

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

PHILIP MORRIS USA INC.,
f/k/a PHILIP MORRIS INC., et al.,

Defendants.

Civil Action No. 99-CV-02496 (GK)

Next scheduled court appearance:
Trial (ongoing)

TESTIMONY OF REGINALD B. SIMMONS UNDER ORDER #471

1 **Q: Please state your name for the record.**

2 A. Reginald B. Simmons

3 **Q. What is your date of birth?**

4 A. November 2, 1957.

5 **Q. Where are you employed?**

6 A. I have my own business, Comprehensive Environmental Strategies, Ltd., 11950 Rocky
7 Brook Court, Manassas, Virginia 20112-7549.

8 **Q. What does your company do?**

9 A. My company is involved in a broad spectrum of environmental consulting but we
10 specialize in asbestos management. About 75 percent of our work is with the State of Virginia.
11 We have worked with the Frederick County school system for about 15 years. We also have a
12 ten year contract with James Madison University and a five year contract with George Mason
13 University.

14 **Q. Where did you attend college?**

15 A. I attended the Citadel for 2 ½ years.

16 **Q. Did you graduate?**

17 A. No.

18 **Q. Do you have any certifications?**

19 A. I am certified as an environmental specialist by the Environmental Assessment
20 Association and hold numerous U.S. EPA certifications and Commonwealth of Virginia licenses.

21 **Q. Are you a member of any professional associations?**

22 A. I was a member of the American Industrial Hygiene Association in the nineties. I let my
23 membership lapse because it's no longer relevant to my company's work.

1 **Q. When did you start your employment at ACVA Atlantic?**

2 A. In January 1986, I went to work for ACVA Atlantic. The company was later renamed
3 Healthy Buildings International. For convenience, I will refer to the company as "HBI"
4 regardless of the time frame.

5 **Q. Who hired you at HBI?**

6 A. Gray Robertson.

7 **Q. What was his position at that time?**

8 A. President.

9 **Q. What was your employment immediately before coming to HBI?**

10 A. In 1981, I had begun my own business in Tampa, Florida. It was called Freedom Solar
11 Engineering. It continued through December 1985.

12 **Q. For what position were you hired?**

13 A. I was hired as a field technician and project team supervisor.

14 **Q. What were your cross-over skills from your work in solar engineering?**

15 A. My mechanical knowledge.

16 **Q. What was your work at HBI like when you started?**

17 A. When I first started working for HBI, the company was very small. In addition to Mr.
18 Robertson, there was Mr. Peter Binnie, the Vice President, and approximately two other
19 employees. We did one or two jobs per week in the mid-Atlantic region. The work was often
20 limited to duct cleaning work and other minor contracts. My first project was cleaning air ducts
21 in a manufacturing facility in North Carolina. My job included performance of indoor air quality
22 assessments; the purpose of which was to generate work cleaning air ducts.

23 **Q. To your knowledge, when did HBI first become involved with the tobacco industry?**

1 A. In the spring of 1986, while I was working in an Oliver Carr building in Washington,
2 D.C., an HBI employee named John Madaris and I were approached by a vice president of the
3 Tobacco Institute. It was my understanding that the Tobacco Institute's offices were located in
4 the building, and he asked us a lot of questions about HBI. He asked us to refer him to someone
5 at HBI, and we told him to contact Gray Robertson.

6 **Q. To your knowledge, did he contact Mr. Robertson?**

7 A. Yes.

8 **Q. How do you know that?**

9 A. Shortly after our conversation with that official from the Tobacco Institute, there was a
10 series of meetings between Gray Robertson and people I believed to be officials of the Tobacco
11 Insitute.

12 **Q. To your knowledge, what was the result of those meetings?**

13 A. From that point, which to my recollection was the end of 1986, HBI became very busy
14 with projects for the Tobacco Institute. The phone was ringing every day, and HBI began hiring
15 new staff members on a regular basis.

16 **Q. To your knowledge, did HBI deal with any other entities associated with the
17 Tobacco Institute?**

18 A. At about that time, approximately 1986-1987, HBI also started dealing with Fleishman
19 Hillard, a public relations firm, and Covington and Burling, a law firm, both of whom were
20 representing the Tobacco Institute.

