of Fact. As August turned into September, the Government filed its 250 page opening Post-trial brief; Defendants filed their 250 page opposition to the Government's brief and their 50 page opening brief on affirmative defenses; the Government filed its 100 page reply brief and 50 page opposition to Defendants' brief on affirmative defenses; and Defendants filed their 20 page reply brief on affirmative defenses.

The Court has issued 1010 Orders during the course of this arduous litigation. Some pundits have opined that this is the largest piece of civil litigation ever brought. The Court will leave that judgment to others.

FINDINGS OF FACT

III. CREATION, NATURE, AND OPERATION OF THE ENTERPRISE[8]

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

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[8] "Enterprise" is a statutory term contained in 18 U.S.C. § 1962(c). The Court's use of it in these Findings does not imply that Defendants' activities meet the statutory definition contained in 18 U.S.C. § 1961(4). That issue will be fully discussed in the Conclusions of Law.

A. Pre-1953 Overview–The Rise in American Smoking and the Status of Scientific Research on Smoking and Health

1. Tobacco usage in North America dates as far back to at least the 1600s when Christopher Columbus came to America and observed Native Americans smoking tobacco leaves. By the end of the 1800s, scientists observed a noticeable rise in the incidence of cigarette smoking, as well as a noticeable rise in the number of cases of lung cancer. Samet TT, 9/29/04, 1027: 5-13.

2. Prior to 1900, lung cancer was virtually unknown as a cause of death in the United States. By 1935, there were an estimated 4000 lung cancer deaths annually, and by 1945 that figure had almost tripled. VXA1601844-2232 at 1986 (US 64057); Brandt WD, 31:16-32:1. Annual per capita consumption of cigarettes in 1900 was approximately forty-nine; by 1930 that figure had grown to 1300; by 1950, annual per capita consumption had skyrocketed to over 3000 cigarettes. Brandt WD, 32:2-17; Samet TT, 9/29/04, 1031:13-1033:25.

3. By the 1920s, scientists were beginning to investigate the relationship between the concomitant rise in cigarette consumption and lung cancer, and to focus on the health consequences of smoking. Brandt WD, 32:2-17. Id. For example, as early as 1928, researchers conducting a large field study associated heavy smoking with cancer. 2060544267-4274 (US 39010). In 1931, Frederick L. Hoffman, a well-known statistician for the Prudential Insurance Company, linked smoking with cancer. VXA2510202-0219 (US 63597). In 1938, a population biologist and biometrician from Johns Hopkins Medical School, Raymond Pearl, published one of the first significant statistical analyses of the health impact of smoking and concluded that individuals who smoked could expect shorter lives. 503285883-5884 (US 20714). In the 1930s, chest surgeons Alton Oschner and Richard Overholt published observations that the patients they saw with

advanced lung malignancies were typically smokers. 85868807-8823 at 8807 (US 63596). By the end of the 1940s and early 1950s, far more evidence linking smoking to disease began to appear, ranging from the ground-breaking statistical studies of two eminent British statisticians, Bradford Hill and Sir Richard Doll, to the Graham and Wynder studies at Washington University, to animal research studies pointing to the carcinogenicity of cigarettes.[9]

4. The mainstream media began to pay attention to the growing scientific literature and report on the scientists' findings. For example, in 1953 Readers Digest, which was at the time one of the most popular publications in the country, published a series of articles titled "Cancer by the Carton" which relayed the scientific findings of Drs. Wynder and Graham. The magazine quoted one of the conclusions they reached in their American Cancer Society study which had been published in the American Medical Association's Journal of May 27, 1950 ("JAMA"), namely that "Excessive and prolonged use of tobacco, especially cigarettes, seems to be an important factor in the induction of bronchiogenic carcinoma." 03358234-8235 at 8235 (US 46459). Such mainstream media publicity in popular magazines such as Time, Life, and Reader's Digest triggered understandable public concern. Brandt WD, 48:1-18.

5. In short, by 1953, there had been a very substantial rise in the annual per capita consumption of cigarettes and the number of deaths attributable to lung cancer; scientists were more and more convinced that a relationship existed between cigarette smoking and lung cancer; and the public was growing increasingly aware of and anxious about both developments.

