

PITMAN

# United States District Court

**JUDGE BUCHWALD**

SOUTHERN

DISTRICT OF NEW YORK

HER MAJESTY THE QUEEN IN RIGHT OF  
ONTARIO, THE MINISTER OF HEALTH AND  
LONG TERM CARE,

**00 CIV. 1593**  
SUMMONS IN A CIVIL CASE

Plaintiff,  
V.

CASE NUMBER:

*ORIG: JAW*  
*cc: BH*  
*JRB*

IMPERIAL TOBACCO LIMITED, et al.,

Defendants.

RECEIVED

MAY 11 2000

BARRY HIRSCH

TO: (Name and address of defendant)

See attached List of Defendants.

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

Janis Ettlinger  
STORCH AMINI & MUNVES, P.C.  
405 Lexington Avenue  
New York, New York 10174  
TEL: (212) 490-4100  
FAX: (212) 490-4208

*Rec'd. on 5/11/00 @ 2:40 PM*  
*by Glenn Zain @ 667*  
*Madison Ave, NY*

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

JAMES M. PARKISON

CLERK

(BY) DEPUTY CLERK

DATE

MAR 01 2000

98233926

**RETURN OF SERVICE**

Service of the Summons and Complaint was made by me <sup>1</sup>	DATE
NAME OF SERVER (PRINT)	TITLE

*Check one box below to indicate appropriate method of service*

- Served personally upon the defendant. Place where served: \_\_\_\_\_
  
- Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.  
Name of person with whom the summons and complaint were left: \_\_\_\_\_
  
- Returned unexecuted: \_\_\_\_\_
  
- Other (specify): \_\_\_\_\_

**STATEMENT OF SERVICE FEES**

TRAVEL	SERVICES	TOTAL

**DECLARATION OF SERVER**

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on \_\_\_\_\_  
Date \_\_\_\_\_  
Signature of Server

\_\_\_\_\_

Address of Server

98233927

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

**Ontario v. Imperial Tobacco, et al.**

**List of Defendants**

Imperial Tobacco Limited  
600 de Maisonneuve Boulevard  
Montreal, Quebec  
Canada

Imasco Limited  
600 de Maisonneuve Boulevard West  
Montreal, Quebec  
Canada

British American Tobacco p.l.c.  
(individually and as successor to B.A.T. Industries p.l.c.,  
B.A.T. Industries Limited and Tobacco Securities Trust Company Limited)  
Windsor House  
50 Victoria Street  
London, England

British American Tobacco (Investments) Ltd.  
(individually and as successor to British-American Tobacco Company Limited)  
Millbank, Knowle Green, Staines  
Middlesex, England

Brown & Williamson Tobacco Corporation  
(individually and as successor to The American Tobacco Company)  
1500 Brown & Williamson Tower  
Louisville, KY

Rothmans, Benson & Hedges Inc.  
(individually and as successor to Rothmans of  
Pall Mall Limited and Benson & Hedges (Canada) Inc.)  
1500 Don Mills Road  
North York, Ontario  
Canada

Rothmans Inc.  
1500 Don Mills Road  
North York, Ontario  
Canada

98233928

Philip Morris Incorporated  
120 Park Avenue  
New York, NY

Philip Morris Companies Inc.  
120 Park Avenue  
New York, NY

Philip Morris International Inc.  
800 Westchester Avenue  
Port Chester, NY

Philip Morris International Finance Corporation  
800 Westchester Avenue  
Port Chester, NY

RJR-Macdonald Inc.  
(individually and as successor to Macdonald Tobacco Co.)  
1 First Canadian Place, 60th Floor  
Toronto, Ontario  
Canada

R.J. Reynolds Tobacco Company  
4th and Main Streets  
Winston-Salem, NC

R.J. Reynolds Tobacco Holdings Inc.  
(individually and as successor to RJR Nabisco Inc.)  
1301 Avenue of the Americas  
New York, NY

Japan Tobacco Inc.  
(individually and as successor to R.J. Reynolds Tobacco International Inc.)  
2-1 Toranomon 2-chome  
Minato-ku , Tokyo 105-8422  
Japan

Liggett Group Inc.  
700 West Main Street  
Durham, NC

Brooke Group Inc.  
100 Southeast 2nd Street, Floor 32  
Miami, FL

Liggett & Myers Tobacco Company  
700 West Main Street  
Durham, NC

Liggett & Myers Tobacco Company of Canada Limited  
3810 Rue St. Antoine  
Montreal, Quebec  
Canada

Lorillard Tobacco Company  
714 Green Valley Road  
Greensboro, NC

Lorillard Incorporated  
714 Green Valley Road  
Greensboro, NC

Loews Corporation  
1 Park Avenue  
New York, New York 10016

Canadian Tobacco Manufacturers' Council  
South 701-99 Bank  
Ottawa, Ontario  
Canada

Council for Tobacco Research  
(individually and as successor to Tobacco Industry Research Council)  
900 3rd Avenue  
New York, NY

The Tobacco Institute  
1875 I Street N.W., Suite 800  
Washington, D.C.

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

HER MAJESTY THE QUEEN IN RIGHT OF )  
ONTARIO, THE MINISTER OF HEALTH AND LONG )  
TERM CARE )  
 )  
Plaintiff, )  
 )  
IMPERIAL TOBACCO LIMITED, et al., )  
 )  
Defendants. )  
 )

Civil No. 00 Civ. 1593

FIRST AMENDED  
COMPLAINT AND  
DEMAND FOR JURY  
TRIAL

Storch Amini & Munves, P.C.  
405 Lexington Avenue  
New York, New York 10174  
(212) 490-4100

98233931

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

**JUDGE BUCHWALD**

0007. 1593

HER MAJESTY THE QUEEN IN RIGHT OF  
ONTARIO, THE MINISTER OF HEALTH AND LONG  
TERM CARE

**PITMAN**  
Plaintiff,

Civil No. \_\_\_\_\_

COMPLAINT AND  
DEMAND FOR JURY  
TRIAL

IMPERIAL TOBACCO LIMITED, IMASCO LIMITED )  
BRITISH AMERICAN TOBACCO p.l.c. (individually )  
and as successor to B.A.T. INDUSTRIES p.l.c., B.A.T. )  
INDUSTRIES LIMITED and TOBACCO SECURITIES )  
TRUST COMPANY LIMITED), BRITISH AMERICAN )  
TOBACCO (INVESTMENTS) LTD. (individually and )  
as successor to BRITISH-AMERICAN TOBACCO )  
COMPANY LIMITED), BROWN & WILLIAMSON )  
TOBACCO CORPORATION (individually and as )  
successor to THE AMERICAN TOBACCO )  
COMPANY), ROTHMANS, BENSON & HEDGES )  
INC. (individually and as successor to ROTHMANS OF )  
PALL MALL LIMITED and BENSON & HEDGES )  
(CANADA) INC.), ROTHMANS INC., PHILIP )  
MORRIS INCORPORATED, PHILIP MORRIS )  
COMPANIES INC., PHILIP MORRIS )  
INTERNATIONAL INC., PHILIP MORRIS )  
INTERNATIONAL FINANCE CORPORATION, RJR- )  
MACDONALD INC. (individually and as successor to )  
MACDONALD TOBACCO CO.), R.J. REYNOLDS )  
TOBACCO COMPANY, R.J. REYNOLDS TOBACCO )  
HOLDINGS INC. (individually and as successor to RJR )  
NABISCO INC.), JAPAN TOBACCO INC. )  
(individually and as successor to R.J. REYNOLDS )  
TOBACCO INTERNATIONAL INC.), LIGGETT )  
GROUP INC., BROOKE GROUP INC., LIGGETT & )  
MYERS TOBACCO COMPANY, LIGGETT & MYERS )  
TOBACCO COMPANY OF CANADA LIMITED, )  
LORILLARD TOBACCO COMPANY, LORILLARD )  
INCORPORATED, LOEWS CORPORATION, )  
CANADIAN TOBACCO MANUFACTURERS' )  
COUNCIL, COUNCIL FOR TOBACCO RESEARCH )  
(individually and as successor to TOBACCO )

98233932

INDUSTRY RESEARCH COUNCIL) and THE )  
TOBACCO INSTITUTE, )  
 )  
Defendants. )  
 )

**I. Introduction**

1. Plaintiff Her Majesty the Queen in Right of Ontario by and through the Minister of Health and Long Term Care (the "Government of Ontario") brings this federal civil RICO action for the purposes of obtaining recoupment of its tobacco-related health care costs, as well as such other relief as will afford a full and complete remedy. The expenditure by the Government of Ontario for these health services was directly and proximately caused by the unlawful conduct of an international conspiracy between defendants detailed herein.

2. The conspiracy alleged in this Complaint is a conspiracy of such scope and duration that it is truly unique in the annals of American jurisprudence. It constituted a scheme to defraud and cheat that lasted almost a half century and spread its shadow over North America and Europe. The conduct of the defendants was inconsistent with moral uprightness, fundamental honesty, fair play and right dealing to the general and business life of members of society.

3. The defendants, all members of the international tobacco industry conspiracy, constitute a substantial portion of the international tobacco industry.

4. All of the defendants were knowingly involved and actively participated or aided and abetted the conduct alleged in this Complaint including, but not limited to, the suppression and manipulation of information regarding the hazards of exposure to cigarette smoke and the addictive nature of cigarettes.

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5. The goal of the conspiracy was to ensure a market for their hazardous products--cigarettes.

6. The existence of this conspiracy was hidden due to a component of the conspiracy that included, *inter alia*, the abuse and manipulation of the judicial system in the United States through a carefully orchestrated policy of scorched litigation tactics that included failure to fully respond to legitimate discovery requests and the creation and suppression of knowingly inappropriate and false privilege claims.

7. The leaders of this conspiracy were the American tobacco companies working in large part through their lawyers. This position of leadership was based on the well accepted understanding that the United States tort system presented the industry with the most potent threat to its profitability.

8. By developing and implementing a litigation strategy that became the theme underlying almost every decision from what issues to research to what researchers to attack to where to do the research, the U.S. tobacco industry lawyers were able to stave off regulation and liability and protect the considerable profitability of the industry until relatively recently when the wall of silence began to crack and information began to leak out about the activities of the tobacco industry on both sides of the Atlantic as a result of courageous whistle blowers and the aggressive litigation strategies of the Attorneys General of various states of the United States.

9. The conspiracy operated not only in the United States and Canada but also without limitation in Germany, the United Kingdom and Switzerland and the defendants communicated amongst and between each other by both mail and wire.

10. The Government of the Province of Ontario has always acted aggressively to deal with the scourge of cigarettes and has diligently worked to restrict youth access and to encourage and legislate restrictions on tobacco advertising. Unfortunately, Ontario has not always been successful--in large part due to the continued successful implementation of the scheme to defraud and cheat so successfully implemented by the tobacco industry conspiracy. As a direct result of the defendants' actions, Ontario has made and continues to make substantial expenditures to cover health care costs.

11. The allegations contained herein, other than those of mail and wire fraud, are made on information and belief.

## **II. Parties**

### **A. Plaintiff**

12. Ontario is a province of Canada. The Minister of Health and Long Term Care (the "Minister") is responsible for administering the health care system and providing health care services to the citizens of the province of Ontario. The minister is the proper representative of the government of Ontario in an action to recover health care costs. The minister acts through provincial officials and employees of the province of Ontario.

### **B. Defendants**

13. Imperial Tobacco Limited is a company incorporated pursuant to the laws of Canada whose principal place of business is at 600 de Maisonneuve Boulevard, Montreal, Quebec, Canada. At times pertinent to the complaint, defendant Imperial Tobacco Limited, directly and/or through its related companies, agents, alter egos, aiders and abettors or co-conspirators, has materially engaged in the design, testing, manufacture, marketing, promotion and/or sale of cigarettes for use

in Ontario and otherwise participated in the affairs of the tobacco industry through the unlawful means and enterprise alleged herein.

14. Imasco Limited is a company incorporated pursuant to the laws of Canada whose principal place of business is at 600 de Maisonneuve Boulevard West, Montreal, Quebec, Canada. At times pertinent to the complaint, defendant Imasco Limited, directly and/or through its related companies, agents, alter egos, aiders and abettors or co-conspirators, has materially engaged in the design, testing, manufacture, marketing, promotion and/or sale of cigarettes for use in Ontario and otherwise participated in the affairs of the tobacco industry through the unlawful means and enterprise alleged herein.

15. British American Tobacco p.l.c. (individually and as successor to B.A.T. Industries p.l.c., B.A.T. Industries Limited and Tobacco Securities Trust Company Limited) is a company incorporated pursuant to the laws of the United Kingdom whose principal place of business is at Windsor House, 50 Victoria Street, London, England. At times pertinent to the complaint, defendant British American Tobacco p.l.c., directly and/or through its related companies, agents, alter egos, aiders and abettors or co-conspirators, has materially engaged in the design, testing, manufacture, marketing, promotion and/or sale of cigarettes for use in Ontario and otherwise participated in the affairs of the tobacco industry through the unlawful means and enterprise alleged herein.

16. British American Tobacco (Investments) Ltd. (individually and as successor to British-American Tobacco Company Limited) is a company incorporated pursuant to the laws of the United Kingdom whose principal place of business is at Millbank, Knowle Green, Staines, Middlesex, England. At times pertinent to the complaint, defendant British American Tobacco (Investments) Ltd., directly and/or through its related companies, agents, alter egos, aiders and

abettors or co-conspirators, has materially engaged in the design, testing, manufacture, marketing, promotion and/or sale of cigarettes for use in Ontario and otherwise participated in the affairs of the tobacco industry through the unlawful means and enterprise alleged herein.

17. Brown & Williamson Tobacco Corporation (individually and as successor to The American Tobacco Company) is a company incorporated pursuant to the laws of Delaware whose principal place of business is at 1500 Brown & Williamson Tower, Louisville, KY. At times pertinent to the complaint, defendant Brown & Williamson Tobacco Corporation, directly and/or through its related companies, agents, alter egos, aiders and abettors or co-conspirators, has materially engaged in the design, testing, manufacture, marketing, promotion and/or sale of cigarettes for use in Ontario and otherwise participated in the affairs of the tobacco industry through the unlawful means and enterprise alleged herein.

18. Rothmans, Benson & Hedges Inc. (individually and as successor to Rothmans of Pall Mall Limited and Benson & Hedges (Canada) Inc.) is a company incorporated pursuant to the laws of Canada whose principal place of business is at 1500 Don Mills Road, North York, Ontario, Canada. At times pertinent to the complaint, defendant Rothmans, Benson & Hedges Inc., directly and/or through its related companies, agents, alter egos, aiders and abettors or co-conspirators, has materially engaged in the design, testing, manufacture, marketing, promotion and/or sale of cigarettes for use in Ontario and otherwise participated in the affairs of the tobacco industry through the unlawful means and enterprise alleged herein.

19. Rothmans Inc. is a company incorporated pursuant to the laws of Canada whose principal place of business is at 1500 Don Mills Road, North York, Ontario, Canada. At times pertinent to the complaint, defendant Rothmans Inc., directly and/or through its related companies,

agents, alter egos, aiders and abettors or co-conspirators, has materially engaged in the design, testing, manufacture, marketing, promotion and/or sale of cigarettes for use in Ontario and otherwise participated in the affairs of the tobacco industry through the unlawful means and enterprise alleged herein.

20. Philip Morris Incorporated is a company incorporated pursuant to the laws of Virginia whose principal place of business is at 120 Park Avenue, New York, NY. At times pertinent to the complaint, defendant Philip Morris Incorporated, directly and/or through its related companies, agents, alter egos, aiders and abettors or co-conspirators, has materially engaged in the design, testing, manufacture, marketing, promotion and/or sale of cigarettes for use in Ontario and otherwise participated in the affairs of the tobacco industry through the unlawful means and enterprise alleged herein.

21. Philip Morris Companies Inc. is a company incorporated pursuant to the laws of Virginia whose principal place of business is at 120 Park Avenue, New York, NY. At times pertinent to the complaint, defendant Philip Morris Companies Inc., directly and/or through its related companies, agents, alter egos, aiders and abettors or co-conspirators, has materially engaged in the design, testing, manufacture, marketing, promotion and/or sale of cigarettes for use in Ontario and otherwise participated in the affairs of the tobacco industry through the unlawful means and enterprise alleged herein.

22. Philip Morris International Inc. is a company incorporated pursuant to the laws of Delaware whose principal place of business is at 800 Westchester Avenue, Port Chester, NY. At times pertinent to the complaint, defendant Philip Morris International Inc., directly and/or through its related companies, agents, alter egos, aiders and abettors or co-conspirators, has materially

engaged in the design, testing, manufacture, marketing, promotion and/or sale of cigarettes for use in Ontario and otherwise participated in the affairs of the tobacco industry through the unlawful means and enterprise alleged herein.

23. Philip Morris International Finance Corporation is a company incorporated pursuant to the laws of Delaware whose principal place of business is at 800 Westchester Avenue, Port Chester, NY. At times pertinent to the complaint, defendant Philip Morris International Finance Corporation, directly and/or through its related companies, agents, alter egos, aiders and abettors or co-conspirators, has materially engaged in the design, testing, manufacture, marketing, promotion and/or sale of cigarettes for use in Ontario and otherwise participated in the affairs of the tobacco industry through the unlawful means and enterprise alleged herein.

24. RJR-Macdonald Inc. (individually and as successor to Macdonald Tobacco Co.) is a company incorporated pursuant to the laws of Canada whose principal place of business is at 1 First Canadian Place, 60th Floor, Toronto, Ontario, Canada. At times pertinent to the complaint, defendant RJR-Macdonald Inc., directly and/or through its related companies, agents, alter egos, aiders and abettors or co-conspirators, has materially engaged in the design, testing, manufacture, marketing, promotion and/or sale of cigarettes for use in Ontario and otherwise participated in the affairs of the tobacco industry through the unlawful means and enterprise alleged herein.

25. R.J. Reynolds Tobacco Company is a company incorporated pursuant to the laws of New Jersey whose principal place of business is at 4th and Main Streets, Winston-Salem, NC. At times pertinent to the complaint, defendant R.J. Reynolds Tobacco Company, directly and/or through its related companies, agents, alter egos, aiders and abettors or co-conspirators, has materially engaged in the design, testing, manufacture, marketing, promotion and/or sale of cigarettes for use

in Ontario and otherwise participated in the affairs of the tobacco industry through the unlawful means and enterprise alleged herein.

26. R.J. Reynolds Tobacco Holdings Inc. (individually and as successor to RJR Nabisco Inc.) is a company incorporated pursuant to the laws of Delaware whose principal place of business is at 1301 Avenue of the Americas, New York, NY. At times pertinent to the complaint, defendant R.J. Reynolds Tobacco Holdings Inc., directly and/or through its related companies, agents, alter egos, aiders and abettors or co-conspirators, has materially engaged in the design, testing, manufacture, marketing, promotion and/or sale of cigarettes for use in Ontario and otherwise participated in the affairs of the tobacco industry through the unlawful means and enterprise alleged herein.

27. Japan Tobacco Inc. (individually and as successor to R.J. Reynolds Tobacco International Inc.) is a company incorporated pursuant to the laws of Japan whose principal place of business is at 2-1 Toranomom 2-chome, Minato-ku, Tokyo 105-8422, Japan. At times pertinent to the complaint, defendant Japan Tobacco Inc., directly and/or through its related companies, agents, alter egos, aiders and abettors or co-conspirators, has materially engaged in the design, testing, manufacture, marketing, promotion and/or sale of cigarettes for use in Ontario and otherwise participated in the affairs of the tobacco industry through the unlawful means and enterprise alleged herein.

28. Liggett Group Inc. is a company incorporated pursuant to the laws of Delaware whose principal place of business is at 700 West Main Street, Durham, NC. At times pertinent to the complaint, defendant Liggett Group Inc., directly and/or through its related companies, agents, alter egos, aiders and abettors or co-conspirators, has materially engaged in the design, testing,

manufacture, marketing, promotion and/or sale of cigarettes for use in Ontario and otherwise participated in the affairs of the tobacco industry through the unlawful means and enterprise alleged herein.

29. Brooke Group Inc. is a company incorporated pursuant to the laws of Delaware whose principal place of business is at 100 Southeast 2nd Street, Floor 32, Miami, FL. At times pertinent to the complaint, defendant Brooke Group Inc., directly and/or through its related companies, agents, alter egos, aiders and abettors or co-conspirators, has materially engaged in the design, testing, manufacture, marketing, promotion and/or sale of cigarettes for use in Ontario and otherwise participated in the affairs of the tobacco industry through the unlawful means and enterprise alleged herein.

30. Liggett & Myers Tobacco Company is a company incorporated pursuant to the laws of Delaware whose principal place of business is at 700 West Main Street, Durham, NC. At times pertinent to the complaint, defendant Liggett & Myers Tobacco Company, directly and/or through its related companies, agents, alter egos, aiders and abettors or co-conspirators, has materially engaged in the design, testing, manufacture, marketing, promotion and/or sale of cigarettes for use in Ontario and otherwise participated in the affairs of the tobacco industry through the unlawful means and enterprise alleged herein.

31. Liggett & Myers Tobacco Company of Canada Limited is a company incorporated pursuant to the laws of Canada whose principal place of business is at 3810 Rue St. Antoine, Montreal, Quebec, Canada. At times pertinent to the complaint, defendant Liggett & Myers Tobacco Company of Canada Limited, directly and/or through its related companies, agents, alter egos, aiders and abettors or co-conspirators, has materially engaged in the design, testing, manufacture,

marketing, promotion and/or sale of cigarettes for use in Ontario and otherwise participated in the affairs of the tobacco industry through the unlawful means and enterprise alleged herein.

32. Lorillard Tobacco Company is a company incorporated pursuant to the laws of Delaware whose principal place of business is at 714 Green Valley Road, Greensboro, NC. At times pertinent to the complaint, defendant Lorillard Tobacco Company, directly and/or through its related companies, agents, alter egos, aiders and abettors or co-conspirators, has materially engaged in the design, testing, manufacture, marketing, promotion and/or sale of cigarettes for use in Ontario and otherwise participated in the affairs of the tobacco industry through the unlawful means and enterprise alleged herein.

33. Lorillard Incorporated is a company incorporated pursuant to the laws of Delaware whose principal place of business is at 714 Green Valley Road, Greensboro, NC. At times pertinent to the complaint, defendant Lorillard Tobacco Company, directly and/or through its related companies, agents, alter egos, aiders and abettors or co-conspirators, has materially engaged in the design, testing, manufacture, marketing, promotion and/or sale of cigarettes for use in Ontario and otherwise participated in the affairs of the tobacco industry through the unlawful means and enterprise alleged herein.

34. Loews Corporation is a company incorporated pursuant to the laws of Delaware and whose principal place of business is at 1 Park Avenue, New York, New York 10016. At times pertinent to the complaint, defendant Loews Corporation, directly and/or through its related companies, agents, alter egos, aiders and abettors or co-conspirators, has materially engaged in the design, testing, manufacture, marketing, promotion and/or sale of cigarettes for use in Ontario and

otherwise participated in the affairs of the tobacco industry through the unlawful means and enterprise alleged herein.

35. Canadian Tobacco Manufacturers' Council is a corporation organized pursuant to the laws of Canada whose principal place of business is at South 701-99 Bank, Ottawa, Ontario, Canada. At times pertinent to the complaint, defendant Canadian Tobacco Manufacturers' Council, directly and/or through its agents, alter egos, aiders and abettors or co-conspirators, has materially engaged in the design, testing, manufacture, marketing, promotion and/or sale of cigarettes for use in Ontario and otherwise participated in the affairs of the tobacco industry through the unlawful means and enterprise alleged herein.

36. Council for Tobacco Research (individually and as successor to Tobacco Industry Research Council) is a corporation organized pursuant to the laws of New York whose principal place of business is at 900 3rd Avenue, New York, NY. At times pertinent to the complaint, defendant Council for Tobacco Research, directly and/or through its agents, alter egos, aiders and abettors or co-conspirators, has materially engaged in the design, testing, manufacture, marketing, promotion and/or sale of cigarettes for use in Ontario and otherwise participated in the affairs of the tobacco industry through the unlawful means and enterprise alleged herein.

37. The Tobacco Institute is a corporation organized pursuant to the laws of New York whose principal place of business is at 1875 I Street N.W., Suite 800, Washington, D.C. At times pertinent to the complaint, defendant The Tobacco Institute, directly and/or through its agents, alter egos, aiders and abettors or co-conspirators, has materially engaged in the design, testing, manufacture, marketing, promotion and/or sale of cigarettes for use in Ontario and otherwise

participated in the affairs of the tobacco industry through the unlawful means and enterprise alleged herein.

### **III. Jurisdiction and Venue**

38. As certain claims asserted in this action arise under 18 U.S.C. § 1961, *et seq.*, this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331.

39. Venue is proper in this district pursuant to 28 U.S.C. § 1391 and 18 U.S.C. § 1965.

### **IV. Factual Allegations**

40. On April 14, 1994, seven tobacco company chief executives testified under oath before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, U.S. House of Representatives, chaired by Congressman Waxman ("Waxman Subcommittee"). Each of these executives knowingly made material misrepresentations and/or omissions to the Waxman Subcommittee.

41. The testimony of the American tobacco industry executives before the United States Congress that smoking is not a proven cause of disease and death, and that nicotine is not addictive, is contradicted by their own internal documents. The testimony of the cigarette executives is only a recent example of an ongoing pattern of a campaign of misinformation that constituted an important part of the industry's scheme to defraud and cheat that began decades ago.

42. In December, 1953, Dr. Ernest L. Wynder of the Sloan-Kettering Institute published the results of a study where he painted the shaved backs of mice with cigarette smoke condensate residue. Malignant tumors grew on 44 percent of the mice in Dr. Wynder's study, providing biological evidence that cigarette smoke caused cancer. The previous year, a British researcher, Dr. Richard Doll, published a statistical analysis showing that lung cancer was more common among

people who smoked and that the risk of lung cancer was directly proportional to the number of cigarettes smoked. The widespread reporting of these studies caused what cigarette company officials later called the "Big Scare."

43. The tobacco industry responded quickly to the mounting adverse publicity of a link between smoking and cancer. The Chief Executive officers of the leading cigarette manufacturers met on December 15, 1953, at the Plaza Hotel in New York City. Also in attendance was the public relations firm of Hill & Knowlton which was to play a central role in formulating and executing the industry response.

44. According to a Hill & Knowlton memorandum summarizing the meeting, tobacco industry executives viewed the problem as "extremely serious, and worthy of drastic action." The document continues, "officials stated that salesmen in the industry are frantically alarmed and that the decline in tobacco stocks on the stock exchange market has caused grave concern . . . ."

45. The participants in the meeting agreed that a strong public relations response from the industry was necessary. From the beginning, the emerging research linking smoking and cancer was viewed by the Defendants as a public relations problem, not a public health issue. According to the Hill & Knowlton memorandum summarizing the meeting:

a. The Chief Executive officers of all the leading companies, except Liggett, "have agreed to go along with a public relations program on the health issue." Liggett decided not to participate at this point because it "feels that the proper procedure is to ignore the whole controversy."

b. "They feel that they should sponsor a public relations campaign which is positive in nature and is entirely 'pro-cigarettes.'"

c. "They are also emphatic in saying that the entire activity is a long-term, continuing program, since they feel that the problem is one

of promoting cigarettes and protecting them from these and other attacks that may be expected in the future. Each of the company presidents attending emphasized the fact that they consider the program to be a long-term one."

d. The role of Hill & Knowlton in executing the plan was also discussed. "The current plans are for Hill and Knowlton to serve as the operating agency of the companies, hiring all the staff and disbursing all funds."

46. Nine days later, Hill & Knowlton presented a detailed recommendation to the tobacco industry. The recommendation recognized the importance of gaining the public trust, and avoiding the appearance of bias, if the "pro-cigarette" industry strategy was to be successful. According to the memorandum:

[T]he grave nature of a number of recently highly publicized research reports on the effects of cigarette smoking . . . have confronted the industry with a serious problem of public relations.

It is important that the industry do nothing to appear in the light of being callous to considerations of health or of belittling medical research which goes against cigarettes.

The situation is one of extreme delicacy. There is much at stake and the industry group, in moving into the field of public relations, needs to exercise great care not to add fuel to the flames.

47. As a result of the meeting of December 15, 1953, and the recommendations of Hill & Knowlton, five of the six cigarette companies agreed to create the Tobacco Industry Research Committee ("TIRC"). Liggett joined the industry trade group in 1964, the same year the U.S. Surgeon General issued his first report on smoking which concluded that cigarette smoking was a cause of lung cancer. Also in 1964, TIRC changed its name to the Council for Tobacco Research ("CTR"). A second trade group, the Tobacco Institute ("TI"), was formed by tobacco industry in 1958.

