

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	Civil Action
v.)	No. 99-CV-02496 (GK)
)	
PHILIP MORRIS USA INC.,)	Next scheduled appearance:
f/k/a PHILIP MORRIS INC., <i>et al.</i>)	Trial (ongoing)
)	
Defendants.)	
_____)	

THE UNITED STATES' WRITTEN DIRECT EXAMINATION OF
JOHN ST. VINCENT WELCH
SUBMITTED PURSUANT TO ORDER #471A

1 **Q. Good morning, Mr. Welch. Could you please state your full name for the record.**

2 A. John Basil William St. Vincent Welch.

3 **Q. Are you represented by counsel?**

4 A. Yes. Mr. Roland Keller.

5 **Q. Mr. Welch, could you please state your current residence for the Court?**

6 A. 593 Great Western Highway, Falconbridge, Australia 2776.

7 **Q. Are you an Australian citizen?**

8 A. Yes.

9 **Q. What is your current occupation?**

10 A. I am self-employed as an industrial relations consultant.

11 **Q. What are your responsibilities as an industrial relations consultant?**

12 A. I handle, for both employers and employees, disputes regarding enterprise bargaining,
13 dispute resolution, and unfair dismissals in a wide range of industries.

14 **Q. How long have you been an independent industrial relations consultant?**

15 A. Since 13 February 1996.

16 **Q. Have you ever been employed by Tobacco Institute of Australia?**

17 A. Yes.

18 **Q. We will return to the subject of the Tobacco Institute of Australia, but first, I'd like
19 to address briefly your educational and professional background.**

20 **Did you attend university?**

21 A. Yes.

22 **Q. What degree do you hold?**

23 A. I have a Bachelor's Degree in economics from The University of Sydney.

24 **Q. When did you received that degree?**

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1 A. 1974.

2 **Q. What professional positions did you hold prior to joining the Tobacco Institute of**
3 **Australia?**

4 A. I was a Personnel Officer for Nestle. I was an Industrial Officer for Dillingham
5 Corporation and the Metal Trades Industrial Association. Following that, I was the
6 Federal Industrial Officer of the Australian Medical Association. I was then the Executive
7 Director of the Oil Industry Industrial Secretariat. I then consulted for the Tasmanian
8 Government regarding issues similar to those I addressed at the AMA. I also was an
9 independent industrial relations consultant prior to my joining the Tobacco Institute.

10 **Q. What did you do after leaving the Tobacco Institute of Australia?**

11 A. I returned to industrial relations consulting, before going to work as the Vice-President
12 - Human Resources for the Sydney Harbour Casino. I went back to industrial relations
13 consulting after being fired from the Sydney Casino.

14 **Q. Why were you fired?**

15 A. Allegations were made that I had benefitted financially by the letting of a superannuation
16 contract. I was cleared of the false allegations by the Casino Control Authority, the State
17 of New South Wales gaming regulatory body. I sued the casino for damages. Settlement
18 was reached with the casino - they provided a monetary settlement and issued a statement
19 clearing my name and regretting the circumstances of the termination of my employment.

20 **Q. What was your position with the Tobacco Institute of Australia?**

21 A. Chief Executive Officer.

22 **Q. For purposes of the examination I may refer to the Tobacco Institute of Australia as**
23 **the "TIA", is that clear?**

24 A. Yes.

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1 **Q. During what time period did you work for the TIA as Chief Executive Officer?**

2 A. From 21 January 1991 to the end of April 1992.

3 **Q. What was the TIA?**

4 A. The TIA was the industry organization of the Australian tobacco manufacturers and
5 distributors.

6 **Q. What was its purpose?**

7 A. The TIA existed to provide the tobacco industry with a unified public relations arm to
8 address public relation matters, primarily issues of smoking and health and advertising
9 sponsorship of sport and the arts. The TIA was the industry's lobbying arm on issues
10 facing the industry as a whole. The TIA also served as means for facilitating
11 communication between the member companies on numerous issues.

12 **Q. Did the Tobacco Institute of Australia have any relationship to the Tobacco Institute
13 in the United States that is a Defendant in the instant lawsuit?**

14 A. I don't believe that there was any formal relationship, however, the Tobacco Institute of
15 Australia served the function in Australia that the United States' Tobacco Institute served
16 in the United States.

17 **Q. Was there any direct communication between the TIA and the United States'
18 Tobacco Institute?**

19 A. Yes.

20 **Q. What was the nature of the communication?**

21 A. I don't recall, other than one meeting between myself and my U.S. counterpart and general
22 communication.

23 **Q. I'm handing you U.S. Exhibit 89,395. Have you seen this document before?**

24 A. Yes. It is a letter than I received from Sam Chilcote.

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1 **Q. Who is Sam Chilcote?**

2 A. He was the head of the U.S. Tobacco Institute. On this document it lists his title as
3 President.

4 **Q. Was he the individual that you usually communicated with at the U.S. Tobacco
5 Institute?**

6 A. Yes.

7 **Q. Did you at any point meet with Mr. Chilcote?**

8 A. Yes.

9 **Q. Do you remember the specific topics addressed in this letter?**

10 A. No.

11 **Q. Who were the members of the TIA during your tenure?**

12 A. When I commenced, the four companies were Philip Morris Limited, the Australian
13 subsidiary of Philip Morris; WD & HO Wills, the Australian subsidiary of BATCo;
14 Rothmans Holding Limited, the Australian affiliate of Rothmans; and RJ Reynolds's
15 Australian affiliate.