21 **Q. Did HBI's business operation expand as a result of a relationship with the Tobacco
22 Institute?**

23 A. Yes. In addition to hiring HBI staff, the Tobacco Institute started sending us assignments

1 to inspect buildings. Day after day, we inspected buildings in the Washington, D.C. area and
2 other areas on the east coast for the Tobacco Institute, including many buildings with union
3 offices that the Tobacco Institute had relationships with. To my recollection by early 1987, we
4 were receiving contracts from the Tobacco Institute to inspect buildings throughout the United
5 States. The staff was expanded, and we were literally flying in all directions of the country to do
6 inspections for the Tobacco Institute or its members.

7 **Q. How did you know that the increase in HBI's work was related to the Tobacco**
8 **Institute?**

9 At our weekly staff meetings, we openly discussed all the work we were getting from the
10 Tobacco Institute and tobacco companies, like Philip Morris and R.J. Reynolds.

11 **Q. Who at HBI managed the projects that were funded by the Tobacco Institute?**

12 A. The assignments from the Tobacco Institute were controlled by Gray Robertson and Peter
13 Binnie.

14 **Q. Did your job change at all from the spring of 1986 to early 1987?**

15 A. Yes. By early 1987, I was a Senior Technician and was also responsible for training new
16 technicians.

17 **Q. What did you do to train new technicians?**

18 A. I trained them on the use of HBI's equipment as well as informed them of the instructions
19 and ground rules that had been set out to me by Peter Binnie.

20 **Q. What were the instructions and ground rules set out by Mr. Binnie?**

21 A. Throughout the period 1986-1989, when the company was going through this massive
22 expansion, Mr. Binnie was intimately involved with all operations. The work we were receiving
23 from the Tobacco Institute covered, as I stated earlier, virtually the entire United States and

1 various foreign countries, and included federal, state and private buildings. It was my
2 understanding that as a result of public relations work done by Fleishman Hillard, HBI also
3 began to receive calls from non-Tobacco Institute potential clients. Mr. Binnie had a number of
4 instructions and ground rules for us to follow that applied to all of the buildings we inspected,
5 private and public: (1) when taking air samples for nicotine tests, we were instructed to take air
6 samples in lobbies and other easily accessible areas where the circulation was best, thus the
7 reducing the readings; (2) if asked, always recommend to clients that any air pollution problem
8 could be solved by better ventilation; (3) banning or restricting tobacco use or smoking was
9 never to be recommended; and, (4) every inspection report was to be reviewed and undergo final
10 editing by either Mr. Binnie or Mr. Robertson before it was sent out.

11 **Q. For the buildings that you inspected, did you submit written reports to Mr.**
12 **Robertson or Mr. Binnie?**

13 A. Yes. I worked on hundreds and hundreds of inspections in private and public buildings,
14 and wrote some of the inspection reports myself.

15 **Q. Did you see the final inspection report that was sent to the client?**

16 A. No. I never reviewed or was asked to review the final product of any of my inspection
17 reports before they were sent to clients.

18 **Q. Were your reports ever edited or changed after you submitted your reports to Mr.**
19 **Binnie or Mr. Robertson?**

20 A. It s my understanding that the reports were always edited by Mr. Binnie or Mr. Robertson.

21 **Q. How do you know that your reports were changed after you submitted them to Mr.**
22 **Binnie or Mr. Robertson?**

23 A. On many occasions involving inspections of both public and private buildings, I would

1 later see the inspection reports in the main files and note that Mr. Binnie or Mr. Robertson had
2 changed the data and the conclusions. For example, when I had recommended a restriction or
3 banning of smoking, Mr. Binnie would edit it out of the final inspection report. It was also a
4 standard practice for Mr. Binnie to reduce the actual results of two significant tests that were
5 done on buildings: (1) the test for airborne particle count ("APC"); and (2) the test for weighing
6 airborne particles ("WAP").

7 **Q. What did you do when you discovered that the results of your reports were**
8 **changed?**

9 A. At the beginning I complained when Mr. Binnie or Mr. Robertson would reduce the
10 results of the APC and WAP tests.

11 **Q. To whom did you complain?**

12 A. I addressed my complaints to Mr. Binnie.

13 **Q. What was his response?**

14 A. His sole comment and response was that the tests were not reliable and that it was not
15 necessary for us to alarm the building owners.

16 **Q. You stated that the results of the APC and WAP tests were changed, please describe**
17 **those tests.**

18 A. An APC test involves the introduction of air into a unit where the air passes through a
19 laser beam which distinguishes sizes and numbers of airborne particles and records them in
20 categories, e.g., X particles of one micron or larger per cubic foot, Y particles of ten microns per
21 cubic foot, etc. Obviously, in rooms where there is smoking, this APC test can record literally
22 1,000,000 particles per cubic foot.

