

**EXCERPTS FROM JUDGE GLADYS KESSLERS' FINAL OPINION IN  
Civil Action No. 99-2496 (GK) United States v. Philip Morris, et al.\***

(Page 1)

On September 22, 1999, the United States brought this massive lawsuit against nine cigarette manufacturers of cigarettes and two tobacco-related trade organizations. The Government alleged that Defendants have violated, and continue to violate, the Racketeer Influenced and Corrupt Organizations Act (“RICO”) by engaging in a lengthy, unlawful conspiracy to deceive the American public about the health effects of smoking and environmental tobacco smoke, the addictiveness of nicotine, the health benefits from low tar, “light” cigarettes, and their manipulation of the design and composition of cigarettes in order to sustain nicotine addiction. ...

In particular, the Government has argued that, for approximately fifty years, the Defendants have falsely and fraudulently denied: (1) that smoking causes lung cancer and emphysema (also known as chronic obstructive pulmonary disease (“COPD”)), as well as many other types of cancer; (2) that environmental tobacco smoke causes lung cancer and endangers the respiratory and auditory systems of children; (3) that nicotine is a highly addictive drug which they manipulated in order to sustain addiction; (4) that they marketed and promoted low tar/light cigarettes as less harmful when in fact they were not; (5) that they intentionally marketed to young people under the age of twenty one and denied doing so; and (6) that they concealed evidence, destroyed documents, and abused the attorney-client privilege to prevent the public from knowing about the dangers of smoking and to protect the industry from adverse litigation results.

... [T]hat there is overwhelming evidence to support most of the Government’s allegations.

(Page 4)

Finally, a word must be said about the role of lawyers in this fifty-year history of deceiving smokers, potential smokers, and the American public about the hazards of smoking and second hand smoke, and the addictiveness of nicotine. At every stage, lawyers played an absolutely central role in the creation and perpetuation of the Enterprise and the implementation of its fraudulent schemes. They devised and coordinated both national and international strategy; they directed scientists as to what research they should and should not undertake; they vetted scientific research papers and reports as well as public relations materials to ensure that the interests of the Enterprise would be protected; they identified “friendly” scientific witnesses, subsidized them with grants from the Center for Tobacco Research and the Center for Indoor Air Research, paid them enormous fees, and often hid the relationship between those witnesses and the industry; and they devised and carried out document destruction policies and took shelter behind baseless assertions of the attorney client privilege.

(Page 15)

**FINDINGS OF FACT**

**III. CREATION, NATURE, AND OPERATION OF THE ENTERPRISEs**

The following Section sets forth in enormous detail the intricate, interlocking, and

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\* The full ruling is available at <http://coop.dcd.uscourts.gov/99-2496-082006a.pdf>. Citations have been deleted and some explanations or names added in [...].

overlapping web of national and international organizations, committees, affiliations, conferences, research laboratories, funding mechanisms, and repositories for smoking and health information which Defendants established, staffed, and funded in order to accomplish the following goals: counter the growing scientific evidence that smoking causes cancer and other illnesses, avoid liability verdicts in the growing number of plaintiffs' personal injury lawsuits against Defendants, and ensure the future economic viability of the industry.

(Page 18)

## **B. Creation of the Enterprise**

6. In December 1953, Paul M. Hahn, President of Defendant American, sent telegrams to the presidents of the seven other major tobacco companies and one tobacco growers organization, inviting them to meet and develop an industry response to counter the negative publicity generated by the studies linking cigarette smoking and lung cancer. The telegrams were sent to: Edward A. Darr, President of Defendant Reynolds; Benjamin F. Few, President of Defendant Liggett; William J. Halley, President of Defendant Lorillard; Timothy V. Hartnett, President of Defendant B&W; O. Parker McComas, President of Defendant Philip Morris; Joseph F. Cullman, Jr., President of Benson & Hedges; J.B. Hutson, President of Tobacco Associates, Inc.; and J. Whitney Peterson, President of United States Tobacco Co.