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[9] All of these studies will be discussed in much greater detail in Section IV, infra.

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. 508775416-5416 (JD 041939); HT0072119-2125 (US 21175), (US 54357); CTRBYL000001-0014 (US 21138); MNAT00609882-9886 (US 59809).

7. Executives from every tobacco company listed above, with the exception of Liggett, 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 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. 680262226-2228 (US 88165); HT0072119-2125 (US 21175); CTRBYL000001-0014 (US 21138); Brandt WD,

50:21-51:23. 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. While it is true that there was a recommendation "to do good science, independent science," Brandt TT, 9/27/04, 740:15-17, the minutes of the meeting reveal that:

> It was recommended that this [research] group undertake to enlist the cooperation of the National Institutes of Health of the U.S. Public Health Service in working out a program of scientific investigation through which the facts in the present controversy would be developed. This was considered highly advisable in that it would give to the program an aspect of independence to the program to a degree not obtainable in any other way.

(no bates) (US 88165 at 68026227).

9. At the December 14, 1953 meeting, Paul Hahn of American and Timothy Hartnett of B&W told the other company presidents that

> they had taken definite steps to remove the health themes from the advertising programs on Pall Mall and Viceroy. Darr [of Reynolds] made the point that he could not concur in sponsoring an industry paid advertising campaign (if this is the course recommended by the Public Relations Counsel) as long as the health theme continued to be featured by any one of the companies represented on the committee.

J. Whitney Peterson of United States Tobacco and Hartnett "expressed their agreement with Mr. Darr's views in this matter." Hill & Knowlton wanted to develop some understanding with the Defendants that

> none is going to seek a competitive advantage by inferring to its public that <u>its</u> product is less risky than others. (No claims that special filters or toasting, or expert selection of tobacco, or extra length in the butt, or anything else, makes a given brand less likely to cause you-know-what. No "Play-Safe-with-Luckies.)"

TLT0901532-1540 at 1539-1540 (US 87224) (emphasis in original); 680262226-2228 (US 88165); TLT0900422-0430 at 0423 (US 88169); TLT0901564-1572 at 1565 (US 88194); TLT0901541-1545 at 1543 (US 87225); 2048375960-5964 (US 85819); JH000493-0501 at 0500-0501 (US 21179).

10. At the December 15, 1953 meeting, the participants were Paul Hahn of American, O. Parker McComas of Philip Morris, Joseph Cullman, Jr. of Benson & Hedges, J. Whitney Peterson of United States Tobacco, and representatives from Hill & Knowlton, including John Hill and Bert Goss. Hill & Knowlton was told that the industry viewed the "problem [posed by the scientific studies] as being extremely serious and worthy of drastic action." JH000502-0506 at 0504 (US 20191); TLT0901541-1545 at 1543 (US 87225). According to a Hill & Knowlton memo dated December 22, 1953, the public relations firm was asked to

> develop suggestions for dealing with the public relations problem confronting the industry as a result of widely publicized assertions by a few medical research men regarding the link between cigarette smoking and lung cancer.

TLT0901552-1552 (US 88192).

11. In an internal planning memoranda, Hill & Knowlton assessed their tobacco clients' problems in the following manner:

> There is only one problem -- confidence, and how to establish it; public assurance, and how to create it -- in a perhaps long interim when scientific doubts must remain. And, most important, how to free millions of Americans from the guilty fear that is going to arise deep in their biological depths -- regardless of any pooh-poohing logic -- every time they light a cigarette. No resort to mere logic ever cured panic yet, whether on Madison Avenue, Main Street, or in a psychologist's office. And no mere recitation of arguments pro, or ignoring of arguments con, or careful balancing of the two together, is going to deal with such fear now. That, gentlemen, is the nature of the unexampled challenge to this office.

JH000493-0501 (US 21408); TLT0901532-1540 at 1534 (US 87224); Brandt WD, 53:16-54:10.

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." 01138856-8864 (JE 20036); TLT0900422-0430 (US 88169); TLT0901564-1572 (US 88194); see also TLT0901546-1549 (US 88191); TLT0901552 (US 88192).