48. Shortly after creating TIRC, Defendants made an unambiguous pledge to the public, including the people of Ontario. Defendants represented that, through TIRC, they would conduct and report objective and unbiased research regarding smoking and health. When they made this representation, Defendants intended that the public and government regulators believe and rely upon it, and knew or should have known that Ontario consumers would consider the representation material to their decisions to purchase and smoke cigarettes and that government regulators would consider the representation material to their decisions to regulate cigarettes. At that time, and continuing to the present, Defendants knew or should have known that their failure to fulfill the duty they undertook would directly increase the health care costs to Ontario.

49. On January 4, 1954, Defendants announced the formation and purpose of TIRC with a full page newspaper advertisement entitled "A Frank Statement to Cigarette Smokers." The statement appeared in 448 newspapers, reaching a circulation of 43,245,000 in 258 cities. The advertisement ran in daily newspapers and was reported on in Ontario.

50. The "Frank Statement to Cigarette Smokers" stated in part:

- a. "Recent reports on experiments with mice have given wide publicity to a theory that smoking is in some way linked with lung cancer in human beings."
- b. "Although conducted by doctors of professional standing, these experiments are not regarded as conclusive in the field of cancer research."
- c. "There is no proof that cigarette smoking is one of the causes" [of lung cancer.]
- d. "We accept an interest in people's health as a basic responsibility, paramount to every other consideration in our business."

e. "We believe the products we make are not injurious to health."

f. "We have always and always will cooperate closely with those whose task it is to safeguard the public health."

g. "We are pledging aid and assistance to the research effort into all phases of tobacco use and health."

h. "For this purpose we are establishing a joint industry group consisting initially of the undersigned. The group will be known as TOBACCO INDUSTRY RESEARCH COMMITTEE."

i. "In charge of the research activities of the Committee will be a scientist of unimpeachable integrity and national repute. In addition there will be an Advisory Board of scientists disinterested in the cigarette industry. A group of distinguished men from medicine, science, and education will be invited to serve on this Board. These scientists will advise the Committee on its research activities."

j. "This statement is being issued because we believe the people are entitled to know where we stand on this matter and what we intend to do about it."

51. By the spring of 1955, the self-defense strategy recommended by Hill & Knowlton and implemented by the industry through the "Frank Statement" was largely successful. Hill & Knowlton reported to TIRC:

a. "progress has been made" . . . "The first 'big scare' continues on the wane."

b. "The research program of the TIRC has won wide acceptance in the scientific world as a sincere, valuable and scientific effort."

c. "Positive stories are on the ascendancy."

52. Even before Defendants represented in the Frank Statement that "[t]here is no proof that cigarette smoking is one of the causes of lung cancer," Lorillard chemist H.B. Parmele, in 1946,

who later became Vice President of Research and a member of Lorillard's Board of Directors, wrote to his company's manufacturing committee:

Certain scientists and medical authorities have claimed for many years that the use of tobacco contributes to cancer development in susceptible people. Just enough evidence has been presented to justify the possibility of such a presumption.

53. After the 1954 "Frank Statement," the tobacco industry's breach of its assumed duty to report objective facts on smoking and health was virtually immediate. As evidence mounted, both through industry research and truly independent studies, that cigarette smoking causes cancer and other diseases, the tobacco industry continued publicly to represent that nothing was proven against smoking. Internal documents show that the truth was very different. The tobacco industry knew and acknowledged internally the veracity of scientific evidence of the health hazards of smoking, and at the same time suppressed such evidence where it could, and attacked it when it did appear.

54. A 1958 memorandum by Geoff Felton, BATCo's most senior scientist at the time, noted the following:

From our contacts in U.S.A. and Canada we sought information on the following: 1. the extent to which it is accepted that cigarette smoke "causes" lung cancer, 2. up to date evidence as to the carcinogenicity of smoke condensate to animal tissues, . . .

With one exception (H.S.N. Greene) the individuals whom we met believed that smoking causes lung cancer if by 'causation' we mean any chain of events which leads finally to lung cancer and which involves smoking as an indispensable link. In the U.S.A. only Berkson, apparently, is now prepared to doubt the statistical evidence and his reasoning is nowhere thought to be sound. . . . Greene of Yale still says that his repeated failure to produce carcinoma by implanting lung tissue along with tobacco smoke condensate into the muscles of mice is conclusive evidence that smoke cannot cause lung cancer. His experiments were not done quantitatively, however, and on these

grounds alone the conclusion which he draws is certainly not justified.

Otherwise we found general acceptance of the view that the most likely means of causation is that tobacco smoke contains carcinogenic substances present in sufficient quantity to provide lung cancer when acting for a long time in a sensitive individual. . . . It is generally accepted that tobacco smoke is only feebly carcinogenic.

No possible doubt now remains that Wynder's results using mouse skin painting are entirely genuine. Using whole smoke condensate and fractions separated from it Bock at Buffalo, Kensler at A.D. Little and Kosal and Nelson, New York University, have each independently confirmed Wynder's earlier work qualitatively.

55. At a 1967 BAT Group conference hosted by Imperial, it was concluded that "[i]f there is no inhaling, there is no lung cancer or respiratory disease."

56. Far from "accepting an interest in people's health as a basic responsibility, paramount to every other consideration in our business" and "cooperating closely with those whose task it is to safeguard the public health," the tobacco industry approach was to deny and attack with "counter-propaganda" the mounting evidence that smoking caused human disease--evidence that the industry plainly viewed internally as accurate.

57. Not only did the tobacco industry know that cigarette smoking caused cancer and other disease, they knew that nicotine was toxic to the heart. For example, in a 1963 memorandum Philip Morris's Wakeham stated, "The cardiovascular effects in smoke are believed to be mainly due to nicotine and have been thoroughly explored in literature and conference. We do not believe this will be a specific area of attack. If forced to, we could produce a fairly tasty low nicotine product."

58. Brown & Williamson, Imperial, and its British parent researched the health effects of nicotine and were aware early on, as reported at a B.A.T. Group research conference in November 1970, that "nicotine may be implicated in the etiology of cardiovascular disease. . . ."

59. At the 1980 BAT Group conference held in Sea Island, Georgia, Imperial, B&W and BATCo all acknowledged that "[t]here is clearly the need for a better understanding of the role of nicotine in carcinogenesis and in cardiovascular response."

60. A memorandum from Dr. S.R. Evelyn of British American Tobacco Ltd., dated May 30, 1974, reported: "Nicotine: The reported correlation of nicotine with tumorigenicity was considered to be of the utmost importance to the industry."

61. Again, in February 1979, the B.A.T. Group held a group-wide research and development conference to review the activities of its laboratories located throughout the world. Notes from the conference reveal that research found that high nicotine cigarettes are more tumorigenic and possibly more malignant. The notes also indicated that the laboratory was continuing work on nicotine analogues.

62. At a 1984 B.A.T. Group research conference held in the United Kingdom, Imperial, Brown & Williamson and British-American Tobacco Co. Ltd. were informed of the harmful effects of nicotine. As a report from that conference stated: "The role of nicotine and cardiovascular disease was outlined, in particular the role of smoke in decreasing prostacyclin and increasing thromboxane levels." Researchers at the conference also recommended that the company perform additional studies on the role of nicotine in heart disease, and its effect on developing fetuses.

63. Despite increasing internal knowledge of the dangers of cigarette smoking which they did not disclose, the Defendants continued, renewed and repeated the representations and

undertakings of the 1954 "Frank Statement to Cigarette Smokers" and its 1958 Canadian counterpart. The tobacco industry continued to pursue its two-pronged strategy of falsely representing the purposes of industry-funded research to the public in order to gain credence, and then misrepresenting, distorting, suppressing and unjustifiably attacking information in order to support its pro-cigarette position.

64. In June of 1969, the Canadian tobacco companies presented written and oral statements to federal Canada's House of Commons Standing Committee on Health, Welfare and Social Affairs. Imperial President Paul Pare was designated as principal spokesperson:

The tobacco industry--in Canada as elsewhere--has been and continues to be deeply concerned over the question of tobacco's possible effect on some people and has been doing something about this through scientific research and investigation.

Similarly, RJR chairman Bowman Gray told the U.S. Congress in 1964: "If it is proven that cigarettes are harmful, we want to do something about it regardless of what somebody else tells us to do. And we would do our level best. It's only human."

65. In 1963, the Canadian tobacco manufacturers made the following statements in response to the hearings by Canada's Minister of National Health and Welfare, Judy LaMarsh:

The fact is that the mounting evidence consists of repetition of the same charges restated by difference people. This evidence was and remains inconclusive no matter how often it is repeated and restated.

66. In Canada both Hill & Knowlton and CTR worked closely with Imperial Tobacco to air positive sides of the tobacco controversy:

Minister of Health, Canada, has called meeting for November 25th to the 26th, to air smoking and health issue. TIRC and Imperial Tobacco Company of Canada working very closely on this hearing. Both sides of controversy will present their briefs. After hearing,

Canadian Minister of Health office will present its position as to legislation, packaging, education against smoking, etc. Most dangerous area in Canada is what tobacco industry agrees to do (i.e., restrictive advertising, any admission of probable guilt, etc.) Hill & Knowlton have close liaison with the Canadian group and will continue to work together on any developments. Hope is that Canadian and Surgeon General's report will not be issued close together but will be well spaced to lessen impact on public.

67. Additionally, the Canadian defendants have taken overt steps in furtherance of the scheme to air the positive side of tobacco use, create doubt and controversy and prevent legislative efforts to curb youth smoking. The following examples are representative:

a.) In 1963 Imperial told the Canadian Medical Association the following:

In spite of all the research work that has been conducted here and elsewhere, these problems remain of immense complexity with many differing scientific viewpoints.

b.) In a 1991 meeting with the Deputy Minister of Health, the President of the Canadian Tobacco Manufacturers' Council, William Neville, claimed that research did not show causal relationships between tobacco and cancer. Furthermore, Neville claimed that the Council saw tobacco use as adult behavior and should be targeted as such. These statements were contrary to internal knowledge on these subjects.

c.) In a 1994 meeting with Deputy Minister of Health, the Canadian Tobacco Manufacturers' Council claimed that people smoke because they like to smoke, "not because it is addictive." This statement was contrary to internal knowledge.

d.) On or about February 17, 1994, the Canadian Tobacco Manufacturers' Council presented a brief to the Ontario Legislature Standing Committee on Social Development. The purpose of the brief was to prevent the passage of Bill 119, which was introduced in an attempt

to curb youth smoking. In the brief the CTMC noted that "CTMC supports the goal of eliminating the sale of tobacco products to young persons." This statement was contrary to internal knowledge and policy.

e.) On or about January 7, 1999, the Canadian Tobacco Manufacturers' Council mailed a letter to the Ontario Ministry of Health. In the letter the CTMC criticized Bill S-13, which would have imposed a special tobacco tax to raise funds to combat youth smoking. This letter with attachments was in furtherance of the industry's fraudulent scheme of promoting cigarettes to kids.

f.) On or about November 22, 1999, Imperial Tobacco issued a press release that was carried over the wires. In the release Imperial denied that it had ever aimed its advertising at young smokers who were not of legal age. This statement is contradicted by internal Imperial documents.

g.) On or about November 4, 1991, the Canadian Tobacco Manufacturers' Council mailed a letter to the Ontario Minister of Health. The letter was designed to prevent the Ontario Legislature from enacting new youth smoking measures. This letter was in furtherance of the industry's fraudulent scheme of promoting cigarettes to kids.

h.) On or about January 25, 1994, the Canadian Tobacco Manufacturers' Council mailed a letter to the Ontario Deputy Minister of Health. In the letter the CMTC attempted to prevent the passage of Bill 119, which was designed to curb youth smoking.

i.) On or about October 26, 1998, Imperial mailed a letter to the Ministry of Health. In the letter Imperial tobacco claimed that it opposes youth smoking. Additionally, Imperial attached a copy of Don Brown's recent statement on smoking issues. In the statement Brown denied that Imperial targets kids and claimed that smoking was not addictive. This letter was sent in

furtherance of the tobacco industry's scheme to defraud and to create doubt about the relationship between smoking and health.

68. The tobacco industry campaign of doubt and controversy was aimed at Canadian smokers, U.S. smokers and smokers around the world. The following documents show the involvement of various BAT Group members.

a. Imperial developed its doubt and controversy campaign many decades ago. In a letter from Addison Yeaman to Imperial scientist L.C. Laporte, the following was noted:

I enclose photo copy of a note from Bob Pittman to me having to do with some smoking/health oriented material he understands your good Company has developed. Would it be agreeable to you to let us have sight of these items?

Bob Pittman is presently deeply engaged in developing approaches, and the necessary material, to ways and means of getting to the various publics the message that the question of the relationship of cigarette smoking to health is still one of intense controversy and that there is no justifiably settled scientific conclusion as to that relationship.

b. All of the BAT Group operating companies, which includes B&W, Imperial and BATCo, participated in this campaign designed to alleviate any concerns or fears about smoking and health:

(i) The video, entitled: "ETS. BAT's reply" is completed and is now being copied for circulation to BATCo, operating companies and CAC companies. It is available for both internal and external use, as appropriate. . . .

c. A 1990 document shows that BAT continued with this corporate policy into the 1990's:

Following the presentation at the Board meeting on 27th February, I enclose copies of our three booklets "Smoking & Health - The Unresolved Debate",

"Environmental Tobacco Smoke - The Science" and "Smoking - Habit or Addiction." These address some of the scientific anomalies and contradictions relating both to smoking itself and to environmental tobacco smoke, and the claim by US Surgeon General that smoking is addictive. They are intended for use outside the company.

69. Each of the representations to the public that Defendant tobacco companies were committed--both through the level of funding of research and through the research itself--to finding and disclosing the facts about smoking and health, that they were endeavoring to bring the truth of these facts to light, and that the public, including regulators, could therefore rely upon the statements made, were part of the industry's scheme to defraud and cheat.

70. These misrepresentations were designed to establish tobacco industry-funded research as authoritative and objective, thus creating a false sense of security which was intended to cause the public, including regulators, to rely on the statements of the tobacco industry and its representatives as to the health effects of smoking.

71. Internal documents demonstrate that certain research efforts undertaken through TIRC, and later through CTR, were not independent, disinterested, objective or consistent with the publicly-stated mission of the TIRC/CTR. Rather, they were designed and used to promote favorable research, to suppress negative research where possible, to attack negative research where it could not be suppressed, and create a false controversy about the true health dangers of smoking, all in order to convince the public, regulators and juries that the "case against smoking is not closed." The Defendants' lawyers were integral to the orchestration and perpetuation of the fraudulent use of the CTR as a "front," used to further the scheme to defraud and cheat.

72. A 1978 memo addressed to the CTR file from a Philip Morris official provides another description of the history and role of the joint industry research effort, a role very different from that represented to the public.

CTR began as an organization called Tobacco Industry Research Council (TIRC). It was set up as an industry "shield" in 1954. That was the year statistical accusations relating smoking to disease were leveled at the industry; litigation began; and the Wynder/Graham reports were issued. CTR has helped our legal counsel by giving advice and technical information, which was needed at court trials. CTR has provided spokesmen for the industry at Congressional hearings. The monies spent on CTR provides a base for introduction of witnesses.

. . . [T]he "public relations" value of CTR must be considered and continued. . . . It is extremely important that the industry continue to spend their dollars on research to show that we don't agree that the case against smoking is closed. . . . There is a "CTR basket" which must be maintained for "PR" purposes. . . .

73. This evidence demonstrates that the role and purpose of TIRC/CTR was to gain the public's trust, and then to use that trust to propagate pro-cigarette propaganda designed to mislead, deceive and confuse the public about the health dangers of smoking.

74. The tobacco industry and its lawyers used the CTR for a number of purposes inconsistent with its publicly-proclaimed mission. Among these were the Special Projects program and litigation support services. Special Projects were research projects funded under the aegis of CTR, yet not reviewed by the Scientific Advisory Board. The true purpose of the Special Projects program was to provide the lawyers with a covert mechanism for funding research supportive of the tobacco industry's position regarding smoking and health, as well as to provide a mechanism to protect against disclosure of certain unfavorable smoking and health research designed and funded

at the direction of the lawyers. These purposes were furthered through wrongful invocation of the attorney-client privilege and work product doctrine.

75. For instance, notes prepared at a 1981 meeting of the tobacco industry's Committee of General Counsel state:

a. When we started the CTR Special Projects, the idea was that the scientific director of CTR would review a project. If he liked it, it was a CTR special project. If he did not like it, then it became a lawyers' special project.

... [W]e were afraid of discovery for FTC and Aviado, we wanted to protect it under the lawyers. We did not want it out in the open.

b. Difference between CTR and Special Four (lawyers' projects). Director of CTR reviews special projects if project was problem for CTR, use Special Four. Also, if there are work-product claims, need the lawyers' protection, . . . e.g. motivational research that was done during the FTC investigation was done through Special Four because of possibility that CTR would be subpoenaed.

76. The memorandum addressed to CTR from a Philip Morris official characterizes CTR as a "front" for performing "special projects."

"[S]pecial projects" are the best way that monies are spent. On these projects, CTR has acted as a "front"; however, there are times when CTR has been reluctant to serve in that capacity. . . .

77. The industry's use of CTR for Special Projects and litigation support services demonstrates not only that the industry representations as to the purpose and activities of the CTR were false, but also that the CTR's representations to the Internal Revenue Service, which form the basis for its tax exempt status, were materially incomplete and false.

78. The B.A.T. Group went to even greater lengths to suppress and avoid disclosure of its internal research on smoking and disease, which it recognized as potentially devastating to Brown

& Williamson. A memorandum from Brown & Williamson's assistant general counsel, J. Kendrick Wells, recommended that much of the B.A.T. Group's biological research be declared "deadwood" and shipped back to England. He recommended that no notes, memos or lists be made about them. Wells stated, "I have marked with an X documents which I suggested were deadwood in the behavioral and biological studies area. I said that the B series are Janus series studies and should also be considered deadwood." ("Janus" was a name of a project which attempted to isolate and remove the harmful elements of tobacco.) Wells further recommended that the research, development and engineering department also "should undertake to remove the deadwood from its files."

79. In the late 1970s and early 1980s, B.A.T. Industries p.l.c. began to fear the economic repercussions of the American cigarette/product liability litigation in which Brown & Williamson was embroiled. For example, in 1979, in a memo encaptioned "Procedure for Handling BAT Scientific Documents," Brown & Williamson's corporate counsel after consultation with the general counsel from BATUS, contrived a scheme to keep incriminating documents from foreign B.A.T. Group companies from being subject to discovery in American lawsuits. Wells states:

I have discussed with Gil Esterle various alternatives for handling BAT Scientific reports which come to B&W in a way that would afford some degree of protection against discovery.

\* \* \*

I recommend . . . that all BAT scientific reports be shipped under a formal arrangement that Dr. Esterle was assigned to be your agent for the acquisition of scientific materials in anticipation of litigation.

\* \* \*

The Esterle alternative would provide work-product coverage for sensitive documents. . . because both Federal and Kentucky civil rules refer to documents prepared for 'that other party's representative (including his attorney, consultant. . . or agent). . . .'

80. At Brown & Williamson, the Law Department had already been put in charge of the scientists and researchers so as to avoid the generation or receipt of incriminating evidence that might otherwise be readily subject to discovery. Earlier in 1979, Wells had written:

The material should come to you [B&W general counsel Ernest Pepples] under a policy statement between you and Southampton [B.A.T. Group facility in England] which describes the purpose of developing the documents for B&W and sending them to you as use for defense of potential litigation.

\* \* \*

Continued Law Department control is essential for the best argument of privilege.

81. The BAT Group developed a number of sophisticated and devious schemes designed to hide and suppress incriminating information. The following are representative:

a. A 1985 memo by J.K. Wells indicates that he has "placed in E'tonda's cabinet a group of R&D reports produced by various companies in the BAT organization. Please send these to Anne Johnson with a cover letter which should say simply that I asked you to send the enclosed documents to her for review. The cover letter should not identify the documents. . ."

b. A 1983 memo by Ernest Pepples reveals another scheme to keep incriminating documents away from B&W. He notes that "[i]t could be disadvantageous for B&W to retain the Blackman letter in our files because of potential mandatory disclosure in legislative proceedings or litigation. Consequently, we are returning it.

c. A 1985 B&W memo indicates that the B&W librarians "[h]ave spent many hrs on special project for law (pulling & deleting reports)."

d. A 1984 BAT Group report containing information that would be potentially helpful to plaintiffs in tobacco litigation was sent to Imperial, BATCo, Souza Cruz and BAT Germany. However, pursuant to another BAT Group scheme, it was noted that "B&W not to be shown on circulation list."

82. In March, 1984, B.A.T. Industries p.l.c. promulgated a B.A.T. Group wide policy entitled "Legal Considerations on Smoking and Health Policy." In pertinent part, it stated:

This note summarizes the policy of the BAT Industries Group in relation to smoking and health issues. Although primarily the concern of the Group's tobacco interests, it is important for senior executives to be aware of the stance taken. This is because the spread of 'strict' or 'no-fault' liability in the USA, Europe and other industrialized parts of the world may in the future result in the attribution to the Group's tobacco companies of statements made or decisions taken by other BAT Industries subsidiaries.

\* \* \*

No conclusive scientific evidence has been advanced and the statistical association does not amount to proof of cause and effect. Thus a genuine scientific controversy exists.

The Group's position is that causation has not been proved and that we do not ourselves make health claims for tobacco products.

\* \* \*

Non-tobacco companies in the Group must particularly beware of any commercial activities or conduct which can be construed as discrimination against tobacco or tobacco manufacturers (whether or not involving companies within the Group), since this could adversely affect the position of Brown and Williamson in current US product liability litigation in the US.

83. This fraudulent and misleading Smoking and Health Policy was made a part of B.A.T. Industries p.l.c.'s Statement of Business Conduct which in turn was made mandatory on all B.A.T. Group employees worldwide. Indeed, B.A.T. Industries p.l.c. so dominated and controlled its

various operating companies within the B.A.T. Group that employees were subject to being fired--terminated from employment--if contrary positions were taken. For example, in the most recently produced Statement of Business Conduct, B.A.T. Industries p.l.c. states:

It is the considered view of the Group that (1) Scientific causation between smoking and diseases allegedly related to smoking has not been established; . . .

\* \* \*

It is expected that any exception to or breach of the principles encompassed in the Statement will usually be dealt with by immediate management disciplinary action (which may include dismissal in an appropriate case).

This Statement of Business Conduct applies to all directors, officers and employees of BAT Industries p.l.c. and its principles apply to all directors, officers and employees of every company within the BAT Industries Group of companies.

84. Then, in Appendix One to B.A.T.'s Statement of Business Conduct, the March 1984 "Legal Considerations on Smoking and Health Policy" was incorporated.

85. Three months after the adoption by B.A.T. Industries p.l.c. of its "Legal Considerations on Smoking and Health Policy," in-house counsel and outside counsel for various B.A.T. Group companies including B.A.T. Industries p.l.c. itself, BATCo, B&W, and BATUS, met to discuss problematical medical and scientific admissions appearing in B.A.T. Group documents. In a memo summarizing the meeting and encaptioned "Conference with BAT Legal on US Product Liability Litigation," Wells stated:

Trial Counsel described the changes in US products liability law, aggressiveness of Plaintiff's lawyers, and smoking and health science since the 1960's.

\* \* \*

We presented examples of statements which might be admitted into evidence under some circumstances in a US products liability action and Messrs Baker and Morini and others.

\* \* \*

To summarize the status of the discussions it is fair to say that BAT Legal are informed about the danger of the admissibility of BAT statements on smoking and health in US products liability litigation.

\* \* \*

Direct lawyer involvement is needed in all BAT activities from conception through every step of the activity.

The problem posed by BAT scientists and frequently used consultants who believe cause is proven is difficult.

86. B.A.T. Group efforts to prevent incriminating documents from reaching Brown & Williamson in discoverable or incriminating form continued throughout 1985. For example, a procedure was contrived wherein scientific and research documents emanating from the BAT Group Research and Development Centre, or other B.A.T. Group companies which needed to be sent to Brown & Williamson would be sent to an outside counsel for Brown & Williamson, Mr. Robert Maddox of Wyatt, Tarrant, and Combs. B.A.T. Group documents were to be sent to Brown & Williamson or to outside sources only after being sanitized by legal and scientific department members. Indeed, for some highly sensitive documents destined for outside the Group, legal departments from the five principle B.A.T. Group companies each had to give their approval. B.A.T. GR&DC's Mr. Hardwick wrote:

Further to my memo of 11th October 1984, I wish to remind you of the total necessity of being aware of the sensitivity concerning sending information to Brown & Williamson. . .

Any information destined for Brown & Williamson must be seen by Alan Heard, Ian Ayers, Richard Binns, or myself. Where the material is non-contentious, clearance for transmission will be given.

\* \* \*

Any sensitive material will be sent by a research manager to Millbank for clearance, or otherwise.

Where any GR&DC report is considered sensitive, the names of the usual Brown & Williamson recipients must not be included in the distribution list.

87. Six days later Mr. Hardwick memorialized in a memo the conversation with Mr. Ray Pritchard. (Pritchard served as Chairman and CEO of Brown & Williamson; a main Board member of B.A.T. Industries p.l.c.; and a member of the Board of CTR.) Hardwick wrote:

Ray Pritchard rang today. He has received a letter from Dr. I.W. Hughes indicating a mechanism for our sending scientific information to B&W. In principle it will mean our mailing contentious information to a legal man called Maddox (? company ) with a covering letter from us saying that Millbank has asked that he (Maddox) receive it.

\* \* \*

He is aware of our present control procedure, i.e., that material is vetted by research managers, and where noncontentious, sent where contentious, referred to Millbank. (Emphasis in original.)

88. Several months later, in April 1985, a B.A.T. Group Research and Development Center memo reports:

As you are aware, for good reasons, there have been delays in clearing reports through Legal Department Millbank. In order to speed the process, reports will be read by Ray Thornton, prior to being sent to Anne Johnson in Millbank.

By this means we hope that obvious corrections can be made before reports are sent to Millbank for final clearance.

\* \* \*

'One bound' version to be sent by Ray Thornton to Anne Johnson in Millbank for final review.

\* \* \*

Once we have heard from Alan [Heard] that copies have been circulated within Millbank (where appropriate), and that the report is acceptable for wider circulation, the full primary circulation can take place. This includes the three unnumbered copies to Robert Maddox at Wyatt, Tarrant, and Combs in Louisville.

89. The scheme to sanitize documents and keep incriminating documents out of the files or possession of Brown & Williamson was coordinated by in-house counsel for both B.A.T. Industries p.l.c. and in-house counsel for BATCo. In a May 20, 1985 B.A.T. GR&DC memo from Dr. Binns, he wrote:

Richard Baker from Windsor House and Anne Johnson from Millbank will be in Southampton on 30th and 31st May for discussions on the circulation of documents from GR&DC, particularly in relation to the B&W situation.

90. Indeed B.A.T. Group attorneys continued their control and domination of scientific research efforts out of a desire to avoid discoverable or incriminating documents from getting into the files of Brown & Williamson. For example, in January of 1990, a solicitor from BATCo wrote:

Introduction

Concern about volume of research documentation spread about the Group.

Discovery

Difficulties faced by author company in explaining documents in a foreign court particularly if it is not even a party to the proceedings in which those documents are to be produced.

Information Required

1. Identification of documents currently sent offshore by Group companies with research centers: --

Issues/Proposals

1. Restrict current flow of research related documents...

\* \* \*

2. Improve quality of documents by:-
  - a) Educating scientists in each research centre about document writing/document creation.
  - b) Regular lawyer reviews and audits of scientific documents produced in each company.
  - c) Arrange a system to ensure that all research related conference minutes involving representatives of more than one Group company are vetted by the lawyer for the company issuing the minutes before the minutes are sent out.

91. Thus, just as Mr. Wells five years earlier had implemented a plan to return to England offshore research and engineering studies previously sent to Brown & Williamson (which he had declared as "Deadwood"), B.A.T. Group counsel continued its illicit efforts to sanitize documents and subvert discovery efforts in American products liability litigation.

92. One of the reasons RJR and other tobacco industry companies began to do internal biological research appears to have been to attempt to develop a cigarette which could be advertised as having reduced health risks. In order to achieve this result, studies were needed to discover how cigarette smoking causes disease. Once this was known, attempts could be made to remove or modify the harmful agents. Several companies performed research of this kind by dividing cigarette smoke into its different chemical constituents, or "fractions," to discover which part of the cigarette

smoke caused disease. Several companies were successful in discovering which specific constituents in tobacco smoke were carcinogens or were linked to other diseases. This research was kept secret and never reported to the public. Moreover, the Defendants continued to deny that cigarette components were harmful.