16 **Q. Did the membership of the TIA change during your tenure?**

17 A. Yes. Toward the end of my time at the TIA, Rothmans's Australian subsidiary took over
18 RJ Reynolds's Australian subsidiary.

19 **Q. Does the TIA still exist?**

20 A. To the best of my knowledge, no.

21 **Q. What was the structure of the TIA?**

22 A. The TIA was a secretariat, of which I was the chief executive officer. The four member
23 companies funded the secretariat. The chief executives of the four Australian companies,
24 which became three by the end of my tenure, would meet on a regular basis, approximately

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1 once a month, to discuss industry issues, and I was the secretary to that committee. Below
2 that committee there was another committee comprising the corporate or government and
3 public affairs officers of the four Australian companies - to become three - and I was the
4 convener/chairman of that committee. The chief executives decided policy and the
5 government and public affairs officers put the policy into practice.

6 **Q. Mr. Welch, what authority did the TIA have over its member companies?**

7 A. The TIA had no authority over the member companies. The TIA was set up to serve the
8 member companies. Nothing was ever done by the TIA without the direction and approval
9 of the members. Every TIA policy came directly from the member companies.

10 **Q. Did the TIA, or anyone at the TIA have the ability under some circumstances to**
11 **"veto" directives from the member companies?**

12 A. No.

13 **Q. How were instructions given from the member companies to the TIA?**

14 A. As a result of the regular meetings or by way of letter and telephone hookups.

15 **Q. Were you ever directed to write documents on behalf of member companies?**

16 A. Yes.

17 **Q. Were you ever provided with documents from the member companies for your**
18 **signature?**

19 A. Yes, drafts which were then put on the TIA letterhead.

20 **Q. As CEO of the TIA, who would you communicate with at the member companies?**

21 A. The CEOs and the government & public affairs officers of the member companies.

22 **Q. How frequently would you communicate with the member companies?**

23 A. On a daily basis.

24 **Q. What matters would you correspond about or discuss?**

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1 A. The full range of topics addressed by the TIA - litigation, legislation, public relations.
2 Everything and anything that I worked on.

3 **Q. How did you come to be employed by the TIA?**

4 A. I was head hunted through a firm called Sheffield Byrne. I was interviewed by the chief
5 executives of the four member companies on a number of occasions before being offered
6 the position.

7 **Q. What did you understand your responsibilities to be when you were hired as the
8 CEO of the TIA?**

9 A. To head up the secretariat, to be the spokesperson for the industry on industry matters, to
10 administer the secretariat, and to be the principal lobbyist on industry legislative issues.

11 **Q. Whom did you report to during your tenure at the TIA?**

12 A. I reported to the Chairman of the TIA, a position that rotated through the CEOs of the
13 member companies. The actual individual changed several times during my tenure, but
14 was Mr. John Devine, the CEO of Rothmans, for much of my time as CEO of the TIA. I
15 also reported to the CEOs and government and public affairs officers of the member
16 companies.

17 **Q. As CEO of the TIA did you work with any external law firms for the industry?**

18 A. Yes.

19 **Q. What firms?**

20 A. Clayton Utz and Dunhill Madden Butler.

21 **Q. Did the TIA have any in-house counsel while you were CEO of the TIA?**

22 A. There was no immediate in-house counsel, however the TIA had an arrangement with
23 Dunhill Madden Butler for Steven Klotz, a solicitor, to be seconded to the TIA, and he
24 performed those duties one half day -- the morning of every day of the week. One of his

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1 duties was to examine and implement the Document Retention Policy.

2 **Q. Were you ever provided with documents from the law firms for your signature?**

3 A. Yes.

4 **Q. Why did you leave the TIA in April of 1992?**

5 A. My contract of employment contained a clause that would give me a salary review and a
6 performance review at the end of 12 months. John Devine was the chairman of the board
7 that was to conduct that performance review and he failed to do so. At that time, I did not
8 think that Mr. Devine's failure in this regard made for a good working relationship. In
9 addition, Reynolds was being taken over by Rothmans, and it had become apparent that
10 the Chief Executive of Reynolds, Mr Ken Pimblett, needed alternative employment, and
11 he was designated as the person who would take over as chief executive on my departure.
12 There was another change in direction insofar as there was significant funding agreed but
13 then cut. I approached John and we came to a mutually agreeable arrangement for my
14 departure.

15 **Q. You previously mentioned the TIA's Document Retention Policy. Did the TIA have a
16 document retention policy at the start of your tenure at the TIA?**

17 A. Yes.

18 **Q. Was it a written policy?**

19 A. Yes.

20 **Q. What was the policy?**

21 A. The Document Retention Policy was two-fold. First, when we were in receipt of
22 documents that were potentially damaging to the industry and/or the member companies,
23 once they'd been read they were to be destroyed. Second, where there were documents that
24 were favourable to the industry's position, and not potentially damaging, once having been

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1 read, to retain them.