13. In its proposal, Hill & Knowlton expressed its concern about the "health" claims being made in the Defendants' advertising:

> [I]t is impossible to overlook the fact that some of the industry's advertising has come in for serious public criticism because of emphasis on health aspects of smoking. . . it must be recognized that some of the advertising may have created a degree of skepticism in the public mind which at the start at least could affect the believability of any public relations effort.

In fact, one of the questions posed by Hill & Knowlton to the Defendants was

> whether the companies considere[d] that their own advertising and competitive practices have been a principal factor in creating a health problem? The companies voluntarily admitted this to be the case even before the question was asked. They have informally talked over the problem and will try to do something about it.

680262226-2228 (US 88165); TLT0900422-0430 at 0423 (US 88169); TLT0901564-1572 at 1565 (US 88194); TLT0901541-1545 at 1543 (US 87225); 2048375960-5964 (US 85819).

14. Four days later, on December 28, 1953, another meeting was held at the Plaza Hotel and was attended by Paul Hahn of American; Edward Darr of Reynolds; Herbert A. Kent, Chairman of Lorillard; Timothy Hartnett of B&W; O. Parker McComas of Philip Morris; Joseph Cullman of Benson & Hedges; J.B. Hutson, President of Tobacco Associates, Inc.; J. Whitney Peterson of United States Tobacco; and three people from the public relations firm of Hill & Knowlton, John Hill, Bert Goss, and Richard Darrow. The attendees agreed on Tobacco Industry Research Committee ("TIRC") as the official name of the research committee; chose Paul Hahn as 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. TLT0901411-1414 (US 88188); 01138856-8864 (JE 20036). The attendees also agreed on a mission statement for the new organization which stated that its "purposes and objectives" were

> to aid and assist research into tobacco use and health, and particularly into the alleged relationship between the use of tobacco and lung cancer, and to make available to the public factual information on this subject.

(no bates) (JD 000294 at 70103757). Hill & Knowlton played a major role in creating, refining, and implementing the strategies adopted by the participants at the December meetings.

15. Although Defendant Liggett did subsequently participate in Enterprise activities, Liggett did not participate in the December meetings because, at the time, the company believed that "the proper procedure is to ignore the whole controversy." JH000502-0506 at 0502 (US 20191); TLT0901541-1545 at 1541 (US 87225).

16. Following Hill & Knowlton's advice, the formation and purpose of TIRC was announced on January 4, 1954, in a full-page advertisement called "A Frank Statement to Cigarette Smokers" published in 448 newspapers throughout the United States. All sponsoring cigarette manufacturers and other tobacco industry entities were clearly identified. McAllister PD, United States v. Philip Morris, 5/23/02, 112:14-114:13; McAllister WD, 9:10-22; 11309817-9817 (US 20277); 86017454-7454 (US 21418); USX6390001-0400 at 0004 (US 89555); TLT0900465-0465 (US 88171); see also TLT0900478-0480 (US 88440); TLT0900481-0483 (US 88441).

17. The Frank Statement was subscribed to by the following domestic cigarette and tobacco product manufacturers, organizations of leaf tobacco growers, and tobacco warehouse associations that made up TIRC: Defendant American by Paul Hahn, President; Defendant B&W by Timothy Hartnett, President; Defendant Lorillard by Herbert Kent, Chairman; Defendant Philip Morris by O. Parker McComas, President; Defendant Reynolds by Edward A. Darr, President; Benson & Hedges by Joseph Cullman, Jr., President; Bright Belt Warehouse Association by F.S. Royster, President; Burley Auction Warehouse Association by Albert Clay, President; Burley Tobacco Growers Cooperative Association by John Jones, President; Larus & Brother Company, Inc. by W.T. Reed, Jr., President; Maryland Tobacco Growers Association by Samuel Linton, General

Manager; Stephano Brothers, Inc. by C.S. Stephano, Director of Research; Tobacco Associates, Inc. by J.B. Hutson, President; and United States Tobacco by J. Whitney Peterson, President. 11309817-9817 (US 20277); 86017454-7454 (US 21418); HT0072119-2125 (US 21175); CTRBYL000001-0014 (US 21138).