93. Even more shocking, industry documents reveal that a number of companies successfully removed certain harmful constituents from cigarette smoke, and developed prototype cigarettes with reduced health effects, but that these products were never marketed. The reason was the industry conspiracy not to reveal harmful research results that would undermine the unified position that there is no proof that smoking causes disease.

94. At the 1969 BAT Group conference in Hilton Head, South Carolina, Imperial, BATCo and B&W came to a number of important conclusions on safer cigarettes. The most telling conclusions are the following:

It is clear that a number of features of cigarettes can modify the biological activity of smoke condensate. . . .

The clear possibility of producing cigarettes with reduced mouse-skin biological activity therefore becomes of greater importance and a research solution to the whole problem is more likely. There was general agreement that a cigarette with such reduced mouse-skin biological activity should be produced;. . .

Research staff should lay down guidelines against which alternative products can be chosen in everyday operations. . .

It was recognized that there was a growing interest in the area of non-cancer diseases, e.g. emphysema, bronchitis, and the cardiovascular diseases. Interest should be maintained in making non-inhalable cigarettes but less-irritating smoke may be an advantage in its own right; even though it may be achieved by lowering the ratio of nicotine to tar.

95. A memorandum written by William Ohlemeyer, an attorney at the firm of Shook, Hardy & Bacon, long-time lawyers for the tobacco industry, confirmed that there was an industry-wide position regarding the issue of a less hazardous cigarette. The 1987 memorandum referred to the marketing by R.J. Reynolds of a smokeless cigarette, Premier, which heated rather than burned tobacco. The Shook, Hardy attorney wrote that the smokeless cigarette could "have significant effects on the tobacco industry's joint defense efforts" and that "[t]he industry position has always been that there is no alternative design for a cigarette as we know them." The attorney also noted that, "Unfortunately, the Reynolds announcement . . . seriously undercuts this component of industry's defense." RJR pulled the Premier product and years later test marketed another such product called Eclipse. Eclipse is still not available beyond RJR's walls except for very limited test markets.

96. As early as 1958, a memorandum from a Philip Morris researcher to the company's Vice President of Research and Development proposed that the company attempt to make a safer cigarette that could enable it to "jump on the other side of the fence . . . on the issue of tobacco smoking and health. . . ." In a 1976 document authored by B&W's Senior Vice President of Research and Development, I.W. Hughes, it was noted that "[t]oday we have all the information necessary to manufacture reduced hazard cigarettes."

97. Philip Morris did perform the research and development of such a product. However, the company never released the research, and never informed the public that existing cigarettes were not safe or that a safer cigarette was possible. A 1964 Philip Morris research and development presentation to its Board of Directors stated:

Two years ago, in anticipation of a health crisis to be precipitated by the Smoking and Health Report of the Surgeon General's Committee, we undertook to develop a physiologically superior cigarette.

[W]e put together a charcoal filter product with performance superior to anything in the market place. That product was known as Saratoga. Physiologically it was an outstanding cigarette. Unfortunately then after much discussion we decided not to tell the physiological story which might have appealed to a health conscious segment of the market. The product as test marketed didn't have good 'taste' and consequently was unacceptable to the public ignorant of its physiological superiority.

98. In a 1986 letter to Imasco's Chairman, Purdy Crawford, Sir Patrick Sheehy made the following observations:

Since there is such a wide discrepancy between your approach and that of the rest of the Group, I thought that I should write to explain why it is that I cannot support your contention that we should give a higher priority to projects aimed at developing a 'safe' cigarette (as perceived by those who claim our current product is 'unsafe') by either eliminating, or at least reducing to acceptable levels, all components claimed by our critics to be carcinogenic. . . .

The BAT objective is and should be to make the whole subject of smoking acceptable to the authorities and to the public at large since this is the real challenge facing the Industry. Not only do I believe that this is the right objective but I also believe that it is an achievable one. . . .

The Group has several research projects, mainly in the combustion area, that should enable us to alter our product if good reason exists. This encompasses components such as nitrosamines and free radicals but extends to the ability to genetically alter tobacco leaf, for instance in its propensity to form tar. . . .

A second practical objection is that in attempting to develop a 'safe' cigarette you are, by implication in danger of being interpreted as accepting that the current product is 'unsafe' and this is not a position that I think we should take.

99. The research and development department at Philip Morris nonetheless continued to perform research on smoking and health, including research into safer cigarettes. The company viewed this as necessary in order to compete if another cigarette company marketed a safer cigarette. This was viewed as less likely, because work was being done through joint industry sponsored research abroad. The presentation to the Philip Morris Board of Directors continued:

In England a research laboratory sponsored by the industry has been established at Harrogate to do biomechanical research. On the Continent individual companies and monopolies have agreed to pool research on the health question, thereby reducing it as a basis for competition. Technical researchers meet to share information and to plan future work. All these efforts underscore the broad and serious attempts to eliminate what are generally believed to be harmful aspects of cigarette smoke.

In short, the Research and Development Department is working to establish a strong technological base with both defensive and offensive capabilities in the smoking and health situation. Our philosophy is not to start a war, but if a war comes, we aim to fight well and to win.

100. Liggett concluded that it had isolated carcinogens in cigarette smoke and found a way to reduce them in cigarettes of commercial quality. Despite these findings, the product called "XA" was never marketed.

101. Despite overwhelming scientific evidence, and the confirmation of this evidence by their own internal research, the cigarette manufacturers and their trade associations continued to repeat again and again, in a unified stance, that there was no causal connection between cigarette smoking and disease. These representations and omissions are fraudulent, misleading, deceptive and untrue. They rest at the heart of the industry's scheme and conspiracy to market and profit from a deadly product.

102. The other truth which the tobacco industry made every effort to suppress, deny, obfuscate, misrepresent and omit is that nicotine is a powerfully addictive substance. While carefully studying its addictive character and acting upon that knowledge to maintain cigarette sales, the tobacco industry uniformly denied that nicotine is addictive.

103. This public deception and the tobacco industry's secret manipulations of nicotine were and are critically important to the tobacco industry's scheme to defraud and cheat. As truly objective researchers increased their warnings of the health dangers of cigarettes, nicotine addiction kept people smoking.

104. The tobacco industry companies have long known of the addictive properties of the nicotine contained in the cigarettes they manufacture and sell. The following illustrates such knowledge:

a. In 1962, Brown & Williamson's parent company, British American Tobacco Company, held a meeting of its worldwide operating companies and divisions in Southampton, England. During the course of that meeting, Brown & Williamson, Imperial and other B.A.T. Group executives were told by Sir Charles Ellis, scientific advisor to the board of directors, that "smoking is a habit of addiction" and that "[n]icotine is not only a very fine drug, but the technique of administration by smoking has considerable psychological advantages." Sir Charles Ellis declared again in 1967 in a document from Brown & Williamson that the company "is in the nicotine rather than the tobacco industry."

b. P.J. Dunn, a senior Imperial scientist, clearly acknowledged the addictive nature of nicotine when he wrote the following in 1992:

Having said that, given the large proportion of smokers wanting to quit, any device which helps even a small fraction to achieve this goal has the potential to have a negative impact on our business. One could make an argument for the industry supporting development of alternative nicotine delivery systems by considering them in the same philosophical light as brand extensions or, in this case, a business extension.

The rationale is that if anyone is going to take away our business it should be us.

- c. Over a decade later at a B.A.T. Group marketing conference, the addictive nature of cigarettes was lauded:

“A cigarette as a ‘drug’ administration system for public use has very significant advantages. . . .”

“[N]icotine is about the lowest dose ‘common’ drug available. . . .”

“Thus we have an emerging picture of a fast, highly pharmacologically effective and cheap ‘drug,’ tobacco, which also confers flavour and manual and oral satisfaction to the user. . . .”

“So -- give them what they seem to want[:] taste and value . . . . ‘A cigarette is the perfect type of perfect pleasure. It is exquisite, and it leaves one unsatisfied. What more can one want.’ Let us provide the exquisiteness, and hope that they, our consumers, continue to remain unsatisfied. All we would want then is a larger bag to carry the money to the bank.”

- d. B&W and BATCo freely admitted internally that nicotine was addictive. In 1978 B&W marketing executives stated that “[v]ery few consumers are aware of the effects of nicotine, i.e. its addictive nature and that its a poison.”

- e. In 1979 a BATCo scientist freely admitted that “[w]e are searching explicitly for a socially acceptable addictive product involving: - a pattern of repeated consumption . . . the essential constituent is most likely to be nicotine. . . .”

- f. These internal admissions were not limited to scientists and marketing executives. In 1981 the BATCo Board of Directors agreed that “[f]or the great majority of smokers, smoking is ‘habituated’. However, it must be admitted that heavy and ‘chain-smokers’ have demonstrated addiction symptoms. In this respect we are totally opposed to smoking in excess and do not encourage it any way. We believe that moderation in smoking, as in other pleasures, is in the best interests of the smoker.”

- g. A research report dated May 30, 1963, prepared under contract by researchers in Switzerland for B.A.T. Group, including Brown & Williamson, and deliberately

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withheld by Brown & Williamson from the U.S. Surgeon General, explained the physiological basis of nicotine addiction. The Brown & Williamson-commissioned report shows that tobacco industry research on the addictive properties of nicotine was years ahead of the research on the subject conducted outside of the industry. Brown Williamson and other tobacco companies did not disclose the information from such research.

h. A 1972 "confidential" company memo written by William L. Dunn, Jr. of the Philip Morris Research Center, concludes:

"Without nicotine, the argument goes, there would be no smoking. Some strong evidence can be marshaled to support this argument. . . . No one has ever become a cigarette smoker by smoking cigarettes without nicotine."

i. Additional internal reports prepared by Dunn in 1972 and the Philip Morris U.S.A. Research Center in March 1978, demonstrate Philip Morris's understanding of the role of nicotine in tobacco use:

"We think that most smokers can be considered nicotine seekers, for the pharmacological effect of nicotine is one of the rewards that come from smoking. When the smoker quits, he foregoes (sic) his accustomed nicotine. The change is very noticeable, he misses the reward, and so he returns to smoking."

"The cigarette should be conceived not as a product but as a package. The product is nicotine. . . . Think of the cigarette pack as a storage container for a day's supply of nicotine. . . . Think of the cigarette as a dispenser for a dose unit of nicotine."

j. Philip Morris scientists confirmed their early research findings with direct anecdotal evidence. In 1971, they interviewed people from the town of Greenfield, Iowa eight months after they had quit smoking "cold turkey." A report of the interviews, called "Bird-I A Study of the Quit-Smoking Campaign in Greenfield, Iowa in Conjunction with the Movie Cold Turkey," and distributed to top Philip Morris executives concluded:

"This is not the happy picture painted by the Cancer Society's anti-smoking commercial which shows an

exuberant couple leaping in the air and kicking their heels with joy because they've kicked the habit. A more appropriate commercial would show a restless, nervous, constipated husband bickering viciously with his bitchy wife, who is nagging him about his slothful behavior and growing waistline."

k. ATC also conducted its own research on nicotine. From 1940 to 1970, ATC funded over 90 studies on the pharmacological and other effects of nicotine on the body. Of the 111 biologic studies funded by ATC over this period, over 80 percent were related to the effects of nicotine. ATC even test marketed a nicotine-enriched cigarette in Seattle, Washington in 1969.

l. In a 1972 internal RJR memo marked "confidential" and titled "Research Planning Memorandum on the Nature of the Tobacco Business and the Crucial Role of Nicotine Therein," RJR wrote:

"In a sense the tobacco industry may be thought of as being a specialized, highly ritualized and stylized segment of the pharmaceutical industry. Tobacco products, uniquely, contain and deliver nicotine, a potent drug with a variety of physiological effects. . . . Thus, a tobacco product is, in essence, a vehicle for delivery of nicotine, designed to deliver the nicotine in a generally acceptable and attractive fashion."

105. Defendants, rather than fulfilling their promise to the public to disclose material information about smoking and health, chose a course of suppression, concealment, omission, deceit and disinformation about the true properties of nicotine and the addictiveness of smoking.

106. Brown & Williamson also chose to suppress and conceal its own substantial body of research on nicotine. Potentially damaging and sensitive research was undertaken to a large degree by Brown & Williamson's British affiliates at a lab called Harrogate. Harrogate performed research for a number of cigarette manufacturers, and some of this research was shared with these other companies and with the Tobacco Institute.

107. By 1963, Brown & Williamson had also chosen to conceal material information from the Surgeon General. The company debated internally whether to disclose to the U.S. Surgeon General, who was preparing his first official report on smoking and health, what the company knew about the addictiveness of nicotine and the adverse effects of smoking on health.

108. Addison Yeaman, general counsel at Brown & Williamson, stated in a 1963 report that “[w]e are, then, in the business of selling nicotine, an addictive drug . . .” Yeaman advised Brown & Williamson to “accept its responsibility” and disclose its findings to the Surgeon General. He said that such disclosure would then allow the company openly to research and develop a safer cigarette.

109. Brown & Williamson rejected Yeaman’s advice to make full disclosure. A series of six letters and telexes exchanged by Yeaman and senior British American Tobacco Company official A.D. McCormick between June 28 and August 8, 1963, document the company’s decision not to disclose to the U.S. Surgeon General the company’s research findings on the addictive and other harmful effects of nicotine and the disease-causing properties of cigarettes.

110. The tobacco industry also understood early on that nicotine played a pivotal role in their success. A chronology of the industry’s research and development activities leaves no doubt about the tobacco industry companies’ conviction that nicotine was the key to their industry’s success.

111. The results of research undertaken by Brown & Williamson more than 30 years ago for a study called Project Hippo were finally disclosed by the company in May 1994. Documents from this study show that as far back as 1961, the tobacco industry was actively studying the physiological and pharmacological effects of nicotine.

112. Realizing the importance of the Hippo research, the BAT Group secretly stored it in law department files:

Sir Charles Ellis says: . . . The ban of secrecy on the above Reports has now been lifted. Any one of 'reasonable standing' in the Research Department may now be permitted to read them. . . . He will tell the Research Department that the Reports are in the Law Department files.

113. A 1968 internal B.A.T. Group report noted that "[i]n view of its pre-eminent importance, the pharmacology of nicotine should continue to be kept under review. . . ."

114. Again, in 1972, a B.A.T. Group report noted:

It has been suggested that a considerable proportion of smokers depend on the pharmacological action of nicotine for their motivation to continue smoking. If this view is correct, the present scale of the tobacco industry is largely dependent on the intensity and nature of the pharmacological action of nicotine.

115. The tobacco industry deliberately determined not to disclose to the public or to public health officials their extensive knowledge of the addictive properties of nicotine and its critical role in smoking, and not to use that knowledge to reduce or eliminate nicotine from their products. Instead, the tobacco industry companies chose to focus their energies and research on developing new and more sophisticated methods of hooking smokers and keeping them hooked, all to boost cigarette sales.

116. The tobacco industry's intense interest in the pharmacology of nicotine led to industry efforts to find an artificial nicotine that would have the addictive and psychopharmacological properties of nicotine without nicotine's dangerous effects on the heart.

117. The B.A.T. Group companies, including Brown & Williamson and British American Tobacco Company, also understood that for purposes of maintaining its sales, nicotine was the

essential ingredient in tobacco. The company attempted to develop a "safer" cigarette which internal documents described as "a device for the controlled administration of nicotine." Project Ariel focused on heating, rather than burning tobacco, and according to company documents, was "a nicotine delivery device."

118. RJR's efforts to develop a "safer" cigarette also focused on delivering nicotine to the consumer without the harmful constituents of tobacco smoke. In the late 1980's, RJR developed and test marketed Premier, a smokeless and virtually tobacco-free cigarette which was, in essence, a nicotine delivery system. RJR conducted human studies to determine whether the nicotine from Premier was absorbed, metabolized and excreted from blood at the same rate as a standard cigarette.

119. RJR, like the other cigarette manufacturers, concealed and suppressed its findings on the addictiveness of smoking and continued to misrepresent to the public its commitment to determining whether smoking was harmful.

120. The tobacco industry has affirmatively misrepresented to consumers and to policymakers the role of nicotine in tobacco use. The tobacco industry continually claimed that nicotine is important in cigarettes solely for flavor.

121. A substantial body of evidence refutes that claim. Tobacco industry patents specifically distinguish nicotine from flavorants. An RJR book on flavoring tobacco, while listing approximately a thousand flavorants, fails to include nicotine as a flavoring agent.

122. In fact, the tobacco industry has concentrated on developing technologies to mask the flavor of increased levels of nicotine in cigarettes. According to the Merck Index, an internationally recognized listing of drugs, nicotine has "an acrid, burning taste." U.S. Patent 4,620,554 describes the taste of nicotine as "hazardous." The role of nicotine in the tobacco industry's business is pure

and simple -- to hook smokers on their deadly products and keep them hooked in the face of mounting evidence that smoking causes human disease. The tobacco industry has focused tremendous energy and resources on developing the technology to ensure that smokers become and remain addicted to the industry's cigarettes. This is all done to facilitate the industry objective: "a larger bag to carry the money to the bank."

123. The tobacco industry's conspiracy to deceive the public about the dangers of smoking was not confined to suppressing and concealing their own findings and discrediting or dismissing the findings of outside researchers. The conspiracy also extended to efforts to retain that segment of the smoking market that was becoming increasingly concerned about health. The tobacco industry was well aware that low-nicotine products -- while better for the heart -- were worse for business. As one company researcher reported to Philip Morris executives:

If the industry's introduction of acceptable low-nicotine products does make it easier for dedicated smokers to quit, then the wisdom of the introduction is open to debate.

124. The tobacco industry has cultivated that health-conscious segment of the smoking market by promoting and selling "light" cigarettes with reduced tar and added nicotine. National Gallup polls have found that smokers believe that cigarette brands labeled "light" are less hazardous to their health and less addictive because they deliver less tar and less nicotine. However, this widely-held belief -- although false -- has been promoted by the tobacco industry.

125. Although the BAT Group realized how misleading the FTC method was, it was decided that all BAT Group members, including Imperial, would generate arguments supporting it:

There is now an urgent need to assess whether there are ways in which the industry can either counter the situation or alternatively turn it into a commercial advantage... A direct consequence of this

growing interest in compensation is the possibility that the FTC, and other authorities, may call for a change in the standard smoking machine test procedure for all products... Either move would weaken the concept of low tar and would both confuse and concern the smoker. Operating Companies around the Group should, therefore, do everything possible to defend and maintain the present standard test procedure. . . .

126. Imperial recognized the smokers compensated when smoking low tar products, thus consuming more tar and nicotine. Armed with the knowledge, Imperial conducted sophisticated and cutting-edge research on smoker compensation in order to take advantage of the situation. Indeed, Imperial used its own products in some of the studies:

The difference becomes more significant for human smoke yields. For the loyal Players smoker, when smoking Du Maurier, the average observed increases amount to 30.4% and 31.5% for nicotine and TPM respectively. Thus, it can be concluded that the Players filter regular cigarette smoker significantly alters his smoking pattern in order to overcome a lower nicotine and TPM delivery, as a result of his experienced high pressure drop. . . . A comparison of human versus machine smoking parameters of the Matinee regular cigarette is seen in Table 4. The marked increase of 51% in nicotine delivery and 17% in TPM delivery, as observed for human smoking, result in part from a 12% increase in puff volume.

127. In order to keep the information on compensation secret, Imperial agreed that it would be unwise to publish or publicize any of the studies on smoking behavior:

The paper on depth of insertion for various cigarettes seem to confirm the Kozlowski-type ideas for low delivery products could be problematic. I think it is unwise to publish any findings of our studies on smoking behavior on any smoking products.

128. The tobacco industry's control and manipulation of nicotine levels in their cigarettes goes well beyond fortifying low-tar or "light" style cigarettes with nicotine. Recent evidence shows

that the cigarette manufacturers are capable of and do, in fact, manipulate the amount and even the presence of nicotine in cigarettes.

129. The tobacco industry companies have developed and use highly sophisticated technologies designed to deliver nicotine in precisely calculated quantities -- quantities that are more than sufficient to create and sustain addiction in the vast majority of individuals who smoke regularly.

130. The story of the B.A.T. Group's development of a new tobacco plant dubbed "Y-1" is one of the more egregious examples of the tobacco industry's outright lies about its control and manipulation of the nicotine levels in its products. The development of Y-1 was coordinated by B.A.T. Industries p.l.c.'s own chairman and Managing Director -- Tobacco -- through B.A.T.'s super-secret Tobacco Strategy Review Team (TSRT). The TSRT consisted of B.A.T.'s chairman of the board and the five chairmen of B.A.T.'s principle cigarette companies, B&W (U.S.A.), British American Tobacco Company (U.K.), Imperial Tobacco Company (Canada), Souza Cruz (Brazil) and BAT Cigarettenfabriken (Germany). Brown & Williamson was one of the primary B.A.T. Group companies involved in the commercialization of Y-1.

131. On June 21, 1994, Dr David A. Kessler testified before the Waxman Subcommittee that FDA investigators had discovered that Brown & Williamson had developed a super-high nicotine tobacco plant, which the company called "Y-1." This discovery followed Brown & Williamson's flat denial to the FDA on May 3, 1994, that it had engaged in "any breeding of tobacco for high or low nicotine levels."

132. Four FDA investigators who had visited the Brown & Williamson plant in Macon, Georgia on May 3, 1994 swore in affidavits that company officials had denied that Brown

Williamson was involved in breeding tobacco for specific nicotine levels. Only after the FDA had learned of the development of Y-1 in its investigation and confronted company officials with the evidence did the company admit that it was growing and using the high-nicotine plant.

133. In fact, in a decade-long project, Brown & Williamson secretly developed a genetically-engineered tobacco plant with a nicotine content more than twice the average found naturally in flue-cured tobacco. Brown & Williamson took out a Brazilian patent for the new plant, which was printed in Portuguese. Brown & Williamson and a Brazilian sister company, Souza Cruz Overseas, grew Y-1 in Brazil and shipped it to the United States for use in five Brown & Williamson cigarette brands, including three labeled "light." When the company's deception was uncovered, company officials admitted that close to four million pounds of Y-1 were stored in company warehouses in the United States. Defendants Imperial and Imasco attended all of the TSRT meetings and had input on all strategy decisions.

134. As part of its massive cover-up, the B.A.T. Group, through Brown & Williamson primarily, even went so far as to instruct the DNA Plant Technology Corporation of Oakland, California, which had developed Y-1, to tell FDA investigators that Y-1 had "never been commercialized." Only after the FDA discovered two United States Customs Service invoices indicating that "more than a half-million pounds" of Y-1 tobacco had been shipped to Brown & Williamson on September 21, 1992, did the company admit that it had developed the high-nicotine tobacco.

135. The number and pattern of tobacco industry patents show that the tobacco industry has developed the capability to manipulate nicotine levels in cigarettes to an exacting degree.

136. Every day, more than 1,200 cigarette smokers die of cigarette-related diseases. Others manage to break their addiction to nicotine and quit. In order to prevent a precipitous decline in cigarette sales, the tobacco industry must attract more than 3,000 new smokers a day. These new smokers are drawn almost entirely from the ranks of youth. In the words of R.J. Reynolds:

Realistically, if our Company is to survive and prosper, over the long term we must get our share of the youth market. In my opinion this will require new brands tailored to the youth market. . . .

137. Other internal documents reveal similar sentiments:

a. Lorillard: "The success of NEWPORT has been fantastic during the past few years. Our profile taken locally shows this brand being purchased by black people (all ages), young adults (usually college age), but the base of our business is the high school student."

b. Reynolds: "Evidence is now available to indicate that the 14-18 year old group is an increasing segment of the smoking population. RJR must soon establish a successful new brand in this market if our position in the industry is to be maintained over the long-term."

Reynolds: "The Importance of Younger Adult Smokers . . . Younger adult smokers are the only source of replacement smokers."

Reynolds: "Bringing in younger adult smokers is a key Company priority . . ."

Reynolds (RJR Macdonald Inc.): "YOUTH TARGET 1987 is the first of a planned series of research studies into the lifestyles and value systems of young men and women in the 15-24 age range. The purpose of the research is to provide marketers and policy makers with an enriched understanding of the mores and motives of this segment which can be applied to better decision making in regard to products and programs directed at youth."

c. Philip Morris: "It is important to know as much as possible about teenage smoking patterns and attitudes. Today's teenager is tomorrow's potential regular customer, and the overwhelming majority of smokers first begin to smoke while still in their teens. . . . The smoking patterns of teenagers are particularly important to Philip Morris. . . ."

Philip Morris: "Because of our high share of the market among the youngest smokers, Philip Morris will suffer more than other companies from the decline in the number of teenage smokers. . . ."

Philip Morris: ". . . The Roper Organization was commissioned to undertake the study [entitled The New Competition for Marlboro's Franchise] summarized here, with the intention of probing the dynamics of the market among smokers below the age of 24. (This was not the 'usual' sample of age 18-24; in this study, no lower age limit was set.)"

Philip Morris: "Raising the legal minimum age for cigarette purchaser to 21 could gut our key young adult market (17-20) where we sell about 25 billion cigarettes and enjoy a 70 percent market share. If we completely lost this market segment, it would significantly reduce our present market share advantage over RJR and cause nearly a \$400 million drop in marginal contribution. Moreover 66 percent of all smokers begin smoking at or before age 18, 80 percent begin before age 21. . . ."

d. American: "A further aspect of the change in attitudes toward smoking is the fact that our society makes it easier to start and continue smoking. Parents hinder children less and smokers continue to seek and find 'authorities' to support them in rationalizing their health fears."

e. B.A.T. Group: "One of the reasons for adolescent attraction to smoking is curiosity about the physical reactions of it. More important reasons for its attraction are the 'forbidden fruits' aspect of cigarettes. The adolescent seeks to display his new urge for independence with a symbol and cigarettes are such a symbol since they are associated with adulthood and at the same time adults seek and deny them to the young. . . . Serious efforts to learn to smoke occur between the ages of 12 and 13 in most case[s]. . . . However intriguing was at 11, 12 or 13, by the age of 16 or 17 many regretted their use of cigarettes for health reasons and because they feel unable to stop smoking when they want to. By the age of 16, any peer pressure to initiate others to smoke is gone. In fact, smoking openly bemoan the sight of 11 or 12 year olds that they see smoking, and in effect, the 16 year olds now act toward their juniors as their own parents act toward them."

f. Imperial: "Serious smoking mainly starts in the 14-15 age range. . . . Starters no longer disbelieve the dangers of smoking, but they almost universally assume these risks will not apply to themselves because they will not become addicted. Once addiction does take place, it becomes necessary for the smoker to make peace with the accepted hazards. This is done by a wide range of rationalizations. . . . The desire to quit seems to come earlier now than before, even prior to the end of high school. In fact, it often seems to take hold as soon as the

recent starter admits to himself that he is hooked on smoking. However, the desire to quit, and actually carrying it out, are two quite different things as the would-be quitter soon learns. . . . Project Sixteen was conducted in the autumn of 1977, some 11-1/2 years ago. The people of that rather singular and sensible project made it essentially a pure behavioral study -- why do young people start smoking, and how do they feel about being smokers? Most of the time spent in those four groups of 16-17 year olds was devoted to starting. . . . All the young person wishes to do then, as Project Sixteen found, is to experiment with smoking, to see what this forbidden fruit is all about, to find out for himself instead of listening to what others say. . . . Trying a cigarette is simply one more among many first ventures into the adult world they are still years away from but which they wish would arrive sooner."