2 **Q. Did the Document Retention Policy list any type of schedule of what documents had**
3 **to be retained?**

4 A. No, it was a general description. If a document were potentially damaging it would be
5 treated in one fashion, if not, in another.

6 **Q. Do you know where the Document Retention Policy came from?**

7 A. It was my understanding that it was formulated by the government and public affairs
8 officers at their various meetings and was supplemented by various legal advice.

9 **Q. Do you recall who physically gave you the Document Retention Policy when you**
10 **started at the TIA?**

11 A. I can't recall ever being given it. It was in existence at the Tobacco Institute when I arrived.
12 I can't recall somebody coming to me and saying, "There it is, read it."

13 **Q. Did you distribute this policy to your staff?**

14 A. Yes, but not the entire staff, just to the those who were involved in handling of documents,
15 that's the two government public affairs officers, the librarian and my deputy chief
16 executive.

17 **Q. Do you recall how many pages it was?**

18 A. To the best of my recollection, it was two pages.

19 **Q. Was the Policy revised while you were at the TIA?**

20 A. It was revised numerous times. The Policy was constantly under review.

21 **Q. Do you recall whether the written Document Retention Policies had dates?**

22 A. Yes, they did.

23 **Q. Did the written Document Retention Policies have titles?**

24 A. Yes. I think they were simply titled "Document Retention Policy".

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1 **Q. Do you recall how many times was it reissued?**

2 A. No, but it would have been two or three times during my tenure.

3 **Q. Was it reissued by you?**

4 A. It was reissued through my office.

5 **Q. Do you know what the purpose of the TIA's Document Retention Policy was?**

6 A. Yes.

7 **Q. What was it?**

8 A. At the time that I was the TIA's CEO, there was a great deal of pressure on the industry
9 from anti-smoking organizations and concerns about lawsuits. The primary purpose of the
10 Document Retention Policy was to keep documents that were potentially damaging to the
11 member companies or the TIA out of litigation and out of the hands of those that could use
12 the information to attack the industry. The view was, why leave a loaded gun on the table
13 that could be used against you? The Document Retention Policy was primarily a
14 document destruction policy designed to make sure that potential "guns" were destroyed.
15 The name "Document Retention Policy" was a misnomer. It's purpose was to minimise
16 the TIA library.

17 **Q. Was there any other purpose for the Document Retention Policy?**

18 A. Yes. A secondary purpose of the Policy was to address basic administrative functions,
19 such as storage space.

20 **Q. Were you familiar with the document retention policies of any of the other industry
21 organizations at which you were employed?**

22 A. Yes.

23 **Q. Were the document retention policies at those organizations similar to the Document
24 Retention Policy at the TIA?**

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1 A. No.

2 **Q. Why not?**

3 A. The document retention policy at the Australian Medical Association was to keep
4 everything, as was the policy at the Oil Industry Industrial Secretariat.

5 **Q. How did you or other members of the TIA determine what documents should or
6 should not be destroyed?**

7 A. Certain decisions were easy to make and routine. Some documents from the member
8 companies would explicitly say "read and destroy," so those would simply be shredded
9 after reading. All drafts of correspondence and documents were destroyed. Other
10 decisions, such as determining which documents were potentially harmful to the industry,
11 were more difficult. In those instances, one would consult with the government and public
12 affairs officers of the member companies or others such as Clayton Utz and Steven Klotz.
13 There also would be occasions where I would get instructions from a member company to
14 determine whether the TIA possessed a certain document, and if so, to destroy it.

15 **Q. What was the primary factor in determining whether or not a specific document
16 should be destroyed?**

17 A. Whether the document would be damaging in litigation positions, legislative positions, or
18 public affairs positions.

19 **Q. How did the government and public affairs officers to whom you would refer
20 questions regarding which documents should be destroyed determine whether a
21 document would be damaging to a legal position and therefore should be destroyed?**

22 A. They would communicate with their in-house counsel, if necessary, to make a legal
23 sensitivity determination.

24 **Q. Did you speak with any lawyers about the Document Retention Policy?**

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1 A. Yes. However, most of my discussions about the Document Retention Policy were with
2 government and public affairs officers of the member companies, as well as with the chief
3 executives of the member companies.

4 **Q. Which lawyers did you speak with regarding the Document Retention Policy?**

5 A. Brian Wilson, Glenn Eggleton, and Donna Staunton-Mayne of Clayton Utz, and Steven
6 Klotz, who as I previously mentioned, was seconded to the TIA.

7 **Q. Was there any formal procedure for discussing whether a document was sensitive,
8 and therefore should be destroyed?**

9 A. Generally, there would simply be informal discussion of the document with the
10 appropriate individual. However, sometimes whether a document should or shouldn't be
11 destroyed would be put on the agenda for meetings with the member companies, then
12 raised at meetings, where the potential danger of the document would be discussed and a
13 decision made on whether or not the document should be destroyed. At the conclusion of
14 the meeting, the agenda that mentioned the document would also be destroyed.

15 **Q. Were there any classes of documents that were destroyed more often than others
16 under the Document Retention Policy?**

17 A. All drafts of documents were destroyed under the Policy. Any document specifically
18 marked "read and destroy" would be destroyed under the Policy. Otherwise, the largest
19 class of documents destroyed under the Policy were scientific documents considered
20 potentially harmful to the member companies.