18. The Frank Statement set forth the industry's "open question" position that it would maintain for more than forty years -- that cigarette smoking was not a proven cause of lung cancer; that cigarettes were not injurious to health; and that more research on smoking and health issues was needed. In the Frank Statement, the participating companies accepted "an interest in people's health as a basic responsibility, paramount to every other consideration in our business" and pledged "aid and assistance to the research effort into all phases of tobacco use and health." The companies promised that they would fulfill the obligations they had undertaken in the Frank Statement by funding independent research through TIRC, free from any industry influence. 11309817-9817 (US 20277); 86017454-7454 (US 21418).

19. The "Frank Statement" in its entirety stated as follows:

> RECENT REPORTS on experiments with mice have given wide publicity to a theory that cigarette smoking is in some way linked with lung cancer in human beings.
>
> Although conducted by doctors of professional standing, these experiments are not regarded as conclusive in the field of cancer research. However, we do not believe that any serious medical research, even though its results are inconclusive should be disregarded or lightly dismissed.
>
> At the same time, we feel it is in the public interest to call attention to the fact that eminent doctors and research scientists have publicly questioned the claimed significance of these experiments.
>
> Distinguished authorities point out:

1. That medical research of recent years indicates many possible causes of lung cancer.

2. That there is no agreement among the authorities regarding what the cause is.

3. That there is no proof that cigarette smoking is one of the causes.

4. That statistics purporting to link cigarette smoking with the disease could apply with equal force to any one of many other aspects of modern life. Indeed the validity of the statistics themselves is questioned by numerous scientists.

We accept an interest in people's health as a basic responsibility, paramount to every other consideration in our business.

We believe the products we make are not injurious to health.

We always have and always will cooperate closely with those whose task it is to safeguard the public health.

For more than 300 years tobacco has given solace, relaxation, and enjoyment to mankind. At one time or another during these years critics have held it responsible for practically every disease of the human body. One by one these charges have been abandoned for lack of evidence.

Regardless of the record of the past, the fact that cigarette smoking today should even be suspected as a cause of disease is a matter of deep concern to us.

Many people have asked us what are we going to do to meet the public's concern aroused by the recent reports. Here is the answer:

1. We are pledging aid and assistance to the research effort into all phases of tobacco use and health. This joint financial aid will of course be in addition to what is already being contributed by individual companies.

2. For this purpose we are establishing a joint industry group consisting initially of the undersigned. This group will be

> known as TOBACCO INDUSTRY RESEARCH COMMITTEE ["TIRC"].
>
> 3. In charge of the research activities of the Committee will be a scientist of unimpeachable integrity and national repute. In addition there will be an Advisory Board of scientists disinterested in the cigarette industry. A group of distinguished men [sic] from medicine, science, and education will be invited to serve on this Board. These scientists will advise the Committee on its research activities.
>
> This statement is being issued because we believe the people are entitled to know where we stand on this matter and what we intend to do about it.

11309817-9817 (US 20277); 86017454-7454 (US 21418); TLT0901611-1611 (US 88196); Brandt WD, 55:8-21.

20. The issuance of the "Frank Statement to Cigarette Smokers," was an effective public relations step. By promising the public that the industry was absolutely committed to its good health, the Frank Statement allayed the public's concerns about smoking and health, reassured smokers, and provided them with an effective rationale for continuing to smoke. Brandt WD, 54:20-55:7; JH000493-0501 (US 21179), (US 21408); TLT0901532-1540 at 1534 (US 87224).

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. Brandt WD, 61:23-62:7.

22. In response to an inquiry by Stanley Barnes, Assistant Attorney General, United States Department of Justice on January 21, 1954, TIRC Chairman Paul Hahn sent a letter to Barnes dated January 26, 1954, enclosing a statement of the origin, purpose, and proposed functions of TIRC. The purposes and objectives of TIRC as recorded in the Statement Concerning the Origin and Purpose of TIRC were

> to aid and assist research into tobacco use and health, and particularly into the alleged relationship between the use of tobacco and lung cancer, and to make available to the public factual information on this subject.