23 The WAP test involves use of an electronic monitor which draws air over a vibrating

1 crystal, which converts to a digital readout of the weight of the airborne particles.

2 **Q. Are the results of these tests important?**

3 A. Yes. These two tests are critical for providing accurate information about airborne
4 particles in the final inspection reports for buildings.

5 **Q. To your knowledge, did clients ever learn that the results of these tests were
6 reduced?**

7 A. No. The clients, both public and private buildings owners and tenants, were never
8 advised of the alteration of the data.

9 **Q. What inspections of public buildings do you believe were altered by Mr. Binnie or
10 Mr. Robertson?**

11 A. The public clients included a number of federal buildings where I was personally
12 involved with the inspections, including the Federal Reserve Bank, the Social Security
13 Administration, the Department of Health and Human Services, the Defense Mapping Agency,
14 the United States Coast Guard, and others.

15 **Q. Did you participate in inspections on buildings outside the United States?**

16 A. Yes. In 1988 and 1989, the Tobacco Institute or its members sent us throughout the
17 world to perform special inspections for them. In February of 1989, eight HBI employees,
18 myself included, were sent to Switzerland for a period of six weeks. We were organized in two
19 teams of four employees for three weeks each. We performed dozens of inspections which to my
20 understanding were under the auspices of the Tobacco Institute and Philip Morris.

21 **Q. Did you interact with officials from Philip Morris?**

22 A. Yes. The Philip Morris officials were from Philip Morris Europe, Department of Science
23 and Technology, and included Dr. Pierre P. Ceschini, principal scientist, Dr. Peter Martin,

1 principal scientist, and Dr. Helmut Reif, principal scientist. We worked with them in Neuchatel,
2 Switzerland.

3 **Q. What were your accommodations while conducting these inspections?**

4 A. While we were there, we stayed in the most exclusive and expensive hotels and were told
5 we could have anything and everything we needed. We were provided drivers that took us to
6 each city and took care of all of our personal needs.

7 **Q. Were your accommodations different on the weekends?**

8 A. On weekends, we were allowed to go anywhere we wanted at the expense of Philip
9 Morris. For example, one weekend they took some of us, myself included, to the St. Moritz
10 Resort where we all went skiing; other team members went to Venice and Florence, Italy, for the
11 weekend.

12 **Q. Were Philip Morris personnel present during the buildings inspections you
13 conducted in Europe?**

14 A. In all of our inspections, Philip Morris personnel were present.

15 **Q. Who edited the final reports for the building inspections in Switzerland?**

16 A. The final reports for the Switzerland study were edited by Mr. Binnie and Mr. Robertson.

17 **Q. Did you ever learn what use was made of the building inspections in Switzerland?**

18 A. Yes. In 1990, after I had left HBI, I heard Mr. Simon Turner of HBI give a presentation
19 on the results of the Swiss study at the International Conference on Indoor Air Quality held in
20 Toronto, Canada. In his presentation, he asserted that environmental tobacco smoke was only a
21 minor problem in the buildings we surveyed. In my opinion, this was not an accurate
22 characterization of what we observed. Contrary to his presentation, some buildings we observed
23 in the study had high levels of environmental tobacco smoke.

1 **Q. In what other countries did you conduct inspections?**

2 A. My team was also sent to Stockholm, Sweden, and Oslo, Norway.

3 **Q. Who managed the inspections in Sweden and Norway?**

4 A. We were under the direction of Mr. Jo Kiese in Norway and Mr. Peterson from Nisses
5 Anderson in Sweden.

6 **Q. Were these individuals associated with the Tobacco Institute?**

7 A. Yes. I believe both individuals were associated with the Tobacco Institute and its
8 members, and took care of all of our needs.

9 **Q. What were your accommodations like in Sweden and Norway?**

10 A. We stayed in exclusive hotels, including the five-star Strand Hotel in Stockholm.

11 **Q. Did Philip Morris pay for the expenses?**

12 A. To my understanding, Philip Morris paid for all of our expenses.

13 **Q. What were your expenses?**

14 A. I personally turned in, for my group's two weeks in Scandinavia, approximately \$12,500
15 of expenses for hotels, meals, and miscellaneous purchases. Money was never an issue when
16 working for the Tobacco Institute or its members.