7. Executives from [Reynolds, Brown & Williamson, Philip Morris, Benson & Hedges, Tobacco Associates, Inc., and United States Tobacco Co.] met in New York City at the Plaza Hotel on December 14, 1953. The executives discussed (i) the negative publicity from the recent articles in the media, (ii) responding to the problem by jointly engaging a public relations counsel, and (iii) removing health themes from advertising. They also discussed Liggett's decision not to attend the meeting because "in the course of time the whole thing would blow over." The executives also authorized the five members of the group who had their offices in New York to engage the services of [the public relations firm] Hill & Knowlton on behalf of the whole committee; to meet with John Hill at the Plaza Hotel the next day, December 15th, to discuss the negative publicity problem; and to request that Hill & Knowlton, if it accepted the assignment, submit recommendations to the full committee at a subsequent meeting as to how to proceed. It is clear from all the surrounding circumstances that representatives of Hill & Knowlton had been contacted about taking on this assignment prior to December 14, 1953.

8. The tobacco company executives did not meet, as they have suggested, in an altruistic response to requests from the scientific community that the industry fund research on smoking and health. Rather, they convened a strategy meeting of the highest company officials to formulate an industry-wide response (a) to the public's growing anxiety generated by the negative publicity about the direction of scientific research on cigarettes and cancer, and (b) to what they accurately understood to be a major threat to their corporations' economic future.

(Page 21)

12. Ten days later, on December 24, 1953, Hill & Knowlton submitted a proposal regarding the tobacco industry's public relations campaign, recommending that the companies form a joint industry research committee that would sponsor independent scientific research on the health effects of smoking and announce the formation of the research committee nationwide as news and in advertisements. Hill & Knowlton also recommended that the companies fund objective research by scientists who were independent of the tobacco industry, and that an advisory board be established

composed of a group of distinguished scientists from the fields of medicine, research and education “whose integrity is beyond question.”

(page 22)

14. Four days later, on December 28, 1953, another meeting was held at the Plaza Hotel and was attended by [tobacco company executives] and three people from the public relations firm of Hill & Knowlton, .... The attendees agreed on Tobacco Industry Research Committee (“TIRC”) [later renamed the Council for Tobacco Research (CTR)] as the official name of the research committee; chose [a] temporary chairman of the committee; agreed that the search should begin immediately for a qualified director who, together with the companies' research directors, would recommend members for the research advisory board; and reviewed and accepted the Hill & Knowlton proposal regarding the tobacco industry's public relations campaign.

(page 32)

38. Defendants met frequently to discuss issues facing the Enterprise [that, like organized crime, was created to violate the law]. Beginning in 1954 and until 1970, representatives of member companies met regularly with TIRC/CTR staff. After CTR's incorporation, in 1971 and until 1999, the Enterprise met annually at CTR's meetings of members. At these meetings, representatives of the Enterprise discussed activities of CTR which furthered their goals such as Special Projects [research projects selected by industry lawyers, that bypassed nominal “peer review:” see below], the Literature Retrieval Division, contract research, public relations, the TIRC/CTR Scientific Advisory Board, and scientific conferences.

(Page 43)

60. TIRC focused its energies and resources in two areas -- public relations and scientific research. First, it served as a sophisticated public relations unit for Defendants [tobacco companies engaged in the Enterprise], especially in relation to growing public concern about the risks of smoking, by repeatedly attacking scientific studies that demonstrated the harms of cigarette smoke and insisting on the notion of an “open question” regarding cigarette smoking and health. Second, it developed a scientific research program that focused on basic processes of disease rather than evaluating the risks and harms associated with smoking -- the very subject that the industry had pledged to pursue through TIRC. From the outset, the dual functions of TIRC were intertwined, with the scientific program of TIRC always subservient to the goals of public relations.

(page 26)

### **C. TIRC/CTR – Tobacco Industry Research Committee/Council for Tobacco Research - USA**

21. With the creation of TIRC in January 1954, the Defendants established a sophisticated public relations vehicle -- based on the premise of conducting independent scientific research -- to deny the harms of smoking and reassure the public. That essential strand of their long range strategy was developed and implemented in 1953-54, and guided their activities for more than forty years.

