

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA)
United States Department of Justice)
950 Pennsylvania Avenue, N.W.)
Washington, D.C. 20530-0001,)

Plaintiff,)

vs.)

PHILIP MORRIS, INC.)
120 Park Avenue)
New York, New York 10017;)

R.J. REYNOLDS TOBACCO COMPANY)
401 North Main Street)
Winston-Salem, North Carolina 27102;)

BROWN & WILLIAMSON TOBACCO CORPORATION)
1500 Brown & Williamson Tower)
Louisville, Kentucky 40202,)
directly and as successor by merger to)
AMERICAN TOBACCO COMPANY)
1500 Brown & Williamson Tower)
Louisville, Kentucky 40202;)

LORILLARD TOBACCO COMPANY)
714 Green Valley Road)
Greensboro, North Carolina 27408;)

THE LIGGETT GROUP, INC.)
300 North Duke Street)
Durham, North Carolina 27702,)
directly and as parent to)
LIGGETT & MYERS, INC.)
810 Craghead Street)
Danville, Virginia 24541;)

AMERICAN TOBACCO COMPANY)
1500 Brown & Williamson Tower)
Louisville, Kentucky 40202,)
directly and as successor to)
the tobacco interests of)
AMERICAN BRANDS, INC.)
1700 East Putnam Avenue)
Old Greenwich, Connecticut 06870;)

PHILIP MORRIS COMPANIES, INC.)
120 Park Avenue)
New York, New York 10017;)

APPENDIX TO COMPLAINT

CIV. NO.

BRITISH AMERICAN TOBACCO, P.L.C.)
Windsor House)
50 Victoria Street)
London SW1H ONL, England,)
directly and as successor to)
B.A.T. INDUSTRIES P.L.C.)
Windsor House)
50 Victoria Street)
London SW1H ONL, England;)
))
BRITISH AMERICAN TOBACCO)
(INVESTMENTS) LTD.)
Globe House)
1 Water Street)
London WC2R 3LA, England,)
directly and as successor to)
BRITISH-AMERICAN TOBACCO)
COMPANY, LTD.)
Globe House)
4 Temple Place)
London WC2R 2PG, England;)
))
THE COUNCIL FOR TOBACCO)
RESEARCH--U.S.A., INC.)
900 Third Avenue)
New York, New York 10022; and)
))
THE TOBACCO INSTITUTE, INC.)
1875 I Street N.W., Suite 800)
Washington, D.C. 20006,)
))
Defendants.)
_____)

APPENDIX TO COMPLAINT^{1/}

Set forth below is a listing of Racketeering Acts, all of which are alleged, in the Complaint filed by the United States of America in the above-entitled action, to have been committed as part of a pattern of racketeering activity. The Racketeering Acts set forth in this Appendix are incorporated by reference and re-alleged as if fully set forth in the Complaint filed by the United States of America.

^{1/} This Appendix is essential to the determination of this action under LCvR 5.1(g).

RACKETEERING ACTS RELATING TO MAIL FRAUD

1. **Racketeering Act No. 1:** On or about January 4, 1954, defendants PHILIP MORRIS, REYNOLDS, BROWN & WILLIAMSON, LORILLARD, AMERICAN, and co-conspirators caused to be placed in numerous newspapers nationwide, including The Washington Post, a daily newspaper, an advertisement entitled "A Frank Statement To Smokers," which newspaper was then sent and delivered by the United States mails to subscribers and others. In this advertisement, defendants promised to safeguard the health of smokers, support disinterested research into smoking and health, and reveal to the public the results of research into the effects of smoking on smokers' health.

2. **Racketeering Act No. 2:** On or about July 15, 1957, defendants PHILIP MORRIS, REYNOLDS, BROWN & WILLIAMSON, LORILLARD, and AMERICAN, through the TOBACCO INDUSTRY RESEARCH COMMITTEE (predecessor to defendant COUNCIL FOR TOBACCO RESEARCH), did knowingly cause a press release entitled "Scientist Comments on Benzopyrene Report" to be sent and delivered by the United States mails to newspapers and news outlets. This press release disputed the United States Surgeon General's report that Benzopyrene had been identified in cigarette smoke, and stated that scientists had "generally concluded" that Benzopyrene in cigarette smoke cannot be a cause of cancer in smokers.

3. **Racketeering Act No. 3:** On or about November 27, 1959, defendants PHILIP MORRIS, REYNOLDS, BROWN & WILLIAMSON, LORILLARD, and AMERICAN, through defendant TOBACCO INSTITUTE, did knowingly cause a press release to be sent and delivered by the United States mails to newspapers and news outlets. This press release contained

statements attacking an article written by then-United States Surgeon General Leroy Burney about the hazards of smoking.

4. **Racketeering Act No. 4:** On or about December 9, 1959, defendant REYNOLDS did knowingly receive from the mails a letter addressed to W.A. Sugg, R.J. Reynolds Tobacco Company, Winston-Salem, North Carolina, from George McGovern of William Esty Company, 100 East 42nd Street, New York, New York. The letter included a marketing study of the smoking habits of high school and college students.

5. **Racketeering Act No. 5:** On or about July 6, 1961, defendants PHILIP MORRIS, REYNOLDS, BROWN & WILLIAMSON, LORILLARD, and AMERICAN, through defendant TOBACCO INSTITUTE, did knowingly cause a press release to be sent and delivered by the United States mails to newspapers and news outlets. This press release was titled "Allen Gives Tobacco Institute Position on 'Health Scares'" and stated that "[t]he tobacco industry itself is more interested than anyone else in finding out and making public the true facts about tobacco and health" and that "research in recent years has produced findings that weaken rather than support the claim that smoking is a major contributor to lung cancer."

6. **Racketeering Act No. 6:** On or about July 9, 1963, defendants PHILIP MORRIS, REYNOLDS, BROWN & WILLIAMSON, LORILLARD, and AMERICAN, through defendant TOBACCO INSTITUTE, did knowingly cause a press release to be sent and delivered by the United States mails to newspapers and news outlets. This press release stated "the tobacco industry's position that smoking is a custom for adults and that it is not the intent of the industry to promote or encourage smoking among youth" and "[t]he industry wants to make it demonstrably clear that it does not wish to promote or encourage smoking among youth."

7. **Racketeering Act No. 7:** On or about November 3, 1963, defendants PHILIP MORRIS, REYNOLDS, BROWN & WILLIAMSON, LORILLARD, and AMERICAN, through defendant TOBACCO INSTITUTE, did knowingly cause a press release to be sent and delivered by the United States mails to newspapers and news outlets. Through this press release, defendants stated that they were on a "crusade" to find answers to the "questions about smoking and health," and that it "should be a crusade neither for nor against tobacco. It is a crusade for research" Defendants asserted the position that the question of causation was still unresolved.

8. **Racketeering Act No. 8:** On or about March 6, 1964, defendants PHILIP MORRIS, REYNOLDS, BROWN & WILLIAMSON, LORILLARD, and AMERICAN, through defendant TOBACCO INSTITUTE, did knowingly cause a press release to be sent and delivered by the United States mails to newspapers and news outlets. This press release announced the reorganization of the Tobacco Industry Research Committee into the Council for Tobacco Research and represented that CTR's research policy would be set by doctors and scientists independent of the tobacco industry.

9. **Racketeering Act No. 9:** On or about November 23, 1965, defendant COUNCIL FOR TOBACCO RESEARCH did knowingly receive from the mails a letter addressed to Edwin J. Jacob, Esq., Cabell Medinger Forsyth & Decker, 51 West 51st Street, Rockefeller Center, New York, New York, counsel to CTR, from Alvan R. Feinstein, Associate Professor of Medicine, Yale School of Medicine, New Haven, Connecticut, requesting funding for research on data indicating that the clinical effects of cancers were no worse in smokers than in nonsmokers.

10. **Racketeering Act No. 10:** On or about December 29, 1965, defendants PHILIP MORRIS, REYNOLDS, BROWN & WILLIAMSON, LORILLARD, and AMERICAN, through defendant TOBACCO INSTITUTE, did knowingly cause a press release to be sent and delivered by the United States mails to newspapers and news outlets. Through this press release, defendants stated that research had not established whether smoking causes disease and this was still an "open question." "If there is something in tobacco that is causally related to cancer or any other disease, the tobacco industry wants to find out what it is, and the sooner the better."

11. **Racketeering Act No. 11:** On or about February 28, 1966, defendants BROWN & WILLIAMSON did knowingly cause to be sent and delivered by the United States mails, and BRITISH-AMERICAN TOBACCO COMPANY (predecessor to BAT INVESTMENTS) thereafter received, a letter addressed to A. D. McCormick, Esq., BAT Co., P.O. Box 482, 7 Millbank, London, SW1, England, from Addison Yeaman, Esq., General Counsel of Brown & Williamson, promoting cooperation among defendants in resisting regulation by Congress and by the Federal Trade Commission by attacking existing scientific studies linking smoking to disease, by making representations to governmental regulators that defendants were engaged in accelerated research, and by suppressing information unfavorable to defendants.