Imperial: "Young smokers represent the major opportunity group for the cigarette industry, we should therefore determine their attitude to smoking and health and how this might changes over time. . . . According to Gilman, youth's position on smoking and health is, like many other controversial areas, an all or nothing situation. They are either concerned about the effects of smoking and therefore do not smoke, or else they are not concerned and therefore choose a brand which in their mind delivers 'full' smoking satisfaction. . . . The reason why youths' attitude to smoking and health, as they become older, is extremely important, is that if those who adopt smoking do not have a "hang up" on smoking, and their attitude does not changes appreciably as they become older, then the share of market of higher T&N brands will continue to expand rather than contract. This line of reasoning would also imply that if Export "A" continues to attract the bulk of young smokers (53% of all new smokers - 8m, Spring 70) and these smokers stay with Export 'A' because a switch in most cases means a reduction in T&N, then theoretically Export 'A' will continue to expand. Should a scientific breakthrough be reached allowing the production of a full flavoured satisfying cigarette without the alleged harmful ingredients, then of course, the whole market could changes overnight."

g. Canadian Tobacco Manufacturers Council: "The recent report of smoking habits of Canadian school children by the Department of National Health and Welfare \* (1980) has shown that students start experimenting with cigarettes at an early age. The major conclusions regarding prevalence of the habit were as follows: . . . By age 12, one half of Canadian school children have at least tried smoking . . . Regular smoking is established in the early teens by many Canadian students. . . . School aged boys experiment with cigarettes earlier than girls, but girls begin regular smoking earlier than boys. From the early tens, a higher proportion of girls than boys smoke daily . . . By age 14, 15% of boys and 20% of girls are daily smokers and by age 17 these figures have increased to 27% of boys and 30% of girls. No significant change occurs in the proportion of students who report daily smoking beyond this age. . . . It is only the teenager who never attempts, or who has attempted

no more than once and decided that he dislikes it and will not take it up, who has much chance of being a non-smoking adult. The matter is largely settled by the age of 19; if a person still is a non-smoker, at this age he is unlikely to take it up. . . . The reasons most people give for their first experiments with smoking are curiosity, conformity, bravado or to appear grown-up (Horn, Courts, Taylor and Solomon, 1959). The first cigarette is almost invariably unpleasant. Nearly everyone has experienced the shock of the first inhalation, often accompanied by gagging and nauseousness - a physiological response which presumably has a pharmacological basis. On the other hand, nearly everyone who has continued smoking more cigarettes can recall the pleasantness of the light-headedness which following inhalation, a sensory experience that could be made to recur following a brief time lapse between cigarettes. . . . The average pack-a-day smoker takes 8-10 puffs per cigarette and absorbs approximately 50-150 ug of nicotine per puff. Each dose of nicotine reaches the brain within 7 seconds and exerts widespread and varied central and peripheral nervous system effects (both stimulation and depression, all of which are potential reinforcers), via its capacity to affect the actions of and release of important neurochemical transmitters (Russell, 1976). For the average smoker the behavior is reinforced approximately 50-70 thousand times a year and this consumption level would tend to suggest that organismic factors of a markedly compelling nature are operative in the inception and persistence of smoking behavior." . . . The mechanism of action of nicotine that has been proposed is not the same as negative reinforcement. Negative reinforcement occurs when a drug terminates or reduces a negative affect [sic]. Thus an anxiolytic is taken during aversive events to enable the person to escape from the consequences or before these events in order to avoid them. Alcoholics seem to drink for this reason. . . . In contrast nicotine enables the smoker to confront his problems and perhaps overcome them. Thus we would paraphrase nicotine's action by saying that nicotine is a drug of confrontation and not escapism, a sharpening drug not a blunting drug. . . . The study starts with a pool of children to be selected from various schools of the Ottawa or Carleton School Board. . . . Approximately 300 children (175 males) will be sampled at 11 years of age at Year I."

138. Indeed, the tobacco industry has devoted considerable research efforts to creating and marketing brands to attract these new youthful smokers. And so, despite the best efforts of parents, educators, medical professionals and Ontario, smoking among young people persists.

139. Cigarette company products and advertising are used to create a mental image associating smoking with good health, glamorous and athletic lifestyles, success and sexual

attractiveness. An R.J. Reynolds' memo describes in detail "what qualities and image a new brand aimed at the youth market should have."

140. This type of product and advertising increases demand for cigarettes among young people. Within a short period of time, the young smoker becomes physiologically and emotionally dependent, i.e., addicted to tobacco. Later, as the maturing smoker begins to wish he or she could quit, advertising reinforces the practice and seeks to minimize health concerns and creates doubt, confusion and mistake which are used by smokers as excuses to avoid the pain and discomfort of attempting to break their addiction to nicotine. This is the vicious cycle of fraudulent tobacco industry advertising of their products.

141. The advertising imagery used to promote cigarette smoking among young people appeals to those with low self-esteem and emotional insecurity. Once the young person has been predisposed toward smoking, a variety of factors can precipitate actual experimentation. For many young people, the precipitating factor is being given a free pack of cigarettes by a tobacco company representative, or purchasing cigarettes in order to obtain an attractive tee-shirt, baseball cap, or other gimmick used to promote cigarette smoking.

**A. The Tobacco Lawyers**

142. Crossing the line of what constitutes proper and ethical legal representation, Shook, Hardy & Bacon, Jacob, Medinger & Finnegan, Chadbourne & Parke and Covington & Burling (sometimes referred to as the "tobacco attorneys") have actively and materially participated in, conspired in, aided and abetted in, and otherwise assisted in the tobacco industry's scheme to defraud and cheat in order to facilitate the continued manufacture, marketing and sale of cigarettes. Specifically, the tobacco law firms have engaged in unlawful conduct in their orchestration of the

fraud to affirmatively hide from and misrepresent to the public the health dangers of smoking. This was accomplished, in part, through their involvement in and direction of the CTR fraud, their corruption of the scientific process, their abuse of the attorney-client privilege and work product protections and, perhaps most telling, their truly pervasive involvement in all affairs of the tobacco industry. Additionally, the tobacco lawyers constructed and implemented a scorched earth litigation strategy that kept the existence and scope of the tobacco industry's strategy secret until the recent aggressive litigation of the United States Attorneys General forced the production of thousands of internal company documents.

143. The truly pervasive involvement of tobacco industry lawyers in every aspect of the tobacco industry in order to facilitate the industry's scheme to defraud and cheat and to insure that such scheme was not discovered is perhaps reflected in part in the October 1964 insider report entitled "Report on Policy Aspects of the Smoking and Health Situation in U.S.A." In this once "strictly confidential" report, two high level representatives from the Tobacco Research Council, the United Kingdom equivalent of the CTR, summarize their findings following more than a month of discussions with various players in the tobacco industry in the United States:

In the U.S., by far the most important factor conditioning action by the manufacturers is the law suit situation and the danger of costly damages being awarded against the manufacturers in a flood of cases. . . . The leadership in the U.S. smoking and health situation therefore lies with the powerful Policy Committee of senior lawyers advising the industry, and their policy, very understandably, in effect is "don't take any chances." It is a situation that does not encourage constructive or bold approaches to smoking and health problems, and it also means that the Policy Committee of lawyers exercises close control over all aspects of the problem.

144. The organizational structure of the tobacco industry that has allowed the orchestration and perpetration of the tobacco industry's scheme to defraud and cheat is laid out in the report in detail. The organizational structure is thoroughly dominated by in-house and outside lawyers:

In consequence of the importance of the lawsuits, the main power in the smoking and health situation undoubtedly rests with the lawyers, and more particularly with the Policy Committee of lawyers. The members of this Committee are:

Henry Ramm	(Reynolds) (Chairman)
Cy. Hetsko	(A.T.Co.)
Add. Yeaman	(Brown & Williamson)
Paul Smith	(P.M.)
Fred Haas	(L. & M.)
John Russell	(Lorillard)

This Committee is extremely powerful; it determines the high policy of the industry on all smoking and health matters, for example, as well as legal matters -- and it reports directly to the Presidents. The Committee is particularly concerned with possible Congressional legislation and it drew up the Cigarette Advertising Code. We understand that the Code was largely the work of Mr. Ramm. As Chairman of the Committee and the representative of the largest manufacturer, Mr. Ramm is probably the most influential member of the U.S. tobacco industry, apart from the Presidents, in forming industry policy in the field of smoking and health.

The Policy Committee set up another Committee of lawyers, known as the Ad Hoc Group, to assist them. The members of the Ad Hoc Group are: --

Dave Hardy	(PM) (Chairman)
Janet Brown	(A.T. Co.)
Ed Cook	(RJR)
Ed Jacob	(RJR & B & W)
John Russell	(Lorillard)
Fred Haas	(L & M)
Alex Holzman	(PM)

The Ad Hoc Group is concerned with --

- (1) Medical - legal matters.
- (2) Scrutinizing proposed action by other tobacco organizations.
- (3) Clearing papers (e.g. Dr. Little's annual report)
- (4) Watching the Inter-State and Foreign Commerce Committee of the House of Representatives.
- (5) Making certain that no assurances of any kind relating to the safety of smoking are given by any manufacturers (e.g. in advertisements).

In addition, there are two other Committees of lawyers -- one for dealing with Federal Trade Commission matters and a Litigation Committee consisting of New York Counsels of the larger Companies -- e.g. Mr. Chandler Cook (R.J.R.), Mr. Coleman, Mr. Jacob and about 14 others.

The lawyers are thus the most powerful group in the smoking and health situation. . . .

145. The lengthy report continues with an indictment of the CTR and its research:

The Scientific Advisory Board of CTR continues to meet and decide on applications for grants to carry out research on what appeared to us to be projects of no more than remote relevance to current problems. . . .

There was either no interest in or indeed mention of CTR research amongst the Companies or active criticism of varying degrees. Although L & M have now joined CTR, this was solely in order to present a united front, and L & M's scientific staff are as highly critical of CTR's research policy as ever.

\* \* \*

While CTR is supposed to be relegated to a back room role, the lawyers' Policy Committee recently decided that Dr. Little should act on behalf of the industry in dealing with requests from the U.S. Dept. of Agriculture (Dr. Tso) for information about benzpyrene, etc., in cigarette smoke.

146. Similarly, the Tobacco Research Council representatives found lawyer-control of the

Tobacco Institute:

There is a need for a voice to speak on behalf of the industry on all matters -- not merely those of health -- and T.I. is that voice, but its activities are minimal. The impression that we obtained is that T.I. is largely a voice at the end of a telephone line from the lawyers, and speaks only when as directed.

147. Moreover, as noted previously, CTR holds itself out, and has been held out by the tobacco industry and the tobacco attorneys, as a research body committed to bringing the facts out to the public about smoking and health. In the words of Shook, Hardy & Bacon partner Bill Shinn, however, the TIRC, predecessor to the CTR, was set up as an industry "shield," and the CTR has acted as a "front" for the tobacco companies' litigation and public relations goals. The tobacco attorneys used the CTR to further the tobacco industry's scheme to defraud and cheat and to cover up the tobacco industry's conspiracy.

148. A 1978 memorandum from Shook, Hardy & Bacon partner Donald Hoel captures the tobacco attorneys' intentional manipulation of the CTR:

After some further discussion, Janet [Brown of Chadbourne & Parke] and Arnie Henson expressed American Tobacco Company's view that CTR must be maintained but needed new people. It must be more politically oriented. They felt that CTR must look at what is happening and what others are doing to see what questions can be raised, etc. The approach must be steady, slow and conservative. They must find skeptical scientists. . . . The staff at CTR also needed to be more tobacco oriented with a skeptical view.

149. In orchestrating the CTR fraud, the tobacco attorneys became deeply involved in the screening, selection, funding, supervision and ultimate disposition of research projects, channeling sensitive research into "special projects" and "special accounts." Partner Ed Jacob of Jacob, Medinger & Finnegan is quoted in a 1981 internal tobacco industry document as saying:

When we started the CTR Special Projects, the idea was that the scientific director of CTR would review a project. If he liked it, it

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was a CTR special project. If he did not like it, then it became a lawyers' special project.

150. As to research which was progressing "satisfactorily" -- that is turning up no negative results -- the tobacco attorneys recommended it receive additional funding. Research which was troubling, either in its direction or in its results, was redirected by the tobacco attorneys or terminated.

151. By way of example, a 1980 letter from Shinn to the various general counsel of the tobacco industry, recommends a grant to Dr. Aviado. Although Shinn states that "[t]his would be a no-strings attached grant and Dr. Aviado would be free to publish," the role of Shook, Hardy & Bacon in supervising and ultimately controlling Dr. Aviado's research is clear: "We would anticipate a brief report toward the end of this year concerning the project. Providing the project is progressing satisfactorily, I anticipate recommending a renewal for a second year and, thereafter, with the same proviso, for a third year."

152. Indeed, "satisfactory" progress in research is always the touchstone for the tobacco attorneys. A telling 1981 memorandum between general counsel J. Kendrick Wells and executive Ernest Pepples of defendant Brown & Williamson tells of a visit by Timothy Finnegan of Jacob, Medinger & Finnegan to a researcher: "It was a cordial meeting and Tim believes he has persuaded them to take a new thrust with their research. The new thrust will have questionable value but no negative."

153. Similarly, Jacob, Medinger & Finnegan wrote a letter to the general counsel of the tobacco industry urging them to approve a grant to Dr. Henry Rothschild, who was doing a study on genetic links to lung cancer. Although CTR had rejected Dr. Rothschild's request to renew his

grant, Finnegan urged funding on the ground that “[h]is research has evolved to a point where his primary focus was on a possible genetic factor rather than environmental or occupational factors.”

154. Sensitive research -- i.e., research that might actually have “value” -- that was not proceeding “satisfactorily” received the close attention of the lawyers. An example of this involvement was the inhalation research conducted by Microbiological Associates under contract with the CTR.

155. This is confirmed by the director of inhalation toxicology at Microbiological Associates, Carol Henry. According to February 11, 1993 Wall Street Journal article, “[t]he lab initially had considerable freedom . . . but after nine years of work and \$12 million, the team was told in 1982 that it could no longer meet with Council [for Tobacco Research] staffers unless a lawyer was present. ‘We had never done science through lawyers before, and we told them it was unacceptable,’ says Dr. Henry. She says a Jacob Medinger lawyer told her, ‘That’s the way it is.’”

156. The breadth of the involvement of the tobacco attorneys in the selection of research projects to be funded, including those funded by and through CTR, is further reflected in the excerpts from the following letter written by Shinn:

The Research Liaison Committee has not had a meeting since July 1976. I have had discussion with individual members of the committee about calling a meeting. It has been suggested that the views of the companies with respect to the future activities of this committee should first be explored through the Committee of Counsel . . . . We may want to discuss research in a larger context, i.e., what are the industry’s present needs? This, of course, involves consideration of the role of institutional type projects (tobacco, e.g., Harvard, and non-tobacco, e.g., Washington University); the role of CTR; and the need for specific areas of research with due regard for the politics of science, the importance of developing witnesses and the need for a responsive mechanism to meet unfounded claims made about tobacco.

157. In fact, Shook, Hardy & Bacon chaired the Research Liaison Committee, a committee comprised of representatives of the major manufacturers "to study the research programs funded by our industry, both through CTR and independent projects that are brought to us from time to time." This committee "directed its primary attention to the question of how industry research should be recommended, decided upon, and supervised in order to accomplish the objective of an efficient and coordinated program which would best serve the needs and objectives of the industry."

158. Here is what Lorillard's Curtis Judge had to say in April 1978 about the ubiquitous involvement of lawyers in the affairs of the Research Liaison Committee:

Scientific Research Liaison Committee [s]hould reconvene because:

1) We have again "abdicated" the scientific research directional management of the Industry to the "Lawyers" with virtually no involvement on the part of scientific or business management side of the business.

2) Lorillard's management is opposed to the total Industry future being in the hands of the Committee of Counsel -- it's reminiscent of late 1960's when Ramm's group [i.e., the Policy Committee noted *supra*] ran the TI, CTR and everything else involved with Industry's public posture.

3) We Lorillard require a meeting of the Committee or a reconstitution leading to regular meetings to give POLICY DIRECTION to Industry Research, CTR, Harvard, possible new proposals, et al!

[R]econstitution only means [to] replace [American Brands, Inc. General Counsel, Cyril] Hetsko. Mix of 2 Business, 2 Science, 2 Law must prevail!

The Committee will NOT report to Committee of Counsel but to own Corp. CEO's.

Immediate action imperative!

159. In addition to tobacco attorney involvement in the Research Liaison Committee, Shook, Hardy & Bacon and Jacob, Medinger & Finnegan also attended Committee of Counsel and the Ad Hoc Committee meetings. David Hardy was intimately involved in the TI Communications

Committee. Attorney Janet Brown of Chadbourne & Parke was also often in attendance at various CTR committee meetings and, in fact, actually sat on the CTR board for nearly a decade. All of these committees worked to further the fraud.

160. In addition, the tobacco attorneys abused the attorney-client privilege and work product protections in order shield special projects and special accounts documents and cover-up the CTR fraud from the public, government regulators and the courts. For example, in notes of a 1981 Committee of Counsel meeting, transmitted by Shook, Hardy & Bacon, Jacob is quoted as stating:

With Spielberg, we were afraid of discovery for FTC and Aviado, we wanted to protect it under the lawyers. We did not want it out in the open.

And another set of notes from this meeting states:

E.J. [Ed Jacob]: Difference between CTR and Special Four (lawyers' projects). Director of CTR reviews special projects -- if project was problem for CTR, use Special Four. Also, if there are work-product claims, need the lawyers' protection, e.g., CTR's past director, Bill Gardiner, didn't think much of Rowe's work; Special Four financed him and he is now published, e.g., motivational research that was done during the FTC investigation was done through Special Four because of possibility that CTR would be subpoenaed, e.g., Joe Janus' current study of cohort effect (those born in 1890-1910) is a full CTR project -- Special Four gave interim support.

161. Indeed, it appears that hiding important information from government regulators and thwarting regulation was a regular course of conduct for the tobacco industry lawyers. Summarizing a September 23, 1981 Committee of Counsel meeting on additives, Brown & Williamson's corporate counsel, J. Kendrick Wells related the various companies' positions:

"RJR:Continue meetings with HHS at the industry's initiation . . . .

Lorillard: Stall any disclosure [of additives] by industry as long as possible . . . .

L&M: Stall disclosure . . . .”

162. Later in the report, Wells reports the position of Shook, Hardy & Bacon’s Robert Northrip on the additives issue:

The product liability litigation risk position stated by Bob Northrip is based on the opinion that it would be more difficult to defend against adverse assessments of additives by an industry panel than adverse assessments by HHS scientists . . . . The Northrip position is that a better alternative would be company review and testing of additives. If company testing began to show adverse results pertaining to a particular additives, the company control would enable the company to terminate the research, remove the additive, and destroy the data. Hopefully, the company testing would be done prior to adoption of an additive, but if tests were made of an additive in current use the additive would be discontinued and eliminated from the C&B list before HHS had opportunity to make adverse comment.

163. The international scope of the tobacco company’s scheme to defraud and cheat and the leading role played by the American tobacco industry’s lawyers is illustrated by a 1988 internal memorandum:

. . . [Philip Morris is] proposing, in key countries, to set up a team of scientists organized by one national coordinating scientist and American lawyers, to review scientific literature or carry out work on ETS to keep the controversy alive. They are spending vast sums of money to do so, and on the European front Covington & Burling, lawyers for the Tobacco Institute in the USA, are proposing to set up a London office from March 1988 to coordinate these activities.

164. The report sets out how Philip Morris and Covington & Burling intended to identify, contact and use these scientists in their quest to “keep the controversy alive:”

9. Philip Morris then expect[s] the group of scientists to operate within the confines of decisions taken by PM scientists to determine

the general direction of research, which apparently would then be "filtered" by lawyers to eliminate areas of sensitivity.

10. Their idea is that the groups of scientists should be able to produce research or stimulate controversy in such a way that public affairs people in the relevant countries would be able to make use of, or market, the information. The scientists would not necessarily be expected to act as spokesmen for the industry, but could be if they were prepared to do so.

165. Even Philip Morris's potential co-conspirators in Covington & Burling's fraudulent endeavor had reservations about the strategy:

Although action on Environmental Tobacco Smoke is becoming more vital to the industry, Philip Morris[']s strategy is perhaps questionable in some respects[,] e.g.,] involvement of lawyers at such a fundamental scientific level; disadvantages in perception of what will only be perceived as a "pro-industry" group of scientists.

#### **B. Parent Corporation Involvement**

166. Not only were they involved in the tobacco industry's scheme to defraud and cheat through use of their wholly-owned subsidiaries as their alter egos, agents and co-conspirators, but also the parent corporation themselves acted to further the scheme. For instance, and without limitation, the general counsel of the parent corporations sat on the Committee of Counsel, the high policy committee of the tobacco industry conspiracy. The parent corporations dictated internal policy for their manufacturing subsidiaries. And the parent corporations made pronouncements on the issue of tobacco that were often inconsistent with their own internal knowledge and documents. These pronouncements are perhaps most evident in their proxy statements to shareholders.

#### **C. The B.A.T. Group**

167. B.A.T. Industries p.l.c. bills itself as ". . . the world's most international tobacco manufacturer" where "Group companies operate in more than ninety countries . . . ." Its five

principal tobacco operations consist of Brown & Williamson (USA); British-American Tobacco Company Limited (UK); BAT Cigarettenfabriken (Germany); Imperial Tobacco Company (Canada); and Souza Cruz (Brazil). These companies meet on a regular basis to coordinate unified positions, share research, discuss future BAT Group policies and maintain unity on all smoking issues. Together, these companies are frequently referred to as the CAC Companies and the Chairman of each one comprised B.A.T.'s Tobacco Strategy Review Team (TSRT). Additionally, Imasco was a primary member of the TSRT. The TSRT was the Group-wide primary means by which B.A.T. Industries p.l.c., through its Chairman and Managing Director, Tobacco, directed, coordinated and controlled Group-wide tobacco operations. The TSRT met on a regular basis and the topics of discussion included safer cigarettes, addiction, Y-1, youth smoking, Barclay filters and smoking compendiums.

168. In Guidelines for BATCo (British-American Tobacco Company Limited), promulgated by B.A.T. Industries p.l.c., it was charged with implementing B.A.T.'s tobacco strategy:

In addition to its direct role in the management and development of its own businesses, BATCo will also be responsible, through the Tobacco Strategy Review Team; for formulating and agreeing with the other tobacco companies, a Group-wide R&D programme; for the preparation of compendiums on smoking issues; and for initiating and coordinating meetings and other activities to promote the Group's views on these issues.

Similarly, in guidelines promulgated by B.A.T. Industries p.l.c. for BATUS, it was stated:

BATUS should participate fully in the work of the Tobacco Strategy Review Team and should contribute with the other tobacco operations in the formulation and implementation of a Group wide R&D programme.

169. As reflected in B.A.T. Industries p.l.c.'s Statement of Business Conduct, which was made mandatory on all its employees who were subject to disciplinary action including termination for disagreeing with B.A.T.'s policies, B.A.T.'s fraudulent and conspiratorial views were expressed in its Smoking and Health Policy which denied scientific causation between smoking and disease. Thus, B.A.T. Industries p.l.c. promulgated a false and fraudulent policy as regards to smoking and disease; made it mandatory upon all Group companies; and charged BATCo with "... promot[ing] the Group's views on these issues . . ." through the TSRT.

170. B.A.T. Industries p.l.c.'s "Group Financial Objectives" demonstrate the direction and control exerted by B.A.T. In pertinent part, they state:

ii. Strategic Priorities

The main thrust of Group strategy will be to maintain profits, growth and a strong cash flow from tobacco...

\* \* \*

Action to be initiated and progressed by the Centre through the strategy review and project teams through liaison with the operating groups...

2.2 Tobacco

(a) GHQ

- Maintain a positive and coordinated stance against the anti-smoking lobby and ensure implementation of the initiatives agreed to pursue...

171. Thus, it was B.A.T. Industries p.l.c. itself which created the mandatory Group-wide view and policy disclaiming the relationship between smoking and disease and coordinated the concerted action against those who disagreed. Indeed, B.A.T. Industries p.l.c. itself made statements to cloud the issues on smoking and health:

I also feel there is so much to say about lung cancer that it would be very desirable to concentrate on this single issue alone . . . .

I could imagine an outline for an extremely interesting short book which might be on the following lines . . . .

There exists a major controversy about smoking and health. But although many people believe that the "case for the prosecution" is absolutely clear cut and proven, the hard fact is that there are many anomalies in the evidence. The more we apply modern techniques of research, the more anomalies we find. It is the aim of this book to examine some of the anomalies and to show that the whole subject needs far more objective investigation . . . .

If we can cast doubt on the relationship between smoking and lung cancer then we have cast doubts on the entire case against smoking. So let us look at the evidence on lung cancer in more detail.

172. In order to ensure that B.A.T.'s Group-wide policies were enforced, it utilized the all powerful Chairman's Policy Committee which acted "... as the key executive body of the Board."

As stated in a January 1990 press release:

Mr. Pat Sheehy [Chairman of BAT Industries p.l.c.] will be responsible for ensuring the strategic coordination of the Group's tobacco interests in addition to his responsibilities as Chairman . . .

Another key member of the Chairman's Policy Committee (later renamed the Chief Executives Committee) is main B.A.T. Board member, Ulrich Herter, Managing Director, Tobacco, according to a February 1993 press release. In short, B.A.T. Industries p.l.c. completely dominated and controlled its Group-wide cigarette operations, including but not limited to B&W, BATCo and BATUS. Moreover, B.A.T. Industries p.l.c. was itself the originator and author of the false and fraudulent Smoking and Health Policy and it coordinated, directed and furthered the industry-wide

conspiracy against what it termed "the anti-smoking lobby", i.e., public health officials and government regulating bodies, etc.

**V. Claims for Relief**

**Count 1: Federal Racketeer Influenced & Corrupt Organizations Act Pursuant to Subsection 1964 for Violations of Subsection 1962(c)**

173. The Government of Ontario realleges and incorporates and adopts by reference the foregoing allegations of this Complaint, and further alleges as follows.

174. The Defendants are individuals or entities capable of holding a legal or beneficial interest in property and are therefore "persons" within the meaning of 18 U.S.C. § 1961(3).

175. At all relevant times, there have existed one or more "enterprises" for purposes of 18 U.S.C. § 1961(4). The enterprises are ongoing associations which function, and whose constituent elements function, as continuing units. The enterprises have engaged in, and their activities have affected, interstate and foreign commerce.

176. The CTR, the Tobacco Institute, the BAT Research Group and the Committee of Counsel each are, and/or have been, legal entities or associations-in-fact and are, therefore, "enterprises" under 18 U.S.C. § 1961(4).

177. At all relevant times, the Defendants together with the CTR, the Tobacco Institute, the BAT Research Group, the Committee of Counsel and related entities including, but not limited to, the Policy Committee, the Council of Counsel, the Ad Hoc Committee, and the Research Liaison Committee and other entities whose identities are unknown at this time have constituted an association-in-fact "enterprise" within the meaning of 18 U.S.C. § 1961(4) (the "Tobacco Enterprise"). The Tobacco Enterprise is an ongoing association whose constituent elements function

as a continuing unit, whose members have been and are in frequent communication with each other and whose purposes are to defraud and mislead the public and regulators, including the Federal government and the Government of Ontario, as to the health hazards of tobacco cigarettes, to suppress the truth concerning the addictive properties of nicotine and of the Defendants' manipulation of nicotine levels, to market tobacco cigarettes to children and to conceal evidence of Defendants' participation in this Enterprise.

178. The Tobacco Enterprise has an ascertainable structure and has an existence separate and apart from the Defendants' pattern of racketeering activity. This separate existence is established by the Tobacco Enterprise's coordinating the commission of different acts of racketeering activity on an ongoing basis as well as coordinating activity on smoking and health and activity unrelated to smoking and health (such as unrelated patent, general business and antitrust matters, that do not qualify as racketeering activity). In the alternative, the Tobacco Enterprise is in effect the sum of the predicate acts committed by the Defendants and described *infra*.

179. The Tobacco Enterprise has engaged in, and its activities have affected, interstate and foreign commerce. The Enterprise has functioned as a continuing unit for over forty-five years, as illustrated by the tobacco industry's sustained, concerted and fraudulent stance that a legitimate controversy exists whether cigarette smoking causes disease, that nicotine is not addictive and that the industry does not market cigarettes to children, as described in detail *supra*, and continues to date through the concerted activities of the Defendants to disguise the nature of their wrongdoing to conceal the proceeds thereof, and to conceal the Defendants' participation in the Tobacco Enterprise to avoid and/or to minimize their exposure to criminal and civil penalties and damages.

180. The Tobacco Enterprise was born at an industry strategy meeting on December 15, 1953, at the Plaza Hotel in New York. The participants included representatives of American Tobacco Co., R.J. Reynolds Tobacco Co., Philip Morris, Inc., U.S. Tobacco Co., Lorillard Tobacco Company, Brown & Williamson Tobacco Corporation, and Hill & Knowlton, Inc. The participants agreed to form entities and/or committees to establish this Enterprise and to protect their cigarette market from the perceived threat posed by the adverse medical reports on tobacco smoking as well as to coordinate an offensive to further the fraudulent objectives described in the preceding paragraph. The Tobacco Enterprise campaign continued over the next four and one half decades and threatens to continue into the future.

