

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

UNITED STATES OF AMERICA,
Plaintiff,

v.

PHILIP MORRIS USA INC., et al.,
Defendants.

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(**Civil Action No. 99-2496 (GK)**
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DECLARATION OF STELLA AGUINAGA BIALOUS, Dr.P.H., R.N.

1. My name is Stella Aguinaga Bialous, and I am over the age of 18.
2. I have been President and a Senior Consultant for Tobacco Policy International (TPI) since 2000. TPI is a San-Francisco-based S-Corp that provides research and policy consultancy services to academic, governmental and non-governmental institutions in the area of tobacco control.
3. I have a Masters degree in nursing from Johns Hopkins University School of Nursing, and a MPH and Dr. PH in Public Health from the University of California, Berkeley School of Public Health.
4. I have served as a Fellow for the World Health Organization (from 1999 to 2000), and a Public Policy analyst at the University of California (from 2000-2002), and have served on several boards and committees, including the International Society of Nurses in Cancer Care, the International Union Against Cancer Nursing Education Project, and as an appointed member of the California Tobacco Education and Research Oversight Committee, California.

5. I have also served as a Visiting Professor in Oncology at McGill University and Universite de Montreal in Montreal, Canada (as a guest lecturer), and as a guest lecturer in the Johns Hopkins Bloomberg School of Public Health Global Tobacco Control Leadership Program. I also serve as a reviewer for several peer-reviewed academic journals, such as Tobacco Control.
6. I have been involved in the organizing committee and as an abstract reviewer of the 12th, 13th and 14th World Conference on Tobacco OR Health and I am currently involved as a member of the International Advisory Board and abstract reviewer in the upcoming 15th World Conference on Tobacco OR Health to be held in Singapore in 2012. I have also presented at these conferences on issues related to accessing tobacco documents online and in the Depositories, monitoring tobacco industry activities, including corporate social responsibility programs, and developing counter measures to protect public health programs from undue tobacco industry interference.
7. In 2003 I was the first recipient of the American Legacy Foundation Sybill G. Jacobson Adult Award for Outstanding Use of Tobacco Industry Documents for public health.
8. In 2007 and 2009, I served on the International Award Selection Committee of the Public Health Advocacy Institute and University of California, San Francisco, Center for Tobacco Control Research and Education International Award for Outstanding Use of Tobacco Industry Documents, which recognizes individuals who made a significant and well-recognized contribution to the health of the public through use of tobacco documents.
9. At TPI, I focus on monitoring tobacco industry activities, the tobacco industry's interference in policy, and smoking cessation services, including educating nurses on

tobacco control and smoking cessation. As part of my tobacco industry-related work, I conduct research to determine, for example, links between tobacco companies and other businesses and non-profit groups seeking to become involved in tobacco control. I also (a) assist researchers in the development and conduct of projects assessing the tobacco industry's behavior to disrupt tobacco control policies; (b) provide phone and e-mail consultation to various groups on strategies to counter tobacco industry attempts to interfere with public health policies; (c) speak with media and journalists developing stories on the tobacco industry's activities and (d) prepare briefings for clients and assist in the preparation of presentations addressing the tobacco industry and how to counter their efforts. I am not compensated for all of these services. In addition, I provided some part-time consultation services for the United States Department of Justice in 2002 and 2003 in connection with this case, on the matter of tobacco industry documents and assisted them in constructing timelines related to secondhand smoke issues.

10. I first visited the Minnesota Depository in February 1999 to make a general assessment as to availability of documents relevant to international issues. I visited the Depository twice that year to review documents in order to prepare for a meeting organized jointly by the World Health Organization and the National Cancer Institute concerning these Minnesota Depository materials and their utility and how to ensure their ongoing availability. That initial meeting and effort led to an increase in funding for tobacco document-related research as well as the funding for user-friendly online access to industry documents as they became available.
11. Over the years, I have obtained documents housed at the Minnesota Depository by asking others to visit the depository on my behalf to assist in my searches for the preparation of

reports and briefings. I have also provided consultation to colleagues who were visiting the Depository to help maximize their search experience as well as discuss the potential relevance of some of the documents they have found.