12. **Racketeering Act No. 12:** On or about October 21, 1966, defendants PHILIP MORRIS, REYNOLDS, BROWN & WILLIAMSON, LORILLARD, and AMERICAN, through defendant TOBACCO INSTITUTE, did knowingly cause a press release to be sent and delivered by the United States mails to newspapers and news outlets. Through this press release, defendants stated that they knew "of no valid scientific evidence demonstrating that either 'tar' or nicotine is responsible for any human illness."

13. **Racketeering Act No. 13:** On or about January 12, 1967, defendants PHILIP MORRIS, REYNOLDS, BROWN & WILLIAMSON, LORILLARD, LIGGETT, and AMERICAN, through defendant COUNCIL FOR TOBACCO RESEARCH, did knowingly cause to be sent and delivered by the United States mails letters addressed separately to each member of CTR's Ad Hoc Committee:

Miss Janet Brown, Esq., Chadbourne Park, Whiteside & Wolff, 25 Broadway, New York, New York 10004, counsel to American; Kevin L. Carroll, Esq., Donald J. Cohn, Esq., and Francis K. Decker, Esq., Webster Sheffield Fleischmann Hitchcock & Chrystie, 1 Rockefeller Plaza, New York, New York 10020, counsel to Liggett; Edward J. Cooke, Jr., Esq., Davis, Polk, Wardwell, Sunderland, & Kiendl, 1 Chase Manhattan Plaza, New York, New York 10005, counsel to Reynolds; Alexander Holtzman, Esq., Conboy, Hewitt, O'Brien & Boardman, 20 Exchange Place, New York, New York 10005, counsel to Philip Morris; Edwin J. Jacob, Esq., Cabell Medinger Forsyth & Decker, 51 W. 51st Street, New York, NY 10019, counsel to CTR; William W. Shinn, Esq., Shook, Hardy, Ottman, Mitchell & Bacon, 915 Grand Avenue, Kansas City, MS 64106; and Edward DeHart, Hill & Knowlton, 1735 K Street, NW, Washington, DC 20006,

each of which was from David R. Hardy, Esq., counsel to CTR's Ad Hoc Committee, requesting the recipients to recommend persons who could act as witnesses before Congressional hearings to perpetuate defendants' "open question" position, and assigning the members of the Ad Hoc Committee oversight of CTR "special projects" designed to be of "practical use" for defendants during congressional hearings.

14. **Racketeering Act No. 14:** On or about February 2, 1967, defendant COUNCIL FOR TOBACCO RESEARCH did knowingly cause to be sent and delivered by the United States mails a letter addressed to David R. Hardy, Esq., counsel to CTR's Ad Hoc Committee, from William W. Shinn, Esq., Shook, Hardy, Ottman, Mitchell & Bacon, 915 Grand Avenue, Kansas City, Missouri 64106, a member of CTR's Ad Hoc Committee, and copied the Ad Hoc Committee and Ed DeHart of Hill & Knowlton. The letter responded to Hardy's request for recommendations of persons who could act as witnesses before congressional hearings to perpetuate defendants' "open question" position.

15. **Racketeering Act No. 15:** On or about May 19, 1967, defendant COUNCIL FOR TOBACCO RESEARCH did knowingly cause to be sent and delivered by the United States mails a letter addressed to Alexander Holtzman, Esq., Conboy, Hewitt, O'Brien & Boardman, 20 Exchange Place, New York, New York 10005, counsel to Philip Morris, from William W. Shinn, Esq., regarding CTR Special Projects, outlining a proposal to support and publicize research advancing the theory of smoking as beneficial to health as a stress reducer, even for "coronary prone" persons; representing that stress (rather than nicotine addiction), explains why smoking clinics fail; and proposing to publicize the "image of smoking as 'right' for many people . . . as a scientifically approved 'diversion' to avoid disease causing stress."

16. **Racketeering Act No. 16:** On or about October 3, 1968, defendant PHILIP MORRIS did knowingly cause to be sent and delivered by the United States mails a letter addressed to David R. Hardy, Esq., Shook, Hardy, Ottman, Mitchell, and Bacon, 915 Grand Avenue, Kansas City, Missouri from Philip Morris Assistant General Counsel Alexander

Holtzman, proposing "Special Project" funding for a scientist whose application to CTR for funding was previously turned down but who was likely to produce data useful to defendants.

17. **Racketeering Act No. 17:** On or about October 21, 1968, defendants PHILIP MORRIS, REYNOLDS, BROWN & WILLIAMSON, LORILLARD, LIGGETT, and AMERICAN, through defendant COUNCIL FOR TOBACCO RESEARCH, did knowingly cause to be sent and delivered by the United States mails letters separately addressed to Liggett General Counsel Frederick P. Haas, Esq.; American General Counsel Cyril Hetsko, Esq.; Reynolds General Counsel H. Henry Ramm, Esq.; Philip Morris General Counsel Paul D. Smith, Esq.; and Brown & Williamson General Counsel Addison Yeaman, Esq., from David R. Hardy, Esq., Shook, Hardy & Bacon, 915 Grand Avenue, Kansas City, Missouri, counsel to CTR's Committee of Counsel. The letter proposed "Special Project" funding for a scientist whose application to CTR for funding was previously turned down but who was likely to produce data useful to defendants.

18. **Racketeering Act No. 18:** In or about 1968, the exact date being unknown, defendants PHILIP MORRIS, REYNOLDS, BROWN & WILLIAMSON, LORILLARD, AMERICAN, and co-conspirators, through defendant TOBACCO INSTITUTE, did knowingly distribute reprints of an article written by Stanley Frank and originally published in True magazine, and caused copies of said document to be sent and delivered by the United States mails, addressed to various physicians and civic leaders. This article disputed the link between smoking and disease, and was distributed anonymously.

19. **Racketeering Act No. 19:** On or about May 27, 1969, defendant PHILIP MORRIS did knowingly cause to be sent by the United States mails a letter from Philip Morris

Vice President for Corporate Research and Development, Helmut Wakeham, to defendant Dr. M. Hausermann, Director of Research and Quality Control, Fabriques de Tabacs, Reunies S.A., Neuchatel-Serrieres, Switzerland. The letter communicated the approval of Paul Smith, Philip Morris' General Counsel, for the publication by Dr. Hausermann of a paper describing the Smoke Exposure Machine developed at Philip Morris' Cologne, Germany, Institute for Biological Research, known as INBIFO. The letter clarified the scope of the article, and stated that "[t]he paper should not include any statements with regard to the effect of smoke on the rats in terms of initiation of disease, etc."

20. **Racketeering Act No. 20:** On or about September 10, 1969, defendant PHILIP MORRIS did receive from the United States mails a letter from M. Hausermann, Fabriques de Tabacs, Reunies S.A., Neuchatel Switzerland, addressed to Philip Morris Vice President for Corporate Research and Development, Dr. Helmut Wakeham, in which Dr. Hausermann reported that he had, following consultation with Alex Holtzman, Esq., in-house counsel at Philip Morris, decided not to submit for presentation a paper entitled "Cigarette Consumption Related to Cigarette 'Strength.'" Dr. Hausermann reported that Mr. Holtzman felt "that this paper should not be presented, because it might be used as an argument for tar-and-nicotine delivery indication on the pack and in ads."

21. **Racketeering Act No. 21:** On or about April 30, 1970, defendants PHILIP MORRIS, REYNOLDS, BROWN & WILLIAMSON, LORILLARD, and AMERICAN, through defendant TOBACCO INSTITUTE, did knowingly cause a press release to be sent and delivered by the United States mails to newspapers and news outlets. This press release falsely stated that

the American Cancer Society had refused to release experimental data underlying the Auerbach/Hammond "smoking beagles" study.

22. **Racketeering Act No. 22:** On or about July 22, 1970, defendants REYNOLDS, PHILIP MORRIS, BROWN & WILLIAMSON, AMERICAN, LIGGETT, and LORILLARD did knowingly cause to be sent and delivered by the United States mails, and defendant COUNCIL FOR TOBACCO RESEARCH thereafter received, a letter from H.H. Ramm, Esq., General Counsel for Reynolds, addressed to Dr. Robert C. Hockett, Associate Scientific Director, CTR, 110 E. 59th Street, New York, New York. The letter states that "counsel representing Philip Morris, Brown & Williamson, American Brands, Liggett & Myers and Lorillard which companies together with Reynolds participate in Special Projects have advised that if the Scientific Advisory Board does not approve this project the same can be treated as an approved Special Project."

23. **Racketeering Act No. 23:** On or about December 1, 1970, defendants PHILIP MORRIS, REYNOLDS, BROWN & WILLIAMSON, LORILLARD, and AMERICAN, through defendant TOBACCO INSTITUTE, did knowingly cause to be placed in The Washington Post, a daily newspaper, an advertisement entitled "The question about smoking and health is still a question," which newspaper was then sent and delivered by the United States mails to subscribers and others. In this advertisement, the Tobacco Institute discredited the causal link between smoking and disease, stated that "in the interest of absolute objectivity" defendants "ha[ve] supported totally independent research efforts with completely non-restrictive funding," and deliberately created the false impression that all research results have been freely published.

24. **Racketeering Act No. 24:** On or about May 25, 1971, defendants PHILIP MORRIS, REYNOLDS, BROWN & WILLIAMSON, LORILLARD, and AMERICAN, through

defendant TOBACCO INSTITUTE, did knowingly cause a press release to be sent and delivered by the United States mails to newspapers and news outlets. This press release contained statements indicating that "many eminent scientists" believe that "the question of smoking and health is still very much a question."