(Page 110)

63. Defendants, through TIRC/CTR and its public relations strategy, were especially effective in identifying and supporting skeptics of the link between smoking and disease. Skeptics were invited to join the Scientific Advisory Board of the TIRC; they and their home institutions were provided with research grants from the TIRC. Their views were effectively solicited and broadcast widely by TIRC and the Tobacco Institute [the enterprise's public relations and political arm].

(Page 1264)

### **5. Defendants Made Public Promises to Support Independent Research on the Link Between ETS [environmental tobacco smoke, what the tobacco companies call secondhand smoke] and Disease**

3430. In 1982, the Tobacco Institute ran the fifth in its series of advertisements called "Answers to the most asked questions about cigarettes." The advertisements ran in major magazines nationwide, including Newsweek, People, and Sports Illustrated. The advertisement asked, "Does Cigarette Smoke Endanger Nonsmokers?" After disputing the evidence linking passive smoking to lung cancer, the advertisement stated:

Like you, we seek answers.

The tobacco industry has committed more funds for independent research on smoking and health than any non-governmental group. More than the American Cancer Society, the American Heart Association, and the American Lung Association combined. The researchers we fund are encouraged to publish whatever they find. Whatever the outcome. If you'd like more information, write for our booklet, "Answers to the most asked questions about cigarettes."

(Page 1266)

3434. These public promises were intended to deceive the American public into believing that there was no risk associated with passive smoking and that Defendants would fund objective research to find definitive answers. Instead, over the decades that followed, Defendants took steps to undermine independent research, to fund research designed and controlled to generate industry favorable results, and to suppress adverse research results.

### **6. Defendants Undertook Joint Efforts to Undermine and Discredit the Scientific Consensus That ETS Causes Disease**

3435. ...Defendants recognized from the mid-1970s forward that the health effects of passive smoking posed a profound threat to industry viability and cigarette profits, through (1) increasing numbers of smoking restrictions; (2) making smoking "socially unacceptable"; and (3) reducing the number of starter smokers. This recognition resulted in concerted, international action by Defendants and other members of the industry to meet the passive smoking threat head on.

(Page 1287)

#### **(4) 1988-1999: The Center for Indoor Air Research (CIAR)**

3498. At a May 26, 1987 ETSAG [ETS Advisory Group, a committee of industry executives and lawyers] meeting, members decided that a new ETS research coordinating organization for the Defendants should be called the Center for Indoor Air Research ("CIAR") "in order to dissociate it and avoid confusion with the Tobacco Institute."

3499. CIAR was also an important component of the industry's ETS program established at "Operation Downunder" [an industry program to defeat smoking restrictions] in June 1987.

3500. ETSAG proposed "the formal organization of a research organization to deal with issues relating to indoor air quality," which became CIAR. The proposal for CIAR, presented to the Tobacco Institute Executive Committee on December 10, 1987, called for the creation of an organization "with its own staff and an increased research budget"

for the ongoing ETSAG projects. At the end of the Executive Committee meeting, "it was agreed that Dr. Osdene [a Philip Morris scientific manager] and his group would proceed with the hiring of an Executive Director and the preparatory corporate and other steps for the establishment of the CIAR."

(Page 1289)

3504. Defendants first offered the job of CIAR Executive Director to outsider Irwin H. Billick. When Dr. Billick questioned the independence, objectivity, and credibility of the organization because all research funding decisions would be made by the Board of Directors, the offer was withdrawn.

(Page 1294)

**(a) CIAR Applied Projects**

3524. In addition to SAB [Scientific Advisory Board, made up of "outside" scientists that nominally oversaw peer review] projects, CIAR funded a class of studies called "Applied Projects," similar to CTR Special Projects, which were approved and directed by the Board of Directors with no review or recommendation by the Scientific Advisory Board. As described below, CIAR Applied Projects were used by Defendants to generate data and conclusions to support the industry's position on passive smoking.