21 **Q. Did some of the scientific reports and studies that were destroyed address whether or
22 not smoking causes disease?**

23 A. Yes.

24 **Q. Did some of the scientific reports and studies that were destroyed address whether or**

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1 **not passive smoking causes disease?**

2 A. Yes.

3 **Q. Did some of the scientific reports and studies that were destroyed address whether or**
4 **not nicotine is addictive?**

5 A. Yes.

6 **Q. Do you recall whether the scientific reports or studies that were destroyed were**
7 **internal company documents or external documents?**

8 A. Both.

9 **Q. Were the scientific documents that were destroyed public documents, available**
10 **outside of the member companies, or private documents, that wouldn't have**
11 **otherwise been available to those outside the member companies?**

12 A. Both.

13 **Q. Why would there be concern that a public document could be potentially dangerous**
14 **if others outside the member companies already had it?**

15 A. Some of the public documents had sensitive notations or handwritten notes on them that
16 were considered potentially dangerous, and therefore required their destruction. In
17 addition it was considered imprudent to be in possession of potentially dangerous
18 documents.

19 **Q. Do you recall whether any of the documents that you received from the member**
20 **companies came from their overseas affiliate or parent companies?**

21 A. Yes. Most of the scientific documents came from the member companies' overseas
22 affiliate or parent companies. At the time the issues in Australia were so sensitive the
23 industry in Australia and overseas cooperated and worked very closely.

24 **Q. Do you recall whether any of the documents that were destroyed were from the**

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1 **member companies affiliate or parent companies?**

2 A. Yes. Correspondingly most of the documents that were destroyed were from the member
3 companies affiliate or parent companies.

4 **Q. Were any of the documents that were destroyed scientific documents from the**
5 **member companies' U.S. affiliate or parent companies?**

6 A. Yes.

7 **Q. Previously, you stated that correspondence would often include instructions to "read**
8 **and destroy". How frequent was correspondence of this kind?**

9 A. Frequent. There were two shredders in the office and as you received mail it would
10 frequently be shredded after being read and/or circulated in-house.

11 **Q. Approximately how many times a week would you use the shredders?**

12 A. Documents were destroyed on a daily basis.

13 **Q. Do you know whether or not the litigation, legislative, and public affairs concerns**
14 **driving the Document Retention Policy were specific to Australia, international, or**
15 **both?**

16 A. As the member companies, rather than myself, were the ones determining what constituted
17 a potentially harmful document, I do not know what their bases for making determinations
18 were. My focus was on carrying out the directives of the member companies, ensuring
19 that those companies were satisfied with the job being done in document retention.

20 Personally, I did not concern myself with the parent or affiliate companies overseas.

21 **Q. Do you know whether or not the decisions made by the Australian operating**
22 **companies regarding which documents should or should not be destroyed were**
23 **motivated by concerns for their overseas parent or affiliate companies?**

24 A. No, I do not know.

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1 **Q. Is it possible that the member companies decisions on what documents to destroy was**
2 **motivated, at least in part, by a desire to protect their parent and affiliate companies**
3 **overseas?**

4 A. Yes.

5 **Q. I am handing you U.S. Exhibit 89,393. Have you seen this document before?**

6 A. I suspect that I have. I do not recall this specific document, but it says that it was
7 addressed to me. At that time, I frequently received correspondence from Phil Francis
8 attaching company reports for my review.

9 **Q. What is the date of the document?**

10 A. 16 April 1991.

11 **Q. Who is it from?**

12 A. Phil Francis.

13 **Q. Who is Phil Francis?**

14 A. He was the government and public affairs officer of Philip Morris's Australian affiliate
15 during my time at the TIA. I see that his official title is listed here as Corporate Affairs
16 Director - the titles differed from company to company.

17 **Q. Who is the letter to?**

18 A. Peter Alexander, Glenn Eggleton, Ken Pimblett, George Symmes, and myself.

19 **Q. Who is Peter Alexander?**

20 A. Rothmans' Australian affiliate's government & public affairs officer.

21 **Q. Who is George Symmes?**

22 A. I do not recall, but I suspect he was the government and public affairs officer from WD &
23 HO Wills. If that is the case, I recall that he did not last long and went back to New
24 Zealand.

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1 **Q. What is the subject listed on this letter?**

2 A. EPA - US - SAB Report

3 **Q. Do you recall what the EPA - US - SAB Report is?**

4 A. No.

5 **Q. The letter refers to an attached report from Philip Morris International. Do you**
6 **recall this report?**

7 A. It was routine for me to receive reports or studies from member companies and their parent
8 and affiliate companies. I received a lot of correspondence like this, but I don't recall this
9 particular document.

10 **Q. Do you have any reason to believe that you didn't receive this document?**

11 A. No. I suspect that I did.

12 **Q. The letter says that the report was going to be released on "April 18 (US time)" and that**
13 **therefore "the morning news on April 19 is likely to carry the story" in Australia.**
14 **Do you know whether the report was a U.S. report?**

15 A. I don't recall this correspondence, so I cannot be sure, but it seems clear that it was, and it
16 was quite common for me to receive and be briefed on reports from the United States and
17 elsewhere.