25. **Racketeering Act No. 25:** On or about July 1, 1971, defendant COUNCIL FOR TOBACCO RESEARCH did knowingly caused to be sent and delivered by the United States mails a letter from CTR Associate Scientific Director Robert C. Hockett, to Reynolds Vice President and General Counsel Henry H. Ramm, Esq., in which Hockett endorsed and passed along to Ramm a suggestion from two employees of Philip Morris that CTR sponsor a scientific conference on the "benefits" of smoking, in the wake of a private conference on the effects of nicotine and smoking on the central nervous system. Dr. Hockett also requested that the Committee of General Counsel guarantee the financing of the conference.

26. **Racketeering Act No. 26:** On or about August 20, 1971, defendant REYNOLDS did knowingly cause to be sent and delivered by the United States mails, and defendant PHILIP MORRIS did receive, a letter addressed to Joseph F. Cullman, III, Chairman of the Board, Philip Morris Inc., 100 Park Avenue, New York, New York 10017, from Alexander H. Galloway, Chairman, R.J. Reynolds Industries, Inc., Winston-Salem, North Carolina, discussing defendants' joint position with respect to smoking and health research.

27. **Racketeering Act No. 27:** On or about November 15, 1971, defendants PHILIP MORRIS, REYNOLDS, BROWN & WILLIAMSON, LORILLARD, and AMERICAN, through defendant TOBACCO INSTITUTE, did knowingly cause a press release to be sent and delivered by the United States mails to newspapers and news outlets. This press release contained

statements suggesting that smoking is not harmful to pregnant women or their babies and indicating that many doctors and scientists believe that "the question of smoking and health is an open one."

28. **Racketeering Act No. 28:** On or about December 22, 1971, defendant PHILIP MORRIS did knowingly cause to be sent and delivered by the United States mails, and defendants LIGGETT, LORILLARD, REYNOLDS, and BROWN & WILLIAMSON did thereafter receive, copies of a memorandum separately addressed to Liggett employee Dr. W.W. Bates, Reynolds employee Dr. Murray Senkus, Lorillard employee Dr. Alexander W. Spears, and Brown & Williamson employee Dr. Iver W. Hughes, from Philip Morris employee Dr. Helmut Wakeham, describing a research proposal of Drs. Auerbach and Hammond concerning the effects of smoking on health, indicating that the National Cancer Institute's likely funding of the research "is a matter of considerable concern to the tobacco industry," and discussing defendants' plan to have lawyers and scientists meet with [the National Cancer Institute ("NCI")] to discourage NCI from funding the research.

29. **Racketeering Act No. 29:** On or about February 1, 1972, defendants PHILIP MORRIS, REYNOLDS, BROWN & WILLIAMSON, LORILLARD, and AMERICAN, through defendant TOBACCO INSTITUTE, did knowingly cause a press release to be sent and delivered by the United States mails to newspapers and news outlets. This press release contained the statement that "[t]he cigarette industry is as vitally concerned or more so than any other group in determining whether cigarette smoking causes human disease, whether there is some ingredient as found in cigarette smoke that can be shown to be responsible, and if so, what it is," and that

"despite this effort the answers to the critical questions about smoking and health are still unknown."

30. **Racketeering Act No. 30:** On or about May 19, 1972, defendant BROWN & WILLIAMSON did knowingly cause to be sent by the United States mails, and defendant BRITISH-AMERICAN TOBACCO COMPANY (predecessor to BAT INVESTMENTS) thereafter received, a letter addressed to A.D. McCormick, Esq., BAT Co., P.O. Box 482, 7 Millbank, London SW1P 3JE, England, from Addison Yeaman, Esq., General Counsel, Brown & Williamson, in which Yeaman provided comments on a statement BAT Co. proposed to make in response to a statement anticipated from a British government minister. Yeaman referred to a cablegram sent to him by McCormick on May 17, 1972, and to a telephone conversation in which McCormick and Yeaman had participated on May 18, 1972. Yeaman commented that BAT Co.'s proposed statement concerning the causal relationship between cigarette smoking and disease "is somewhat less affirmative in tone than would be welcome on this side." He gave his approval to alternative versions that described the controversy on this issue. Finally, Yeaman stated in a postscript, "In the penultimate sentence of the B.A.T. draft statement would you object to changing the word 'habit' to 'practice?'"

31. **Racketeering Act No. 31:** On or about November 7, 1973, defendants PHILIP MORRIS, REYNOLDS, BROWN & WILLIAMSON, LORILLARD, LIGGETT, and AMERICAN, through defendant COUNCIL FOR TOBACCO RESEARCH, did knowingly cause to be sent and delivered by the United States mails letters separately addressed to Thomas F. Ahrensfield, Esq., Philip Morris; DeBaun Bryant, Esq., Brown & Williamson; Frederick P. Haas, Esq., Liggett; Cyril F. Hetsko, Esq., American; Henry C. Roemer, Esq., Reynolds, and Arthur J.

Stevens, Esq., Lorillard, from Donald K. Hoel, Esq., Shook, Hardy & Bacon, 915 Grand Avenue, Kansas City, Missouri. The letter recommends approval to fund research by Dr. Richard J. Hickey as a CTR Special Project for two years, beginning September 1973, and cites Hickey's efforts to show that air pollution is primarily responsible for many chronic diseases attributed to smoking.

32. **Racketeering Act No. 32:** On or about November 26, 1973, defendant BROWN & WILLIAMSON did knowingly cause to be sent and delivered by the United States mails a letter from DeBaun Bryant, Esq., counsel to Brown & Williamson, addressed to Donald K. Hoel, Esq., Shook, Hardy & Bacon, 915 Grand Avenue, Kansas City, Missouri. The letter conveys Brown & Williamson's approval to fund research by Dr. Richard J. Hickey as a CTR Special Project, beginning September 1973, while noting that "[a]s is usual our support is contingent upon the participation in this project by the other companies."

33. **Racketeering Act No. 33:** On or about January 11, 1974, defendants PHILIP MORRIS, REYNOLDS, BROWN & WILLIAMSON, LORILLARD, and AMERICAN, through defendant TOBACCO INSTITUTE, did knowingly cause a press release to be sent and delivered by the United States mails to newspapers and news outlets. This press release attacked the 1964 U. S. Surgeon General's Report on smoking and health and dismissed scientific research linking smoking to lung cancer, emphysema, and low birth weight in babies born to women who smoked during pregnancy.

34. **Racketeering Act No. 34:** On or about January 14, 1975, defendants PHILIP MORRIS, REYNOLDS, BROWN & WILLIAMSON, LORILLARD, and AMERICAN, through defendant TOBACCO INSTITUTE, did knowingly cause a press release to be sent and delivered

by the United States mails to newspapers and news outlets. This press release contained the statement that "domestic tobacco companies . . . have committed some \$50 million to help support researchers who are seeking the truth."

35. **Racketeering Act No. 35:** In or about September 1975, defendants PHILIP MORRIS, REYNOLDS, BROWN & WILLIAMSON, LORILLARD, and AMERICAN, through defendant TOBACCO INSTITUTE, did knowingly cause a press release to be sent and delivered by the United States mails to newspapers and news outlets. This press release contained statements noting that, as early as 1963, the Tobacco Institute had issued statements denying that the Cigarette Companies targeted youth smokers. The press release also noted that in July 1969, the Chairman of the Tobacco Institute, Joseph F. Cullman, III, testified before a Senate Commerce subcommittee that the Cigarette Companies intended to avoid advertising representing cigarette smoking as essential to social prominence, success, or sexual attraction or depicting smokers engaged in sports or other activities requiring exceptional stamina or conditioning.

36. **Racketeering Act No. 36:** During 1975, the exact dates being unknown, defendant REYNOLDS caused to be placed in various print media, including Newsweek, a weekly magazine, an advertisement for Vantage cigarettes, which magazine was then sent and delivered by the United States mails to subscribers and others. This text included the language, "If you're like a lot of smokers these days, it probably isn't smoking that you want to give up. It's some of that 'tar' and nicotine you've been hearing about."

37. **Racketeering Act No. 37:** During 1975, the exact dates being unknown, defendant LORILLARD caused to be placed in various print media, including Family Circle magazine, an advertisement for True cigarettes, which magazine was then sent and delivered by

the United States mails to subscribers and others. This advertisement depicted a young woman and contained text stating, "I thought about all I'd read and said to myself, either quit or smoke True. I smoke True."

38. **Racketeering Act No. 38:** On or about January 4, 1976, defendants PHILIP MORRIS, REYNOLDS, BROWN & WILLIAMSON, LORILLARD, LIGGETT, and AMERICAN, through defendant COUNCIL FOR TOBACCO RESEARCH, did knowingly cause to be sent and delivered by the United States mails letters separately addressed to Thomas F. Ahrensfeld, Esq., Philip Morris, Joseph Greer, Esq., Liggett, Cyril F. Hetsko, Esq., American, Ernest Pepples, Esq., Brown & Williamson, Henry C. Roemer, Esq., Reynolds, and Arthur J. Stevens, Esq., Lorillard, from Donald K. Hoel, Esq., Shook, Hardy & Bacon, Mercantile Bank Tower, 1101 Walnut, Kansas City, Missouri. The letter recommends funding Dr. Richard J. Hickey as a CTR Special Project during 1977, noting a report of Dr. Hickey that states, "Our findings for lung cancer appear to raise doubt concerning claims . . . that cigarette smoking is the primary cause of lung cancer, particularly in males."

