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April 9, 1985

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COUNSEL

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Middleton & Anderson, P.C.
21 West Perry Street
Savannah, GA 31401

BY HAND

Re: McBride -v- Lorillard

Dear Richard and Clint:

We have several comments and suggested changes in your proposed consent Order to Produce Documents.

We would like the opening paragraph to read as follows:

By agreement of counsel for the parties to the above-styled action, the Employer, LORILLARD, a Division of LOWE'S THEATRES, INC., consents to produce those among the following documents (except those listed in Paragraph 1 below) (the word "documents" as used here encompasses taped recordings of a visual and/or auditory nature as well as written documents), found to exist as a result of a reasonably diligent search by the Employer, for review and copying at Employee's expense by counsel for the Employer at a place to be designated by Employer and at a mutually convenient time.

Material contained in the document(s) listed in Paragraph 1 is confidential trade information and Employer does not automatically agree to allow the copying of such material.

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If you find any material when looking at the Administration Manual (Paragraph 1) which you claim to be relevant and which is deemed by Employer to be confidential, we will bring a copy of that material to Savannah for in camera consideration by Judge Rice. We would insist that any confidential trade information be sealed, however, so that it would not be available to our client's competitors.

The paragraphs of your proposed order are discussed below:

1. This paragraph has already been discussed. You should be aware that Division Managers' Administration Manuals are supplemented periodically, with old pages discarded and replaced by updated material.

2. We agree to produce such documents.

3. The time frame is too broad. Mr. McBride was hired in 1955 and, apparently, re-hired in 1957. Documents pertaining to hiring policies for other years would not be material, and to dig out such documents would be unduly burdensome to our client. Perhaps we can agree to produce documents pertaining to hiring policies from 1955-1960.

4, 5, 6. As far as Employer is aware, the only documents which have existed which are called for by these paragraphs are the "work plans". We are willing to produce what may be relevant "work plans" to you for your inspection and copying but Mr. McBride ceased being a field sales representative in 1958. Thus, "work plans" developed subsequent to his 1958 promotion would not be relevant to his claim. While we have no desire to thwart your discovery, obviously we have no desire to search for, try to find and review documents which could have no bearing on this litigation.

7. These will be produced to the extent that they exist.

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8. We do not agree to production of such documents even if they exist. The allegation that the Employer knew of a link between smoking and lung cancer might be relevant in a tort action, but is not relevant in a worker's compensation proceeding. Worker's compensation does not depend on the fault of the employer, but is more akin to benefits provided under a policy of insurance.

9. We agree to produce any documents which we have in this regard, if any are in existence.

Our client will, of course, need some time to discover whether many of the requested documents are available. Additional time will be needed to collect any existing documents and pull out what you have requested.

We look forward to your prompt reply.

Sincerely,


Frank W. Seiler

FWS/kh

cc: Honorable Richard L. Rice



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RECEIVED
APR 17 1985
A. J. STEVENS

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