18 **Q. The exhibit states that "it would be of benefit to discuss the co-ordination of activities**
19 **here in Australia on a conference call." Do you recall whether such a conference call**
20 **took place?**

21 A. No, but conferences coordinating the activities of the Australian member companies were
22 commonplace.

23 **Q. Were such coordinating conferences commonly held in relation to issues, like this**
24 **one, arising in the United States?**

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1 A. Yes.

2 **Q. Are you familiar with the AFCO v. TIA case?**

3 A. Yes.

4 **Q. What was the AFCO case?**

5 A. It was a lawsuit to enjoin the TIA from making public statements that there was no
6 evidence that passive smoking caused disease. The case was in its final stages during my
7 tenure. The TIA lost the lawsuit.

8 **Q. Do you know whether or not the TIA member companies overseas parents and
9 affiliates were concerned about the potential ramifications for them from the AFCO
10 decision?**

11 A. Yes. The AFCO decision was the first of its kind, and I knew that the parents and
12 affiliates of the member companies were greatly concerned about the potential impact of
13 the AFCO case on the passive smoking issue in other parts of the globe and were paying
14 very close attention to the matter.

15 **Q. I am handing you U.S. Exhibit 89,396. Have you seen this document previously?**

16 A. Yes.

17 **Q. What is this document?**

18 A. It is a written guideline for answering expected questions from the press in response to
19 possible outcomes of the AFCO case.

20 **Q. Please turn to the final page of the exhibit, which is a fax cover sheet. Who sent this
21 fax?**

22 A. Glenn Eggleton.

23 **Q. What is the number of pages listed on the fax cover sheet?**

24 A. 4.

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1 **Q. What is listed as the "matter name" on the fax sheet?**

2 A. TIA - AFCO.

3 **Q. Do you recall receiving the attached document from Glenn Eggleton?**

4 A. Yes.

5 **Q. What is the date listed on the fax?**

6 A. 28 February 1992.

7 **Q. Do you recall whether the TIA was anticipating a ruling in the AFCO case at that**
8 **time?**

9 A. My recollection is that the AFCO decision was in February of 1991, but that the TIA had
10 appealed the ruling. During the appeal, Glenn Eggleton would frequently correspond with
11 the TIA, the member companies, and their parents and affiliates regarding how possible
12 outcomes should be addressed from a public relations standpoint.

13 **Q. Do you know why Glenn Eggleton was sending out guidelines for answering**
14 **questions on AFCO?**

15 A. This was a normal procedure. Clayton Utz wanted to ensure that, whenever a matter arose
16 that would require a response from the TIA that the response would be consistent and be
17 appropriate - in that the TIA wouldn't cause any legal or public relations problems.

18 **Q. Did the member companies coordinate a response on the issue of passive smoking?**

19 A. Of course.

20 **Q. Did the member companies' parent companies in the United States and London also**
21 **coordinate a response on the issue of passive smoking?**

22 A. Yes, and I think that is clear from the document.

23 **Q. Looking at the fax page, do you see that a Mr. C. Wall of Philip Morris International**
24 **in New York, a Mr. D. Schechter of BATUS Inc. in Kentucky, a Mr. P. Clark of**

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1 **BATCo in London, and a Mr. Willis of Shook Hardy & Bacon in Kansas City are all**
2 **listed as recipients of this fax?**

3 A. Yes.

4 **Q. Was it common for Glenn Eggleton and Clayton Utz to send out instructions on how**
5 **to answer questions from the press on Australian matters to tobacco industry**
6 **representatives in the United States and England?**

7 A. I am not aware nor recall all that Clayton Utz did in this regard. Nevertheless,
8 the tobacco industry in the United States and elsewhere in the world were extremely
9 concerned about the AFCO case and knew that it could have serious ramifications on their
10 business across the globe. That was the reason the TIA had numerous visits from Shook,
11 Hardy & Bacon.

12 **Q. How many times did lawyers from Shook Hardy & Bacon visit the TIA?**

13 A. I don't recall the exact number, but the visits were frequent - half a dozen or more times in
14 a year.

15 **Q. Do you recall which lawyers visited?**

16 A. Yes. Robert Northrip.

17 **Q. Each time?**

18 A. Yes.

19 **Q. What did Mr. Northrip do when he visited?**

20 A. Mr. Northrip would discuss the AFCO case and other passive smoking issues with me. He
21 addressed other matters as well, but those were his primary concern.

22 **Q. Did you request that Mr. Northrip visit the TIA?**

23 A. No. The primary purpose for Mr. Northrip's trips to Australia was to visit with the
24 member companies, but he would visit the TIA each time, as well.

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1 **Q. How often did the member companies correspond to coordinate on passive smoking?**

2 A. Frequently. This was considered a critical issue at the time, and a great deal of effort was
3 spent by the parties to make sure that everyone was on the same track.

4 **Q. Did the Document Retention Policy change while you were at the TIA?**

5 A. Yes. However, I do not recall the changes as being significant, basically fine tuning to
6 bring the TIA Document Retention Policy closer in line to that of the member companies.
7 The most significant changes were in the implementation of the Policy, rather than the
8 Policy itself.