39. **Racketeering Act No. 39:** During 1976, the exact dates being unknown, defendant REYNOLDS caused to be placed in various print media an advertisement for Vantage cigarettes, which newspapers and magazines were then sent and delivered by the United States mails to subscribers and others. The advertisement included text stating, "Vantage cuts down substantially on the 'tar' and nicotine you may have become concerned about."

40. **Racketeering Act No. 40:** On or about January 13, 1977, defendant PHILIP MORRIS did knowingly cause to be sent and delivered by the United States mails a letter from Alexander Holtzman, Esq., counsel to Philip Morris addressed to Donald K. Hoel, Esq., Shook,

Hardy & Bacon, Mercantile Bank Tower, 1101 Walnut, Kansas City, Missouri, approving Philip Morris' participation in a grant to fund Dr. Richard J. Hickey's CTR Special Project during 1977.

41. **Racketeering Act No. 41:** On or about March 31, 1977, defendant PHILIP MORRIS did knowingly cause to be sent and delivered by the United States mails a letter addressed to: Dr. Max Hausermann, Philip Morris Europe S.A., P.O. Box 11, 2003 Neuchatel, Switzerland, from Robert B. Seligman, Vice President for Research and Development, suggesting that the recipient comply with company policy of avoiding direct mail contact with Philip Morris' Cologne, Germany research facility by sending materials to a "dummy" mail address.

42. **Racketeering Act No. 42:** On or about December 29, 1977, defendants PHILIP MORRIS, REYNOLDS, BROWN & WILLIAMSON, LORILLARD, and AMERICAN, through defendant TOBACCO INSTITUTE, did knowingly cause a press release to be sent and delivered by the United States mails to newspapers and news outlets. This press release contained statements suggesting that the contribution of smoking to disease was still an "open question" and that tobacco smoke does not harm nonsmokers.

43. **Racketeering Act No. 43:** On or about January 17, 1979, defendants PHILIP MORRIS, REYNOLDS, BROWN & WILLIAMSON, LORILLARD, and AMERICAN, through defendant TOBACCO INSTITUTE, did knowingly cause a press release to be sent and delivered by the United States mails to newspapers and news outlets. This press release contained statements that defendants had spent 75 million dollars on research over 20 years to learn whether smoking is harmful but that "the case against cigarettes is not satisfactorily demonstrated."

44. **Racketeering Act No. 44:** On or about November 20, 1979, defendants PHILIP MORRIS, REYNOLDS, BROWN & WILLIAMSON, LORILLARD, LIGGETT, and

AMERICAN, through defendant COUNCIL FOR TOBACCO RESEARCH, did knowingly cause to be sent and delivered by the United States mails letters separately addressed to Thomas F. Ahrensfield, Esq., Philip Morris; Max Crohn, Esq., Reynolds; Joseph Greer, Esq., Liggett; Arnold Henson, Esq., American; Ernest Pepples, Esq., Brown & Williamson; Arthur J. Stevens, Esq., Lorillard; and William Shinn, Esq., Shook, Hardy & Bacon, Kansas City, Missouri, from CTR counsel Edwin J. Jacob, Jacob & Medinger, New York, New York. The memorandum described a proposal to research the relationship between stress and cardiac disorder, and stated, "I have discussed this with Bill Shinn, who agrees with me that this study is well worth doing and that we should recommend it to you for approval, financing to be handled through Special Account #4."

45. **Racketeering Act No. 45:** On or about November 27, 1979, defendant BROWN & WILLIAMSON did knowingly cause to be sent and delivered by the United States mails a letter from Ernest Pepples, Esq., Brown & Williamson Vice President and General Counsel, addressed to CTR counsel Edwin J. Jacob, Esq., Jacob & Medinger, 1270 Avenue of the Americas, New York, New York 10020, regarding a proposal to fund a study on the relationship between stress and cardiac disorder, and agreeing that the study should be financed through Special Account #4.

46. **Racketeering Act No. 46:** In or about 1979, the exact date being unknown, defendants PHILIP MORRIS, REYNOLDS, BROWN & WILLIAMSON, LORILLARD, and AMERICAN, through defendant TOBACCO INSTITUTE, did knowingly publish a document entitled "Fact or Fancy?" and caused copies of said document to be sent and delivered by the United States mails to newspapers and news outlets. This publication contained statements

asserting that smoking does not contribute to low birth weight in babies and suggesting that cigarette smoking is not harmful to women.

47. **Racketeering Act No. 47:** During 1979, the exact dates being unknown, defendant PHILIP MORRIS caused to be placed in various national magazines an advertisement for Merit cigarettes entitled "Best Move Yet," which magazines were then sent and delivered by the United States mails to subscribers and others. The advertisement stated that Merit's "ability to satisfy over long periods of time could be the most important evidence to date that MERIT science has produced what it claims: The first real alternative for high tar smokers."

48. **Racketeering Act No. 48:** During 1979, the exact dates being unknown, defendant PHILIP MORRIS caused to be placed in various national magazines an advertisement for Merit cigarettes entitled "Merit Taste Eases Low Tar Decision," which magazines were then sent and delivered by the United States mails to subscribers and others. The advertisement stated that Merit's "ability to satisfy over long periods of time could be the most important evidence to date that MERIT is what it claims to be: The first real alternative for high tar smokers."

49. **Racketeering Act No. 49:** On or about May 13, 1981, defendants PHILIP MORRIS, REYNOLDS, BROWN & WILLIAMSON, LORILLARD, and AMERICAN, through defendant TOBACCO INSTITUTE, did knowingly cause a press release to be sent and delivered by the United States mails to newspapers and news outlets. This press release contained statements that members of the Tobacco Institute had a "long-standing policy" of discouraging smoking by children and suggested that smoking is a free choice when done by adults.

50. **Racketeering Act No. 50:** On or about November 9, 1981, defendant BRITISH-AMERICAN TOBACCO COMPANY (predecessor to BAT INVESTMENTS) did knowingly

cause a letter to be delivered by the United States mails, and defendant BROWN & WILLIAMSON did thereafter receive, a letter addressed to Mr. J. Kendrick Wells III, Esq., Brown & Williamson, 1600 West Hill Street, P.O. Box 35090, Louisville, Kentucky 40232, and signed by Sarah Mash, Secretary to M.J. Leach, BAT Co. The letter referenced an enclosed "copy of the Parliamentary Brief in order that you can see how the B & W amendments have been incorporated into the text," and sought Wells' approval of the revised document. Brown & Williamson's amendments intended to ensure that the Brief did not contain anything that could be construed as an admission regarding the health effects of smoking.

51. **Racketeering Act No. 51:** On or about December 17, 1981, defendant BRITISH-AMERICAN TOBACCO COMPANY (predecessor to BAT INVESTMENTS) did knowingly cause to be delivered by the United States mails, and defendant BROWN & WILLIAMSON did thereafter receive, a letter addressed to J. Kendrick Wells III, Esq., Brown & Williamson, 1600 West Hill Street, P.O. Box 35090, Louisville, Kentucky 40232, and copied to Don Hoel, Esq., Shook, Hardy & Bacon, Kansas City, Missouri, from M.J. Leach, BAT Co. The letter enclosed, for review by Wells and Ernest Pepples, another Brown & Williamson attorney, a draft "UK Parliamentary Brief" in which BAT Co.'s position on smoking and health incorporates "open controversy" language urged by Brown & Williamson.

52. **Racketeering Act No. 52:** On or about February 12, 1982, defendant BROWN & WILLIAMSON did knowingly cause to be sent and delivered by the United States mails a letter from Ernest Pepples, Esq., Brown & Williamson General Counsel, addressed to Patrick M. SIRRIDGE, Esq., Shook, Hardy & Bacon, 20th Floor, Mercantile Tower, 1101 Walnut, Kansas City,

Missouri. The letter concurs in the recommendation to renew an annual grant to Dr. Arthur Furst to be paid from Special Fund 4.

53. **Racketeering Act No. 53:** On or about April 7, 1982, defendant BRITISH-AMERICAN TOBACCO COMPANY (predecessor to BAT INVESTMENTS) did knowingly cause to be delivered by the United States mails, and defendant BROWN & WILLIAMSON did thereafter receive, a letter addressed to W.L. Telling, Esq., Brown & Williamson International Tobacco, 1600 West Hill Street, Louisville, Kentucky 40232, from G.O. Brooks, BAT Co. The letter replied to a request from Telling for a report on a Smoker Compensation Study that examined how a cigarette smoker's method of smoking alters tar and nicotine delivery, and enclosed "a paper from one of our recent Product Knowledge Seminars [entitled "Human Smoking Behaviour"] which contains a summary of the work and a number of the tables from the report."