17 **Q. Who controlled the inspections in Switzerland, Sweden, and Norway?**

18 A. At all times, we were under the control of the Tobacco Institute members and there was
19 usually a debriefing by their officials. For example, following the inspection tour in Switzerland,
20 we were questioned by the three Philip Morris individuals I previously mentioned, and it was
21 very clear to me at all times that Philip Morris was in charge.

22 **Q. How significant of a client was the Tobacco Institute and its members for HBI?**

23 A. It was known by everybody at HBI that our biggest client was the Tobacco Institute and

1 its members, such as Philip Morris. It was our understanding that HBI received a monthly
2 retainer from them of up to twenty thousand dollars. It was also known in the company that HBI
3 was paid additional sums per inspection, approximately \$1,500 per building, by the tobacco
4 interests to take environmental tobacco smoke (ETS) studies of the buildings that we were
5 scheduled to inspect. It was obvious that Mr. Robertson spent the majority of his time with
6 officials from the Tobacco Institute or its members.

7 **Q. With regard to the ETS studies that you mentioned, in your opinion, approximately**
8 **how many of them was the company asked to take by the Tobacco Institute and its**
9 **members?**

10 A. Between 1988 and 1989, we were asked to perform in the neighborhood of 500 ETS
11 studies.

12 **Q. How did you conduct these ETS studies?**

13 A. They were done by using air sampler pumps fixed with small glass ampules, which were
14 placed in a room and ran for an hour. We, the technicians, were advised to place air samplers in
15 lobbies and other areas of low tobacco use or high ventilation.

16 **Q. Who advised you to do the studies that way?**

17 A. Mr. Binnie and Mr. Robertson.

18 **Q. To your understanding, what was the analytical cost to HBI for these tests?**

19 A. The analytical cost to HBI was about \$200 per test.

20 **Q. Did you participate in a study in New York City?**

21 A. Yes.

22 **Q. In what year was that study performed?**

23 A. In 1988, when the New York State officials were considering anti-smoking legislation.

1 **Q. What were you, as a technician, instructed to do?**

2 A. Six or seven HBI technicians went to New York to work with the tobacco industry
3 representatives in obtaining approximately 240 studies of restaurants and offices over a 10 day
4 period.

5 **Q. Who supplied the equipment?**

6 A. To my understanding, the Tobacco Institute supplied all of the equipment and supplies
7 and scheduled all of the location visits.

8 **Q. What type of equipment was supplied?**

9 A. We were each provided with a James Bond-style black briefcase, which contained air
10 quality testing equipment.

11 **Q. How did you conduct the tests?**

12 A. We were driven from restaurant to restaurant and office to office. At each location we
13 entered, we placed our brief case on the seat next to us, turned on the briefcase, which had ports
14 for collecting nicotine samples and the like, and waited a minimum of one hour. Once the hour
15 had passed, we shut off the briefcase.

16 **Q. What did you do next?**

17 A. We returned to the tobacco industry representatives' computer center in the Regency
18 Hotel on Park Avenue where they would "unload" the data.

19 **Q. Who were the people managing this study?**

20 A. The people running the study were Guy B. Oldaker and Michael Ogden from the
21 Research and Development department of R.J. Reynold Tobacco Company, and W.E. Cruse
22 from the Environmental Affairs Research Department of H.P. Lorillard. Those individuals and
23 presumably Tobacco Institute officials controlled everything that was done for the ten day period,

1 including all results and all data.

2 **Q. Did you advise the owners of the restaurants and office buildings that you worked**
3 **for the Tobacco Institute and its members?**

4 A. At no time did we tell anybody that we were working with or for the Tobacco Institute
5 and its members. We were told to tell anyone that asked that we were doing a "time study"
6 within the space.

7 **Q. Under what circumstances did you leave HBI?**

8 A. I resigned in approximately mid-1989. At that point, I was burned out because I had a
9 family and I was frequently out-of-town on business travel. It wasn't worth it.

10 **Q. What is U.S. Exhibit 65093?**

11 A. U.S. Exhibit 65093 is the statement that I signed on December 9, 1994, for the
12 congressional investigation of HBI.

13 **Q. What is U.S. Exhibit 85639?**

14 A. U.S. Exhibit 85639 is an affidavit that I signed on October 28, 1994, for the lawsuit that
15 Mr. Jeffrey Seckler brought against HBI.

16 **Q. Thank you Mr. Simmons.**

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