

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

THE STATE OF TEXAS, Plaintiff,	§ § § § § §	CIVIL NO.: 5:96-CV-0091 JUDGE: DAVID FOLSOM MAGISTRATE: JUDGE WENDELL C. RADFORD
VS.		
THE AMERICAN TOBACCO COMPANY, ET AL		

THE STATE OF TEXAS' MOTION FOR AN EMERGENCY HEARING

Plaintiff, the State of Texas, respectfully moves this Court for an emergency hearing on its Motion for a Temporary Restraining Order Enjoining Defendants from Interfering with this Court's Discovery Orders. In support, the State would show as follows:

1. On March 20, 1997, Liggett entered into the Attorneys General Settlement Agreement ("Settlement Agreement") with 22 states – including Plaintiff, the State of Texas – that have filed lawsuits against the cigarette manufacturers to, *inter alia*, recoup the public health care costs caused by smoking-related disease. Central to these suits are allegations that the cigarette manufacturers have affirmatively misrepresented and hidden the true health dangers of smoking from the public and health regulators.

2. As part of the settlement agreement, Liggett agreed to turn over "all documents and information that are relevant to the subject matter of the Actions or which are likely to lead to admissible evidence in connection with the claims asserted in any of the Actions" Settlement Agreement, para. 4.3.2(2). Liggett further agreed to deposit in this Court, under seal for *in camera* inspection, all documents which any tobacco company claims may be privileged. *Id.*

3. Defendants R. J. Reynolds Tobacco Company, Brown & Williamson Tobacco Corporation, Lorillard Tobacco Company and Philip Morris Incorporated sought, and were granted, a temporary restraining order dated March 20, 1997, the effect of which has precluded

Liggett from disclosing documents and information as required by the Attorneys General Settlement Agreement. *See*, Temporary Restraining Order. On March 21, 1997, Defendants R. J. Reynolds Tobacco Company, Brown & Williamson Tobacco Corporation, Lorillard Tobacco Company and Philip Morris Incorporated sought, and were granted, a further order regarding the documents and information pertinent to the Settlement Agreement. This Order requires Liggett to retrieve all copies of all documents subject to the TRO and deposit them with the Superior Court of Forsyth County, North Carolina by Monday, March 24, 1997, at 5:00 p.m. *See*, March 21, 1997, Order.

4. The actions of Defendants R. J. Reynolds Tobacco Company, Brown & Williamson Tobacco Corporation, Lorillard Tobacco Company and Philip Morris Incorporated attempt to seriously interfere and infringe on the jurisdiction of this Court, undermine this Court's previous Orders, and impair this Court's power to effectively manage and decide the above-captioned action.

5. Given the North Carolina court's Order to retrieve all copies of all documents subject to the TRO and deposit them into that court by Monday, March 24, 1997, at 5:00 p.m. E.S.T., the State requests this Court to conduct an emergency hearing to determine whether the State's Motion for Temporary Restraining Order should be granted. If this Motion for Emergency Hearing is not granted, the matters at issue will become moot at 5:00 p.m. E.S.T. today and this Court will have been effectively deprived of its jurisdiction to determine matters properly before it.

WHEREFORE premises considered, the State of Texas respectfully requests that this Court schedule and hold an emergency hearing on the State's Motion for Temporary Restraining Order at a time sufficiently in advance of 5:00 p.m. E.S.T. to determine whether the motion should be granted.

Respectfully submitted:

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By: _____

Grant Kaiser, by permission of Walter
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CERTIFICATE OF SERVICE

I hereby certify compliance with Fed. R. Civ. P. 5 and Case Management Order of November 5, 1996, that a true a correct copy of the foregoing document has been sent by hand delivery on March 24, 1997, to the following:

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Respectfully submitted,

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TEXARKANA DIVISION**

**THE STATE OF TEXAS,
Plaintiff,**

VS.

**THE AMERICAN TOBACCO
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§ **CIVIL NO.: 5:96-CV-0091**
§
§ **JUDGE: DAVID FOLSOM**
§
§
§ **MAGISTRATE:**
§ **JUDGE WENDELL C. RADFORD**

ORDER SETTING EMERGENCY HEARING

The State of Texas' Motion for Emergency Hearing was determined today. After reviewing all pertinent pleadings, briefs and other filings and arguments of counsel, the Court determines that the State's Motion should be in all things granted.

IT IS THEREFORE ORDERED, that a hearing be held on the State of Texas' Motion for Temporary Restraining Order on the _____ day of _____, 1997, at _____
__m.

Dated: March 24, 1997.

DAVID FOLSOM
FEDERAL DISTRICT JUDGE