

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, :
 :
 Plaintiff, :
 : Civil Action No.
 v. : 99-2496 (GK)
 :
 PHILIP MORRIS USA INC., :
 f/k/a PHILIP MORRIS INC., et al., :
 :
 Defendants. :

ORDER #898

Upon consideration of discussions with the parties in open Court, their submissions regarding procedures for the remedies phase of trial, Order #894 and the entire record herein, it is hereby:

ORDERED that the following procedures will apply to the remedies phase of this trial:

1. Consistent with Order #886, no later than **5:00 p.m. on Friday, March 11, 2005**, the United States shall serve and file an identification of all witnesses it will offer in support of the proposed remedies, including a detailed statement for each witness disclosing the subject matter of the proposed testimony.

2. No later than **5:00 p.m. on Monday, March 21, 2005**, the United States shall serve and file expert witness reports for all

expert witnesses that the United States will seek to call in its remedies case-in-chief regarding all opinions that have not been previously disclosed; and (3) an identification of all materials relied upon by each expert for the remedies opinions that have not been previously disclosed.¹ All such reliance materials will be produced to Defendants no later than **March 21, 2005**. Any quantitative data, formula and programs used and/or relied upon by an expert in connection with newly disclosed opinions shall be produced to Defendants in a reasonably accessible and usable electronic format no later than **March 21, 2005**. All expert reports served and filed by the United States shall comply with Fed. R. Civ. P. 26(a)(2)(b).

3. The United States shall make all witnesses who will offer testimony regarding remedies that were not previously disclosed available for deposition at a mutually available time in the time period between **March 28, 2005 and April 11, 2005**.

4. No later than **5:00 p.m. on Monday, April 18, 2005**, Defendants shall serve and file: (1) an identification of all witnesses they will offer in their remedies case-in-chief,

¹ To the extent that the United States will be relying upon existing expert witness opinions, it shall identify those opinions and corresponding expert witness reports with particularity.

including a detailed statement for each witness disclosing the subject matter of the proposed testimony; (2) expert witness reports for all expert witnesses that Defendants will seek to call in their remedies case-in-chief regarding all opinions that have not been previously disclosed; and (3) an identification of all materials relied upon by each expert for the remedies opinions that have not been previously disclosed. All such reliance materials will be produced to the United States no later than **April 18, 2005**. Any quantitative data, formula and programs used and/or relied upon by an expert in connection with newly disclosed opinions shall be produced to the United States in a reasonably accessible and usable electronic format no later than **April 18, 2005**. All expert reports served and filed by the Defendants shall comply with Fed. R. Civ. P. 26(a)(2)(b).

4. Defendants shall make all witnesses who will offer testimony regarding remedies that were not previously disclosed available for deposition at a mutually available time in the time period between **April 25, 2005 and May 9, 2005**.

5. If the United States identifies new expert opinions that, in whole or in part, involve the use of a complex mathematical or statistical formula, then additional time will be provided to

Defendants to depose such experts and to produce responsive expert witness reports. Defendants will identify any such opinion(s), and a proposed schedule for further discovery regarding such opinion(s), on or before **March 25, 2005**.

6. All depositions shall take place in Washington, D.C. unless otherwise agreed by the parties or ordered by the Court for good cause shown. Depositions shall not exceed one seven-hour day, unless otherwise agreed by the parties or ordered by the Court for good cause shown.

7. One week prior to the start of the United States' remedies case-in-chief, the United States shall disclose its proposed order of witnesses pursuant to Order #471, ¶ IV.B.

8. One week prior to the start of Defendants' remedies case-in-chief, Defendants shall disclose their proposed order of witnesses pursuant to Order #471, ¶ IV.B.

IT IS SO ORDERED.²

March 16, 2005

/s/
Gladys Kessler
United States District Judge

² If Defendants' prediction, that their case on liability will end April 11, 2005, turns out to be accurate, there may be, at most, a one week "gap" between the closing of the Defendants' liability evidence and the start of the United States' remedies evidence. If the Government is correct that the Defendants' prediction is too optimistic, there will be no such "gap."