508775382-5382 (JD 090191); 70103754-3761 (JD 000294); MTD0030448-0455 (US 21218); 70103755-3761 (JD 043064); HT0072119-2125 (US 21175); TIMN0116378-6384 (US 21277); TLT0901026-1035 (US 88181); McAllister WD, 28:14-29:1; Zahn PD, Cipollone v. Liggett, 12/16/86, 51:24-52:6, 53:9-12 at 0005-0007 (US 89555).

23. The statement of origin and purpose was signed in the name of TIRC by Chairman Paul Hahn, was ratified and adopted by TIRC, and attached as Exhibit A to the Bylaws of the Tobacco Industry Research Committee. CW00787817-7842 (US 21420); CTRBYL000001-0014 (US 21138); 70103754-3761 (JD 000294); MTD0030448-0455 (US 21218); 70103755-3761 (JD 043064); HT0072119-2125 (US 21175), (US 54357); TIMN0116378-6384 (US 21277); TLT0901026-1035 (US 88181). All of the bylaws could be altered and repealed by a majority vote of TIRC's corporate members, except "Article I. Purposes and Objectives" which could only be altered with the unanimous consent of all the corporate members. CW00787817-7842 at 7817, 7822 (US 21420); CTRBYL000001-0014 at 0001, 0006 (US 21138).

24. The statement of origin and purpose stated that TIRC had engaged the public relations firm of Hill & Knowlton to assist TIRC in effectuating its purpose. CW00787817-7842 (US 21420); CTRBYL000001-0014 (US 21138); 70103754-3761 (JD 000294); MTD0030448-0455 (US 21218); 70103755-3761 (JD 043064); HT0072119-2125 (US 21175); TIMN0116378-6384 (US 21277); TLT0901026-1035 (US 88181); TLT0900723-0728 (US 88179); see also USX6390001-0400 at 0012 (US 89555).

25. The TIRC bylaws stated that each corporate member of the TIRC "shall from time to time appoint an individual to serve as the personal member of the Committee representing such corporate member" and that a majority of the personal members of TIRC would select such officers, agents, and employees as they deemed necessary, including a Chairman to serve for a term of one year and until his successor is elected and qualified. CW00787817-7842 (US 21420); CTRBYL000001-0014 (US 21138).

26. The first officers selected by TIRC members were: Paul Hahn of American as temporary Chairman; J. Whitney Peterson of United States Tobacco as Vice Chairman; Joseph Cullman of Benson & Hedges as Treasurer; and Wilson Thomas ("W.T.") Hoyt of Hill & Knowlton as Secretary. CW00787817-7842 (US 21420); CTRBYL000001-0014 (US 21138); 70103754-3761 (JD 000294); MTD0030448-0455 (US 21218); 70103755-3761 (JD 043064); HT0072119-2125 (US 21175); TIMN0116378-6384 (US 21277); TLT0901026-1035 (US 88181).

27. TIRC bylaws described the method of funding TIRC as follows:

> Each of the cigarette manufacturing corporate members has pledged to the Committee for payment before or during 1954 an amount equal to 1/4 of a cent for each one thousand of tax-paid cigarettes produced by such company in 1953 as estimated by Harry M. Wootten and published under the date of January 15, 1954, and has pledged to the

> Committee for payment during 1954 an additional amount equal to one-half of the amount originally pledged.

CW00787817-7842 at 7819 (US 21420); CTRBYL000001-0014 at 0003 (US 21138).

28. At its January 29, 1964 meeting, the TIRC Executive Committee agreed to change the name of the organization to the Council for Tobacco Research-U.S.A. ("CTR"). 93218985-8986 (US 21116). The organization bylaws were amended February 1, 1964, to reflect the name change. Although the name changed, the purposes, objectives, and functions of the organization did not. According to the amended bylaws, the purposes and objectives of CTR remained the same, i.e.

> to aid and assist research into tobacco use and health, and particularly into the alleged relationship between the use of tobacco and lung cancer and to make available to the public factual information on this subject.