9 **Q. How did the implementation of the Policy change?**

10 A. At the time I joined the TIA, the implementation of the Document Retention Policy was
11 done primarily by employees of the TIA. When I arrived morale was low and the TIA had
12 not done a particularly good job of applying the Document Retention Policy, in that many
13 documents that should have been destroyed had not been destroyed. The TIA's lack of
14 vigilance in implementing the Policy became a subject of frequent discussion on the part
15 of the member companies and Clayton Utz. As a result, both the member companies and
16 Clayton Utz took a more hands on approach in ensuring that the Document Retention
17 Policy was applied and that potentially damaging documents were destroyed.

18 **Q. Did the importance of the Document Retention Policy shift during your tenure at the
19 TIA?**

20 A. Yes. Later in my tenure, the Document Retention Policy was made a major priority.
21 Whereas the Document Retention Policy may have been around twentieth on the list of the
22 TIA's priorities previously, it became extremely important, the second, third, or fourth
23 priority at the TIA.

24 **Q. Why?**

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1 A. Clayton Utz became concerned that the Document Retention Policy at the TIA was not as
2 "airtight" as the TIA's member companies, and wanted to revamp the TIA's Document
3 Retention Policy to make sure that it was as secure as the member companies' policies.

4 **Q. What do you mean by revamp?**

5 A. Both make changes in the actual Document Retention Policy itself to make it more
6 secure, and also make changes to the implementation of the Document Retention Policy to
7 make sure that it was functioning as it should, and that no documents that should have
8 been destroyed had been retained.

9 **Q. Was the Document Retention Policy a frequent subject of discussion?**

10 A. It was a constant subject of discussion with Clayton Utz. There was great concern that the
11 TIA was a "weak link" and that discovery at the TIA could become a problem for the
12 member companies.

13 **Q. Do you have any understanding of the document retention policies of the member
14 companies of the TIA?**

15 A. Yes.

16 **Q. Were the document retention policies of the member companies similar to the
17 Document Retention Policy at the TIA?**

18 A. Yes. While I don't recall the specifics of all of the policies, all of the policies were similar
19 to each other and the TIA's policy. The purpose of each of the policies was the same, to
20 prevent potentially damaging documents from being discovered, so significant differences
21 would have made little sense.

22 **Q. Do you recall whether there was ever any discussion between member companies at
23 the monthly TIA meetings over which documents each member should destroy?**

24 A. Yes. The only reason that the TIA existed was so that there would be an industry voice

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1 and industry cohesion on certain issues. It was not unusual for someone at a meeting to sit
2 down and say, "Has anybody got such-and-such a survey? Has anybody got such-and-such
3 a document, and if you've got it, we at this company didn't like it, and we've got rid of it
4 and we suggest you review it if you've got it."

5 **Q. Mr. Welch, are you familiar with any scientific research that was done on behalf of**
6 **the tobacco industry?**

7 A. Yes.

8 **Q. How are you familiar with tobacco industry scientific research?**

9 A. The commissioning of certain research was a subject of monthly TIA meetings that
10 included each of the member companies.

11 **Q. Was scientific research a subject addressed at every monthly TIA meeting?**

12 A. Scientific research was often a subject addressed at meetings.

13 **Q. What was discussed?**

14 A. Companies would discuss the latest research, both external and internal to the companies.
15 They would talk about the ramifications of the research and, in the case of external
16 negative for the industry, what actions needed to be taken to respond to the new findings.
17 The meetings were an opportunity for the companies to share and discuss new science.

18 **Q. You've stated that the CEOs of the member companies and the government and**
19 **public affairs officers attended monthly TIA meetings. Did scientists from member**
20 **companies attend either of the monthly TIA meetings?**

21 A. No.

22 **Q. Do you know why scientific studies were discussed at TIA meetings that were not**
23 **attended by the scientists?**

24 A. Yes. The basis for commissioning the scientific studies discussed at TIA meetings was

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1 not science, it was litigation, legislation, or public affairs concerns. Whenever any
2 scientific report was published that was negative for the industry, it was standard practice
3 that the member companies would immediately seek to hire a scientist who would do
4 research or a study that would produce a result that was favorable to the industry. If the
5 anti-industry research said “white” the member companies would contract for a report that
6 said “black.”

7 **Q. What do you mean by "seek to hire a scientist who would do research or a study that**
8 **would produce a result that was favorable to the industry"?**

9 A. Discussions would be held as to the desired outcomes, what research result would be
10 beneficial to the industry. Then the companies would talk about whether they knew a
11 scientist or scientists who could be counted upon to produce the result desired by the
12 industry. Why would a company fund research that confirmed a bad result?

13 **Q. Were these reports jointly funded by the member companies?**

14 A. No. While the companies would confer regarding which scientist or scientists should do
15 the study, and what results they were seeking, one company or another other would end up
16 funding and commissioning the report.

17 **Q. Did the member companies ever share any of their internal scientific research with**
18 **you?**

19 A. Yes. There were occasions when the government and public affairs officers would consult
20 with me and other members of the TIA on their internal activities in that regard.

21 **Q. Did the member companies ever send their internal scientific studies or research to**
22 **the TIA library?**

23 A. Yes. From time to time they would.

24 **Q. Which companies provided the library with their internal scientific studies or**

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1 **research?**

2 A. To the best of my knowledge and the best of my recollection, all the companies, with the
3 exception of Reynolds, contributed from time to time to the library and what we had.