3527. In a May 14, 1992 memorandum to Jim Charles, Pages distinguished "Applied Studies" from CIAR's ordinary research in these terms: The SAB recommends proposals for funding after they have been peer reviewed. Proposals can only be funded subsequent to approval by the Board. A second class of research projects -- Applied Studies -- are also funded if approved by the Board; such projects are not normally reviewed or recommended by the SAB.

3528. Funding for Applied Projects was often billed by CIAR [to the tobacco companies] as "Special Assessments" in addition to the yearly market share-based payments of the companies to CIAR.

3529. CIAR Applied Projects was used by Defendants to fund studies that were previously approved by the TI-ETSAG ...and underway at the time of CIAR's formation in early 1988. These studies included:

- 1. James Enstrom [UCLA] (\$525,000);** this study examined the association between spousal smoking and lung cancer using CPS 1 data.

(Page 1300)

3539. In sum, it is clear that although CIAR was publicly billed as an independent scientific entity organized to support research projects addressing indoor-air issues, its funding was controlled by the tobacco industry, and projects were sought for the purpose of establishing industry-favorable science and potential expert witnesses.

(Page 1330)

**(d) The Appearance of "Independence"**

3635. Through their recruiting and training of consultants around the world, Defendants created a cadre of seemingly independent consultants to support the industry's position on secondhand smoke and to create the impression that a legitimate controversy existed among independent scientists. The global effort to create and manage this program required intense coordination among the companies and their counsel [outside lawyers].

3636. The need for seemingly independent consultants emanated in part from an internal recognition that the industry had little credibility with the public and among regulatory bodies. As stated in a July 24, 1991 BATCo summary of the program:

It has been apparent to the industry for some time that we do not have sufficient credibility to put forward a position on ETS (or any other issue for that matter) unless we can identify independent scientists who are saying the same thing. If independent scientists back up our position, it becomes more credible, not only to the general public and the media, but to politicians and other decision-makers. . . . Although it is essential for the industry to speak up about its positions, there are some things that are better left to independent scientists to express.

(Page 1364)

#### **b. Defendants and Their Paid Consultants Controlled ETS Research Findings**

3731. Several projects managed by Defendants as part of their worldwide ETS program illustrate the degree to which Defendants closely supervised and, when necessary, altered the research on the question of ETS and disease. Four of these ETS projects -- the 1995 Japanese Spousal Study, the 1989 Malmfors/SAS paper, the 1992 HBI 585 Building Study, and the 2003 Enstrom/Kabat [UCLA] paper -- are described in detail below.

(Page 1380)

#### **(4) The 2003 Enstrom/Kabat Study [UCLA]**

3781. James Enstrom's May 2003 article, "Environmental tobacco smoke and tobacco related mortality in a prospective study of Californians, 1960-1998," concluded that the association between ETS exposure and lung cancer and CHD "may be considerably weaker than generally believed." This study was CIAR-funded and managed and was published in the British Medical Journal.

3782. A June 25, 1996 Philip Morris e-mail [between PM executives] stated that Enstrom did work for Philip Morris and Reynolds "in the context of the EPA litigation," and that one of his new proposals was "clearly litigation oriented" and should be "pursued, if at all, in the context of attorney work product."

3783. Enstrom then sent his first proposal to perform statistical analyses on data from [a dataset collected by the American Cancer Society known as] CPS I to CIAR on July 15, 1996, stating:

For the past three years I have done consulting and research for Jeffrey L. Furr of Womble Carlyle [a law firm] on behalf of R.J. Reynolds and Philip Morris. This research has found a number of results that raise serious questions about several published findings on the relationship of passive smoking to lung cancer and other diseases.

Enstrom also stated in his July 15, 1996 letter to Eisenberg that his proposed CIAR research would "continue and expand upon" the research done for Womble Carlyle.

