (B&W) Motion for Temporary Sealing of Certain Documents Filed with the Court and Order Preventing Further Dissemination by Plaintiff's Counsel. The Court having reviewed the various

written submissions of the parties, and having heard the arguments of counsel, issues the following Order.

Apparently, most, if not all, of the over 800 "stolen" documents filed with the Court as part of Plaintiffs' Request for Admissions were part of the public domain prior to being filed in this Court. These documents have been the subject of newspaper articles, television programs, and Congressional hearings. Plaintiff's counsel has admitted in open court having disseminated the documents to every news agency he could think of. To now seal the court files to protect the confidentiality of these documents would be futile. Moreover, the public and the press cannot be denied access to information already within the public domain. *United States v. Gurney*, 558 F.2d 1202 (5th Cir. 1977) (citing *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 95 S.Ct. 1029, 43 L.Ed.2d 328 (1975)). Therefore, Defendant B&W's motion to Seal is DENIED.

This Court does not give the slightest impression that it condones the theft of privileged documents, or any theft. It does NOT. This Court is well aware of the crucial role that the attorney-client privilege and work product doctrine play in guaranteeing all litigants a fair trial. Hence, even though these documents will not be sealed, there is no presumption whatsoever that they will be admissible in any future proceedings before this Court. *See Smith v. Armour Pharmaceutical Co.*, 838 F.Supp. 1573 (S.D. Fla. 1993).

Where documents such as these are not only facially privileged but also known to have been obtained under suspicious or illegal circumstances, they should be presented to the Court for a ruling on whether or not they are privileged or already part of the public domain. No party should usurp the Court's function by unilaterally filing such documents into a court file as part of a Request for Admissions or other such artifice. As to the remaining 3,200 or so allegedly privileged or work product documents, the Court orders Plaintiffs to not further disseminate these documents nor to place them in the court file without first presenting them to the court *in camera*, with appropriate notice to B&W of any requested Court action to ensure that due process of law is afforded to all parties.

DONE AND ORDERED in Chambers, in West Palm Beach, Palm Beach County, Florida, this 28th day of April, 1995.