54. **Racketeering Act No. 54:** On or about April 8, 1982, defendant BRITISH-AMERICAN TOBACCO COMPANY (predecessor to BAT INVESTMENTS) did knowingly cause to be delivered by the United States mails, and defendant BROWN & WILLIAMSON did thereafter receive, a letter addressed to J. Kendrick Wells III, Esq., Corporate Counsel, Brown & Williamson, 1600 West Hill Street, Louisville, Kentucky 40232, from L.C.F. Blackman, BAT Co., in which Blackman informed Wells that "[w]e have acted on the various points you have made" regarding a BAT Co. position paper relating to smoking and health.

55. **Racketeering Act No. 55:** On or about April 14, 1982, defendant BAT INDUSTRIES (predecessor to BAT P.L.C.) did knowingly cause to be delivered by the United States mails, and defendant BROWN & WILLIAMSON did thereafter receive, a letter addressed

to Dr. I.W. Hughes, Brown & Williamson, 1600 West Hill Street, P.O. Box 35090, Louisville, Kentucky 40232, from T.J. Walker, BAT Industries, Windsor House, 50 Victoria Street, London SW1H 0NL, England. The letter referenced materials regarding the "BAT Board Guidelines" on public affairs matters, and referred to enclosed "secret" papers entitled "Assumptions and Strategies of the Smoking Issues."

56. **Racketeering Act No. 56:** On or about March 17, 1983, defendants PHILIP MORRIS, REYNOLDS, BROWN & WILLIAMSON, LORILLARD, and AMERICAN, through defendant TOBACCO INSTITUTE, did knowingly cause a press release to be sent and delivered by the United States mails to newspapers and news outlets. This press release contained statements disputing the addictiveness of cigarette smoking.

57. **Racketeering Act No. 57:** On or about July 20, 1983, defendant BRITISH-AMERICAN TOBACCO COMPANY (predecessor to BAT INVESTMENTS) did knowingly cause to be delivered by the United States mails, and defendant BROWN & WILLIAMSON did thereafter receive, a letter addressed to K. Wells, Esq., Brown & Williamson, 1600 West Hill Street, P.O. Box 35090, Louisville, Kentucky 40202, from Miss A. Johnson, BAT Co. The mailing included "the T.I.'s Australian booklet on the Waxman Hearings" and a note that Johnson had written "to Public Affairs Department about the way in which they can use Dr. Colby's article and the Waxman Hearings' summary in relation to the overseas companies." Johnson also informed Wells that BAT Co. intended to make the smoking and health "controversy" a "central issue" in future presentations to members of the British Parliament.

58. **Racketeering Act No. 58:** On or about July 27, 1983, defendant PHILIP MORRIS, did receive from the United States mails a letter addressed to Frederic S. Newman,

Esq., Philip Morris International, 120 Park Avenue, New York, New York 10017, from Patrick M. Sirridge, Esq., Shook, Hardy & Bacon, Kansas City, Missouri, enclosing a memorandum summarizing research on the addictive features of nicotine conducted by Philip Morris and recommending suppression of such research.

59. **Racketeering Act No. 59:** On or about September 9, 1983, defendant BAT INDUSTRIES (predecessor to BAT P.L.C.) did knowingly cause to be delivered by the United States mails, and defendant PHILIP MORRIS did thereafter receive, a letter from P. Sheehy, Chairman of BAT Industries, addressed to George Weissman, Philip Morris, Inc., 120 Park Avenue, New York, New York, 10017. The letter discussed an advertisement of Philip Morris' Holland affiliate, and stated: "I find it incomprehensible that Philip Morris would weigh so heavily the short-term commercial advantage from deprecating a competitor's brand while weighing so lightly the long-term adverse impact from an on-going anti-smoking programme. . . . In doing so, Philip Morris . . . makes a mockery of Industry co-operation on smoking and health issues. . . ."

60. **Racketeering Act No. 60:** On or about January 23, 1984, defendant BRITISH-AMERICAN TOBACCO COMPANY (predecessor to BAT INVESTMENTS) did knowingly cause to be delivered by the United States mails, and defendant BROWN & WILLIAMSON did thereafter receive, a letter addressed to Mr. E.E. Kohnhorst, Brown & Williamson, P.O. Box 35090, Louisville, Kentucky 40232, from C.I. Ayres, Group Research & Development Centre, BAT Co., Southampton, England, in which Ayres discussed and sought Kohnhorst's comments concerning an upcoming conference on nicotine to be held in Southampton on June 6-8, 1984. Ayres acknowledged the existence of articles in the scientific literature linking nicotine with various diseases and predicted that the Cigarette Companies would be "under pressure to reduce

the delivery of nicotine. My translation is that, in the future, we have to evolve ways and means of ensuring that smaller amounts of nicotine continue to give a satisfactory 'reward' to the smoker."

61. **Racketeering Act No. 61:** In or about April 1984, the exact date being unknown, defendant REYNOLDS did knowingly cause to be placed in numerous publications nationwide, including U.S. News and World Report, a weekly magazine, an advertisement entitled "We don't advertise to children," which magazine was then sent and delivered by the United States mails to subscribers and others. This advertisement contained the statement "we don't want young people to smoke," and further stated, "Kids don't pay attention to cigarette ads, and that's exactly as it should be."

62. **Racketeering Act No. 62:** In or about July 1984, the exact dates being unknown, defendant REYNOLDS did knowingly cause to be sent and delivered by the United States mails letters from Reynolds' employee Ann Griffin, addressed to various children who wrote to Reynolds. In the letter, Reynolds claimed to be engaged in an effort to determine the harmful effects of smoking for the benefit of smokers, promised to support disinterested research into smoking and health, and claimed that research had not revealed any "conclusive" evidence linking smoking to disease.

63. **Racketeering Act No. 63:** On or about August 28, 1984, defendant BROWN & WILLIAMSON did knowingly cause to be sent and delivered by the United States mails, and defendant BRITISH-AMERICAN TOBACCO CO., LTD. (predecessor to BAT INVESTMENTS) did thereafter receive, a letter addressed to Mr. Ray Pritchard, Deputy Chairman, BAT Co., P.O. Box 482, Westminster House, 7 Millbank, London, England, from

Ernest Pepples, Esq., Senior Vice President and General Counsel of Brown & Williamson, enlisting the recipient's help in suppressing a BAT employee's conclusions regarding the addictiveness of nicotine because the conclusion contradicted the position taken by Brown & Williamson in ongoing litigation.

64. **Racketeering Act No. 64:** In or about 1984, the exact date being unknown, defendant REYNOLDS did knowingly cause to be placed in daily newspapers an advertisement entitled "Can we have an open debate about smoking?" which newspapers were then sent and delivered by the United States mails to subscribers and others. In this advertisement Reynolds claimed that "studies which conclude that smoking causes disease have regularly ignored significant evidence to the contrary," that this "significant evidence" comes from research "completely independent of the tobacco industry," and that "reasonable people" would consider the link between smoking and disease to be an "open controversy."

65. **Racketeering Act No. 65:** In or about 1984, the exact date being unknown, defendant REYNOLDS did knowingly cause to be placed in numerous newspapers and magazines nationwide, including The New York Times, a daily newspaper, an advertisement entitled "Smoking and health: Some facts you've never heard about," which newspapers and magazines were then sent and delivered by the United States mails to subscribers and others. This advertisement contained the statement, "You hear a lot these days about reports that link smoking to certain diseases. This evidence has led many scientists and other people to conclude that smoking causes these diseases. But there is significant evidence on the other side of this issue. It is regularly ignored by the critics of smoking. And you rarely hear about it in the public media. But, it has helped persuade many scientists that the case against smoking is far from closed."

Further, the advertisement contained the statement, "No one wants to know the real answers more than R.J. Reynolds. That is why we are providing major funding for scientific research. The funds are given at arms length to independent scientists who are free to publish whatever they find. We don't know where such research may lead. But this much we can promise: when we find the answers, you'll hear about it."

66. **Racketeering Act No. 66:** On or about February 18, 1986, defendants PHILIP MORRIS, REYNOLDS, BROWN & WILLIAMSON, LORILLARD, LIGGETT, and AMERICAN, through defendant COUNCIL FOR TOBACCO RESEARCH, did knowingly cause to be sent and delivered by the United States mails letters addressed separately to Alexander Holtzman, Esq., Philip Morris; Wayne W. Juchatz, Esq., Reynolds; Josiah Murray III, Esq., Liggett; Ernest Pepples, Esq., Brown & Williamson; Paul Randour, Esq., American; and Arthur J. Stevens, Esq., Lorillard, from Donald K. Hoel, Esq., Shook, Hardy & Bacon, Mercantile Bank Tower, 1101 Walnut, Kansas City, Missouri. The letter recommends funding the work of Dr. Theodor Sterling for the years 1986-1988 as a CTR Special Project.