3784. At a November 1996 meeting, the CIAR Board of Directors discussed the Enstrom proposal and noted that Philip Morris lead scientist Richard Carchman and Reynolds lead scientist Charles Green (two members of the CIAR Board) had already visited Enstrom at UCLA to discuss the proposal with him personally.

3785. Enstrom wrote a January 15, 1997 letter following up on his proposal but directly to Carchman at Philip Morris, rather than to CIAR or its SAB:

A level of trust must be developed based on my past research on passive smoking and epidemiology in general in order to work out the best way for me to conduct this research. A substantial research commitment on your part is necessary in order for me to effectively compete against the large mountain of epidemiologic data and opinions that already exist regarding the health effects of ETS and active smoking.

3786. According to the minutes of the May 15, 1997 CIAR Board of Directors meeting, CIAR found a co-author collaborator for Enstrom, Geoffrey Kabat.

3787. By letter from Carchman dated April 25, 1997, Philip Morris agreed to fund a precursor study by Enstrom for \$150,000. That same year, Enstrom received funding from CTR, via a letter that proposed paying him an additional \$25,000 in addition to an ongoing CTR grant already in place.

3788. Enstrom's second proposal to CIAR, dated October 20, 1997, resulted in funding of at least \$525,000 from Defendants, a 1998 contract with CIAR as an Applied Project.

3789. As originally planned, the researchers conducted a study using California CPS I data to ascertain rates of reported cases of coronary heart disease, lung cancer, and chronic obstructive pulmonary disease for study participants identified as "never smokers married to smokers." ... the researchers concluded that there is no significant association between passive smoking and tobacco-related diseases in never smokers married to smokers.

3790. When the Enstrom/Kabat paper was published in the May 2003 issue of the British Medical Journal, it was roundly criticized in the scientific community. Members of the 2002 working group on involuntary smoking and cancer for the International Agency for Research on Cancer (IARC) made the following statement:

Enstrom and Kabat's conclusions are not supported by the weak evidence they offer, and although the accompanying editorial alluded to "debate" and "controversy", we judge the issue to be resolved scientifically, even though the "debate" is cynically continued by the tobacco industry.

The American Cancer Society had repeatedly warned Enstrom that using its CPS-I data in the manner he was using it would lead to unreliable results. Enstrom used only a small subset of the overall data, and, more importantly, the data corresponded to participants who enrolled in 1959, a time when exposure to tobacco smoke was common.

3791. Defendants nevertheless promoted the study. For example, in October 2003, BATCo cited the report on its website in support of its position that "the claim that ETS exposure has been shown to be a cause of chronic disease is not supported by the science." BATCo stated that a "very large study published in the British Medical Journal in May 2003 on environmental tobacco smoke in the home has found no increases in risk for the key smoking related diseases." The website provided a hyperlink to BAT's summary of the study:

In our view, this is an important study which confirms that many of the estimates of the risks of public smoking are overstated in the extreme, and that considerable

doubts remain as to whether ETS exposure is associated with any risk of chronic diseases such as lung cancer and heart disease. We believe the study illustrates that calls for bans on public smoking cannot be justified on the basis of the suggestion of chronic health risk for non-smokers, although of course we believe that the needs of non-smokers should be also catered for with solutions such as good ventilation.

3792. In the present litigation, Defendants' statistician Edwin Bradley relied on the Enstrom paper as evidence that bias and confounding explain the elevated observed risks in epidemiological studies finding an association between spousal smoking and lung cancer.

(Page 1397)

### **8. Defendants Continue to Obscure the Fact that ETS is Hazardous to Non Smokers**

(Page 1399)

3836. BATCo's website also claims that the 1998 WHO/IARC study, which reported a increased relative risk of lung cancer of 16% for spousal exposure and 17% for workplace exposure, "found no meaningful increase in lung cancer risk." BATCo summarizes the 2003 Enstrom study results, but fails to state that the study was funded and managed by the tobacco industry through CIAR and Philip Morris.