682631364-1368 (US 21024); CW00787817-7842 at 7831-7835 (US 21420); see also USX6390001-0400 at 0002 (CTR Response to Request for Admission No. 82). Timothy Hartnett announced the organization name change in a March 1964 press release. 508775085-5088 (US 20815); HK1865014-5017 (US 77847).

29. Robert Heimann, Chairman and Chief Executive Officer of American, commented upon the TIRC's name change in a December 6, 1977 letter to Addison Yeaman, CTR's Chairman and President and formerly the General Counsel of B&W:

> [W]e decided some years ago to rename T.I.R.C. "The Council for Tobacco Research" because "Tobacco Industry Research Committee" sounded too much like industry-directed, as distinct from independent, research.

2022200158-0160 at 0160 (US 87532).

30. In 1971, CTR changed from an unincorporated association to a corporation pursuant to the laws of the State of New York. CTR's Certificate of Incorporation was filed with the Department of State of the State of New York on January 8, 1971. The bylaws of the newly-formed corporation were adopted at the first meeting of CTR's Board of Directors on January 13, 1971. CTRMIN-BD000001-0303 at 0002 (JD 093208); CTRINC000001-0019 (JD 090053); McAllister WD, 10:7-14.

31. Following incorporation, CTR was divided into two classes of members, Class A and Class B. Class A members were: (1) designated by the Board of Directors; (2) domestic persons who sold cigarettes in the United States; and (3) manufacturers of their own brand of cigarettes. Class A members included American Tobacco, B&W, Lorillard, Philip Morris, Reynolds, and United States Tobacco. Class B members were: (1) designated by the Board of Directors; and (2) a person, corporation, association, or partnership not eligible for Class A membership but involved in the production, manufacturing, and distribution of cigarettes. Class B members included Bright Belt Warehouse Association, Burley Auction Warehouse Association, Burley Tobacco Growers, Imperial Tobacco, Tobacco Associates, and United States Tobacco. CTRBYL000031-0049 (JD 090055); CTRMIN-BD000001-0303 at 0003 (JD 093208); 512678857-8863 (US 30046).

32. In 1963, Clarence Cook Little and W.T. Hoyt invited Liggett to join TIRC in order to secure complete industry cooperation in dealing with the 1963 Surgeon General's Advisory Committee. Liggett declined the invitation but, in its response, assured its cooperation: "[T]he aims of all of us are the same and the path that we [Liggett] have followed has been similar to that of the Committee in may respects." RC6007182-7183 (LI 142).

33. Liggett became a member of CTR in 1964 and resigned in 1968, but continued to participate in CTR activities for decades. In its January 1968 resignation letter, Liggett's President stated "we will continue to participate in defraying the cost of [CTR] Special Projects sponsored by the Council after evaluation of each Project on an individual basis." CTR-TIRC-MIN000238-0244 at 0241 (US 33023). Liggett made contributions to CTR's Special Projects fund from 1966 through 1975 and to CTR's Literature Retrieval Division from 1971 through 1983. DXA0630917-1033 at 1024-1025 (US 75927). Liggett was also asked to attend scientific meetings at CTR. 044227839-7842 (US 20066); LWDOJ9055586-5587 (US 26007) (Confidential).

34. Representatives of Liggett attended CTR meetings at which CTR Class A members, CTR Class B members, CTR officers, CTR public relations counsel, tobacco industry attorneys, and other representatives of cigarette manufacturers and the Tobacco Institute were present. CTRMIN-MOM000001-0015 (US 21145); CTRMIN-MOM000053-0069 (US 32617).

35. Although Defendant BATCo was not a member of TIRC or CTR, communication and contact between high level smoking and health research scientists at BATCo and scientists at TIRC/CTR was frequent and direct. BATCo scientists, including David G. Felton, Lionel C.F. Blackman, and R.E. Thornton, visited TIRC/CTR several times over the years. TINY0003106-3116 (US 21369); 105408490-8499 (US 21135); 517002090-2091 (US 66527).

