

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF SOUTH CAROLINA  
FLORENCE DIVISION

-----X  
Roy P. Windham, Harden Evans, Joe Skipper, :  
David Nexsen, W.A. Turner, and Toby Gaskins, :

Plaintiffs, :

CIVIL ACTION  
NO. 74-1008

-v-

American Brands, Inc., Liggett & Meyers, :  
Incorporated, R. J. Reynolds Tobacco Company, :  
(R. J. Reynolds, Inc.), Brown & Williamson :  
Tobacco Corporation, The Imperial Tobacco :  
Company (of Great Britain and Ireland) Ltd., :  
Mullins Leaf Tobacco Company, Inc., C. W. :  
Walters Co., Inc., Export Leaf Tobacco :  
Company, Loews Theaters, Inc., (d/b/a :  
Lorillard), Philip Morris, Inc., British- :  
American Tobacco Company, Ltd., Universal :  
Leaf Tobacco Co., Inc., The Austin Company, :  
Inc. (Greeneville, Tennessee), J. P. Gallaher :  
Limited, and Earl L. Butz, Secretary of :  
Agriculture of the United States. :

AFFIDAVIT OF LOEW'  
IN OPPOSITION TO  
PLAINTIFFS' MOTION  
FOR A NON-DESTRUCT  
PROTECTIVE ORDER

Defendants. :

-----X  
STATE OF NEW YORK )

: ss.:

COUNTY OF NEW YORK )

M. ALFRED PETERSON, JR., being duly sworn, deposes  
and says:

1. I make this affidavit in opposition to plaintiffs'  
motion seeking a "non-destruct protective order" and the  
form of the order proposed by plaintiffs. I am Vice President,  
Financial Administration, of Lorillard, a Division of Loew's

Theatres, Inc. ("Lorillard"). Loew's Theatres, Inc. is engaged in the business of purchasing tobacco and manufacturing tobacco products solely through Lorillard.

2. My duties at Lorillard are to coordinate, record and control the financial aspects of Lorillard's business. In the course of my duties, I have gained knowledge of many of the types of documents which are prepared and which are received by Lorillard, and the volume in which such documents are prepared and received.

3. I know of no fact which supports the making of this motion by plaintiffs and I believe that it is totally without basis. Within a few days after Lorillard was served with the summons and complaint in this lawsuit, Lorillard instructed those of its employees who were likely to prepare or receive documents relating to the purchase of flue-cured tobacco to preserve all such documents which were in their possession currently and in the future. Since the filing of this motion, I have talked with such personnel and am informed that no such documents have been destroyed. Lorillard has no intention of either destroying or altering so as to change the content of documents in its possession or control, relating to the purchase of flue-cured tobacco.

4. In spite of the fact that plaintiffs do not even purport to show any facts in support of their motion, they propose an order which requires indefinite retention

of documents unrelated to any issue in this lawsuit. The proposed order is so sweeping that it would make Lorillard responsible for the actions of others even though Lorillard cannot control such actions, and it would unreasonably interfere with the normal use of documents by Lorillard in the operation of its business. The entry of the order proposed by plaintiffs will harm Lorillard (a) by causing it to notify thousands of employees of the order and to check their compliance, although there are fewer than 100 employees who are in any way involved in the purchase of flue-cured tobacco, (b) by requiring Lorillard to incur the burden and expense of keeping for an indefinite time millions of pages of documents which are presently in its possession, and millions of pages of documents which will come into its possession each year, although the vast majority of such documents are not relevant to the issues in this lawsuit, (c) by placing Lorillard in jeopardy of being held to have violated a court order because of the actions of third parties - trade associations, lobbyists, advertising agencies, public relations firms and suppliers - which are not under Lorillard's control and (d) by preventing Lorillard's employees from marking documents although such employees mark documents in the normal course of their duties.

5. The bulk of the documents prepared and received by Lorillard which would be covered by plaintiffs' proposed

order relate to the manufacture and marketing of tobacco products. The vast quantity of just those documents produced by Lorillard is vividly illustrated by Lorillard's annual expenditure of approximately \$350,000 per year for the paper used to prepare such documents.

6. Lorillard has a computer which operates 24 hours per day, five days a week. The computer prints out material approximately 20 hours a day, five days a week. I am advised that the computer alone prints out approximately 23,000 pages a day or about 6,000,000 pages a year. This figure does not include carbon copies, which if included would bring the total to over 18,000,000 pages a year.

7. Lorillard does not use its computer to any substantial extent in connection with its leaf buying activities, which activities are recorded essentially by manual means. Rather, the vast majority of the material processed by the computer relates to the manufacture and marketing of tobacco products.

8. Lorillard sends approximately 24,000 invoices a month to its customers and each invoice is based upon 2 to 3 purchase order and shipping documents. In addition, Lorillard prepares one or more supporting documents for each of the 7,000 bills a month which it receives, exclusive of bills relating to the purchase of tobacco. Further, many thousands of pages of reports are prepared each month to

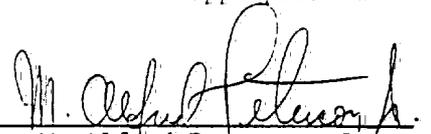
guide management with respect to marketing. In addition, Lorillard employs approximately one thousand sales representatives throughout the United States and in foreign countries who prepare reports each day, plus weekly expense reports. Further, Lorillard prepares documents totalling over 200 pages a day regarding cigarette production at its plants. None of the above documents relate to the purchase of flue-cured tobacco.

9. In addition to the documents which it produces, Lorillard receives many thousands of orders each month from its customers and, as stated above, receives approximately 7,000 bills a month from suppliers, exclusive of bills relating to leaf purchases.

10. In addition to requiring the retention of millions of pages of documents which are not relevant to this lawsuit, plaintiffs' proposed order would make Lorillard responsible for the retention of documents in the possession of trade associations, lobbyists, advertising agencies, public relations firms and suppliers. I am at a complete loss to understand how plaintiffs can even suggest this. The ridiculousness of this suggestion is shown by the fact that plaintiffs are themselves suppliers of tobacco. Lorillard does not have control over the documents of the associations to which it belongs or of the lobbyists, advertising agencies, public relations firms and suppliers with which it deals.

11. Further, the wording of the plaintiffs' proposed order is so restrictive that it would prevent Lorillard personnel from making normal use of documents. Lorillard's personnel frequently mark documents while using them. For example, employees may interline portions of documents while reading them or may place marks on documents in checking columns of figures. Plaintiffs' proposed order would prevent interlining a document even though the interlining does not alter the content of the document. Such a restriction is unnecessary, since there can be no valid objection to interlineations which do not alter the content of a document, and such a restriction is unreasonable, since it would interfere with the normal operation of Lorillard's business.

12. I respectfully urge the Court to reject plaintiffs' motion and proposed form of order, because such order is unnecessary and the form of order is inappropriate.

  
M. Alfred Peterson, Jr.

Sworn to before me this  
20<sup>th</sup> day of November, 1974.

  
Notary Public

Notary Public  
New York  
County of New York  
Commission Expires March 30, 1976

RECEIVED  
AUG 23 1979  
A. J. STEVENS

91828710