181. The Tobacco Enterprise functions as an ongoing organization with several committees composed of the general counsels and outside counsels of each of the tobacco manufacturers operating as the decision-making framework for controlling the association's members on all matters relating to smoking and health. These committees include the Committee of Counsel, the Council of Counsel, the Policy Committee, the Ad Hoc Committee and/or the Research Liaison Committee. An October 1964 internal industry "confidential reports" to members of the British tobacco industry describes the Policy Committee as follows:

In the U.S., by far the most important factor conditioning action by the manufacturers is the law suit situation and the danger of costly damages being awarded against the manufacturers in a flood of cases . . . . The leadership in the U.S. smoking and health situation therefore lies with the powerful Policy Committee of senior lawyers advising the industry, and their policy, very understandably, in effect is "don't take any chances." It is a situation that does not encourage constructive or bold approaches to smoking and health problems, and it also means that the Policy Committee of lawyers exercises close control over all aspects of the problem . . . .

This committee is extremely powerful, it determines the high policy of the industry on all smoking and health matters -- research and public relations matters, for example, as well as legal matters -- and it reports directly to the Presidents.

The Policy Committee and the other committees have convened, and continue to convene, regular meetings to fulfill their function as the decision-making body for the Tobacco Enterprise.

182. Each Defendant conducted or participated, directly or indirectly, in the conduct of the affairs of the Enterprise through a pattern of racketeering activity. The conduct and affairs of the Tobacco Enterprise consist primarily of devising and implementing the various schemes and artifices to defraud described in this Complaint and specifically intended by each Defendant, i.e., the creation of a public perception that a legitimate scientific controversy exists concerning whether cigarettes cause disease and whether nicotine is addictive; the shifting of the health care costs of smoking to governmental health care providers such as the Government of Ontario; the strategies and efforts to market cigarettes to minors, the suppression of the development, manufacture and sale of less hazardous cigarettes, the use of the CTR, and its predecessor the Tobacco Industry Research Committee ("TIRC"), as fronts for the tobacco industry; the concealment of research establishing the health hazards of smoking and the addictiveness of nicotine and the knowledge of the industry as to these health hazards; the concealment of the industry's manipulation of nicotine; the "scorched-earth-litigation" tactics of the Enterprise, including, but not limited to, the abuse of the attorney-client privilege and the intimidation of whistle blower witnesses.

183. The Defendants have targeted and continue to target these schemes to defraud, in part, Ontario government officials for the specific purpose of avoiding regulation, taxation or other demands for compensation and preventing the public disclosure of the industry's deceptions. In

essence, the Defendants target these schemes to defraud Ontario and other public officials with the specific intent of ensuring that the economic consequences of the health crises caused by the industry's conduct are not borne by the industry but are shifted to other parties, including the Government of Ontario. A November 20, 1978 memorandum regarding a meeting of the Ad Hoc Committee, a second committee of industry lawyers created to assist the Policy Committee, demonstrates this fact:

At our meeting last week, the ad hoc group discussed long-range plans, policy, etc. Thus, I'd like to bring to your attention an area which, I feel, needs to be addressed.

Health care costs are rising at an alarming rate:

\$ 42 billion in 1966  
\$163 billion in 1977  
\$310 billion in 1983 (anticipated).

More industry antagonists are using an economic argument against cigarettes: - i.e., cigarettes cause disease; disease requires treatment; major health cost are borne by the government; the taxpayers pay in the end.

Thus, as health costs rise astronomically, the opposition becomes armed with more potent weapons. We must be prepared to counter this line of argument.

184. In implementing these schemes to defraud, the Defendants have participated, and continue to participate, in the operation and/or management of the RICO Enterprises through the commission of a pattern of racketeering activity which dates from December 15, 1953 through the present and threatens to continue in the future. Specifically, the Defendants have implemented and continue to implement their schemes to defraud as described herein, which are reasonably calculated to deceive persons of ordinary prudence and comprehension, by (i) causing items incident to an

essential element of and in furtherance of these schemes, to be deposited and/or received through the domestic and international mails, in violation of 18 U.S.C. § 1341 (mail fraud); and (ii) using wire, radio, and television communications incident to an essential element of and in furtherance of these schemes in interstate and foreign commerce, in violation of 18 U.S.C. § 1343 (wire fraud), as illustrated by, but not limited to, the following:

- a. On or about July 30, 1984, S.R. Massey, a senior scientist at Imperial Tobacco, mailed a copy of summary notes and slides from a recent B.A.T. Group conference to E.E. Kohnhorst of Brown & Williamson Tobacco Corp. The notes contained discussions on nicotine as an addictive drug, attracting new starter smokers and attracting kids to smoke B.A.T. Group cigarettes. This letter with attachments was in furtherance of the industry's fraudulent scheme of withholding accurate internal information on the issues of nicotine addiction and youth smoking. Each use of the U.S. mail as described herein constitutes a distinct violation of 18 U.S.C. § 1341.
- b. On or about May 23, 1977, S.R. Massey, a senior scientist at Imperial Tobacco, mailed an internal report on smoking and health to various BAT Group scientists in Canada, United States, England, Germany and Brazil. In the report, Massey concedes that smoking causes cancer. This report demonstrates Imperial Tobacco's and B.A.T. Group's knowledge of the carcinogenic nature of cigarette smoking as well as their knowledge of the falsity of the tobacco industry's public relations misinformation campaign wherein they deny that nicotine is a drug, that cigarettes are drug delivery devices and that nicotine in cigarettes or tobacco products is addictive. Each use of the U.S. mail as described herein constitutes a distinct violation of 18 U.S.C. § 1341.
- c. On or about May 10, 1994, Brown & Williamson issued a press release that was carried on the interstate wire services and provided that "contrary to media reports, B&W had not concluded that cigarette smoking was addictive prior to the release of the 1964 Report." This release was issued in furtherance of the industry's fraudulent scheme of publicly denying that nicotine is addictive and attempting to cast doubt on the link between nicotine and addiction. The issuance of this press release constitutes a violation of 18 U.S.C. § 1343.
- d. On or about February 4, 1983, B&W's corporate counsel, J.K. Wells, sent a letter to L.C.F. Blackman, BATCo's senior scientist. In the letter Wells makes numerous changes to scientific conclusions reached by Blackman and noted that "as with all statements on smoking and health, it is vital that BAT consistently take the position that causation has not been proven . . ." This letter rewriting scientific research was

sent in furtherance of the tobacco industry's scheme to defraud and to create doubt about the relationship between smoking and health. Its mailing constitutes a violation of 18 U.S.C. § 1341.

- e. On or about November 22, 1999, Imperial Tobacco issued a press release that was carried over the wires. In the release Imperial denied that it had ever aimed its advertising at young smokers who were not of legal age. This statement is contradicted by internal Imperial documents. The issuance of this press release constitutes a violation of 18 U.S.C. § 1343.
- f. On or about December 18, 1986, B.A.T.'s CEO, Sir Patrick Sheehy, sent a letter to Purdy Crawford, Imasco's Chairman. The letter concluded that Imperial would no longer be pursuing research into safer cigarettes. This letter was in furtherance of the industry's scheme to defraud and suppress safer cigarette projects. Its mailing constitutes a violation of 18 U.S.C. § 1341.
- g. On or about November 11, 1977, Brown & Williamson's head of corporate public relations stated on television that "we don't think it's a question of safer cigarettes. We think all of our cigarettes are safe because there is no documented evidence whatsoever that indicates a cause and effect relationship between smoking and any disease." This statement was made in furtherance of the industry's fraudulent scheme of publicly denying that smoking causes disease even though the industry was well aware of the carcinogenic nature of cigarette smoking. The statement on television constitutes a violation of 18 U.S.C. § 1343.
- h. On or about September 9, 1983, B.A.T.'s CEO, Sir Patrick Sheehy, sent a letter to George Weissman of Philip Morris, Inc. and noted that there should be no health claims or health-related competition between members of the tobacco industry. This letter was sent in furtherance of the industry's scheme to defraud and suppress safer cigarettes and shows these industry members' intent that they unite to further the scheme to defraud. The mailing of this letter constitutes a violation of 18 U.S.C. § 1341.
- i. On or about August 1, 1985, B&W's corporate counsel, J.K. Wells, mailed a letter to John David Myles. The letter discussed B.A.T. Group R&D reports being hidden in Wells' secretary's office and eventually being secretly sent to England for review by BATCo lawyers. The letter was written to conceal the tobacco industry's scheme to defraud and its mailing constitutes a violation of 18 U.S.C. § 1341.
- j. On or about March 3, 1975, P.J. Dunn, a senior scientist at Imperial Tobacco Ltd., sent a report out to several B.A.T. Group scientists around the world. The report discussed the fact that low tar cigarettes may cause smokers to compensate and actually ingest more harmful smoke components. This evidence has always been

denied by the industry. This report demonstrates Imperial Tobacco's and B.A.T. Group's knowledge of the harmful nature of cigarette smoking as well as their knowledge of the falsity of the tobacco industry's public relations misinformation campaign wherein they deny that nicotine is a drug, that cigarettes are drug delivery devices and that nicotine in cigarettes or tobacco products is addictive. Each use of the U.S. mail as described herein constitutes a distinct violation of 18 U.S.C. § 1341.

- k. On or about November 17, 1989, B&W's corporate counsel J.K. Wells, sent a letter to R.J. Pritchard, B&W's CEO. The letter recommended that B&W "avoid the production of scientific witnesses and documents at this time . . . to preserve credibility for the management's statements on smoking and health . . ." and was sent to further the industry's scheme to defraud and to suppress the truth about cigarettes and health. This letter also indicates the writer's knowledge that the documents to be withheld from production show the industry's knowledge of the harmful effects of cigarette smoking and the industry's knowledge of the falsity of its public relations misinformation campaign wherein they deny that, *inter alia*, cigarette smoking causes disease, nicotine is a drug and that nicotine is addictive. Each use of the U.S. mail as described herein constitutes a distinct violation of 18 U.S.C. § 1341.
- l. On or about September 20, 1971, Imperial scientist L.C. Laporte mailed a copy of the Cigarette Advertising Code of the Canadian Tobacco Manufacturers Council to Addison Yeaman, B&W's corporate counsel, and E.P. Finch, B&W's President. The advertising code contained numerous false statements regarding youth smoking and light cigarettes. The advertising code was designed to create a positive image for the industry and to further its scheme to promote smoking by minors. Each use of the U.S. mail as described herein constitutes a distinct violation of 18 U.S.C. § 1341.
- m. On or about September 1, 1994, Imperial Tobacco spokesperson Michel Descoteaux told CTV National News that "we don't say that smoking is good for you, we don't say that smoking is bad for you. All we are saying is that in the state of current knowledge we do not know." This statement was made with knowledge that these statements would be aired on television in Canada and that these statements were patently false. These statements were made in furtherance of the industry scheme to misinform the public and the Canadian and Ontario governments by creating a false controversy about the harmful effects of cigarette smoking on human health. The statement on television constitutes a violation of 18 U.S.C. § 1343.
- n. On or about November 24, 1987, Jean-Louis Mercier, then President of Imperial Tobacco, appeared before a House of Commons Committee and was asked whether he believed that any Canadians die of smoking-related diseases. He replied "No, I do not." Mercier knew that this testimony would be carried by the news media and reported and discussed on television and in the papers. These statements were made in furtherance of the industry scheme to misinform the public and the Canadian and

Ontario governments by creating a false controversy about the harmful effects of cigarette smoking on human health. The statements carried on television constitute a violation of 18 U.S.C. § 1343. Those carried in the newspapers and mailed constitute a violation of 18 U.S.C. § 1341.

- o. On or about April 10, 1994, Rob Parker, President of the Canadian Tobacco Manufacturers' Council, appeared on the Canadian Broadcasting Corporation Sunday Morning radio program and stated "I don't believe there is an established scientific causal link." At the time Parker made this statement the entire industry internally accepted that the scientific link was clear. These statements were made in furtherance of the industry scheme to misinform the public and the Canadian and Ontario governments by creating a false controversy about the harmful effects of cigarette smoking on human health. The statements carried on television constitute a violation of 18 U.S.C. § 1343.
- p. On or about June 22, 1981, Fernand A. Leclerc of RJRM wrote to R.J. Marcotullio and M. Morrison with a copy to Lester W. Pullen and D.A. Crawford regarding Hirayama Study Findings Package to 49 Canadian Media:

Attached is a copy of the file compiled and mailed by the CTMC to the 49 Canadian publications that have published the original Hirayama study findings.

It is hoped this package will stimulate publication of the new findings. The Public Affairs Committee of the CTMC will keep a close watch on the results of this mailing as we hope to use the findings to further our intelligence of the media's perception of material related to smoking & health.

I will make sure to send you copies of the formal or informal report.

Each use of the U.S. mail as described herein constitutes a distinct violation of 18 U.S.C. § 1341.

- q. The Canadian companies were involved with the Council for Tobacco Research, and CTR research was conducted at Canadian research facilities in furtherance of the RICO scheme. On or about June 19, 1970, Hans Selye, C.C., of the Universite De Montreal, Institut de medecine et de, chirurgie experimentals, with a Special Project report attached, wrote to Dr. Robert C. Hockett of the CTR:

The special research project 'Stress and Relief from Stress' having come to the close of its initial year, I am sending you herewith our first Annual Report . . . With your help, much of the groundwork is done . . .

It is not yet known to what extent steroid hormones, normally produced during stress, can also affect the production of defense enzymes, but I strongly believe that the possibility of correcting and/or complementing the body's resistance to adverse influences holds the greatest promise for the elimination of arguments presently used against smoking.

Each use of the U.S. mail as described herein constitutes a distinct violation of 18 U.S.C. § 1341.

- r. RJR Macdonald operated under the direction and control of its parent company, RJR Nabisco and RJR Tobacco Company, and acted as the agent of these companies in Canada and elsewhere. On or about December 10, 1979, Frank G. Colby of RJ Reynolds Tobacco Company wrote to Derick A. Crawford of RJR Macdonald:

"Referring to my attached memorandum on laryngeal cancer, addressed to Max Crohn, I would appreciate if you could please have one of your associates attempt to obtain copies of the Ontario and Montreal studies identified in the attached JAMA write-up."

Each use of the U.S. mail as described herein constitutes a distinct violation of 18 U.S.C. § 1341.

- s. RJR Macdonald conspired with U.S. companies to control and suppress scientific findings regarding smoking and health. On or about January 9, 1980, D.A. Crawford of RJRM wrote to Dr. Frank G. Colby, Manager, Science Information, of R.J. Reynolds Tobacco Company:

Macklem, Martin & King CTMC Grant Request

I attach a copy of a letter received by Chris Seymour from the team at McGill re their grant application. Your main query regarding this work, viz why continue with the rat study when they point out

themselves that the rat is not particularly suitable for this work, seems to have worked as they are proposing to 'terminate this part of the programme'.

Each use of the U.S. mail as described herein constitutes a distinct violation of 18 U.S.C. § 1341.

- t. RJR Tobacco exercised direction and control of RJR Macdonald in scientific matters related to smoking and health. On or about October 14, 1980, Frank G. Colby of RJR Tobacco Company wrote to Derick A. Crawford of RJR-Macdonald, Inc., RE: Dr. JAMES HOGG:

"As mentioned in previous communications, I am recommending against accepting the latest proposal by Dr. Hogg, dated August 1980, for the following reasons:

1. The research project is ill conceived and poorly planned. It is repetitious of previous work and work certain to be currently in progress by groups such as those of Janoff, and Crystal, and Gadek, e.g.:
3. Last and not least, as also mentioned previously, Hogg more recently seems to take on a less and less balanced attitude towards smoking.

I agree with your comment of August 21, that report writing ability is not a criterion for research grants."

Each use of the U.S. mail as described herein constitutes a distinct violation of 18 U.S.C. § 1341.

- u. On or about February 12, 1981, Frank G. Colby of RJRT on inter-company correspondence wrote to Derick A. Crawford of RJR-MacDonald Inc., Montreal, regarding "Some Ideas on the Constitution of a Canadian Tobacco Research Council":

During my recent very pleasant visit, you suggested that I prepare a memorandum summarizing my ideas on a Canadian Tobacco Industry Research Council.

Each use of the U.S. mail as described herein constitutes a distinct violation of 18 U.S.C. § 1341.

- v. On or about November 10, 1980, F. Leclerc of RJRM wrote to Derick Crawford with a copy to RJR's F. Colby:

Coincidental with your memo, I received a call from Frank Colby concerning the above and we sort of both agreed that the idea of a Canadian Scientific Advisory Board would certainly be a good one. I can see some very positive Public Relations inputs through this eventual Board.

One of the public affairs and public relations objectives to be pursued by the creation of this Scientific Advisory Board would be to make sure that the state of the art in research is well understood by the public. Also, it would provide an excellent vehicle for correcting some of the 'excesses' of the more dedicated proponents of anti-smoking.

Each use of the U.S. mail as described herein constitutes a distinct violation of 18 U.S.C. § 1341.

- w. On or about December 22, 1980, in a memorandum from Michel Descoteaux to Louis Boudreau of Rothman's, C. Denis of Rothman's, C. Heide of Benson & Hedges, Fernand Leclerc of RJR-MacDonald, and Jacques LaRiviere of CTMC:

"This move will reduce the relative importance of Alcan's anti-tobacco campaigns in the framework of the health-promotion campaigns as a whole. (anti-alcoholism, anti-drug abuse, etc.);

the door is wide open for discussions which might lead Alcan to take a position that is more 'compatible' with our interests;

this was a first attempt at discussion with an important employer who is likely to help us polish up our approach when the time comes to prepare the 'employer's kits' (c.f. our plan of action)."

Each use of the U.S. mail as described herein constitutes a distinct violation of 18 U.S.C. § 1341.

- x. Upon information and belief, in opposition to proposed advertising restrictions in Canada, the tobacco industry initiated a massive public relations campaign including an information kit to generate letter-writing. News conferences, ads, and withdrawal of sporting event sponsorships were also used in implementing this plan. On information and belief, one member of Parliament alone reportedly received 15,000 letters in opposition to the ban:

The letters were designed to appear as if the retailer was the author: for example, the retailer's return address was included. Letters were made to look different in form, text, colour, and paper, all varied by automated equipment. Retailers received up to three follow-up calls to ensure that the letters got sent in. Many letters were sent in, and the industry's attempt to create an impression among the MPs of grass-roots opposition to the Bill was succeeding.

Each use of the U.S. mail as described herein constitutes a distinct violation of 18 U.S.C. § 1341.

- y. Examples of the use of mails to further their scheme:
- z. An electronic mail from Chairman of Imperial Tobacco Ltd., the Presidents of RJR-Macdonald Inc., and Rothman's Benson & Hedges, to L. Riznel of Toronto, Ontario:

Many ordinary Canadians are about to be victimized by proposed federal legislation . . . For all the wrong reasons!

We think the government is wrong. There is time and there is a way for people who are against the bill to make their feelings clear to the government. Frankly, it will take an organized programme. We have undertaken the organization. We hope you will undertake to offer your support. Within a day or two, you will receive a more comprehensive information package. We urge you to sign and send that letter right away. Perhaps together, we can help common sense prevail. While there is still time. (Emphasis added.)

- aa. The 'information kit' sent to retailers contained the directions from CTMC President Norman J. McDonald:

In the postalgram, we advised you that you would receive a comprehensive information kit on this

critical issue. You now have the kit in your hands. As you will note, it contains a letter and a stamped, pre-addressed envelope directed to you Member of Parliament. We urge you to sign and send the letter right away. Remember, this damaging legislation could be passed into law soon.

So where are the benefits of Bill C-51? There are none. Yet the economic damage will be massive and widespread. And remember, this piece of legislation could become law in a matter of weeks as the Government tries to rush the legislation through Parliament! Again, we urge you to sign and send the enclosed letter to your Member of Parliament. (Emphasis added.)

bb. Sample letters to parliament stated:

(The Bill) is nothing more than an interventionist Act that exploits an ill-informed electorate. It is both irresponsible and unconscionable for the Government to breach as basic a civil liberty as the right given to manufacturers and users to provide and receive information through advertising . . . .

As my elected member, I prevail upon you to do what has to be done to pre-empt any unilateral move by the Health Minister to pass Bill C-51 into legislation.

- cc. The fraudulent use of the mail was in furtherance of the scheme to defraud, in this instance using the citizens of Ontario. Upon information and belief, each letter was made to look different in color, font, text and paper to create the impression of a grass roots campaign. Upon information and belief, the tobacco industry engaged in harassing and coercive phone calls to induce persons to send these letters to Government officials.
- dd. On or about April 30, 1984, Jacques LaRiviere, Director of Public Affairs for the Canadian Tobacco Manufacturers' Council wrote to Miss Barbara Davis of Willowdale, Ontario, stating that all models for cigarette-companies provide proof they were at least 25 years of age despite evidence to the contrary.
- ee. On or about May 22, 1984, RJR-Macdonald Inc.'s Jeffrey Goodman, Director of Public Affairs/Public Relations wrote to Bob Macauley of Toronto, Ontario claiming

that advertising and promotion at the Canadian Junior Skiing Championships was not in violation of the Cigarette and Cigarette Tobacco Advertising and Promotion Code of the Canadian Tobacco Manufacturers' Council, which provides among other promises, that no athletes or celebrities will be used in cigarette advertising and promotion, and further commenting:

I wish to inform you that RJR-Macdonald Inc. is a company that has been part of the Canadian economic and social fabric for 126 years. . . . (and) . . . never have we violated a Code which we helped conceive and produce. I would suggest that before you make any accusations regarding our company and our sponsorship activities, that you check you facts first.

- ff. On or about August 19, 1985, the Canadian Tobacco Manufacturers' Council President Norman J. McDonald wrote David Sweanor, Staff Lawyer at the Non-Smokers' Rights Association and stated:

Contrary to your remarks, the tobacco industry respects its code and attempts to adhere to it rigidly and takes the necessary action to correct infractions when and where they may occur. Be assured, there is no hidden agenda with respect to the acknowledgment of the rules of the game vis a vis the advertising and promotion of cigarettes and cigarette tobacco in Canada. It was established and agreed to by competent and responsible citizens whose standards of ethics are beyond reproach.

- gg. On or about August 11, 1997, R.J. Reynolds Tobacco Co., Brown & Williamson Tobacco Corporation, Philip Morris Incorporated and Lorillard Tobacco Co. issued a joint press release that was carried on the interstate wire services. The release concerned oral arguments before the U.S. Court of Appeals for the Fourth Circuit in the tobacco industry's suit challenging the FDA's assertion of regulatory jurisdiction over tobacco. The release provided "Today's oral arguments are not about the need to prevent youth smoking. To the contrary: tobacco companies are, like FDA, opposed to youth smoking and support rational measures to attack the problem." This assertion is false. The tobacco industry actively markets cigarettes to children and the industry's public assertions that it does not want children to smoke are "a pro-smoking subterfuge." The issuance of this press release constitutes a violation of 18 U.S.C. § 1343.

- hh. The combined response of Brown & Williamson, Liggett, Lorillard, Philip Morris, R.J. Reynolds, and the Tobacco Institute in their January 1996 joint submission of twelve volumes in opposition to the 1995 proposed regulations of cigarettes and nicotine by the FDA, in which the Defendants perpetuate their disinformation campaign by denying that nicotine is a drug, by denying that cigarettes are drug delivery devices and by denying that nicotine in cigarettes or tobacco products is not addictive. This submission constitutes a violation of 18 U.S.C. § 1341.
- ii. On or about September 8, 1995, a letter signed by Geoffrey C. Bible, Chairman of the Board and Chief Executive Officer of Philip Morris Companies Inc., was mailed to Philip Morris Companies Inc.'s stockholders as part of the company's 1995 Midyear Update. The letter provided, "In August, the Clinton Administration announced its support for the Food and Drug Administration's regulation of cigarettes. As his pretext for this action, President Clinton says that he does not want minors to smoke. We agree, and even before the President's announcement, we launched an ambitious program to keep cigarettes away from children. The real issue here is not minors and smoking, but the power to regulate cigarettes as medical devices . . . I urge you to join us in combating FDA regulation by writing your members of Congress (see facing page for address)." As described herein, Philip Morris Companies Inc. and the rest of the tobacco industry actively market cigarettes to children, and the industry's public assertions that it does not want children to smoke are "a pro-smoking subterfuge." Bible's letter urging stockholders to transmit false information to Congress was mailed in furtherance of the industry's scheme to defraud, and each separate mailing constitutes a distinct violation of 18 U.S.C. § 1341.
- jj. On or about December 14, 1994, U.S. House Representative Martin Meehan requested of the United States Department of Justice the Prosecution Memorandum Requesting a Formal Investigation of the Possible Violation of Federal Criminal Laws by Named Individuals and Corporations in, or Doing Business With, the Tobacco Industry which details several instances of wire and mail fraud by the Defendants and is incorporated herein for all purposes. Each use of the U.S. mail or wires as described therein constitutes a distinct violation of 18 U.S.C. § 1341 or 18 U.S.C. § 1343.
- kk. On or about February 15, 1995, in furtherance of the tobacco industry's scheme to defraud, James Glenn, President of the CTR, mailed letters to James Todd, Executive Vice-President of the American Medical Association as well as to the deans of all United States medical schools. These letters discussed the CTR and misrepresented as follows: "Indeed, the tobacco industry does not review the grant applications to CTR or select the research sponsored by CTR, nor does the industry seek to influence CTR grantees in any fashion. On the contrary, CTR encourages these independent investigators to publish their research findings, whatever they may be." This letter

failed to disclose that the CTR was conceived as a public relations effort to support the sale and marketing of cigarettes; the Special Projects funded through the CTR were used to develop witnesses to defend the tobacco industry; and, the tobacco industry's lawyers participated heavily in the design, funding and public discussions relating to the research funded by the CTR and edited and cleared research findings of research funded by CTR before public dissemination. Each separate mailing of these letters constitutes a distinct violation of 18 U.S.C. § 1341.

- ll. On or about February 15, 1995, a letter signed by Lawrence A. Tisch and Preston R. Tisch Co-Chairmen of the Board and Co-Chief Executive Officers of Loews Corporation was mailed to Loews Corporation's shareholders as part of the company's 1994 Annual Report. The letter provided, "[I]n unprecedented fashion throughout the year, the industry was confronted with an extraordinarily high volume of federal, state and local legislative and regulatory proposals relating to cigarette marketing . . . . We encourage you to keep abreast of issues and public debates which affect your company, and to communicate your views to appropriate officials in order to avoid further unwarranted legislation and regulations. Lorillard continues to support and strictly adhere to a voluntary, multi-faceted, industry program to discourage smoking by people under legal age and to address concerns about cigarette advertising and promotion." The tobacco industry actively markets cigarettes to children and the industry's public assertions that tobacco companies do not want children to smoke are "a pro-smoking subterfuge." The Tisches' letter urging stockholders to transmit false information to federal, state and local officials was mailed in furtherance of the industry's scheme to defraud and each separate mailing constitutes a distinct violation of 18 U.S.C. § 1341.
- mm. On or about June 23, 1994, Thomas E. Sandefur, Jr., Chairman and CEO of Brown & Williamson Tobacco Corporation and Member of the Board of Director of B.A.T. Industries p.l.c. testified under oath before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, U.S. House of Representatives. Sandefur testified, "I do not believe that nicotine is addictive . . . . I want to assure this Subcommittee that we do not spike our products, nor do we manipulate the nicotine in our cigarettes to keep people hooked, as the FDA alleges. In fact, over the last 40 years, the nicotine levels have been reduced substantially." As described herein, Sandefur knew these statements were false. At the time of his testimony Sandefur also knew that his testimony would be televised throughout North America, including Ontario. Sandefur's testimony constitutes a violation of 18 U.S.C. § 1343.
- nn. On or about April 14, 1994, William I. Campbell, President and CEO of Philip Morris Incorporated, testified under oath before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, U.S. House of Representatives. Campbell testified, "Cigarette smoking is not addictive . . . . The

presence of nicotine, however, does not make cigarettes a drug or smoking an addiction . . . . Philip Morris research does not establish that smoking is addictive . . . . Consumers are not misled by the published nicotine deliveries as measured by the FTC . . . . Philip Morris does not manipulate nor independently control the level of nicotine in our products . . . . The fact is that tar and nicotine levels have decreased dramatically over the past 40 years." Campbell also testified that smoking does not cause disease. Campbell failed to disclose that Philip Morris had developed a nicotine analog that mimics nicotine's pleasurable effect on the brain without nicotine's injurious effects on the circulatory system and had suppressed this analog. At the time of his testimony Campbell knew his statements were false. Campbell also knew that his testimony would be televised throughout North America, including Ontario. Campbell's testimony constitutes a violation of 18 U.S.C. § 1343.