67. **Racketeering Act No. 67:** On or about February 25, 1986, defendants PHILIP MORRIS, REYNOLDS, BROWN & WILLIAMSON, LORILLARD, LIGGETT, and AMERICAN, through defendant COUNCIL FOR TOBACCO RESEARCH, did knowingly cause to be sent and delivered by the United States mails letters addressed separately to Alexander Holtzman, Esq., Philip Morris; Wayne W. Juchatz, Esq., Reynolds; Josiah S. Murray III, Esq., Liggett; Ernest Pepples, Esq., Brown & Williamson; Paul A. Randour, Esq., American; and Arthur J. Stevens, Esq., Lorillard, from Patrick M. Sirridge, Esq., Shook, Hardy & Bacon, 1101 Walnut,

Kansas City, Missouri, counsel to CTR. The letter advised the Cigarette Companies to continue funding through CTR research by a "Special Fund" scientist.

68. **Racketeering Act No. 68:** On or about March 11, 1986, defendant REYNOLDS did knowingly cause to be sent and delivered by the United States mails a letter from Reynolds counsel Wayne W. Juchatz, Esq., and addressed to Patrick M. Sirridge, Esq., Shook, Hardy & Bacon, 1101 Walnut, Kansas City, Missouri, counsel to CTR, in which Reynolds approved payment through CTR to a scientist conducting "Special Fund" research.

69. **Racketeering Act No. 69:** On or about March 13, 1986, defendant PHILIP MORRIS COMPANIES did knowingly cause to be sent and delivered by the United States mails a letter from Philip Morris Companies employee Helen Frustace addressed to Donald K. Hoel, Esq., Shook, Hardy & Bacon, Mercantile Bank Tower, 1101 Walnut, Kansas City, Missouri, indicating approval of request to support Dr. Theodore Sterling's research project "provided it is also approved by four other companies."

70. **Racketeering Act No. 70:** On or about April 1, 1986, defendants PHILIP MORRIS, REYNOLDS, BROWN & WILLIAMSON, LORILLARD, LIGGETT, and AMERICAN, through defendant COUNCIL FOR TOBACCO RESEARCH, did knowingly cause to be sent and delivered by the United States mails letters addressed separately to Alexander Holtzman, Esq., Philip Morris; Wayne W. Juchatz, Esq., Reynolds; Josiah S. Murray III, Liggett; Ernest Pepples, Esq, Brown & Williamson; Paul A. Randour, Esq., American; and Arthur J. Stevens, Esq., Lorillard, from Donald K. Hoel, Esq., Shook, Hardy & Bacon, 1101 Walnut, Kansas City, Missouri, counsel to CTR. The letter advised the Cigarette Companies to continue funding through CTR research by a "Special Project" scientist.

71. **Racketeering Act No. 71:** On or about April 23, 1986, defendant PHILIP MORRIS COMPANIES did knowingly cause to be sent and delivered by the United States mails a letter from Eric A. Taussig, Esq., Assistant General Counsel, Philip Morris Companies, addressed to Dr. Paul C. Mele, 3205 Whispering Pines Drive, Silver Spring, Maryland. The letter alleged that Dr. Mele had violated a confidentiality agreement with Philip Morris and warned that "[i]n the future, you are expected to comply" with the agreement.

72. **Racketeering Act No. 72:** On or about April 23, 1986, defendant PHILIP MORRIS COMPANIES did knowingly cause to be sent and delivered by the United States mails a letter from Eric A. Taussig, Esq., Assistant General Counsel, Philip Morris Companies, addressed to Dr. Victor J. DeNoble, 5603 Fox Run Drive, Plainsboro, New Jersey. The letter alleged that Dr. DeNoble had violated a confidentiality agreement with Philip Morris and warned that "[i]n the future, you are expected to comply" with the agreement.

73. **Racketeering Act No. 73:** On or about September 4, 1986, defendants PHILIP MORRIS, REYNOLDS, BROWN & WILLIAMSON, LORILLARD, LIGGETT, and AMERICAN, through defendant COUNCIL FOR TOBACCO RESEARCH, did knowingly cause to be sent and delivered by the United States mails letters addressed separately to Alexander Holtzman, Esq., Philip Morris; Wayne W. Juchatz, Esq., Reynolds; Josiah S. Murray III, Liggett; Ernest Pepples, Esq, Brown & Williamson; Paul A. Randour, Esq., American; and Arthur J. Stevens, Esq., Lorillard, from Patrick M. Sirridge, Esq., Shook, Hardy & Bacon, 1101 Walnut, Kansas City, Missouri, advising the companies to continue funding research by a former "Special Project" scientist through the "Shook, Hardy & Bacon Special Account."

74. **Racketeering Act No. 74:** On or about September 10, 1986, defendant PHILIP MORRIS COMPANIES did knowingly cause to be sent and delivered by the United States mails a letter from Eric A. Taussig, Esq., Assistant General Counsel, Philip Morris Companies, addressed to Dr. Paul C. Mele, 3205 Whispering Pines Drive, Silver Spring, Maryland. The letter alleged that Dr. Mele and Dr. DeNoble had violated their respective confidentiality agreements with Philip Morris and stated that "The Company cannot tolerate this kind of conduct. . . . Any further breach of your agreement will result in action being taken."

75. **Racketeering Act No. 75:** On or about September 10, 1986, defendant PHILIP MORRIS COMPANIES did knowingly cause to be sent and delivered by the United States mails a letter from Eric A. Taussig, Esq., Assistant General Counsel, Philip Morris Companies, addressed to Dr. Victor J. DeNoble, 5603 Fox Run Drive, Plainsboro, New Jersey. The letter alleged that Dr. DeNoble and Dr. Mele had violated their respective confidentiality agreements with Philip Morris and stated that "The Company cannot tolerate this kind of conduct. . . . Any further breach of your agreement will result in action being taken."

76. **Racketeering Act No. 76:** From about April 1, 1988, through about June 30, 1988, defendant REYNOLDS caused an advertisement for Camel cigarettes to be placed in various print media, including the "Sporting News and other Jumbo Jr. Size Magazines," which magazines were then sent and delivered by the United States mails to subscribers and others. This advertisement was captioned "Get On Track With Camel's 75th Birthday!" and depicted the Joe Camel character in a Formula One-type automobile racing suit, opening a bottle of champagne, with racing cars whizzing by in the background.

77. **Racketeering Act No. 77:** On or about April 19, 1988, defendants PHILIP MORRIS, REYNOLDS, BROWN & WILLIAMSON, LORILLARD, LIGGETT, and AMERICAN, through defendant COUNCIL FOR TOBACCO RESEARCH, did knowingly cause to be sent and delivered by the United States mails letters separately addressed to Alexander Holtzman, Esq., Philip Morris; Wayne W. Juchatz, Esq., Reynolds; Josiah Murray III, Esq., Liggett; Ernest Pepples, Esq., Brown & Williamson; Paul Randour, Esq., American; and Arthur J. Stevens, Esq., Lorillard, from Bernard V. O'Neill, Jr., Esq., Shook, Hardy & Bacon, One Kansas City Place, 1200 Main Street, Kansas City, Missouri. The letter recommended funding Dr. Alvan Feinstein's work in clinical epidemiology as a CTR Special Project for two years.

78. **Racketeering Act No. 78:** On or about May 9, 1988, defendant PHILIP MORRIS COMPANIES did knowingly cause to be sent and delivered by the United States mails a letter from Philip Morris Companies employee Helen Frustace addressed to Bernard V. O'Neill, Jr., Esq., Shook, Hardy & Bacon, One Kansas City Place, 1200 Main Street, Kansas City, Missouri, indicating approval Dr. Rodger L. Bick's request for a one-year extension of the funding for his CTR Special Project.

79. **Racketeering Act No. 79:** On or about May 16, 1988, defendants PHILIP MORRIS, REYNOLDS, BROWN & WILLIAMSON, LORILLARD, and AMERICAN, through defendant TOBACCO INSTITUTE, did knowingly cause a press release to be sent and delivered by the United States mails to newspapers and news outlets. This press release contained statements disputing the addictiveness of cigarette smoking.

80. **Racketeering Act No. 80:** On or about May 16, 1988, defendant PHILIP MORRIS COMPANIES did knowingly cause to be sent and delivered by the United States mails

a letter from Philip Morris Companies employee Helen Frustace addressed to Donald K. Hoel, Esq., Shook, Hardy & Bacon, One Kansas City Place, 1200 Main Street, Kansas City, Missouri 64105. The letter indicated the approval of Alexander Holtzman, Esq., Philip Morris Companies, to renew Dr. Carl Seltzer's CTR Special Project funding.

81. **Racketeering Act No. 81:** On or about July 1, 1988, defendants PHILIP MORRIS, REYNOLDS, BROWN & WILLIAMSON, LORILLARD, and AMERICAN, through defendant TOBACCO INSTITUTE, did knowingly cause a press release to be sent and delivered by the United States mails to newspapers and news outlets. This press release contained statements disputing the addictiveness of cigarette smoking.

82. **Racketeering Act No. 82:** On or about August 18, 1988, defendant REYNOLDS did knowingly cause to be sent and delivered by the United States mails a letter from Reynolds employee Jo F. Spach addressed to Mr. Anthony A. Christina, 815 188th Street, Court E, Spanaway, WA 98387. The letter denied any causal link between smoking and disease.

83. **Racketeering Act No. 83:** During 1988, the exact dates being unknown, defendant REYNOLDS caused a multi-page advertisement for Camel cigarettes to be placed in various print media, including Sports Illustrated, which magazines were then sent and delivered by the United States mails to subscribers and others. The second page of the advertisement, which was captioned, "Some have it. Most don't," stated, "You can have it free!" and contained a coupon for a free pack of Camels. The advertisement depicted Joe Camel in the foreground, with a beautiful woman sitting on the hood of a convertible automobile in the background.

