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April 9, 1996

VIA TELECOPY

Richard F. Scruggs, Esq.
Scruggs, Millette, Lawson,
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734 Delmas Avenue
Pascagoula, MS 39563-1425

Re: Depositions of Uydess and Rivers

Dear Dickie:

We are in receipt of your letter of April 4, 1996, regarding the depositions of Dr. Uydess and Mr. Rivers.

Obviously, the parties disagree about what ground rules should apply to the depositions. Nonetheless, some clarification of the applicable rules is clearly in order in light of the conduct of plaintiff's counsel during the Wigand deposition. As you know, in several instances plaintiff's counsel insisted that Dr. Wigand answer questions over objections made by counsel for Brown & Williamson on the ground of attorney-client privilege. At one point, counsel for Brown & Williamson attempted to suspend the deposition. Plaintiff's counsel responded that defense counsel could walk out, but the deposition would continue. Wigand Deposition at 49-54.

As you suggested, our concerns in this regard can be met without going beyond the Mississippi Rules of Civil Procedure and the discovery order that plaintiff has proposed Chancellor Myers enter in this case.

Mississippi Rule of Civil Procedure 30(d) provides that "[u]pon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order." Paragraph 19 of the Agreed Case Management

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Order provides that disputes that arise during a deposition may be presented to the Court. In the event the Court is unavailable, "the deposition shall nevertheless continue to be taken as to matters not in dispute." (Emphasis added.) Thus, both the Rules and the Agreed Case Management Order contemplate that a deponent shall not provide information or answer a question as to which a party has made an objection on the basis of privilege unless and until the Court overrules the privilege objection. Please confirm that plaintiff agrees with this understanding of the Rules and the Agreed Case Management Order.

With respect to confidential information and materials, paragraph 13 of plaintiff's proposed Order Governing Access To And Use Of Material Determined To Be Privileged And/or Confidential allows a "supplying party" to designate deposition testimony as confidential. We believe that, to the extent Dr. Uydass or Mr. Rivers testify about information obtained in the course of their employment with Philip Morris, the "supplying party" would be Philip Morris. Please let me know immediately whether or not you agree with this construction of the Order.

Finally, as I discussed with Charles Mikhail today, it is likely that one or both of the depositions will not be completed within two days. I understand that the plaintiffs have a preference not to have the depositions go day to day until completed. Charles and I discussed going ahead and scheduling two additional days for each deposition now in order to accommodate plaintiffs but at the same time assure that the depositions will be completed in a timely fashion. I understand that Charles will be getting back to me with possible dates in the near future. Please let me know if any of these understandings is not correct.

Sincerely,


MURRAY R. GARRNICK

cc: Defense Counsel

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