- oo. On or about April 14, 1994, Philip Morris Incorporated issued a press release that was carried on the interstate wire services. The release reasserted the fraudulent statements Campbell made during his testimony before the House Subcommittee. The issuance of this press release constitutes a distinct violation of 18 U.S.C. § 1343.
- pp. On or about April 14, 1994, James W. Johnson, Chairman and CEO of R.J. Reynolds Tobacco Company and member of the Board of Directors of R.J.R. Nabisco Inc., testified under oath before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, U.S. House of Representatives. Johnson testified, "We do not add or otherwise manipulate nicotine to addict smokers . . . . smoking is no more addictive than coffee, tea, or twinkies." Johnson also testified that smoking does not cause disease. At the time of his testimony, Johnson knew these statements were false. Johnson also knew his testimony would be televised throughout North America, including Ontario. Johnson's testimony constitutes a violation of 18 U.S.C. § 1343.
- qq. On or about April 14, 1994, Andrew J. Schindler, President and Chief Operating Officer of R.J. Reynolds Tobacco Company, testified under oath before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, U.S. House of Representatives. Schindler testified, "We do not restore any nicotine anywhere in our process. We lose nicotine in the process . . . nowhere in that process is any nicotine being incrementally added into the process." Schindler also testified that smoking does not cause disease. At the time of his testimony, Schindler knew his statements were false. Schindler also knew his testimony would be televised throughout North America, including Ontario. Schindler's testimony constitutes a violation of 18 U.S.C. § 1343.
- rr. On or about April 14, 1994, R.J. Reynolds Tobacco Company issued a press release that was carried on the interstate wire services. The release reasserted the fraudulent statements Johnson and Schindler made during their testimony before the

subcommittee. The issuance of this press release constitutes a distinct violation of 18 U.S.C. § 1343.

- ss. On or about April 14, 1994, Andrew H. Tisch, Chairman and CEO, Lorillard Tobacco Company and member of the Board of Directors of Loews Corporation, testified under oath before the Subcommittee on Energy and Commerce, U.S. House of Representatives. Tisch testified, "Nicotine levels follow tar levels and are not raised or reduced for particular brands . . . . Lorillard does not add nicotine to cigarette tobacco for the purpose of manipulating or spiking the amount of nicotine received by the smoker . . . . We have looked at the data and the data we have been able to see has not convinced me that smoking causes death." At the time of his testimony, Tisch knew these statements were false. Tisch also knew his testimony would be televised throughout North America, including Ontario. Tisch's testimony constitutes a violation of 18 U.S.C. § 1343.
- tt. On or about April 14, 1994, Lorillard Tobacco Company issued a press release that was carried on the interstate wire services. The release reasserted the fraudulent statements Tisch made during his testimony before the subcommittee. The issuance of this press release constitutes a distinct violation of 18 U.S.C. § 1343.
- uu. On or about April 14, 1994, Thomas E. Sandefur, Jr., Chairman and CEO of Brown & Williamson Tobacco Corporation and Member of the Board of Directors of B.A.T. Industries p.l.c., testified under oath before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, U.S. House of Representatives. Sandefur testified that cigarette smoking does not cause disease and that nicotine is not addictive. At the time of his testimony, Sandefur knew these statements were false. Sandefur also knew that his testimony would be televised throughout North America, including Ontario. Sandefur's testimony constitutes a violation of 18 U.S.C. § 1343.
- vv. On or about April 14, 1994, T.F. Riehl, Vice President for Research and Development of Brown & Williamson Tobacco Corporation, testified under oath before the Subcommittee on Energy and Commerce, U.S. House of Representatives. Riehl testified, "We blend for taste, not nicotine." At the time of his testimony, Riehl knew his statements were false. Riehl also knew his testimony would be televised throughout North America, including Ontario. Riehl's testimony constitutes a violation of 18 U.S.C. § 1343.
- ww. On or about April 14, 1994, Brown & Williamson Tobacco Corporation issued a press release that was carried on the interstate wire services. The release reasserted the fraudulent statements Sandefur and Riehl made during their testimony before the subcommittee. The issuance of this press release constitutes a distinct violation of 18 U.S.C. § 1343.

- xx. On or about April 13, 1994, Walker Merryman, an official of the Tobacco Institute appeared on CNN *The World Today* and stated, "There isn't any manipulation of nicotine in the cigarette." At the time of Merryman's interview, Merryman knew this statement was false. Merryman also knew the interview would be televised throughout North America, including Ontario. Merryman's interview constitutes a violation of 18 U.S.C. § 1343.
- yy. On or about April 8, 1994, Brennan Dawson, Vice-President of the Tobacco Institute, appeared on the CBS *Evening News* program and stated that there is nothing in cigarettes to worry about, "in the amounts that are used, the ingredients that are used to make cigarettes are safe for smokers." At the time of Dawson's interview, she knew her statements were false and knew her interview would be televised throughout North America, including Ontario. Dawson's interview constitutes a violation of 18 U.S.C. § 1343.
- zz. On or about April 1, 1994, Brennan Dawson, Vice-President of the Tobacco Institute, appeared on the *MacNeil/Lehrer News Hour* television program and stated that tobacco manufactures "do not add nicotine," that "[t]here's no manipulation done by the manufacturers" concerning production of cigarettes, that nicotine is not an addictive drug and that tobacco manufactures are not targeting and marketing the sale of cigarettes to minors. At the time of Dawson's interview, she knew her statements were false. Dawson also knew her interview would be televised throughout North America, including Ontario. Dawson's interview constitute a violation of 18 U.S.C. § 1343.
- aaa. On or about March 27, 1994, Brennan Dawson, Vice-President of the Tobacco Institute, appeared on the nationally televised CBS program *Face the Nation*, aired from 10:30 a.m. - 11:00 a.m., and stated before a live television and radio audience, "[C]igarettes are not addictive . . . . All six manufacturers in the United States do . . . not add nicotine" and "they don't manipulate nicotine . . . . There is no process that adds nicotine to the cigarette . . . . Nicotine is not added during the manufacturing process. It's that simple." At the time of Dawson's interview, she knew her statements were false. Dawson also knew her interview would be televised throughout North America, including Ontario. Dawson's interview constitutes a violation of 18 U.S.C. § 1343.
- bbb. On or about March 25, 1994, Dr. Alexander Spear, Vice-Chairman and Chief Operating Officer, Lorillard Tobacco Company, testified under oath before the Subcommittee on Energy and Commerce, U.S. House of Representatives. Spear testified, "We do not set nicotine levels for particular brands of cigarettes. Nicotine levels follow the tar level." At the time of his testimony, Spear knew his statements were false. Spear also knew his testimony would be televised throughout North

America, including Ontario. Spear's testimony constitutes a violation of 18 U.S.C. § 1343.

- ccc. On or about March 4, 1994, R.J. Reynolds Tobacco Company published an advertisement in numerous newspapers across the United States, providing, "WE DO NOT 'SPIKE' OUR CIGARETTES WITH NICOTINE. James W. Johnson, Chairman, R.J. Reynolds Tobacco Company . . . At R.J. Reynolds we do not increase the level of nicotine in any of our products in order to 'addict' smokers. Instead of increasing the nicotine levels in our products, we have in fact worked hard to decrease 'tar' and nicotine." (emphasis in original). These assertions are false. The advertisement also failed to disclose that nicotine is highly addictive and that R.J. Reynolds' cigarettes contain additives that raise the PH of the smoke in order to free up more nicotine for absorption into the smoker's bloodstream. At the time the advertisement was published R.J. Reynolds Tobacco Company knew the advertisement contained material misrepresentations and omissions and it was reasonably foreseeable to R.J. Reynolds Tobacco Company that the advertisement would be disseminated, in part, by the use of the U.S. mail in violation of 18 U.S.C. § 1341.
- ddd. On or about February 28, 1994, R.J. Reynolds Tobacco Co. Chairman and member of the Board of Directors of RJR Nabisco Inc., James W. Johnson mailed a letter to Dr. David A. Kessler head of the Food and Drug Administration. The letter concerned nicotine levels in cigarettes and did not disclose that, R.J. Reynolds' research established that nicotine is highly addictive; R.J. Reynolds manipulates the amount of nicotine delivered to smokers by cigarettes; and, "light" cigarettes that R.J. Reynolds markets as containing low amounts of nicotine actually deliver similar amounts of nicotine as to regular cigarettes. The mailing of this letter constitutes a violation of 18 U.S.C. § 1341.
- eee. On or about February 16, 1994, a letter signed by Lawrence A. Tisch and Preston R. Tisch, Co-Chairmen of the Board and Co-Chief Executive Officers of Loews Corporation, was mailed to Loews shareholders as part of the company's 1993 Annual Report. The letter provided, "[T]he high volume of new federal, state and local legislative and regulatory proposals related to cigarette marketing, excise taxes and restrictions on smoking continued . . . . We encourage you to keep abreast of issues and public debates which affect your company, and to communicate your views to appropriate officials in order to avoid further unwarranted legislation and regulation. Lorillard supports and adheres to a voluntary, multi-faceted, industry program to discourage smoking by people under the legal age and to address concerns about cigarette advertising and promotion." The tobacco industry actively markets cigarettes to children and the industry's public assertions that tobacco companies do not want children to smoke are "a pro-smoking subterfuge." The Tisches' letter urging stockholders to transmit false information to federal, state and

local officials was mailed in furtherance of the industry's scheme to defraud and each separate mailing constitutes a distinct violation of 18 U.S.C. § 1341.

- fff. On or about May 1, 1968, J.B. Mann of R.J. Reynolds Public Relations Department wrote the fourth graders of the Geiger School in Tacoma, Washington, touting the CTR as an independent research organization and claiming that despite "many years of extensive research, medical science has been unable to establish that smoking has a direct causal link with any disease."
- ggg. On or about April 7, 1972, T.K. Cahill of RJR's Public Relations Departments wrote to Mr. Kenneth Bersinger's 5th graders at the Will Rogers Elementary School. RJR reports "medical science has not found any conclusive evidence that an element in tobacco or tobacco smoke causes human disease." Calling for more research, RJR intends to study the problem "until the truth is known."
- hhh. On or about January 11, 1990, Jo F. Sprach, Manager, Public Relations Department R.J. Reynolds Tobacco Co., mailed a letter to the principal of Willow Ridge School, Amherst, New York, providing, "Long before the present criticism began, the tobacco industry, in a sincere attempt to determine what harmful effects, if any, smoking might have on human health, established the Council for Tobacco Research . . . . Over the years the tobacco industry has given in excess of \$162 million to independent research on the controversies surrounding smoking . . . . Despite all the research going on, the simple and unfortunate fact is that scientists do not know the cause or causes of the chronic diseases reported to be associated with smoking . . . . We would appreciate your passing this information along to your students." Sprach knew these statements were false and the mailing of this letter constitutes a violation of 18 U.S.C. § 1341.
- iii. On or about October 29, 1986, J. Tylee Wilson, Chairman and Chief Executive Officer, RJR Nabisco, Inc. to the Association of National Advertisers:

RJR Nabisco has a long and successful history in events and promotions. Part of that, of course, is by necessity. With cigarettes off television since 1972, we have built a substantial events and promotion effort with the Winston NASCAR racing circuit, Vantage Cup golf, Salem Street Festivals and a range of other activities. We held more than 1,600 events in 200 cities in 1985 and are on a similar pace this year. Add to that a major, direct-mail effort, couponing and store promotions, and you are looking at a large and growing portion of our total cigarette ad budget.

- jjj. On or about 1991, Louis Gerstner, Jr. then president and CEO of RJR Nabisco, Inc. proclaimed to RJR shareholders that the intense glare of government scrutiny continues, but that despite proposed tobacco advertising bans in Taiwan, Canada, Europe, and other places: "(w)e've fought back in California, in Canada, in Taiwan. We've won more often than we've lost . . . increasingly, our success will depend on how well we anticipate the regulatory and legislation environments, and how well we overcome the impediments they present to our growth.
- kkk. On or about July 9, 1992, in a letter from Senior Vice President of RJR Nabisco, M.B. Oglesby, Jr., to The Honorable Romano L. Mazzoli, U.S. House of Representatives:

Dear Congressman Mazzoli:

I am responding to your letter and your recent comments on the House floor requesting the voluntary removal of the "Old Joe" advertising campaign for Camel cigarettes.

You cited as the basis for your request the article by Dr. Joseph DiFranza published in the December 11, 1991, issue of the Journal of the American Medical Association (JAMA). Since its publication, we have questioned the validity of this study on a number of grounds.

- lll. On or about August 4, 1993, Carl W. Ehmann, M.D., Executive Vice President, Research & Development, R.J. Reynolds Tobacco Company wrote to Mr. Charles M. Harper, Chairman and CEO, RJR Nabisco:

Thank you for your letter of July 14, containing your very kind comments on the R&D presentation to the Board of Directors.

I apologize for the delay in responding but I just received your letter today. Something happened to it between your office and mine.

I am enclosing a short 'talk sheet' on the positive aspects of smoking. During your August 20 visit we will be providing additional information on these positive aspects of smoking. We need to provide our customers with the information and the language to

express what they are experiencing by smoking so that people understand that they are receiving a benefit from the use of our products, and are not using them because of physiological addiction.

mmm. On or about March 4, 1994, James W. Johnston, Chairman and CEO of R.J. Reynolds Tobacco Company, wrote to Charles M. Harper, stating:

Attached are some notes prepared by Tom Griscom which will give you a quick look at some of the current activities and next steps that are planned regarding the ETS issue. As Tom's memo points out, we are interviewing a PR firm week after next.

We have previously prepared some creative ideas for a media plan. Attached are two ads that have been run. These stem from a joint project with Philip Morris on smoker accommodation as the answer to ETS.

nnn. On or about May 26, 1994, RJR Nabisco Presentation to the Consumer Analysts of New York:

This is one of a new series of ads designed to bring our message directly to the American public. . .

Here's another one, also confronting gross misconceptions about second hand smoke. . .

Our campaign will focus on key opinion-leading publications: USA Today, The New York Times, The Wall Street Journal, The Washington Post, The Washington Times, National Journal and Roll Call.

ooo. On or about October 20, 1994, RJR Nabisco Presentation to the Washington State Investment Board:

. . . we are an operating company, not an investment company. . .

These are part of a new series of ads designed to bring our message directly to the American public. . . who

is far more reasonable about tobacco issues that several lawmakers I might name. . .

We're using the ads to confront misinformation and misconceptions regarding second-hand smoke, charges of nicotine "spiking" and other issues. . .

Our campaign will focus on key opinion-leading publications: USA Today, The New York Times, The Wall Street Journal, The Washington Post, The Washington Times, National Journal and Roll Call. .

We're putting money and resources behind our beliefs. . .

We believe these and other activities will have an impact. . . .

ppp. On or about October 4, 1995, in a letter to Charles M. Harper, Chairman and Chief Executive Officer of RJR Nabisco, Inc. from James W. Johnston, Chairman and Chief Executive Officer of R.J. Reynolds Tobacco Company with copies to Jo-Ann Ford, Steven F. Goldstone, Suzanne P. Jenney, and Robert S. Roath, all with attachments, stated:

We have initiated several new efforts in the legal, legislative and public affairs areas to address the recent actions by the Clinton administration to further regulate the tobacco industry via the FDA.

First, we made it clear that 'we don't want kids to smoke,' highlighting our five-year programs of communicating with youth, parents and retailers on that issue. But the Clinton proposals go much further than just addressing youth smoking. They impose serious limits on our ability to communicate with, and sell our products to, adult smokers.

Third, our Washington office remains in constant contact with Congress, developing strategies for potential legislative remedies.

- qqq. On or about March 1, 1988, Patrick Sheehy, Chairman of B.A.T. Industries p.l.c. mailed a letter to H.F. Frigon of BATUS Holdings Inc. discussing BATUS Holdings Inc.'s business objectives and providing "R&D . . . Substantial progress must be made on the smokeless cigarette." The mailing of this letter was incident to an essential part of the industry's fraudulent scheme regarding the development and suppression of safer cigarettes and constitutes a violation of 18 U.S.C. § 1341.
- rrr. On or about August 1, 1987, R.J. Reynolds Tobacco Co. published in *Family Circle* magazine an advertisement promoting "Now 100's" cigarettes. The advertisement provided, "NOW IS LOWEST BY U.S. Gov't testing method" in tar and nicotine. This advertisement was published in furtherance of the tobacco industry's scheme to fraudulently promote "light" cigarettes as less dangerous and less addicting than other cigarettes. At the time of publishing, R.J. Reynolds knew that the magazine would be disseminated by use of the mail. Each separate mailing of the magazine constitutes a distinct violation of 18 U.S.C. § 1341.
- sss. On or about July 20, 1987, William Davis, an attorney with the law firm of Shook, Hardy & Bacon, wrote a letter to Dr. Lehrer, who had performed research for the tobacco industry, regarding potential misinterpretations of Dr. Lehrer's manuscript and suggesting revisions to correct the same, including suggestions on explanations for anomalies in the conduct of the research to make the research appear more valid. This letter was in furtherance of the industry's fraudulent scheme of representing that tobacco-industry research was truly independent and that independent research truly casts doubt on studies linking tobacco use and health problems. The mailing of this letter constitutes a violation of 18 U.S.C. § 1341.
- ttt. On or about October 24, 1985, the CTR issued a press release that was carried over the wires. The release provided, "Findings of a nine-year study in which thousands of mice were exposed to cigarette smoke inhalation are described in the 1984 annual report of the Council for Tobacco Research, issued today. . . . None of the smoke-exposed animals got squamous cell lung cancer, a type often claimed to be associated with smoking by humans. More than 10,000 mice were exposed to the smoke of over 800,000 cigarettes during the project." The release did not disclose that mice are poor subjects for inhalation studies because they inhale shallowly when administered smoke, preventing much of the smoke from reaching the lungs; that the researcher who conducted the study believed the study indicated that cigarette smoke induces cancer in animals; and that the study was controlled by lawyers for the tobacco industry. The issuance of this press release with these material omissions constitutes a violation of 18 U.S.C. § 1343.
- uuu. On or about March 22, 1985, May 1, 1985 and June 3, 1985, documents were exchanged through the mail relating to a revision of a CTR grant proposal by Dr. Alexander Spears of Lorillard Tobacco Company. These documents were mailed in

furtherance of the Defendants' scheme to defraud by representing the CTR to be independent from the influence of the tobacco companies. The mailing of each letter constitutes an independent violation of 18 U.S.C. § 1341.

- vvv. On or about February 4, 1985, R.G. Baker of B.A.T. Industries p.l.c. mailed a letter to David Schechter of BATUS Holdings Inc. discussing the possibility that admissions made by B.A.T. Industries p.l.c.'s scientist regarding the health risk of smoking would be attributable to Brown & Williamson Tobacco Company in products liability actions. The letter proposed a procedure for manufacturing fraudulent claims of attorney client privilege over documents generated for normal business purposes and provided, "The real risk of attribution is if documents show that someone other than B&W had the final decision. For this reason documents likely to be sent to BWT must be subject to legal review before originated." This letter was written to conceal the industry's scheme to defraud, and its mailing constitutes a violation of 18 U.S.C. § 1341.
- www. On or about January 11, 1985, Brown & Williamson Tobacco Company's CEO, Ray Pritchard, mailed a letter to M.J. Hardwick a senior official of British American Tobacco, Ltd. (BATCO). The letter discussed the mechanism the two companies devised to sanitize research documents sent to Brown & Williamson by editing the documents before sending them in an untraceable form to Brown & Williamson's outside counsel Robert Maddox in Louisville, Kentucky. This letter was mailed in furtherance of a scheme to conceal the tobacco industry's fraud and constitutes a violation of 18 U.S.C. § 1341.
- xxx. On or about January 9, 1985, Brown & Williamson Tobacco Company's CEO Ray Pritchard telephoned M. J. Hardwick, a senior official of British American Tobacco, Ltd. (BATCO), and discussed the mechanism the two companies devised to sanitize research documents sent to Brown & Williamson by editing the documents before sending them in an untraceable form to Brown & Williamson's outside counsel Robert Maddox in Louisville, Kentucky. This telephone conversation was conducted in furtherance of a scheme to conceal the tobacco industry's fraud and constitutes a violation of 18 U.S.C. § 1343.
- yyy. On or about October 25, 1984, Brown & Williamson Tobacco Company's corporate counsel, J. Kendrick Wells III, mailed a letter to H.A. Morini of British American Tobacco, Ltd. (BATCO). The letter directed the revision of a paper written by Dr. Blackman entitled "The Controversy on Smoking and Health: Some Facts and Anomalies" and provided, "Recent developments have reaffirmed the need for the attention we customarily have given to proposed BAT publications. The smoking and health litigation in the U.S. demonstrated that plaintiffs' lawyers are aggressive in questioning tobacco CEOs about published company statements, as we had predicted they would be. . . . BAT publications which may be intended for limited

distribution can be obtained and scrutinized by our most articulate adversaries." This letter was written to conceal the tobacco industry's scheme to defraud and its mailing constitutes a violation of 18 U.S.C. § 1341.

- zzz. On or about January 23, 1984, Patrick Sirridge, an attorney with the law firm of Shook, Hardy & Bacon, wrote a letter to the general counsel of each tobacco manufacturer recommending funding as a CTR Special Project, an on going study by Dr. Theodore Sterling and noted that Dr. Sterling had found strong methodological and analytical biases in earlier studies. This letter was in furtherance of the industry's fraudulent scheme of representing that tobacco-industry research was truly independent and that independent research truly casts doubt on the link between tobacco use and health problems. Each issuance of this letter constitutes a violation of 18 U.S.C. § 1341.
- aaaa. On or about February 28, 1983, Brown & Williamson Tobacco Company's general counsel Ernest Pepples mailed a letter to Lorillard Tobacco Co.'s senior vice president and general counsel Arthur Stevens. The letter discussed the possibility of receiving a tax credit for contributions made to the CTR's grantees by falsely claiming that these contributions were for "basic research." This letter was mailed in furtherance of the tobacco industry's scheme to defraud and constitutes a violation of 18 U.S.C. § 1341.
- bbbb. On or about February 7, 1983, R.J. Reynolds Tobacco Co.'s Vice President, Samuel B. Witt III, mailed two letters to Brown & Williamson Tobacco Company's general counsel Ernest Pepples. The letters suggests that the tobacco companies who fund the CTR might be able "to take advantage of a new tax credit for basic research expenditures . . . [by] paying our share of the grant to the [CTR] grantee directly." These letters were mailed in furtherance of the tobacco industry's scheme to defraud and each mailing constitutes a separate violation of 18 U.S.C. § 1341.
- cccc. On or about February 1, 1983, the Tobacco Institute published an advertisement in *Time* magazine discounting the affect of cigarette advertising on minors' decision to smoke. The advertisement provided "Answers to the most asked questions about cigarettes. IS CIGARETTE ADVERTISING A MAJOR REASON WHY KIDS SMOKE? NO." The advertisement contains text and a bar graph purporting to support the position that advertising does not impact youth smoking. The advertisement was published in furtherance of the tobacco industry's fraudulent stance that the industry's marketing is not targeted at children. Each separate mailing of the magazine constitutes a distinct violation of 18 U.S.C. § 1341.
- dddd. On or about May 7, 1982, Daniel Milway of the Tobacco Institute mailed letters to the presidents of R.J. Reynolds Tobacco Co., Brown & Williamson Tobacco Company, Philip Morris Incorporated, Lorillard Tobacco Company, The American

Tobacco Company and Liggett & Myers Inc. regarding the level of funding to support biomedical research in order to support the fraudulent pretext that the tobacco industry sponsors truly independent scientific research into tobacco and health. The mailing of each separate letter constitutes an independent violation of 18 U.S.C. § 1341.

- eeee. On or about March 3, 1982, Patrick Sirridge, an attorney with the law firm of Shook, Hardy & Bacon, wrote a letter to the general counsel of each tobacco manufacturer recommending funding as a CTR Special Project, Dr. Sterling's ongoing study and continuing "critical review of the major factors in the etiology of diseases emerging from statistical studies." This letter was in furtherance of the industry's fraudulent scheme of representing that tobacco-industry research was truly independent and that independent research truly casts doubt on the link between tobacco use and health problems. Each mailing of this letter constitutes a violation of 18 U.S.C. § 1341.
- ffff. On or about February 18, 1982, the Tobacco Institute issued a press release which was carried on the interstate wires. The release describes a review of scientific evidence published by the Tobacco Institute that "raises serious questions about the link between smoking and cancer." At the time the release was issued the Tobacco Institute and all the tobacco manufactures knew that the scientific evidence linking smoking with cancer was valid. The issuance of the press release constitutes a violation of 18 U.S.C. § 1343.
- gggg. On or about November 20, 1981, Patrick Sirridge, an attorney with the law firm of Shook, Hardy & Bacon, wrote a letter to the general counsel of each tobacco manufacturer recommending funding as a CTR Special Project, Dr. Sterling's Office Building Syndrome Study and indicated "the study could be useful to the controversial issue of restriction of smoking in the work place." This letter was in furtherance of the industry's fraudulent scheme of representing that tobacco-industry research was truly independent and that independent research truly casts doubt on the link between tobacco use and health problems. Each issuance of this letter constitutes a violation of 18 U.S.C. § 1341.
- hhhh. On or about September 25, 1981, J.K. Wells, corporate counsel for Brown & Williamson wrote to Ernest Pepples, General Counsel for Brown & Williamson stating, "the product liability litigation risk position stated by Bob Northrip [of Shook, Hardy & Bacon] is based on the opinion that it would more difficult to defend against adverse assessments of additives by an industry panel than adverse assessments by HHS [Health & Human Services]." The memorandum clarified that the industry panel was simply a mechanism to gain HHS sanction and not to develop information about additives. The memorandum stressed that any industry testing about additives should be performed by industry member companies because "[i]f company testing began to show adverse results pertaining to a particular additive the

company control would enable the company to terminate the research and destroy the data." This memorandum was circulated among the Defendants via the U.S. Mails and was in furtherance of the industry's fraudulent scheme of representing that tobacco-industry research was truly independent and that independent research truly casts doubt on the link between tobacco use and health problems. Each mailing of this memorandum through the U.S. mails wires constitutes a violation of 18 U.S.C. § 1341.

- iii. On or about August 10, 1981, the Tobacco Institute published an advertisement attacking a study published in the *British Medical Journal* that linked lung cancer in non-smokers to exposure to environmental tobacco smoke. The advertisement was published in magazines and newspapers throughout the country including *Life*, *National Review*, *New York Times*, *Newsweek*, *People*, *Psychology Today*, *Sports Illustrated* and the *Wall Street Journal*. The advertisement provided that "several eminent biostatisticians found an apparent statistical error in the [study's] calculations - raising serious questions about the study. . . . [Other studies] indicate[] that 'second hand' smoke has insignificant effect on lung cancer rates in nonsmokers." At the time this ad was published, the Tobacco Institute knew that the *British Medical Journal* study was scientifically valid and knew the advertisement would be disseminated by use of the mail. Each separate mailing of newspapers and magazines containing the advertisement constitutes a distinct violation of 18 U.S.C. § 1341.
- jjj. On or about July 24, 1981, J.K. Wells, corporate counsel for Brown & Williamson, wrote a letter to Ernest Pepples, General Counsel for Brown & Williamson, which detailed a visit by Tim Finnegan, a lawyer with the law firm of Jacob, Medinger & Finnegan, to a university researcher to persuade the researcher to "take a new thrust with their research. The new thrust will have questionable value but no negative." The letter also indicates that Finnegan's objective is to put "U.S. lawyers in the forefront in preparing an industry position primarily through the development of witnesses who can present a position." This letter was in furtherance of the industry's fraudulent scheme of representing that tobacco-industry research was truly independent and that independent research truly casts doubt on the link between tobacco use and health problems. The issuance of this letter constitutes a violation of 18 U.S.C. § 1341.
- kkkk. On or about June 17, 1981, Patrick Sirridge, an attorney with the law firm of Shook, Hardy & Bacon, wrote a letter responding to the request of Ernest Pepples, General Counsel for Brown & Williamson, for analysis and background information on two doctors and others on their suitability for industry-sponsored tobacco research. This letter was one of many written in furtherance of the tobacco industry's fraudulent scheme of representing that the tobacco industry sponsored truly independent research while at the same time selecting only researchers who would further the

industry's scheme to create a scientific controversy about whether smoking causes cancer. This letter and others like it constitute violations of 18 U.S.C. § 1341.