84. **Racketeering Act No. 84:** During 1989, the exact dates being unknown, defendant REYNOLDS caused advertisements for Camel cigarettes, to be placed in various print

media, including magazines, which magazines were then sent and delivered by the United States mails to subscribers and others. The advertisements were part of Program No. 900162, which involved "buy one, get one free coupons" and included the following advertisements:

a. An advertisement with the words "Bored? Lonely? Restless? What you need is" This advertisement featured the face of a beautiful woman gazing at the reader.

b. An advertisement captioned "Camel Smooth Moves." One such advertisement offered "Smooth Move #325 - Foolproof Dating Advice," and "Smooth Move #334 - How to impress someone at the beach." The "Foolproof dating advice" concluded with "[a]lways break the ice by offering her a Camel." The "advice" concerning the beach facetiously suggested that the reader "[r]un into the water, grab someone and drag her back to the shore, as if you've saved her from drowning. The more she screams, the better" and "[a]lways have plenty of Camels ready when the beach party begins."

c. An advertisement captioned "Smooth Move #437 - How to get a FREE pack even if you don't like to redeem coupons."

85. **Racketeering Act No. 85:** On or about January 11, 1990, defendant REYNOLDS did knowingly cause to be sent and delivered by the United States mails a letter addressed to Principal, Willow Ridge School, Amherst, New York, from Jo F. Sprach, Manager, Public Relations Department, Reynolds, claiming that defendants, in a sincere attempt to determine what harmful effects, if any, smoking might have on human health, established CTR, claiming that scientists do not know the causes of the chronic diseases reported to be associated with smoking, and stating that Reynolds intends to continue to support scientific research in a

continuing search for answers. The letter asked the recipient to pass this information along to her students.

86. **Racketeering Act No. 86:** On or about March 5, 1990, defendant REYNOLDS did knowingly cause to be sent and delivered by the United States mails a letter addressed to Mark Green, New York City Commissioner of Consumer Affairs, from James W. Johnston, Chairman and CEO of Reynolds. In response to a letter sent by Green to Louis V. Gerstner, Jr., Chairman and CEO of RJR Nabisco (predecessor to RJR Tobacco Holdings), in which Green had complained about the design of the "Joe Camel" advertising campaign in such a manner as to appeal to youths, Johnston stated that it "has long been an R.J. Reynolds policy not to induce youths to smoke," further stating that, as CEO of Reynolds, "I have reinforced this policy," and "I see no basis to conclude that R.J. Reynolds has conducted itself in an unethical, illegal or misleading manner."

87. **Racketeering Act No. 87:** On or about May 24, 1990, defendants PHILIP MORRIS, REYNOLDS, BROWN & WILLIAMSON, LORILLARD, and AMERICAN, through defendant TOBACCO INSTITUTE, did knowingly cause a press release to be sent and delivered by the United States mails to newspapers and news outlets. This press release contained statements suggesting that Cigarette Companies actively discourage smoking by young people.

88. **Racketeering Act No. 88:** On or about August 31, 1990, defendants PHILIP MORRIS, REYNOLDS, BROWN & WILLIAMSON, LORILLARD, LIGGETT, and AMERICAN, through defendant COUNCIL FOR TOBACCO RESEARCH, did knowingly cause to be sent and delivered by the United States mails letters addressed separately to Wayne W. Juchatz, Esq., Reynolds; Josiah S. Murray III, Esq., Liggett; Ernest Pepples, Esq, Brown &

Williamson; Paul A. Randour, Esq., American; Arthur J. Stevens, Esq., Lorillard; Charles R. Wall, Esq., Philip Morris Companies, from Patrick M. Sirridge, Esq., Shook, Hardy & Bacon, 1200 Main Street, Kansas City, Missouri 64105, advising that the Companies fund research to be conducted by a scientist who generated favorable results for defendants.

89. **Racketeering Act No. 89:** On or about September 18, 1990, defendant REYNOLDS did knowingly cause to be sent and delivered by the United States mails a letter addressed to Joanna Brown, from Joan F. Cockerham of the Reynolds Public Relations Department. Responding to concerns expressed by Ms. Brown about the "Joe Camel" ad campaign appealing to youth, the letter stated, "Our intention with this campaign, as with all of our advertising, is to appeal only to adult smokers. We would not have launched the current Camel campaign if we thought its appeal was to anyone other than this group."

90. **Racketeering Act No. 90:** On or about October 2, 1990, defendant AMERICAN did knowingly cause to be sent and delivered by the United States mails a letter addressed to Patrick M. Sirridge, Esq., Shook, Hardy & Bacon, 1200 Main Street, Kansas City, Missouri 64105, from Paul A. Randour, Esq., American Vice President and General Counsel, approving payment to a "Special Project" researcher.

91. **Racketeering Act No. 91:** On or about October 11, 1990, defendants PHILIP MORRIS, REYNOLDS, BROWN & WILLIAMSON, LORILLARD, and AMERICAN, through defendant TOBACCO INSTITUTE, did knowingly cause a press release entitled "Major New Initiatives to Discourage Youth Smoking Announced" to be sent and delivered by the United States mails to newspapers and news outlets. This press release contained statements suggesting that defendants had a "longstanding policy" of discouraging and preventing smoking by youth.

92. **Racketeering Act No. 92:** On or about June 4, 1991, defendant PHILIP MORRIS COMPANIES did knowingly cause to be sent and delivered by the United States mails a letter from Philip Morris Companies' Charles R. Wall, Esq., Vice President and Associate General Counsel, in New York, to: Philippa J. Casingena, Esq., British American Tobacco Company Ltd., England; John Evans, Esq., Ashurst Morris Crisp, England; Marion Funck, Esq., Reemtsma Cigaretten Fabriken GmbH, Germany; Alan D. Porter, Esq., Imperial Tobacco Limited, England; and James W. Seddon, Esq., Rothmans International Limited, in which Mr. Wall enclosed "a brief statement and a somewhat longer statement discussing the 'risk factor' language" relating defendants' position on the health effects of smoking.

93. **Racketeering Act No. 93:** On or about December 11, 1991, defendants PHILIP MORRIS, REYNOLDS, BROWN & WILLIAMSON, LORILLARD, and AMERICAN, through defendant TOBACCO INSTITUTE, did knowingly cause a press release to be sent and delivered by the United States mails addressed to newspapers and news outlets. This press release contained statements suggesting that the majority of smokers in the United States are of legal age when they begin smoking and that defendants have discouraged youth smoking.

94. **Racketeering Act No. 94:** On or about January 28, 1992, defendant REYNOLDS did knowingly cause to be sent and delivered by the United States mails a letter addressed to James Harrison, President of the Vermont Retail Grocers Association, from Yancey W. Ford, Jr., Executive Vice President for Sales of Reynolds, stating "R.J. Reynolds Tobacco Co. does not want youth to smoke" and denying in substance that the "Joe Camel" advertising campaign was directed at youth.

95. **Racketeering Act No. 95:** On or about May 18, 1992, defendant PHILIP MORRIS COMPANIES did knowingly cause to be sent and delivered by the United States mails a letter from Charles R. Wall, Esq., Vice President and Associate General Counsel, Philip Morris Companies, addressed to Bernard O'Neill, Esq., Shook, Hardy & Bacon, 1200 Main Street, Kansas City, Missouri. The letter accompanied a check representing Philip Morris' contribution to the research efforts of Theodor D. Sterling.

96. **Racketeering Act No. 96:** On or about August 28, 1992, defendant REYNOLDS did knowingly cause to be sent and delivered by the United States mails a letter addressed to Dr. Francis A. Neelon, Editor of the North Carolina Medical Journal, purporting to be from Dr. Robert G. Fletcher, Medical Director of Reynolds, but bearing a handwritten notation on the copy retained by Reynolds stating that it was "written by SWM for Dr. Fletcher," complaining about an article in the North Carolina Medical Journal, and stating about the author of the article, "He claims the tobacco industry spends huge amounts of money promoting its products to youth. This is blatantly false. None of Reynolds Tobacco's product advertising or promotions are directed toward anyone under the legal age to smoke."

97. **Racketeering Act No. 97:** During 1992, the exact dates being unknown, defendant REYNOLDS caused an advertisement captioned "Camel Lights" to be placed in various print media, including Sports Illustrated, a magazine, which magazines were then sent and delivered by the United States mails to subscribers and others. The advertisement depicted Joe Camel wearing sunglasses, a tee shirt, and blue jeans, with a pack of cigarettes rolled up in his sleeve and a lit cigarette hanging from his mouth, and casually leaning against a convertible automobile.