4 **Q. Would the member companies consult with you regarding their own internal
5 scientific research?**

6 A. Yes.

7 **Q. Why would the member companies consult with you about their own internal
8 scientific research if you were not a scientist?**

9 A. To ensure that there would be no conflicts with the research being done by the other
10 member companies. As the industry spokesperson one had to know what was going on in
11 the industry and the industry comprised the members.

12 **Q. You testified that one of your responsibilities at the TIA was to make public
13 statements on behalf of the industry, correct?**

14 A. Yes.

15 **Q. Would your statements be reviewed and approved prior to your making the
16 statements?**

17 A. Yes. Clayton Utz would review and it give its approval to each proposed public statement
18 before it was made. If it was a live event, like a radio or television interview, Clayton Utz
19 would go over talking points in advance on the expected subject matters of the interview
20 and how I should answer specific questions, much like the proposed questions and answers
21 that Glenn Eggleton distributed that you showed me earlier.

22 **Q. Do you know why Clayton Utz, a law firm, would review and approve your public
23 statements?**

24 A. Yes. The review was to ensure that the public statements on behalf of the industry did not

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1 have a negative impact on any smoking and health litigation position.

2 **Q. Did anyone else review the proposed public statements?**

3 A. Often the public statements would be discussed generally with the CEOs and government
4 and public affairs officers of the member companies at TIA meetings, but the only ones
5 who would actually review and approve my public statements were the lawyers at Clayton
6 Utz.

7 **Q. You have stated that you are not a scientist, but did you receive any scientific
8 training on smoking and health issues while at the TIA?**

9 A. Yes. Glenn Eggleton, a solicitor for Clayton Utz, taught a mini-course on epidemiology to
10 certain members of the TIA.

11 **Q. On how many occasions did you attend this epidemiology class held by Mr.
12 Eggleton?**

13 A. Once a week for a morning for a number of weeks. How many I don't recall.

14 **Q. Were any materials distributed as part of Mr. Eggleton's course?**

15 A. Yes. However, we were always required to return the materials to Mr. Eggleton. We were
16 not permitted to take the materials outside of the room.

17 **Q. Did you find this requirement unusual?**

18 A. Yes. However, it was consistent with the member companies concerns regarding the
19 dissemination of potentially damaging documents.

20 **Q. Previously, you stated that your tenure at the TIA was marked by a great deal of
21 pressure on the industry from potential litigation and by anti-smoking organizations.
22 Other than destroying documents to prevent anyone from using those documents
23 against the industry, did the TIA take any other actions to address these threats?**

24 A. Yes. The flip side of destroying our own documents was to try to acquire documents held

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1 by the anti-smoking organizations.

2 **Q. How did you do that?**

3 A. As the anti-smoking organizations were not as careful as the industry about getting rid of
4 documents, the TIA paid individuals to go through the dumpsters and rubbish of anti-
5 smoking organizations in order to find any potentially relevant documents relating to their
6 plans or their funding.

7 **Q. Did TIA employees go through the anti-smoking trash?**

8 A. No. The TIA contracted with a private inquiry agent, Winston Gregory & Associates.
9 Winston Gregory employed a number of individuals who would go through the anti-
10 smoking organizations' garbage. Mr. Michael Rigo was one such person - Mr. Rigo was
11 nicknamed "the garbageman".

12 **Q. Who was aware of this practice?**

13 A. The member companies. My boss, John Devine, Chairman of the TIA. Several other
14 employees at the TIA. Clayton Utz may have been aware, I don't recall.

15 **Q. Did the member companies approve of this practice?**

16 A. Yes. If they hadn't approved of it, they would not have paid for it, and we wouldn't have
17 done it.

18 **Q. Were you able to get any useful information about the plans and practices of anti-
19 smoking organizations through these methods?**

20 A. Yes.

21 **Q. Do you recall any of the "anti-smoking organizations" that would be monitored in
22 this fashion?**

23 A. Yes. The New South Wales Cancer Council and the Heart Foundation. In addition the
24 TIA once used Winston Gregory's contacts within Little Athletics in Canberra - Little

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1 Athletics is a children's sports association, like Little League, but for athletes, that is track
2 and field instead of baseball - to request that a prominent anti-smoking lobbyist, Ms. Rene
3 Bittoun, give an anti-smoking seminar to the children at Little Athletics. It was thought
4 that Ms. Bittoun, despite often claiming that she had a degree from a certain university,
5 hadn't in fact completed her course of study. Winston Gregory arranged for a video to be
6 made of the seminar - ostensibly so that other children could see it - but in fact to try to
7 catch her on camera reciting possibly false credentials so that it could later be used against
8 her.

9 **Q. Did you ever visit the United States as the CEO of the TIA?**

10 A. I did.

11 **Q. When was that?**

12 A. October 1991.

13 **Q. What was your itinerary?**

14 A. I flew from Sydney to Kansas City and met with Don Hoel, Robert Northrip, and other
15 lawyers at Shook, Hardy & Bacon. I was there for a day. Then I went to Washington, DC
16 and met with my American counterpart, Sam Chilcote, and with John Rupp, of the firm of
17 solicitors, Covington & Burling. Then I went to London and met with David Bacon of
18 British American Tobacco, which was the parent of WD & HO Wills. From London I
19 went to an Infotab conference in Hamburg, and came home via Paris where I had a two-
20 day break.