- llll. On or about November 6, 1980, Ernest Pepples wrote a letter to Tim Finnegan, an attorney with the law firm of Jacob, Medinger & Finnegan, requesting Finnegan to "find out, without tipping over any cans, what Dr. Justus has done in the tobacco allergy field." This letter was in furtherance of the industry's fraudulent scheme of representing that tobacco-industry research was truly independent and that independent research truly casts doubt on the link between tobacco use and health problems. The issuance of this letter constitutes a violation of 18 U.S.C. § 1341.
- mmmm. On or about October 22, 1980, William Shinn, an attorney with the law firm of Shook, Hardy & Bacon, wrote a letter to the general counsel of each tobacco manufacturer recommending funding for a 3-month extension for CTR Special Projects of Drs. Ted Sterling and Harold Perry regarding the "retrospective analysis of environmental contacts of patients with respiratory cancer, other cancers, and other diseases." This letter was in furtherance of the industry's fraudulent scheme of representing that tobacco-industry research was truly independent and that independent research truly casts doubt on the link between tobacco use and health problems. Each issuance of this letter constitutes a violation of 18 U.S.C. § 1341.
- nnnn. On or about September 1, 1980, Brown & Williamson Tobacco Company published in *U.S. News & World Report* magazine an advertisement promoting its "Kool SUPER LIGHTS" cigarettes. The advertisement provided "Kool SUPER LIGHTS . . . the coolest taste around." This advertisement was published in furtherance of the tobacco industry's scheme to fraudulently promote "light" cigarettes as less dangerous and less addicting than other cigarettes. At the time of publishing Brown & Williamson knew that the magazine would be disseminated by use of the mail. Each separate mailing of the magazine constitutes a distinct violation of 18 U.S.C. § 1341.
- oooo. On or about August 25, 1980, The American Tobacco Company published in *Time* magazine an advertisement promoting its "Carlton" cigarettes. The advertisement provided "10 packs of Carlton have less tar than 1 pack of" eleven other types of cigarettes. This advertisement was published in furtherance of the tobacco industry's scheme to fraudulently promote "light" cigarettes as less dangerous and less addicting than other cigarettes. At the time of publishing The American Tobacco Company knew that the magazine would be disseminated by use of the mail. Each separate mailing of the magazine constitutes a distinct violation of 18 U.S.C. § 1341.
- pppp. On or about August 25, 1980, Philip Morris Incorporated published in *Time* magazine an advertisement promoting its "Merit" cigarette. The advertisement provided "Low tar/good taste combination scores impressive 3-to-1 victory over

defraud by representing that the industry jointly funds truly independent research and that this research cast doubt on any link between tobacco use and health problems. Each separate mailing constitutes a distinct violation of 18 U.S.C. § 1341.

- uuuu. On or about February 22, 1980, Art Stevens, Lorillard's Senior Vice-President and General Counsel, wrote a letter to Tim Finnegan, an attorney with the law firm of Jacob, Medinger & Finnegan, indicating "I am mindful of the continuing mandate with which your office, Shook, Hardy and others have been charged by your respective clients on behalf of the industry: that is to find witnesses and researchers -- and if necessary in order to determine the feasibility of developing the relationship with them, engaged them as consultants, or as researchers on an initially modest projects." This letter was in furtherance of the industry's fraudulent scheme of representing that tobacco-industry research was truly independent and that independent research truly casts doubt on the link between tobacco use and health problems. The mailing of this letter constitutes a violation of 18 U.S.C. § 1341.
- vvvv. On or about July 10, 1979, Brown & Williamson Tobacco Corporation published in *Us* magazine an advertisement promoting its "Arctic Lights" cigarettes. The advertisement provided, "You see, while the filter holds back 'tar,' the unique new ARCTIC LIGHTS menthol blend comes right through." This advertisement was published in furtherance of the tobacco industry's scheme to fraudulently promote "light" cigarettes as less dangerous and less addicting than other cigarettes. At the time of publishing, Brown & Williamson knew and intended that the magazine would be disseminated by use of the mail. Each separate mailing of the magazine constitutes a distinct violation of 18 U.S.C. § 1341.
- wwww. On or about April 17, 1979, Dr. Henry Rothschild wrote a letter to Tim Finnegan, an attorney with the law firm of Jacob, Medinger & Finnegan, enclosing a copy of his research and requesting clearance to submit the paper to the *New England Journal of Medicine* after receiving any possible revisions and clearance from Finnegan's law firm. This letter was in furtherance of the industry's fraudulent scheme of representing that tobacco-industry research was truly independent and that independent research truly casts doubt on the link between tobacco use and health problems. The mailing of this letter and all like it constitutes a violation of 18 U.S.C. § 1341.
- xxxx. On or about February 22, 1979, Dr. Samuel Lehrer wrote a letter to Tim Finnegan, an attorney with the law firm of Jacob, Medinger & Finnegan, enclosing a copy of Dr. Lehrer's revised research proposal incorporating Finnegan's suggestions and indicating that if the revised proposal "meets with your approval ... I will forward the proposal to the Counsel for Tobacco Research." This letter was in furtherance of the industry's fraudulent scheme of representing that tobacco-industry research was truly independent and that independent research truly casts doubt on the link between

tobacco use and health problems. The mailing of this letter constitutes a violation of 18 U.S.C. § 1341.

yyyy. On or about June 22, 1978, Edwin J. Jacob, an attorney for the tobacco industry from the law firm Jacob and Medinger, mailed a letter to Ernest Pepples, Vice President and General Counsel of Brown & Williamson Tobacco Company, "setting forth the current status of CTR's consideration of the proposals made by Microbiological Associates for the year beginning July 1, 1978." This letter was mailed in furtherance of the tobacco industry's scheme to defraud by representing the CTR as an independent scientific organization when, in fact, the CTR was controlled by tobacco company lawyers. The mailing of this letter constitutes a violation of 18 U.S.C. § 1341.

zzzz. On or about March 14, 1978, Brown & Williamson Tobacco Company's general counsel Ernest Pepples, mailed letters to the members of the Committee of Counsel, including Mr. Crohn of R.J. Reynolds Tobacco Co., Mr. Stevens of Lorillard Tobacco Company and Mr. Henson of American Brands, Inc. These letters concerned the possibility that the Federal Trade Commission had obtained a smoking machine for testing the carbon monoxide content of cigarette smoke and may require the industry to publish the results of these tests. The letter provided, "No action should be taken which would in any way expedite the Commission's consideration of CO." The letter also proposed procedures for an analysis of carbon monoxide content of cigarette smoke that would produce results that "might be useful in the presentation of the industry's objections to a proposed FTC program to undertake carbon monoxide testing." While the results of this proposed analysis would be presented to the FTC, there "would be no discussion or passage of information at this time on the various methods used." These letters were mailed in furtherance of the industry's scheme to defraud by representing that the industry sponsors independent scientific research and cooperates with government officials in all matters touching upon tobacco use and health. Each separate mailing constitutes a distinct violation of 18 U.S.C. § 1341.

aaaaa. On or about February 9, 1978, William Shinn, an attorney with the law firm of Shook, Hardy & Bacon, sent a letter to the general counsel of each tobacco manufacturer indicating that the role of CTR research needs to be focused with an eye toward "the politics of science, the importance of developing witnesses and the need for a responsive mechanism to meet unfounded claims made about tobacco." This letter was in furtherance of the industry's fraudulent scheme of representing that tobacco-industry research was truly independent and that independent research truly casts doubt on the link between tobacco use and health problems. Each mailing of this letter constitutes a violation of 18 U.S.C. § 1341.

- bbbb. On or about December 28, 1977, W. Hoyt of the CTR mailed letters to American Brands Inc., Brown & Williamson Tobacco Company, Philip Morris Incorporated and R.J. Reynolds Tobacco Company. The letters outlined the proposed CTR's 1978 budget for the CTR's Literature Retrieval Division, the division's budget for 1977, the estimated expenses for 1977, the procedure for billing the companies according to the companies market share and discussed the relationship between the tobacco companies and the CTR. These letters were mailed in furtherance of the tobacco industry's scheme to defraud by representing the CTR as a truly independent scientific organization and the mailing of each letter constitutes a separate violation of 18 U.S.C. § 1341.
- cccc. On or about December 6, 1977, the president of the CTR, Addison Yeaman, mailed letters to members of the Committee of Counsel, including Thomas F. Ahrensfeld, Joseph H. Greer, Arnold Henson, Ernest Pepples and H.C. Roemer. These letters outlined the proposed budget for 1978 for the CTR's Literature Retrieval Division, the division's budget for 1977, the estimated expenses for 1977, the procedure for billing the companies according to each company's market share and the relationship between the companies and the CTR. These letters were mailed in furtherance of the tobacco industry's scheme to defraud by representing the CTR as a truly independent scientific organization and each letter constitutes a separate violation of 18 U.S.C. § 1341.
- dddd. On or about July 14, 1977, Horace Komegay, President of the Tobacco Institute, wrote a letter to William Shinn, an attorney with the law firm of Shook, Hardy & Bacon, indicating that Mr. Shinn's opinion on a potential research project by a Dr. Singleton was required, and "at the same time, I am not circulating it generally throughout the industry but sending it first to you . . . for comments." This letter was in furtherance of the industry's fraudulent scheme of representing that the tobacco industry sponsored independent research and that independent research truly casts doubt on the link between tobacco use and health problems. The mailing of this letter constitutes a violation of 18 U.S.C. § 1341.
- eeee. On or about May 9, 1977, William Shinn, an attorney with the law firm of Shook, Hardy & Bacon, wrote a letter to the general counsel of each tobacco manufacturer recommending funding as a CTR Special Project Dr. Domingo Aviado's work on the possible effects of carbon monoxide and nicotine on the heart and experimental emphysema research. This letter was in furtherance of the industry's fraudulent scheme of representing that tobacco-industry research was truly independent and that independent research truly casts doubt on the link between tobacco use and health problems. Each mailing of this letter constitutes a violation of 18 U.S.C. § 1341.
- ffff. On or about April 29, 1974, Bill Smith, Chairman of R.J. Reynolds wrote a letter to Henry Ramm, then CTR President, indicating that David Hardy, an attorney with the

law firm of Shook, Hardy & Bacon, would chair the CTR's Research Review Committee and that "the Committee is to be charged with the responsibility for studying the research programs of the industry without regard to membership or participation in the counsel for tobacco research, and the projects that have already been funded outside of that group. . . ." This letter was in furtherance of the industry's fraudulent scheme of representing that the tobacco industry sponsored independent research and independent research truly casts doubt on the link between tobacco use and health problems. The mailing of this letter constitutes a violation of 18 U.S.C. § 1341.

ggggg. On or about June 30, 1972, Lorillard Tobacco Company published in *Life* magazine an advertisement prompting its "True" cigarette. The advertisement provided, "Latest U.S. Government tests of all leading cigarettes show True lowest in both tar and nicotine of the 20 best-selling brands." This advertisement was published in furtherance of the tobacco industry's scheme to cheat and fraudulently promote "light" cigarettes as less dangerous and less addicting than other cigarettes. Lorillard knew and intended that the advertisement would be disseminated, by use of the mail. Each separate mailing of this magazine constitutes a distinct violation of 18 U.S.C. § 1341.

hhhhh. On or about January 3, 1971, the Tobacco Institute issued a press release that was carried on the interstate wire services. The release provided that a good faith scientific controversy existed on the question of whether cigarettes cause disease, "Establishing a cause and effect relationship is much more complex than originally thought" and the industry is committed "to honest scientific research to help resolve the controversy about smoking and health." This release was issued in furtherance of the industry's fraudulent scheme of representing that the tobacco industry sponsors truly independent research and that independent research truly casts doubt on the link between tobacco use and health problems. The issuance of this release constitutes a violation of 18 U.S.C. § 1343.

iiii. On or about December 1, 1970, the Tobacco Institute issued a press release that was carried on the interstate wire services and provided, "the question about smoking and health is still a question." According to the release, "eminent scientists" question "whether any causal relationship has been proven between cigarette smoking and human disease. . . . From the beginning the tobacco industry has believed that American people deserve objective scientific answers. With this credo in mind, the tobacco industry stands ready today to make commitments for additional valid scientific research that offers to shed light on new facets of smoking and health." This release was issued in furtherance of the industry's fraudulent scheme of representing that the tobacco industry sponsors truly independent research and that independent research truly casts doubt on the link between tobacco use and health problems. The issuance of this release constitutes a violation of 18 U.S.C. § 1343.

- jjjj. On or about December 28, 1970, W. Hoyt mailed letters to American Brands, Inc., Brown & Williamson Tobacco Company, Liggett & Myers Incorporated, Philip Morris Incorporated and R.J. Reynolds Tobacco Company. These letters discussed the tobacco companies' relationship to the CTR and were mailed in furtherance of the tobacco industry's scheme to defraud, and the mailing of each individual letter constitutes a separate violation of 18 U.S.C. § 1341.
- kkkkk. On or about February 1, 1968 through February 20, 1968, the Tobacco Institute orchestrated and financed the mass mailing of 414,820 reprints of an article written by Stanley Frank and published in the January issue of *True* magazine. The article was entitled "To Smoke or Not to Smoke -- That Is Still the Question" and contained numerous false statements, including "At the moment, all we can say for sure is that the cause of cancer is not known and that there is absolutely no proof that smoking causes human cancer. . . . Long exposure to concentrated cigarette smoke never has produced lung cancer in experimental animals -- and researchers have been trying for 35 years." The article did not disclose that the Tobacco Institute paid Frank \$500 to write the article and that the Tobacco Institute edited the article prior to its submission to *True*. The reprint was accompanied by a note claiming to be from "The Editors" providing "We thought that you, as a leader in your profession and community, might be interested in reading this story from the January issue of TRUE about one of today's most controversial issues." However, the editors of *True* magazine had no part in the mass mailing and the note did not disclose that the Tobacco Institute was responsible for the mailing. The reprint was mailed to prominent physicians, newspaper editors, attorneys, educators across the country as well as to members of the United States Senate and House of Representatives. Each separate mailing of the 414,820 reprints constitutes a distinct violation of 18 U.S.C. § 1341.
- lllll. On or about January 17, 1968, Seymore Heck mailed a letter to the Tobacco Institute's vice president of public relations, William Kloepfer, Jr. The letter concerned reprints of the *True* article and provided, "The companies ordered reprints in the following quantities: Lorillard, 43,500; Brown & Williamson, 10,000; Philip Morris, 10,000; Reynolds, 30,000. It's hard to see how very many literate Americans will not have read the *True* piece, a few weeks hence." This letter was mailed in furtherance of the tobacco industry's scheme to defraud and constitutes a violation of 18 U.S.C. § 1341.
- mmmmm. The January 15, 1968 issue of *True* Magazine contained an article written by Stanley Frank called, "To Smoke or Not to Smoke--That *Is Still* the Question." The article dismissed the evidence against smoking as "inconclusive and inaccurate", and claimed that "Statistics alone link cigarettes with lung cancer... it is not accepted as scientific proof of the cause and effect." A few months later, a similar but shorter article appeared in the *National Enquirer* entitled "Cigarette Cancer Link is Bunk"

written by "Charles Golden" (a fictitious name commonly used by the *Enquirer*). The real author was Stanley Frank. Two million reprints of the *True Magazine* article were distributed to physicians, scientists, journalists, government officials, and other opinion leaders with a small card which stated, "As a leader in your profession and community, you will be interested in reading this story from the January issue of *True* magazine about one of today's controversial issues." The cost for this was paid by Brown & Williamson, Philip Morris and R. J. Reynolds. It was subsequently disclosed that author Frank had been paid \$500 to write the article by Joseph Field, a public relations professional working for Brown & Williamson. Brown & Williamson reimbursed Field for that amount. At the time of publishing the Defendants knew that the magazine would be disseminated by use of the mail. Each separate mailing of the magazine constitutes a distinct violation of 18 U.S.C. § 1341.

nnnnn. On or about December 6, 1967, Rosser Reeves mailed a letter to Earle C. Clements, an officer of the Tobacco Institute. The letter concerned advertisements regarding the publication of the *True* article and provided, "Reynolds Tobacco Company is joining with Philip Morris and Brown & Williamson to run one half-page *True* advertisement in the first 72 markets, at an estimated cost of approximately \$68,788.47. . . . The theory of these 72 advertisements is very simple. We do not expect people to read the ad, and rush out and buy a copy of *True*. Our vigorish (as they say in Las Vegas circles) comes from the fact that the advertisement quotes some very pertinent and direct comments on our side." This letter was mailed in furtherance of the tobacco industry's scheme to defraud and constitutes a violation of 18 U.S.C. § 1341.

ooooo. On or about October 11, 1966, David R. Hardy, of the law firm Shook, Hardy & Bacon, mailed a letter to the members of the Committee of Counsel, i.e., Henry Ramm of R.J. Reynolds Tobacco Company, Cy Hetsko of American Tobacco Company, Fred Haas of Liggett & Myers, John Russell of Lorillard Tobacco Co., Paul Smith of Philip Morris Incorporated, and Ad Yeaman of Brown & Williamson Tobacco Company. This letter contained progress reports on various ongoing CTR special projects. This letter was mailed in furtherance of the industry's scheme to defraud by representing that the CTR conducts truly independent research into smoking and health and that truly independent research casts doubt on any link between tobacco use and health problems. The mailing of this letter constitutes a violation of 18 U.S.C. § 1341.

ppppp. On or about May 23, 1964, Abe Krash of the law firm Arnold, Fortas & Porter, mailed a letter to the members of the Committee of Counsel, i.e., Henry Ramm of R.J. Reynolds Tobacco Company, Cy Hetsko of American Tobacco Company, Fred Haas of Liggett & Myers, John Russell of Lorillard Tobacco Company, Paul Smith of Philip Morris Incorporated and Addison Yeaman of Brown & Williamson Tobacco Company. The letter enclosed a memorandum concerning a proposed

survey developed as a potential basis for congressional testimony. The memorandum provided that if the results of the study proved unfavorable, measures would be taken to prevent the study from being disclosed to government officials. "We have been assured by both Elrich & Lavidge and by Professor Steiner that they would transmit to us every interview and every copy of the analysis. Thus, when it is completed, there will be nothing in the records of Elrich & Lavidge or Professor Steiner to subpoena. The danger of a successful subpoena would be reduced (though not entirely eliminated) if the survey were in an attorney's files. In any event, if the returns were unfavorable they could be destroyed and there would be no record in any office of the nature of the returns." This letter was mailed in furtherance of the tobacco industry scheme to defraud by representing that the industry sponsors independent scientific research and that the industry cooperates with government officials on all matters touching on tobacco use and health. The mailing of this letter constitutes a violation of 18 U.S.C. § 1341.

qqqqq. On or about February 28, 1964, Lorillard Tobacco Company published in *Life* magazine an advertisement promoting its "Kent" cigarette. The advertisement provided, "Kent with the MICRONITE filter gives you the best combination of filtration and satisfying taste." The advertisement failed to disclose Lorillard's sophisticated knowledge concerning the dangers of smoking filter cigarettes. At the time of publishing Lorillard knew that the magazine would be disseminated by use of the mail. Each separate mailing of the magazine constitutes a distinct violation of 18 U.S.C. § 1341.

iiii. On or about February 21, 1964, R.J. Reynolds Tobacco Company published in *Life* magazine an advertisement promoting its "Winston" cigarette. The advertisement provided, "Flavor that goes with fun . . . Pure white, modern filter." The advertisement failed to disclose R.J. Reynolds' sophisticated knowledge concerning the dangers of smoking filter cigarettes. At the time of publishing R.J. Reynolds knew that the magazine would be disseminated by use of the mail. Each separate mailing of the magazine constitutes a distinct violation of 18 U.S.C. § 1341.

sssss. On or about June 28, 1963 through August 8, 1963, six letters and telexes were exchanged between Brown & Williamson Tobacco Company's general counsel Addison Yeaman and A.D. McCormick, a senior official at British-American Tobacco Company, predecessor in interest to B.A.T. Industries p.l.c. These communications discussed whether the companies should submit to the U.S. Surgeon General internal research demonstrating the addictive nature of nicotine and the health hazards of cigarettes prior to the issuance of the first Surgeon General's report on smoking and health. The discussions concluded that the companies would withhold the research. The telexes and letters concluding that research should be withheld were sent in furtherance of the tobacco industry's scheme to defraud and

each separate letter and telex constitutes a separate violation of 18 U.S.C. §§ 1341 and 1343.

ttttt. On or about October 3, 1963, The American Tobacco Company issued a press release that was carried on interstate wire services and described a study conducted by Dr. Robert Heiman which concluded that the statistical association between smoking and lung cancer is "fallacious" and leads to "absurd consequences." At the time of the issuance of the press release, the American Tobacco Company knew that statistical evidence linking tobacco with disease was scientifically valid. The issuance of this release constitutes a violation of 18 U.S.C. § 1343.

uuuuu. On or about October 8, 1962, Philip Morris Incorporated published in *Sports Illustrated* magazine an advertisement promoting its "Marlboro" cigarette. The advertisement provided, "Marlboro the filter cigarette with the unfiltered taste." The advertisement failed to disclose Philip Morris's sophisticated knowledge concerning the dangers of smoking filter cigarettes. At the time of publishing Philip Morris knew that the magazine would be disseminated by use of the mail. Each separate mailing of the magazine constitutes a distinct violation of 18 U.S.C. § 1341.

vvvvv. On or about March 28, 1962, the Tobacco Industry Research Committee (ATIRC predecessor to the CTR) issued a press release which was carried on interstate wire services and provided that the TIRC's purpose was to "make the facts known to the public." This release was issued in furtherance of the industry's fraudulent scheme of representing that the TIRC sponsors truly independent research and that independent research truly casts doubt on the link between tobacco use and health problems. The issuance of this release constitutes a violation of 18 U.S.C. § 1343.

wwwww. On or about April 25, 1960, Philip Morris Incorporated published in *Sports Illustrated* magazine an advertisement promoting its "Marlboro" cigarette. The advertisement provided "Sort of nice to know a cigarette so good can be so comfortable to smoke through Marlboro's exclusive Selectrate filter. . . . Make yourself comfortable -- have a Marlboro." The advertisement failed to disclose Philip Morris Incorporated's sophisticated knowledge concerning the dangers of smoking filter cigarettes. At the time of publishing, Philip Morris Incorporated knew that the magazine would be disseminated by use of the mail. Each separate mailing of the magazine constitutes a distinct violation of 18 U.S.C. § 1341.

xxxxx. On or about March 28, 1960, the TIRC issued a press release which was carried on interstate wire services and provided, "We have frankly accepted a responsibility for financing independent research into health problems, including lung cancer, in an effort to get needed facts and evidence." This release was issued in furtherance of the industry's fraudulent scheme of representing that the TIRC sponsored truly independent research and independent research truly casts doubt on the link between

tobacco use and health problems. The issuance of this release constitutes a violation of 18 U.S.C. § 1343.

yyyyy. On or about January, 1959, Ed Jacob, an attorney with Jacob, Medinger & Finnegan, wrote a document entitled "Another Frank Statement to Smokers" in which he stated, "The cause of cancer remains today as much a mystery as ever. Until the questions now raised about tobacco are solved the Tobacco Industry Research Committee will continue to support independent scientific research into all phases of tobacco use and health." This document was circulated among the Defendants and others via the mails. It was reasonably foreseeable to the tobacco companies, their agents, lawyers, and other defendants that this statement would be disseminated, in part, through the mail. Each separate mailing of this statement constitutes a distinct violation of 18 U.S.C. § 1341. Each separate mailing was in furtherance of the industry's fraudulent scheme of representing that tobacco-industry research was truly independent and that independent research truly casts doubt on the link between tobacco use and health problems.

zzzzz. On or about February 10, 1958, Benson & Hedges, predecessor in interest to Philip Morris Incorporated, published in *Life* magazine an advertisement promoting its "Parliament" cigarette. The advertisement provided, "THE FIRST FILTER CIGARETTE IN THE WORLD THAT MEETS THE STANDARDS OF THE UNITED STATES TESTING CO." The advertisement failed to disclose Benson & Hedges' sophisticated knowledge concerning the dangers of smoking filter cigarettes. At the time of publishing, Benson & Hedges knew that the magazine would be disseminated throughout North America, including Ontario, by use of the mail in violation of 18 U.S.C. § 1341.

aaaaa. On or about December 27, 1958, the TIRC issued a press release that was carried on interstate wire services and provided, "during the past year many scientists of high professional standing have produced additional evidence and opinions that challenge the validity of broad charges made against tobacco use." According to the TIRC, its research had developed several "essential facts," including that "doubts have been raised about statistics and their interpretations involving smoking and health." The release concluded "At its formation in January 1954, the Tobacco Industry Research Committee stated its fundamental position: 'We believe the products we make are not injurious to health. We are providing aid and assistance to research efforts into all phases of tobacco use and health.' That statement and pledge are reaffirmed today by members of the Tobacco Industry Research Committee." This release was issued in furtherance of the industry's fraudulent scheme of representing that tobacco-industry research was truly independent and that independent research truly casts doubt on studies linking tobacco use with health problems. The issuance of this release constitutes a violation of 18 U.S.C. § 1343.

- bbbbbb. On or about December 16, 1957, the Tobacco Industry Research Committee issued a press release that was carried on interstate wire services and provided "Extensive scientific research now underway into tobacco use does not substantiate generalized charges against smoking as a cause of cancer." Reporting on the findings of Dr. Clarence Cook Little, scientific director of the Tobacco Industry Research Committee, the release represented that "no substance has been found in tobacco smoke known to cause cancer." According to Dr. Little, the research program was designed "solely to obtain new information and to advance human knowledge in every possible phase of the tobacco and health relationship." This release was issued in furtherance of the industry's fraudulent scheme of representing that the tobacco industry sponsored independent research and independent research truly casts doubt on studies linking tobacco use and health problems. The issuance of this release constitutes a violation of 18 U.S.C. § 1343.
- ccccc. On or about June 4, 1955, the TIRC issued a press release entitled "Antismoking Theories Not Based on Scientific Knowledge." The release was carried on interstate wire services and provided "Little is established scientifically about tobacco's effect on the heart. . . [and tobacco has] even been reported as killing various harmful bacteria." The release also claimed that the tobacco industry "is supporting scientific investigation into many phases of tobacco use and human health in order to get the facts." This release was issued in furtherance of the industry's fraudulent scheme of representing that the TIRC sponsored truly independent research and independent research truly casts doubt on studies linking tobacco use with health problems. The issuance of this release constitutes a violation of 18 U.S.C. § 1343.
- dddddd. On or about April 14, 1954, 191,800 copies of a booklet entitled "A Scientific Perspective on the Cigarette Controversy" were mailed on behalf of the tobacco industry to doctors and journalists throughout the country. This booklet claimed to offer an independent scientific review of the evidence linking cigarette smoking with disease but was actually developed as part of the tobacco industry's "entirely pro-cigarette" public relations campaign. Each separate mailing of the booklet constitutes a distinct violation of 18 U.S.C. § 1341.
- eeeeee. On or about January 4, 1954, the American Tobacco Company, Brown & Williamson Tobacco Corporation, Lorillard Tobacco Company, Philip Morris Incorporated, Benson & Hedges and R.J. Reynolds Tobacco Company published a full page newspaper advertisement entitled "A Frank Statement to Cigarette Smokers" in 448 newspapers across the nation and the globe. The publishing of the "Frank Statement" was the initial step in the fraudulent public relations campaign. It contained several misrepresentations, including the assertion that the tobacco companies "accept an interest in people's health as a basic responsibility, paramount to every other consideration in our business," the tobacco companies "have always and always will cooperate closely with those whose task it is to safeguard the public health," and the

TIRC will be controlled by "an Advisory Board of scientists disinterested in the cigarette industry." At the time of publication, it was reasonably foreseeable to the tobacco companies that the newspapers containing the "Frank Statement" would be disseminated, in part, through the mail. Each separate mailing of a newspaper containing the "Frank Statement" constitutes a distinct violation of 18 U.S.C. § 1341.

fffff. On dates yet unknown, numerous other mailings and uses of the wires occurred which were incident to an essential part of the Defendants' scheme, described *supra* and *infra*, in furtherance of this scheme and enterprise and known and/or intended by Defendants to be in furtherance of Defendants' scheme. Each separate mailing or use of the wires constitutes a distinct violation of 18 U.S.C. § 1341 or § 1343.

185. In furtherance of their ongoing pattern of racketeering activity, Defendants have repeatedly attempted to intimidate one or more witnesses in past, pending or prospective legal proceedings, in violation of 18 U.S.C. §§ 1512, 1513, and 18 U.S.C. § 1951(a), including but not limited to threats against Jeffrey Wigand, former research chief of Brown & Williamson Tobacco Corporation, to discourage him from providing testimony to the Mississippi Attorney General in connection with *Mike Moore, Attorney General, ex rel., State of Mississippi v. The American Tobacco Co.*, No. 94-1429 (Ch. Ct. Jackson Co.), and other suits. Each attempt to intimidate witnesses (such as Bill Farone, Ian Uydess, Merrell Williams, Paul Fischer, Robert Bruce, Anthony Colucci) and each threat against persons are predicate acts under 18 U.S.C. § 1961(1).

