

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action
)	No. 99-2496 (GK)
)	
PHILIP MORRIS INCORPORATED,)	
<u>et al.</u> ,)	
Defendants.)	
)	

**LETTER OF REQUEST FOR
INTERNATIONAL JUDICIAL ASSISTANCE**
(Martin Broughton)

TO THE SENIOR MASTER OF THE QUEEN'S BENCH DIVISION, ROYAL COURTS OF JUSTICE, STRAND, LONDON, WC2:

The United States District Court for the District of Columbia presents its compliments to you and requests your assistance in the following manner:

WHEREAS, this proceeding is properly under the jurisdiction of and is now pending before the United States District Court for the District of Columbia located in Washington, District of Columbia, United States of America, between plaintiff United States of America and defendants Philip Morris Companies, Inc.; R.J. Reynolds Tobacco Company; Brown & Williamson Tobacco Company; British American Tobacco (Investments) Ltd.; Lorillard Tobacco Company; American Tobacco Company; The Liggett Group, Inc.; The Council for Tobacco Research - U.S.A., Inc.; and The Tobacco Institute, Inc., as shown in the Amended Complaint (attached as Exhibit 1);

WHEREAS, the claims asserted in this action arise out of violations of United States racketeering laws under 18 U.S.C. § 1962(c) and 18 U.S.C. § 1962(d). Section 1962(c) prohibits "any person employed by or associated with any enterprise" engaged in or affecting interstate or foreign commerce from "conduct[ing] or participat[ing], directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt." Section 1962(d) prohibits a conspiracy to violate any of the other provisions of 18 U.S.C. § 1962. Racketeering activity is "defined as behavior that violates certain other laws, either enumerated federal statutes or state laws addressing specified topics and bearing specified penalties." Rotella v. Wood, 528 U.S. 549, 552, 120 S. Ct. 1075, 1079 (2000) (citing 18 U.S.C. § 1961(1)). Civil racketeering activity may include, but is not limited to, a conspiracy to commit fraud or other intentional tortious conduct, and a civil racketeering action may be brought by an individual, corporation, or government entity.

Paragraph 174 of the Amended Complaint in this action alleges that not later than 1953, Defendants formed an enterprise and entered into a conspiracy, which was reaffirmed by subsequent explicit and implicit agreements, to deceive consumers into starting and continuing to smoke, without regard to the truth, the law, or the health consequences to the American people by:

(1) fraudulently maintaining that there was an open question as to whether smoking causes disease, despite the fact that Defendants knew otherwise;

(2) concealing and suppressing relevant research on the health consequences of smoking and funding biased or irrelevant research on the health consequences of smoking, while publicly claiming to do everything in their power, including fund independent research, in order to determine if smoking causes cancer or other diseases;

(3) deceiving consumers into becoming or staying addicted to cigarettes by claiming that nicotine is not addictive, despite the fact that the Defendants knew that nicotine is addictive;

(4) manipulating the design of cigarettes and the delivery of nicotine to smokers to maintain and enhance the addictiveness of cigarettes, while at the same time denying that they engaged in such manipulation;

(5) marketing and advertising "light" and "ultra-light" cigarettes as conferring health benefits over other cigarettes, despite their knowledge that no such health benefits existed; and

(6) marketing and advertising with the intent of addicting children into become lifetime smokers, while claiming that they did not market to children.

WHEREAS, it appears that it is necessary for the purpose of justice and for the due determination of the matters in question between the parties that Martin Broughton, Chairman of British American Tobacco Plc. ("BAT"), within your jurisdiction, should be called upon to provide certain evidence relating to those matters.

Mr. Broughton's work address is as follows: Martin Broughton, Chairman, British American Tobacco Plc., Globe House, 4 Temple Place, London, WC2R 2PG, England.