12. The materials I have obtained from the Minnesota Depository have been necessary both for peer-reviewed articles and for my work for clients. Research I conducted at the Depository led to publications that include:

- a. Aguinaga Bialous, S & Yach, D. *Whose standard is it, anyway? How the tobacco industry determines the International Organization for Standardization (ISO) standards for tobacco and tobacco products*. Tobacco Control 10: 96-104 (2001). This article describes how the tobacco companies were involved in international standard setting regarding the machines used to measure tar and nicotine contents in cigarettes and the policy impact of such involvement.
- b. *PROFITS OVER PEOPLE: Tobacco Industry Activities to Market Cigarettes and Undermine Public Health in Latin America and the Caribbean*. Pan American Health Organization (2002). This report utilized documents found in the Minnesota and Guildford Depositories to describe, among other things, the tobacco industry's activities to forestall tobacco control legislative measures around marketing and public smoking policy areas. Findings from the tobacco documents also exposed the industry's knowledge of the illicit trade of tobacco products in Latin America. This seminal publication served as an educational tool for governmental and non-government groups in the region to assist in moving forward national and regional tobacco control policies.

c. Bialous SA, Fox BJ, Glantz SA. Tobacco industry allegations of "illegal lobbying" and state tobacco control. *Am J Public Health*. 91(1):62-7 (2001). This study researched how public health professionals were affected by tobacco-industry accusations that their advocacy for public health constituted "illegal lobbying." The research included a limited review of tobacco industry documents from the Minnesota Depository.

13. In my capacity as a consultant, I have also used documents from the Depository as background information to prepare non-published reports for clients.
14. Documents my colleagues and I have reviewed from the Minnesota Depository also showed that a few tobacco companies globally orchestrated efforts to derail tobacco policy and have specifically attempted to take tobacco control off the political agenda in developing countries. This discovery, and the research we conducted based on these documents, was a significant factor leading to the World Health Organization Framework Convention on Tobacco Control (FCTC), a public health treaty that entered into force on February 27, 2005, addressing the tobacco industry's conduct, rather than to treat smoking solely as a health problem. The FCTC requires Parties to protect their public health policies from commercial and other vested interests of the tobacco industry in accordance with their national law (WHO FCTC, Article 5.3). Currently, there are 172 Parties to the FCTC. I also found documents at the Depository that provided information on one of the tobacco companies' public opinion survey on smoking in public places in Europe. I obtained these documents from the Depository in 1999. The discovery of these documents informed health advocates in Europe about the need to counter tobacco

industry arguments and to conduct more research on smoke-free workplaces and restaurants in Europe, and to develop appropriate policies.

15. While overlap exists between the documents available online and those at the Minnesota Depository, as far as I am aware, the overlap is not complete; thus a truly comprehensive search strategy to ensure a complete data acquisition requires that a search of the Depository be conducted in addition to an online search. While budgetary constraints might limit some researchers, this possibility should not negate the availability to those who are able to produce a comprehensive data search.
16. It is vital that the Minnesota Depository remains open and that the materials located there remain publicly accessible. There is no certainty that all of its documents have been put on to Defendants' document websites. We also do not know what documents may still be protected under attorney-client privilege, which would mean they are physically held at the Depository but not available on-line. Should some of these documents be made publicly available, access to them through the Depository would be critical for our continuing understanding of the tobacco industry strategies. Thus, there is a risk of losing documents that are not yet available to the public and have not been accounted for should the Depository be permitted to close at this time.
17. The Minnesota Depository should also remain open because it is unclear if all the documents have been transferred to online systems. I am not aware of any systematic effort, by the tobacco companies or anyone else, to ensure that all documents in the Depository have been made available to the public and uploaded to the tobacco companies' own document websites.

18. Additionally, in my experience, the tobacco companies' websites are not particularly easy to use for doing research and only the most experienced of the researchers can use them efficiently. The websites do not provide varied ways to search the documents, such as, for example, sorting by reverse document dates, and there are other limitations that make it more likely that a search will return unrelated results.

I hereby declare under penalties of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Dated: March 23, 2011

A handwritten signature in blue ink, appearing to read 'Stella Aguinaga Bialous', written over a horizontal line.

Stella Aguinaga Bialous, RN, DrPH
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