(Page 1402)

#### **b. The Philip Morris External Research Program (PMERP)**

3847. Philip Morris has created a new organization called the Philip Morris External Research Program, or PMERP, to continue the scientific research carried out by CIAR.

3848. The MSA [Master Settlement Agreement that ended state litigation against the tobacco industry, including California's case], signed by representatives of certain Defendants on November 23, 1998, required that Defendants shut down and disband CIAR. CIAR's executive director Eisenberg formally dissolved the organization on December 6, 1999.

3849. Prior to CIAR's dissolution, Defendants were already forming a plan to establish a replacement. On November 25, 1998, Lorillard general counsel Arthur Stevens wrote a letter to Philip Morris general counsel Denise Keane with copies to Charles Blixt at Reynolds and Ernie Pepples at B&W. Stevens wrote: "Please call me later in the morning on Monday, November 30, 1998, so that we can discuss the status of the plan to reinstate CIAR. The matter seems to be 'dragging' without direction toward a positive resolution." The CIAR Board of Directors had a similar intent in 1998 to reconstitute CIAR.

3850. On October 11, 1999, Eisenberg faxed Philip Morris a proposal to form an "External Research Program" to administer research with a Scientific Advisory Board, a research agenda, and peer reviewers.

3851. Philip Morris established the PMERP in early 2000, using the same offices in Linthicum, Maryland, that formerly housed CIAR, employing many of the same individuals who were employed by CIAR, and even using the same phone numbers as CIAR had used. The program is administered by an entity called Research Management Group (RMG), set up in 2000 solely to manage the PMERP. RMG has never managed any other program. RMG is headed by Max Eisenberg, the former executive director of CIAR.

3852. Eisenberg and Philip Morris established a "Research Focus" and Request for Applications for PMERP in the same way that the Research Agenda and Request for Applications were established for CIAR. The PMERP utilized a number of former CIAR peer reviewers and grantees, as well as ETSAG project recipients, including James Enstrom, ... All told, 44 out of the 105 peer-reviewers listed by PMERP in its 2000 Request for Applications were drawn from the peer reviewer list in the 1998 CIAR Request for Applications. Moreover, 53 of the peer reviewers were former recipients of CIAR funding. Many researchers funded through CIAR have continued to receive funding through the PMERP. Through the PMERP, Philip Morris continues to manage projects conducted by ETSAG and CIAR researchers [including] James Enstrom, ...

3853. Eisenberg also organized the formation of a Scientific Advisory Board (SAB), similar in structure to the CIAR SAB. The PMERP SAB was originally staffed with two former members of the CIAR SAB.

3854. The subject matter of the research funded through the PMERP is very similar to that funded through CIAR. The first research topic area in the PMERP Research Agenda is "Exposure/Biomarkers/Dosimetry," a subject that includes the very same types of work that were funded as Applied Projects by CIAR. For example, PMERP funds work investigating "area and personal monitoring," "biological monitoring with biomarkers," and exposure assessment.

3855. The PMERP also solicits epidemiological research proposals to study risk factors and confounders in the development of cancer.

3856. As was the case with the CIAR SAB, the PMERP SAB has no authority to sign contracts with researchers or commit funds for any studies.

(page 1532)

### **3. The Enterprise operated through both formal and informal organization**

Like an amoeba, the organization of the Enterprise changed its shape to fit its current needs, adding organizations when necessary and eliminating them when they became obsolete. Whatever the shape or composition of the Enterprise at any given time, again like an amoeba, its core purpose remained constant: survival of the industry. The participants in the Enterprise coordinated and strategized in order to preserve and enhance the cigarette market and, in turn, their individual revenues. The Enterprise created and used formal and informal entities, many with overlapping participants and purposes, to serve Defendants' central mission.