In support of its Motion to this Court for the issuance of a Letter of Request, the Plaintiff has offered the following information, set forth in the numbered paragraphs below, all of which are allegations of the Plaintiff and are not findings of this Court:

1. Mr. Broughton is the individual with "ultimate responsibility" for BATCo and Brown & Williamson. Mr. Broughton, among other things, issues public statements on behalf of BATCo; attends meetings where BATCo decisions are made; uses BATCo employees to act on his behalf; exercises decision authority with respect to BATCo, including the hiring and advancement of

BATCo employees, officers, directors and agents; and is the "most senior" individual within the BAT organization to whom BATCo officers and directors owe fiduciary duties. The decision-making structure of BAT subsidiaries leads directly to Mr. Broughton who maintains final authority over the important decisions of the subsidiaries. In fact, though parallel positions with "affiliates," "parents," or "subsidiaries," each of the officers of BATCo ultimately answers to Mr. Broughton. For these reasons, Martin Broughton has been compelled to testify in other proceedings in the past regarding, among other things, BATCo's policies and procedures and other conduct in various smoking and health litigation.

2. During his deposition on May 28, 2002, Ulrich Herter, former Managing Director of BATCo, testified that Mr. Broughton is currently the most senior member of the BAT group of companies, that include BATCo and Brown & Williamson. (Tr. Ulrich Herter, May 28, 2002 Depo. at 25) (copy attached as Exhibit 3). Mr. Herter also stated that all five regional management boards reported to himself and Mr. Broughton. (Id. at 4.) Mr. Herter testified that Mr. Broughton was involved in the decision-making process by which Susan Ivey was named Chief Executive Officer of Brown & Williamson, demonstrating his influence in the affairs of that subsidiary. (Id. at 41-42.) Mr. Broughton, as Chairman of the parent company BAT, and answerable to its shareholders, maintains ultimate responsibility for the actions of all BAT subsidiaries, including BATCo and Brown & Williamson.

WHEREAS, this Court is authorized by Rule 28(b) of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 1781 and 1782 to issue this Letter Rogatory to the appropriate judicial authority in the United Kingdom requesting assistance in this matter;

NOW THEREFORE, I, Gladys Kessler, United States District Court Judge, pursuant to Rule 28(b) of the Federal Rules of Civil Procedure, hereby request that, in furtherance of justice and by proper and usual process of your court, you summon Martin Broughton to appear before you or some competent person by you, at a time and place by you to be fixed, there to answer questions upon oral depositions relating to the following matters:

1. Relationship of BAT to BATCo and Brown & Williamson
 - a. Structure of the corporate relationship between BAT and BATCo;
 - b. Structure of the corporate relationship between BAT and Brown & Williamson;
 - c. Financial relationship between BAT and BATCo;
 - d. Financial relationship between BAT and Brown & Williamson;
 - e. Control of BAT over BATCo
 - i. Control over research and development;
 - ii. Control over positions on smoking and health;
 - in. Control over marketing decisions;
 - iv. Control over board selection;
 - v. Control over brand development.
 - f. Control of BAT over Brown & Williamson
 - i. Control over research and development;
 - ii. Control over public positions on smoking and health;
 - in. Control over marketing decisions;
 - iv. Control over board selection;
 - v. Control over brand development.

2. Corporate reorganizations
 - a. Purpose of changes in corporate relationship of BAT entities;
 - b. Effect of changes in corporate relationships of BAT entities
 - i. BAT's control of subsidiaries, including BATCo and Brown & Williamson;
 - ii. Access of BAT subsidiaries to information of BAT and other BAT subsidiaries;
 - iii. Litigation position of BAT and its subsidiaries, including BATCo and Brown & Williamson;
 - iv. BAT's accountability for subsidiaries, including BATCo and Brown & Williamson;
 - v. BAT stock price;
 - vi. BAT financials.

and that you will cause his testimony to be committed to writing and be videotaped, and that the transcript and videotape and any exhibits thereto be sent to: Sharon Y. Eubanks, Civil Division, Torts Branch, United States Department of Justice, 1331 Pennsylvania Avenue, N.W., Suite 1150, Washington, D.C. 20004, U.S.A.

This Court expresses its appreciation to you for your courtesy and assistance in this matter and states that, pursuant to the authority of 28 U.S.C. § 1782, it stands ready and willing to do the same for you in a similar matter when required.

Oct. 3, 2002
Date

Gladys Kessler
Gladys Kessler
United States District Judge

Copies to:

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