21 **Q. Do you recall the subject matter of your meeting with Shook, Hardy & Bacon?**

22 A. We discussed TIA matters relating to passive smoking and other subjects, but I can't recall
23 the discussion with any specificity.

24 **Q. Why did you meet with Shook, Hardy & Bacon?**

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1 A. Since I was travelling across the globe to the Infotab meeting anyway, it was thought that
2 it would useful for me to travel to the U.S. and meet with both Shook, Hardy & Bacon and
3 Covington & Burling, since they played such central roles in international coordination of
4 tobacco related issues.

5 **Q. Do you recall the subject matter of your meeting with Covington & Burling?**

6 A. It was similar to my discussion with Shook Hardy. The only specific subject matter I
7 recall is passive smoking.

8 **Q. Why did you meet with Sam Chilcote?**

9 A. For the same reasons I met with Shook Hardy & Bacon and Covington & Burling - I was
10 travelling anyway, and Mr. Chilcote was my American counterpart.

11 **Q. Do you recall what you discussed with Mr. Chilcote?**

12 A. I recall very little. I do recall that Mr. Chilcote expressing to me his feelings that he felt
13 hamstrung and frustrated by limitations imposed on him by the U.S. Tobacco Institute's
14 member companies. I was introduce to other U.S. Tobacco Institute employees and taken
15 to lunch in Georgetown.

16 **Q. Have you previously testified in relation to the document retention policies of the
17 TIA?**

18 A. No.

19 **Q. Have you previously given any interviews in relation to the document retention
20 policies of the TIA?**

21 A. Yes.

22 **Q. When?**

23 A. The first instance was following the McCabe decision, I believe sometime in November of
24 2002, I did an interview with an Australian television program "60 Minutes".

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1 **Q. How did you come to give that interview?**

2 A. When the McCabe decision was released, it received a great deal of media attention. As I
3 understood it, much of the decision addressed the document retention policies of Wills and
4 the TIA, and the fact that the document retention policies were in fact document
5 destruction policies. I telephoned Peter Gordon, of Slater & Gordon, the solicitor for the
6 plaintiff Rolah McCabe to let him know that the facts the McCabe judgment, in relation to
7 the TIA's Document Retention Policy and Wills's Document Retention Policy, were
8 correct. I then had a brief meeting with Mr. Gordon, at which we discussed the TIA's
9 Document Retention Policy. Following that meeting he arranged for me to be interviewed
10 by Charles Woolley on 60 Minutes.

11 **Q. What other interviews did you give?**

12 A. I also gave interviews to Kerry O'Brien and Nick McKenzie of the Australian Broadcast
13 Corporation.

14 **Q. How did you come to give those interviews?**

15 A. Following the release of the Court of Appeals decision that overturned McCabe a producer
16 for the ABC television program "The 7:30 Report" rang me at home one day saying that
17 Kerry O'Brien, the host of the program, was "interested in talking to you about document
18 retention".

19 **Q. And how did you respond?**

20 A. That I'd be prepared to be interviewed.

21 **Q. Why did you agreed to be interviewed?**

22 A. I felt it was the right thing to do. We did have a policy, and at the time it was being
23 indicated that there was no such policy. I felt it was appropriate to set the record straight.
24 In addition, I am fed up with business barons and politicians using "spin doctors" to

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1 manipulate the facts.

2 **Q. I'm handing you U.S. Exhibit 89,397. Is this following document a transcript of your**
3 **interview with Mr. O'Brien?**

4 A. It appears to be.

5 **Q. Do you see the broadcast of your interview with Mr. O'Brien?**

6 A. I did not see it live, but I did watch a recording of the interview.

7 **Q. Did the interview occur on July 23, 2003?**

8 A. I don't recall the exact date, but it was in that time period.

9 **Q. Does the substance of this transcript accord with your recollection of the interview?**

10 A. Yes.

11 **Q. How did the interview with Nick McKenzie come to pass?**

12 A. In a similar fashion. A producer for Mr. McKenzie's radio program contacted me at home,
13 asked me if I would be willing to be interviewed, and I agreed.

14 **Q. I'm handing you U.S. Exhibit 89,398. Is this document a transcript of your interview**
15 **with Mr. McKenzie?**

16 A. It appears to be.

17 **Q. Did the interview occur on July 23, 2003, also?**

18 A. I recall it being the same day as the O'Brien interview.

19 **Q. Does the substance of this transcript accord with your recollection of the interview?**

20 A. Yes.

21 **Q. Did you receive monetary compensation for any of these interviews?**

22 A. No.

23 **Q. Are you being compensated for your testimony in this case?**

24 A. No. I am neither receiving, nor have I sought compensation.

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1 **Q. Mr. Welch, why are you voluntarily testifying before this Court?**

2 A. As I said before, I am sick of people in high places manipulating and distorting the truth,
3 and then hiding behind "spin doctors" or others who try to cover up their actions. There
4 was a Document Retention Policy and its purpose was to keep damaging documents out of
5 the courts and out of the public. When the United States Department of Justice asked me
6 to testify about it, I agreed.

7 **Q. Thank you for your time, Mr. Welch.**

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