186. The above described pattern of racketeering activity is composed of racketeering acts that are related, amount to continued criminal activity and pose a threat of continued criminal activity.

187. The racketeering activities alleged herein are related in that they have the same or similar purpose, i.e., to defraud government officials and the general public regarding the true properties of cigarettes and the actual knowledge, actions, capabilities and deleterious goals of the tobacco industry; results, i.e., the tobacco industry avoids meaningful regulation and smokers

continue to smoke unreasonably dangerous cigarettes; participants, i.e., the members of the Tobacco Enterprise; victims, i.e., government entities obligated to pay the health care costs of injured smokers who are unable to provide for their own care and individual smokers; and methods of commission, i.e., repeated acts of mail, wire fraud and other cheating.

188. These related acts of racketeering amount to continued criminal activity in that the duration of the commission of the predicate acts extends over a substantial period of time, beginning on or about January 4, 1954, and constitute a comprehensive and an extensive pattern of criminal activity involving a large and complex overriding conspiracy, numerous schemes to defraud, and repetitive acts of racketeering activity.

189. The racketeering activities pose a threat of continued criminal activity in that the implementation the above described schemes to defraud is a regular way of conducting the RICO Enterprise's ongoing activity and a regular way of conducting each co-conspiratorial Defendant's ongoing business. In addition, the racketeering activities have no discrete goal and continue to occur during the pendency of the publicly-funded health care recoupment litigation and threaten to continue into the future with no foreseeable end.

190. The Plaintiff is a person, as this term is used in 18 U.S.C. § 1964(c) and has suffered an injury in its business or property proximately caused by reason of the Defendants' violation of 18 U.S.C. § 1962(c).

191. But for the Defendants' racketeering activity in violation of 18 U.S.C. § 1962(c), the Plaintiff would not have suffered and would not continue to suffer injury to its business or property in the form of the exorbitant levels of publicly-funded health care costs on account of cancer, addiction, respiratory diseases and cardiovascular diseases caused by its residents' smoking

unreasonably dangerous cigarettes. These individuals are publicly-funded health care recipients, and thus the Plaintiff has borne, and will continue to bear, the massive costs of these damages and illnesses.

192. In addition, Defendants' racketeering activity in violation of 18 U.S.C. § 1962(c) has proximately caused and continues to cause injury to business or property as described in the preceding paragraph since the Defendants' racketeering activity has frustrated the Plaintiff in its efforts to investigate, control and/or ameliorate the hazards of smoking cigarettes, and residents of Plaintiff have continued to smoke unreasonably dangerous cigarettes, resulting in illnesses in the form of cancer, respiratory diseases, addiction and cardiovascular diseases. The Government of Ontario has borne, and continues to bear, the massive costs of these injuries and illnesses.

193. Each defendant's misrepresentation or omission made in furtherance of the Defendants' schemes to defraud was relied upon by one or more officials of the Government of Ontario or by the Ontario public at large. The Government of Ontario has suffered injury to its business or property as a result of its and/or its citizens' reliance on these misrepresentations and omissions as alleged herein. The misrepresentations and omissions relied upon have frustrated the Government of Ontario in its efforts to investigate, control and/or ameliorate the hazards of smoking cigarettes, and residents of Ontario have continued to smoke unreasonably dangerous cigarettes resulting in illnesses in the form of addiction, cancer, respiratory diseases and cardiovascular diseases. These residents are publicly-funded health care recipients, and thus Ontario has borne, and will continue to bear, the massive costs of these illnesses. But for the Defendants' misrepresentations and omissions, Ontario would not have suffered and would not continue to suffer injury to its business or property in the form of the exorbitant levels of publicly-funded health care

costs on account of cancer, respiratory diseases, addiction and cardiovascular diseases incurred by smoking the Defendant tobacco companies' products.

194. Pursuant to 18 U.S.C. § 1964(c), the Government of Ontario is entitled to recover threefold its cost of treating these illnesses and the cost of this suit, and a reasonable attorneys' fee.

195. These violations of 18 U.S.C. § 1962(c) have enabled the Defendants to earn profits and dividends from the sale of unreasonably dangerous cigarettes to children and adults within Ontario and elsewhere and to maintain interests in the various "legitimate" enterprises that compose the RICO Enterprise.

196. In furtherance of the public interest and pursuant to the broad grant of equitable powers provided by 18 U.S.C. § 1964(a), this Court should order the Defendants to disgorge the profits and dividends earned through the sale of cigarettes and transfer these funds to the Government of Ontario. These monies are to be used in the treatment and prevention of tobacco related diseases.

197. In furtherance of the public interest and pursuant to the broad grant of equitable powers provided by 18 U.S.C. § 1964(a), this Court should also order the Defendants to divest themselves of their various interests in the "legitimate" enterprises that compose the RICO Enterprise. Specifically, this Court should order each Defendant tobacco manufacturer to divest itself of any interest in The Tobacco Institute and for the CTR and/or any similar organization.

**Count 2: Federal Racketeer Influenced and Corrupt Organizations Act Pursuant to Subsection 1964 for Violations of Subsection 1962(a)**

198. The Government of Ontario realleges and incorporates and adopts by reference the foregoing allegations of this Complaint, and further alleges, upon information and belief, as follows.

199. Each Defendant has violated 18 U.S.C. § 1962(a) by receiving income derived directly and/or indirectly from a pattern of racketeering activity and investing and/or using part of this income and/or part of the proceeds of this income in the establishment and operation of various enterprises that affect interstate and foreign commerce.

200. The enterprises in which the Defendants have invested racketeering income include, but are not limited to, the association-in-fact enterprise described *supra*, the CTR and the Tobacco Institute.

201. Plaintiff incorporates herein the paragraphs in Count 1 above describing the pattern of racketeering activity from which the Defendants have derived income.

202. The Defendants have invested money gained from their racketeering activity in the CTR and TI to develop and implement the sophisticated and successful marketing campaigns designed to entice children to begin smoking.

203. The Defendants have invested money gained from their racketeering activity in the CTR and TI to develop unreasonably dangerous cigarettes designed to manipulate the amount of nicotine absorbed into a smoker's bloodstream to ensure that the smoker becomes and remains addicted to these nicotine enhanced cigarettes.

204. The Defendants have invested money gained from their racketeering activity to establish and fund the Tobacco Institute which in turn uses racketeer income to engage in public relations and lobbying activity for the purpose of preventing investigation into the tobacco industry and regulation of tobacco products.

205. The Defendants have invested money gained from their racketeering activity to establish and fund the CTR (formerly the TIRC) which purportedly conducted and reported

independent research regarding smoking and health for the purpose of preventing investigation into the tobacco industry and regulation of tobacco products.

206. The Government of Ontario is a person, as this term is used in 18 U.S.C. § 1964(c), and has suffered an injury in its business or property proximately caused by reason of the Defendants' violation of 18 U.S.C. § 1962(a).

207. Specifically, the Government of Ontario endeavors to protect the public health, to prevent children from smoking cigarettes, and to investigate industries that pose a risk to the public health. As described above, the tobacco industry actively works in opposition to the Government of Ontario regarding these objectives. Because of the Defendants' continued investment and use of racketeer income in the TI and the CTR, the Government of Ontario has been placed at a disadvantage in its efforts to achieve these goals.

208. The use and investment of racketeer income in public relations campaigns and lobbying has resulted in the international tobacco industry's escaping any meaningful national government oversight and Ontario legislation that serves only to protect the industry.

209. But for the Defendants' investment of racketeering income in an enterprise through which Defendants conducted and continue to conduct racketeering activity in violation of 18 U.S.C. §1962(a), the Government of Ontario would not have suffered and would not continue to suffer injury to its business and property [in the form of the exorbitant levels of publicly-funded health care costs on account of addiction, cancer, respiratory diseases and cardiovascular diseases caused by its residents' smoking the Defendant tobacco companies' unreasonably dangerous cigarettes. These residents are publicly-funded health care recipients, and thus the Government of Ontario has borne, and will continue to bear, the massive costs of these illnesses.

210. In addition, Defendants' use or investment of racketeering income in an enterprise through which Defendants conducted and continue to conduct racketeering activity in violation of 18 U.S.C. §1962(a) has proximately caused and continues to cause injury to business or property as described in the preceding paragraph since the Defendants' racketeering activity has frustrated the Government of Ontario in its efforts to investigate, control and/or ameliorate the hazards of smoking cigarettes, and residents of Ontario have continued to smoke unreasonably dangerous cigarettes resulting in illnesses in the form of addiction, cancer, respiratory diseases and cardiovascular diseases. These residents are publicly-funded health care recipients, and thus the Government of Ontario has borne, and will continue to bear, the massive costs of these illnesses.

211. Pursuant to 18 U.S.C. § 1964(c), the Government of Ontario is entitled to recover threefold the damage to its business and property, the cost of treating these illnesses and the cost of this suit, including a reasonable attorney's fee.

212. These violations of 18 U.S.C. § 1962(a) have enabled the Defendants to earn profits and dividends from the sale of unreasonably dangerous cigarettes to children and adults within Ontario and to maintain interests in the various RICO enterprises described herein.

213. In furtherance of the public interest and pursuant to the broad grant of equitable powers provided by 18 U.S.C. § 1964(a), this Court should order the Defendants to disgorge the profits and dividends earned through the sale of unreasonably dangerous cigarettes and transfer these funds to the Government of Ontario to be used in the treatment and prevention of tobacco related diseases.

214. In furtherance of the public interest and pursuant to the broad grant of equitable powers provided by 18 U.S.C. § 1964(a), this Court should also order the Defendants to divest

themselves of their various interests in the "legitimate" enterprises that compose the RICO Enterprise. Specifically, this Court should order each Defendant tobacco manufacturer to divest itself of any interest found to be in furtherance of the scheme; B.A.T. Industries p.l.c., British American Tobacco Company, Ltd, British-American Tobacco (Holdings) LTD and BATUS Holdings Inc. to divest themselves of any interest in Brown & Williamson Tobacco Corporation; Philip Morris Companies, Inc. to divest itself of any interest in Philip Morris Inc.; The Brooke Group Ltd. and Liggett Group Inc. to divest themselves of any interest in Liggett & Myers Inc. and Loews Corporation to divest itself of any interest in Lorillard Tobacco Co.

**Count 3: - Federal Racketeer Influenced and Corrupt Organizations Act Pursuant to Subsection 1964 for Violations of Subsection 1962(d)**

215. The Government of Ontario realleges and incorporates and adopts by reference the foregoing allegations of this Complaint, and further alleges, upon information and belief, as follows.

216. Each Defendant has violated 18 U.S.C. § 1962(d) by knowingly joining a conspiracy to conduct the affairs of a RICO enterprise through a pattern of racketeering activity, in violation of 18 U.S.C. § 1962(c), and by knowingly joining a conspiracy to invest and use income derived from a pattern of racketeering activity in the establishment and operation of the various RICO enterprises, in violation of 18 U.S.C. § 1962(a).

217. Specifically, each Defendant has conspired to violate 18 U.S.C. § 1962(c) by knowingly agreeing to the formation, scope and purpose of a RICO enterprise; agreeing with one or more other Defendants that at least two predicate acts of racketeering activity be committed on behalf of the RICO enterprise; and agreeing that the operation and/or management of a RICO enterprise be conducted through predicate acts of racketeering activity.

218. Each Defendant has conspired to violate 18 U.S.C. § 1962(a) by knowingly agreeing with one or more other Defendants to the commission of at least two predicate acts of racketeering activity and agreeing that income derived from the racketeering activity be invested and used in the establishment and operation of various RICO enterprises.

219. This Complaint is replete with specific factual allegations demonstrating that R.J. Reynolds Tobacco Co., the American Tobacco Company, Brown & Williamson Tobacco Corporation, Philip Morris Incorporated, Lorillard Tobacco Co., the CTR, and The Tobacco Institute entered into these conspiratorial agreements, including, the numerous acts of racketeering activity committed by these defendants; the formation and function of the RICO enterprises; the formation and function of the Committee of Counsel; the formation and function of the TIRC, the CTR and the Tobacco Institute; the "Gentlemens' Agreement"; and the industry's concerted and fraudulent stance that tobacco use does not cause disease, that nicotine is not addictive and that the industry does not market cigarettes to children.

220. This Complaint also contains specific allegations demonstrating that the tobacco manufacturers' parent and affiliate corporations, i.e., RJR Nabisco Inc., American Brands Inc., B.A.T. Industries p.l.c., British American Tobacco Company, Ltd, BATUS Holdings Inc., British-American Tobacco (Holdings) LTD, Philip Morris Companies, Inc. the Brooke Group Ltd. and Loews Corporation, also entered into the requisite agreements.

221. The tobacco parent corporations' participation in the requisite agreements is also demonstrated by the allegations regarding (1) the predominant business consideration confronting the tobacco industry is the belief that scientific evidence linking tobacco use with addiction and terminal disease poses a threat of exposing the industry to unlimited liability; (2) the nature of the

operating companies' efforts to avoid liability, i.e., agreeing to undertake concerted and fraudulent action in the formation and operation of the RICO enterprises; and (3) the operating companies' actions in this regard remaining consistent for over forty years. The parent corporations are cognizant of the predominant business consideration confronting their subsidiaries and accordingly are cognizant of their subsidiaries' actions in response to this threat. The tobacco manufacturers' consistent positions on smoking and health demonstrate the parent corporations' agreement with and participation in their subsidiaries' response, i.e., the formation and operation of the RICO enterprises.

222. In addition, many of the tobacco manufacturers and their parent corporations share officers and directors. Of the five CEO's who testified at the 1994 Waxman hearing, four also sat on the board of directors of the parent corporations, including Thomas E. Sandefur, Jr., Chairman and CEO of Brown & Williamson Tobacco Corporation and Member of the Board of Directors of B.A.T. Industries p.l.c.; James W. Johnson, Chairman and CEO of R.J. Reynolds Tobacco Company and member of the Board of Directors of R.J.R. Nabisco Inc.; Andrew H. Tisch, Chairman and CEO of Lorillard Tobacco Company and member of the Board of Directors of Loews Corporation. Accordingly, these parent corporations have detailed knowledge of their subsidiaries' actions regarding the RICO enterprises and the subsidiaries' continued participation in the RICO Enterprise demonstrates the parents' consent and participation.

223. B.A.T. Industries p.l.c.'s, and the BAT group of companies' agreement to participate in the RICO Enterprise is also firmly established by Sandefur's June 23, 1994 testimony before the Waxman Committee. Sandefur testified that research and development for all the BAT group tobacco subsidiaries is conducted on a group wide basis under the direction of B.A.T. Industries p.l.c. B.A.T. Industries p.l.c. requires Brown & Williamson Tobacco Company to enter into a cost

sharing arrangement for this research, and the results of this research are disseminated throughout the group, in part through Brown & Williamson's participation in B.A.T. Industries p.l.c.'s research conferences. Accordingly, B.A.T. Industries p.l.c. and the rest of the BAT group companies have a detailed knowledge of all the scientific research conducted throughout the group, including research establishing a casual link between cigarette smoking and terminal disease, the addictive nature of nicotine, methods of manipulating the amount of nicotine absorbed into a smokers bloodstream and the availability of "safer" cigarettes.

224. BATUS Holdings Inc.'s specific involvement in group-wide research is evidenced by internal documentation providing that "BATUS should participate in the work of the Tobacco Strategy Review Team and should contribute with the other Tobacco operations in the formulation and implementation of a Group-wide R&D program." BATUS's 1988 - 1992 Five Year Plan provides that BATUS Holdings Inc. should play a leading role in the development of nicotine manipulation and the development and suppression of "safer cigarettes."

225. B.A.T. Industries p.l.c. and BATUS Holdings Inc. also participated in the operation of the RICO enterprises through the suppression of research by manufacturing fraudulent claims of attorney work-product privilege. A February 4, 1985 letter from R.G. Baker of B.A.T. Industries p.l.c., mailed to David Schechter of BATUS Holdings Inc., discusses possible attribution of B.A.T. Industries p.l.c.'s statements to Brown & Williamson. The letter provides, "The real risk of attribution is if documents show that someone other than B&W had the final decision. For this reason documents likely to be sent to BWT must be subject to legal review before originating."

226. B.A.T. Industries p.l.c. also participates in the RICO enterprise's public stance that smoking has not been proved to be harmful by promulgating and enforcing its "Legal Considerations

on Smoking and Health Policy" as part of its "Statement of Business Conduct." The Statement of Business Conduct applies "to all directors, officers and employees of B.A.T. Industries p.l.c. and its principles apply to all directors, officers and employees of every company within the B.A.T. Industries Group of companies." While the "Statement of Business Conduct" does not "lay down detailed rules concerning all the topics which it covers," the "Legal Considerations of Smoking and Health Policy" does establish a detailed policy on public statements concerning smoking and health. Pursuant to this policy, public statements must echo B.A.T. Industries p.l.c.'s public position that smoking has not been proved to cause disease. Compliance with this "Statement" is mandatory, and "any exception to or breach of" its provision would be dealt with "by immediate management disciplinary action (which may include dismissal in an appropriate case)."

227. B.A.T. Industries p.l.c. also directly participates in the dissemination of health related propaganda regarding the epidemiological link between smoking and disease, as revealed in BAT's overall "Group Financial Objectives." This document designates to B.A.T. Industries' Group Headquarters the responsibility to

maintain a positive and coordinated stance against the anti-smoking lobby and ensure implementation of the initiatives agreed to pursue the argument through the conference on low risk epidemiology (organized for February 1989) and by the re-issue and promotion of the compendium of relevant scientific work.

228. In addition, B.A.T. Industries p.l.c., through its control of BAT Group's Tobacco Strategy Review Team ("TSRT"), participates in the operation of the RICO enterprises by controlling all major decisions of its tobacco subsidiaries' business which touch upon the RICO enterprises' schemes to defraud. The TSRT comprises the CEOs of all B.A.T. Industries world-wide tobacco subsidiaries and is controlled by the top two executives of B.A.T. Industries, Patrick Sheehy

and Ulrich Herter. TSRT minutes and agendas from October 1988 through May 1993 demonstrate that B.A.T. Industries directed all tobacco subsidiaries to coordinate activities regarding 1) development and participation in Project Green Dot, a project aimed at designing a low tar/high nicotine cigarette using Y-1 tobacco; 2) development and participation in Project Airbus, an alternative "smokeless" (safer) cigarette design based on patents held by B.A.T. Industries p.l.c.; 3) the test marketing of Y-1 tobacco; 4) the commercialization of Y-1 tobacco; 5) the development and implementation of nicotine impact-enhancing ammonia treatment in the manufacture of cigarettes; 6) the compilation and dissemination of publications and compendiums to perpetuate the public disinformation on nicotine addiction and smoking and health issues; and 7) group wide marketing priorities.

229. RJR Nabisco Inc.'s participation in the requisite agreements is also demonstrated by RJR Nabisco Inc.'s involvement in the development of the safer cigarette "Premier" and the decision not to market the cigarette as a healthier alternative to normal cigarettes. Notes from a June 21, 1988 Nabisco Board of Directors meeting provide that the board was given a presentation by Dr. Wally Hayes, who reviewed "the results from our extensive toxicological testing program. . . . As Dr. Haynes indicated, the overwhelming weight of evidence from our tox tests fully supports the product's objectives." The project's objective was the development of a less hazardous cigarette, and the board was also informed that, despite this evidence, "we are not claiming that Premier is a 'safe' or 'safer' cigarette, and we do not intend to market it that way."

230. The driving force behind the development of Premier was not an official of R.J. Reynolds Tobacco Corporation but rather F. Ross Johnson, head of R.J.R. Nabisco Inc. Johnson's public statements concerning tobacco include the comment, "Of course, it's addictive. That's why

you smoke the stuff." Moreover, R.J.R. Nabisco Inc. had a significant role in the ongoing process to develop Premier because Nabisco had to approve major capital investments in the project and because the project required investment of over one billion dollars. The development of cigarettes that quell smokers' addictive need for nicotine without several of the dangerous aspects of tobacco smoke and the decision not to market these advantages demonstrate R.J.R. Nabisco Inc.'s involvement in several key aspects of the RICO enterprise's schemes to defraud.

231. R.J.R. Nabisco Inc.'s involvement in the aspects of R.J. Reynolds' business which touch upon the RICO enterprises is also demonstrated by Nabisco's control of product liability actions. As one federal court has observed, "[t]he office of the general counsel at RJR Nabisco . . . had the right to steer the products liability litigation as it saw fit, and did so." The court concludes that R.J.R. Nabisco and R.J. Reynolds Tobacco were not "in fact distinct and separate entities for representation purposes."

232. R.J.R. Nabisco Inc. also participates directly in aspects of the RICO enterprises' schemes to defraud as demonstrated by R.J.R. Nabisco's 1990 10-K filing with the Securities & Exchange Commission provides, "On December 11, 1990, RJRN and other U.S. cigarette manufacturers, through the Tobacco Institute, announced a tobacco industry initiative to assist retailers in enforcing minimum age laws on the sale of cigarettes . . . to distribute informational materials to assist parents in combating peer pressure on their children to smoke." As explained in this Complaint, these programs "are a pro-smoking subterfuge . . . Brochures, such as 'Tobacco: Helping Youth Say No,' distributed by the Tobacco Institute and the tobacco industry, present smoking as a permissible 'adult' decision and smoking as something an 'adult' can safely do." However, an internal RJR memorandum entitled "Some Thoughts About New Brands Of Cigarettes

For The Youth Market," acknowledges that depicting cigarette smoking as an adult activity encourages underage smoking.

233. Loews Corporation's participation in the requisite agreements is also demonstrated by Loews Corporation's involvement in the "Executive Committee" of the Tobacco Institute, the body responsible for setting the Tobacco Institute's policy on smoking and health issues. Specifically, minutes of the Tobacco Institute's Executive Committee November 29, 1973, July 25, 1974 and January 30, 1975 meetings reflect that Lestor Pollack attended those meetings as a representative of Loews Corporation, not of Lorillard, Loews' tobacco subsidiary.

234. In addition, several of Loews Corporation's officers and directors, such as Andrew Tisch and Lestor Pollack, have an extensive history of involvement with the activities of the Tobacco Institute and the CTR in their capacities as officers and directors for Loews Corporation's tobacco subsidiaries. Because of the prominence of the Tobacco Institute and the CTR in the operation of the RICO enterprises, the direct participation of Loews Corporation and its officers in those tobacco trade organizations demonstrates Loews Corporation's participation in the RICO enterprises.

235. Memoranda discussing Loews Corporation's officers and board members' involvement in Lorillard's "Project 111," also demonstrate Loews Corporation's involvement in the RICO enterprises. "Project 111" was an attempt to develop a safer cigarette designs. Loews Corporation's involvement in this project demonstrates Loews' understanding of the dangers of smoking. This knowledge is also demonstrated by the fact that Loews Corporation owns a 84% interest in the insurance company CNA, which offers health and life insurance to nonsmokers at a preferential rates. Accordingly, Loews Corporation knows the fraudulent nature of Lorillard's repeated public assertions that smoking has not been proved to cause disease.

236. In addition, recent actions of the Loews Corporation board of directors also demonstrate that Loews Corporation participates in the RICO enterprises' fraudulent schemes. In recommending against a 1996 shareholder resolution, the Loews Board of Directors echoed the industry's fraudulent position that "the use of the term 'addiction' in relation to cigarettes is, in the opinion of the Board, inappropriate and erroneous." In recommending against another 1996 shareholder resolution, the Loews Board of Directors repeated the industry's fraudulent stance that the tobacco industry discourages underage smoking.

237. The participation of defendant American Brands Inc., a Delaware corporation, in the requisite agreements is also demonstrated by the involvement of its officers in the Committee of Counsel and the CTR's Special Projects. The predecessor of defendant American Brands Inc., American Brand Inc., a New Jersey corporation, was a tobacco manufacturer that participated in all aspects of the RICO enterprises, including the Committee of Counsel. In the mid 1980s, the predecessor corporation was reorganized into a holding company, defendant American Brands Inc., and various operating subsidiaries, including the American Tobacco Company. Notwithstanding this reorganization, defendant American Brands Inc. has knowledge of all aspects of the RICO enterprises because officers of the tobacco company became officers of the holding company after the reorganization. In addition, Paul Randour, general counsel of defendant American Brands, Inc., continued to participate in the RICO enterprises after the reorganization. Specifically, Randour continued to attend meetings of the Committee of Counsel, and the CTR continued to request funds for its Special Projects, directly from Randour.

238. The Government of Ontario is a person, as this term is used in 18 U.S.C. § 1964(c) and has suffered an injury in its business or property proximately caused by reason of the Defendants' violation of 18 U.S.C. § 1962(d).

239. But for the Defendants knowingly joining a conspiracy, in violation of U.S.C. § 1962(d), to use or invest racketeering income in an enterprise through which Defendants conducted and continue to conduct racketeering activity in violation of 18 U.S.C. § 1962(a) and a conspiracy to conduct or participate in the affairs of an enterprise through a pattern of racketeering activity in violation of 18 U.S.C. § 1962(c), the Government of Ontario would not have suffered and would not continue to suffer injury to its business or property.

240. In addition, Defendants knowingly joining a conspiracy, in violation of U.S.C. § 1962(d), to use or invest racketeering income in an enterprise through which Defendants conducted and continue to conduct racketeering activity in violation of 18 U.S.C. § 1962(a) and a conspiracy to conduct or participate in the affairs of an enterprise through a pattern of racketeering activity in violation of 18 U.S.C. § 1962(c), has proximately caused and continues to cause injury to Ontario's business or property.

241. Pursuant to 18 U.S.C. § 1964(c), the Government of Ontario is entitled to recover threefold the damage to its business or property and the cost of this suit, including a reasonable attorney's fee.

242. These violations of 18 U.S.C. § 1962(d) have enabled the Defendants to earn profits and dividends from the sale of unreasonably dangerous cigarettes to children and adults within the Ontario and to maintain interests in the various legitimate enterprises that compose the RICO Enterprise.

243. In furtherance of the public interest and pursuant to the broad grant of equitable powers provided by 18 U.S.C. § 1964(a), this Court should order the Defendants to disgorge the profits and dividends earned through the sale of unreasonably dangerous cigarettes and transfer these funds to the Government of Ontario.

244. In furtherance of the public interest and pursuant to the broad grant of equitable powers provided by 18 U.S.C. § 1964(a), this Court should also order the Defendants to divest themselves of their various interests in the legitimate enterprises that compose the RICO Enterprise. Specifically, this Court should order each Defendant tobacco manufacturer to divest itself of any interest in The Tobacco Institute and the CTR; RJR Nabisco Inc. to divest itself of any interest in R.J. Reynolds Tobacco Co.; B.A.T. Industries p.l.c., British American Tobacco Company, Ltd, British-American Tobacco (Holdings) LTD and BATUS Holdings Inc. to divest themselves of any interest in Brown & Williamson Tobacco Corporation; Philip Morris Companies, Inc. to divest itself of any interest in Philip Morris Inc.; The Brooke Group Ltd. and Liggett Group Inc. to divest themselves of any interest in Liggett & Myers Inc. and Loews Corporation to divest itself of any interest in Lorillard Tobacco Co.

#### **VI. Requests for Relief**

245. WHEREFORE Ontario demands judgment against Defendants as follows:

- a. Ordering Defendants to pay damages to Ontario equal to the injury to Ontario's business or property caused by the Defendants' wrongful conduct.
- b. Ordering Defendants to pay damages to Ontario equal to the injury to Ontario's business or property that will be caused by Defendants' wrongful conduct.
- c. Awarding to Ontario costs of this action and reasonable attorney fees;

d. Ordering Defendants to disgorge to Ontario all profits from the operation of the enterprise in Ontario;

e. Declaring that Defendants have violated the provisions of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962;

f. Awarding to Ontario treble damages pursuant to 18 U.S.C. § 1964 (c) , costs of investigation, costs of this action, reasonable attorneys' fees and any further relief to which Ontario may be entitled pursuant to said Act; and

g. Granting such other and further relief as this Court deems just and proper to which Ontario may be entitled.

**VII. Demand for Jury Trial**

246. Plaintiff demands a trial by jury on all issues so triable.

**Respectfully submitted.**

In New York this 1<sup>st</sup> day of March, 2000.

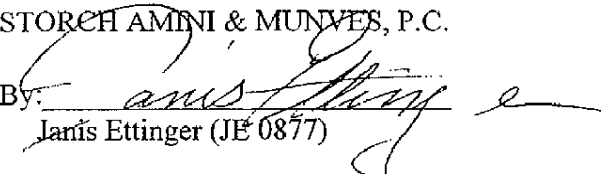
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