98. **Racketeering Act No. 98:** On or about March 11, 1993, defendants PHILIP MORRIS, REYNOLDS, BROWN & WILLIAMSON, LORILLARD, and AMERICAN, through defendant COUNCIL FOR TOBACCO RESEARCH, did knowingly cause to be sent and delivered by the United States mails letters addressed separately to Wayne W. Juchatz, Esq., Reynolds; Ernest Pepples, Esq., Brown & Williamson; Gilbert L. Klemann, II, Esq., American; Arthur J. Stevens, Esq., Lorillard; and Charles R. Wall, Esq., Philip Morris Companies, from Bernard V. O'Neill, Jr., Esq., Shook, Hardy & Bacon, 1200 Main Street, Kansas City, Missouri 64105, advising that the Cigarette Companies continue to fund research to be conducted by a scientist who generated favorable results for defendants and seeking financial contributions in proportion to each Cigarette Company's "market share" to support such research.

99. **Racketeering Act No. 99:** On or about November 12, 1993, defendant REYNOLDS did knowingly cause to be sent and delivered by the United States mails a letter addressed to Mr. Mark E. Smith, 26582 Mocine Avenue, Hayward, California 94544, from Reynolds employee Catherine Clinton. The letter denied the existence of any proof that smoking causes lung cancer, heart disease, or emphysema, and asserted that "a cause and effect relationship between smoking and disease has not been established."

100. **Racketeering Act No. 100:** In or about December 1994, the exact date being unknown, defendant PHILIP MORRIS did knowingly cause a press release to be sent and delivered by the United States mails to newspapers and news outlets. This press release stated that "Philip Morris is taking aggressive steps to keep cigarettes out of the hands of young people" and that the company sought to eliminate access to cigarettes by minors.

101. **Racketeering Act No. 101:** On or about October 31, 1996, defendant BAT INDUSTRIES (predecessor to BAT P.L.C.) did knowingly cause to be transmitted in interstate commerce by means of the mails comments for publication in the Wall Street Journal, which newspaper was then sent and delivered by the United States mails to subscribers and others. The Chief Executive of BAT Industries, Martin Broughton, denied charges that BAT Industries, including its Brown & Williamson subsidiary, concealed research linking smoking and disease. He stated: "We haven't concealed, we do not conceal and we will never conceal. We have no internal research which proves that smoking causes lung cancer or other diseases or, indeed, that smoking is addictive."

102. **Racketeering Act No. 102:** During 1996, the exact dates being unknown, defendant REYNOLDS caused multi-page advertisements captioned "Take a Rockin' Road Trip" and "Go ahead, it's on me," to be placed in various print media, including magazines which were then sent and delivered by the United States mails to subscribers and others. The advertisements depicted Joe Camel and offered gift certificates in the amount of \$25 to purchase tickets "to just about any Ticketmaster event," in exchange for 100 Camel Cash C-Notes.

All in violation of Title 18, United States Code, Sections 1341, and 2.

RACKETEERING ACTS RELATING TO WIRE FRAUD

103. **Racketeering Act No. 103:** On or about July 3, 1963, defendant BROWN & WILLIAMSON did knowingly cause to be sent by cable, and BRITISH-AMERICAN TOBACCO COMPANY (predecessor to BAT INVESTMENTS) received, a message from Addison Yeaman, Esq., Brown & Williamson General Counsel, to A.D. McCormick, Esq., BAT Co., in London, England, with copies to Messrs. Finch, Wade, and Griffith, reporting that W.T.

Hoyt, Executive Director of the TIRC had agreed to withhold a Battelle report from TIRC members or the Scientific Advisory Board, and further agreed that submitting certain information to the Surgeon General would be "undesirable."

104. **Racketeering Act No. 104:** On or about July 22, 1970, defendant LORILLARD did knowingly cause to be sent by telegram, and defendant REYNOLDS did receive, a message from Arthur J. Stevens, Esq., Lorillard General Counsel, to Henry Ramm, Esq., Reynolds Vice President and General Counsel, transmitting Lorillard's agreement to participate in a CTR Special Project that involved sponsoring a conference on the benefits of smoking.

105. **Racketeering Act No. 105:** On or about January 3, 1971, defendant PHILIP MORRIS did knowingly cause to be transmitted on the nationally televised CBS program *Face the Nation*, air date January 3, 1971, statements before a live television and radio audience by Joseph Cullman III, President and CEO of Philip Morris, that misrepresented Philip Morris' funding of independent research and denied that cigarettes are hazardous or pose a hazard to pregnant women or their infants.

106. **Racketeering Act No. 106:** On or about September 16, 1976, defendants BROWN & WILLIAMSON did knowingly cause to be transmitted, and BRITISH-AMERICAN TOBACCO COMPANY (predecessor to BAT INVESTMENTS) did receive, a letter cable addressed to G.C. Hargrove, BAT Co., London, England, from Ernest Pepples, Esq., Brown & Williamson, counseling BAT to maintain the same position in England as Brown & Williamson maintained in America that the use of tobacco is not unduly dangerous.

107. **Racketeering Act No. 107:** On or about February 25, 1981, defendant REYNOLDS did knowingly cause to be sent by telex a message from Reynolds' employee Frank

Colby addressed to Wilfried Dembach, Cologne, Germany, discussing the disciplining of a company employee who admitted publicly that smoking plays a significant role in causing cancer.

108. **Racketeering Act No. 108:** On or about October 26, 1983, defendants BAT INDUSTRIES (predecessor to BAT P.L.C.) and PHILIP MORRIS did knowingly cause to be transmitted a telephone conversation between BAT Industries employee Eric Alfred Albert Bruell, Esq., and Philip Morris Vice President Hugh Cullman, in which the participants agreed to continue the Cigarette Companies' internal agreement not to compete with one another on issues relating to smoking and health.

109. **Racketeering Act No. 109:** On or about April 14, 1994, defendant PHILIP MORRIS did knowingly cause to be transmitted the testimony of the President and Chief Executive Officer of Philip Morris, William I. Campbell, which was presented at a nationally televised hearing of the House Subcommittee on Health and the Environment. During this hearing, Mr. Campbell denied that nicotine is addictive, denied that Philip Morris research establishes that smoking is addictive, and denied that Philip Morris manipulates the amount of nicotine contained in cigarettes.

110. **Racketeering Act No. 110:** On or about April 14, 1994, defendant REYNOLDS did knowingly cause to be transmitted the testimony of the Chairman and Chief Executive Officer of Reynolds, James Johnston, which was presented at a nationally televised hearing of the House Subcommittee on Health and the Environment. During this hearing, Mr. Johnston denied that nicotine is addictive and denied that Reynolds manipulates the amount of nicotine contained in cigarettes.

111. **Racketeering Act No. 111:** On or about April 14, 1994, defendant LORILLARD did knowingly cause to be transmitted the testimony of the Chief Executive Officer of Lorillard, Andrew H. Tisch, which was presented at a nationally televised hearing of the House Subcommittee on Health and the Environment. During this hearing, Mr. Tisch denied that Lorillard manipulates the amount of nicotine contained in cigarettes.

112. **Racketeering Act No. 112:** On or about April 14, 1994, defendant LIGGETT did knowingly cause to be transmitted the testimony of the Chairman and Chief Executive Officer of Liggett, Edward A. Horrigan, Jr., which was presented at a nationally televised hearing of the House Subcommittee on Health and the Environment. During this hearing, Mr. Horrigan denied that Liggett manipulates the amount of nicotine contained in cigarettes.

113. **Racketeering Act No. 113:** On or about April 14, 1994, defendant AMERICAN did knowingly cause to be transmitted the testimony of the Chief Executive Officer of American, Donald S. Johnston, which was presented at a nationally televised hearing of the House Subcommittee on Health and the Environment. During this hearing, Mr. Johnston denied that American manipulates the amount of nicotine contained in cigarettes.

114. **Racketeering Act No. 114:** On or about May 9, 1994, defendant PHILIP MORRIS did knowingly cause to be transmitted a telefax letter addressed to The Honorable Henry Waxman, Chairman, Subcommittee on Health and the Environment, Committee on Energy and Commerce, 2415 Rayburn House Office Building, Washington, D.C. 20515-6118, from Dr. Cathy Ellis, Director of Research, Philip Morris. The letter denied that nicotine causes addiction, based on a definition of addiction overwhelmingly rejected by public and mental health

professionals: "intoxication, pharmacological tolerance, and physical dependence in a manner that would impair the smokers' ability to exercise a free choice to continue or to quit smoking."

115. **Racketeering Act No. 115:** On or about April 27, 1995, defendant BROWN & WILLIAMSON did transmit and cause to be transmitted a telephone call placed by Brown & Williamson employee Melanie Gnadinger to Brown & Williamson Japan employee Hiromi Mikami in furtherance of defendants' public assertions that smoking does not cause disease.

116. **Racketeering Act No. 116:** During 1999, the exact dates being unknown, defendant BROWN & WILLIAMSON did knowingly cause to be posted on the Brown & Williamson Internet web site a document entitled "Hot Topics: Smoking and Health Issues." Although Brown & Williamson recognized "that, by some definitions, including that of the Surgeon General in 1988, cigarette smoking would be classified as addictive," the company stated:

Brown & Williamson believes that the relevant issue should not be how or whether one chooses to define cigarette smoking as addictive based on an analysis of all definitions available. Rather, the issue should be whether consumers are aware that smoking may be difficult to quit (which they are) and whether there is anything in cigarette smoke that impairs smokers from reaching and implementing a decision to quit (which we believe there is not).

All in violation of Title 18, United States Code, Sections 1343 and 2.