For example, in terms of formal organization, TIRC/CTR and the Tobacco Institute were jointly formed and funded by other Defendant-members of the Enterprise to help the industry execute the strategy devised to achieve their shared goal. TIRC/CTR sponsored and funded research that attacked scientific studies demonstrating the harmful effects of smoking cigarettes but did not itself conduct research addressing the fundamental questions regarding the adverse health effects of smoking. Moreover, attorneys for Defendants initiated and oversaw CTR "Special Projects" -- research projects conceived and directed by industry representatives, including industry lawyers, to support scientists who had shown a willingness and ability to generate data, and provide testimony, that would bolster the industry's litigation position before courts and governmental bodies. Altria executives served on the Board of Directors of CTR, and Altria had, and exercised, approval authority for CTR special projects.

...

Defendants also used numerous other means -- including structures of varying degrees of formality such as CIAR, the Committee of Counsel, the ETS Advisory Committee, the Ad Hoc Committee, the Research Liaison Committee, the Industry Technical Committee, law firms, and direct communications between and among members of the Enterprise -- to coordinate their activities, ensure continued adherence to the joint strategy, and enable the Enterprise to respond as new threats to the industry arose.

Defendants' claim that the Enterprise no longer has any organization within the meaning of [the RICO law] because all of the "all of the organizational vehicles for the 'enterprise' no longer exist" is unpersuasive. While it is true that CTR and TI were dissolved pursuant to the terms of the MSA, all of the other organizations either still exist or can be readily re-activated. Moreover, the individuals and Defendant-companies participating in these organizations, who, incidentally, often overlapped, still exist. Most importantly, Defendants have an ongoing need to satisfy the same purposes which these organizations met. Put simply, these organizations can be resurrected, recreated, or reincarnated at any time as Defendants wish. For example, Philip Morris currently has PMERP (Philip Morris External Research Program) which operates out of CIAR's former headquarters, is directed by CIAR's former scientific director, Max Eisenberg, and continues to fund many former CIAR projects.

(Page 1545)

In addition, each Defendant had some part in directing the affairs of the Enterprise by coordinating and causing the public dissemination of false, misleading or deceptive statements denying the link between smoking cigarettes and adverse health effects, denying the addictiveness of smoking, and by committing related racketeering acts, all in furtherance of the primary, shared objective of the Enterprise. Defendant Altria (f/k/a Philip Morris Companies) argues that, as a parent company to Philip Morris, it did not participate in the affairs of the Enterprise. The Court concludes, however, that Altria did participate in the Enterprise both directly, by joining many of the Enterprise's organizations and by supporting its objective, and indirectly, by controlling the policies and public positions of Philip Morris, the only subsidiary of Altria which manufactures cigarettes. Altria participated directly in the operation and management of the Enterprise through, for example, the Scientific Research Review Committee ("SRRC"), which had responsibility for overseeing "all scientific studies, related to tobacco, smoke and/or smoking, conducted or funded by Philip Morris Companies or any of its subsidiaries around the world" with authority to review and approve all funding of scientific studies related to those topics. ... After the MSA mandated dissolution of CTR and CIAR, the SRRC continued to approve research projects funded by Philip Morris through its "External Research Program" which was created in 2000 to take over the function of funding third-party research and eventually took the place of the SRRC.

(Page 1606)

**B. The Enterprise's Scheme to Defraud Presents Continuing Opportunities for Defendants to Commit Violations of 18 U.S.C. 1962 (c) and (d)**

There is a reasonable likelihood that Defendants' RICO violations will continue in most of the areas in which they have committed violations in the past. Defendants' practices have not materially changed in most of the Enterprise's activities, including: denial that ETS causes disease, denial that Defendants market to youth, denial of the addictiveness of nicotine, denial of manipulation of the design and content of cigarettes,

suppression of information and research, and claims that light and low tar cigarettes are less hazardous than full-flavor cigarettes.

(Page 1609)

Finally, despite Defendants' claims that they have materially altered their management and are now "new" companies, the evidence demonstrates that they have not changed their policies or personnel in any meaningful way. For example, Philip Morris' current top executive staff is composed entirely of veteran employees with an average of fifteen to twenty years of company experience. The assertion that such longstanding, faithful employees will usher in dramatically new corporate policies seems reasonably unlikely.