36. For example, in 1958, three British scientists, D.G.I. (David) Felton of BATCo, W.W. Reid of BATCo-Australia, and H.R. (Herbert) Bentley of Imperial Tobacco, visited the United States for four weeks and met with members of TIRC's Scientific Advisory Board, as well as with representatives of Defendants TIRC/CTR, American, Liggett, and Philip Morris. TINY0003106-3116 (US 21369); 105408490-8499 (US 21135), (US 76169); Brandt WD, 94:8-95:3.

37. In October 1979, David Felton of BATCo went on a month-long "fact-finding mission to a number of laboratories engaged in research relating to smoking and health" in the United States. Felton was accompanied by two lawyers for most of his visits, either Patrick Sirridge of Shook, Hardy & Bacon or Timothy Finnegan of Jacob & Medinger. Near the end of the trip, Felton met with CTR executives and employees, including Addison Yeaman, CTR President; William Gardner, CTR Scientific Director; W.T. Hoyt, CTR Executive Vice President; Robert Hockett, CTR Research Director; Vincent Lisanti, CTR Associate Research Director; and David Stone and Donald Ford, members of CTR's scientific staff. Discussions included CTR contract research, nitrosamines, smoking and stress, and nicotine research. During his visit, Felton also met with Tobacco Institute representatives Horace Kornegay, President, and Marvin Kastenbaum, Director of Statistics. 109879229-9295 (US 34923); 109879296-9308 (US 86063).

38. Defendants met frequently to discuss issues facing the Enterprise. 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, the Literature Retrieval Division, contract research, public relations, the TIRC/CTR Scientific Advisory Board, and scientific conferences. CTR-TIRC-MIN000001-0252 (JD 093292); CTR-TIRC-MIN000033-0052 (US 33006); CTR-TIRC-MIN000174-0186 (US 33016); CTR-TIRC-MIN000224-0231 (US 33021); CTR-TIRC-MIN00023-0244 (US 33023); CTR-TIRC-MIN000245-0255 (US 33024); 1002608337-8339 (US 85989); MM0010053-0056 (US 85990); CTRMIN-MOM000001-000015 (US 21145); CTRMIN-MOM000016-0034 (US 21170); CTRMIN-MOM000035-0052 (US 32616);

CTRMIN-MOM000053-0069 (US 32617); CTRMIN-MOM000070-0087 (US 32618); CTRMIN-MOM000088-0089 (US 32619); CTRMIN-MOM000090-0104 (US 32620); CTRMIN-MOM000105-0117 (US 32621); CTRMIN-MOM000129-0142 (US 32623); CTRMIN-MOM000143-0154 (US 32624); CTRMIN-MOM000155-0167 (US 32625); CTRMIN-MOM000168-0181 (US 32626); CTRMIN-MOM000182-0195 (US 32627); CTRMIN-MOM000210-0221 (US 32629); CTRMIN-MOM000222-0233 (US 32630); CTRMIN-MOM000234-0244 (US 32631); CTRMIN-MOM000245-0255 (US 32632); CTRMIN-MOM000256-0268 (US 32633); CTRMIN-MOM000269-0280 (US 32634); CTRMIN-MOM000281-0294 (US 32635); CTRMIN-MOM000295-0306 (US 32636); CTRMIN-MOM000307-0318 (US 32637); CTRMIN-MOM000319-0331 (US 32638); CTRMIN-MOM000332-0334 (Ex. 32639); 70000261–0274 (US 31078); 70005388-5408 (US 31104); CW00800809-0811 (US 31368); TLT0901390-1393 (US 88186); TLT0901400-1410 (US 88187); JH000395-0400 (US 21178); TLT0901411-1414 (US 88188).

39. Members of the Enterprise also convened regularly between 1971 and 1998 at CTR's Board of Directors meetings. CTR's Board of Directors was made up of representatives from the member companies. At these meetings the CTR Board of Directors discussed and passed resolutions regarding issues such as CTR's budget, the status of grants and contract research, the election of officers, payment of dues, and amendments to the bylaws. In addition to Board members, attendees at the meetings included other corporate offices and executives from the tobacco companies, Defendants' legal counsel and public relations counsel, and representatives from the Tobacco Institute. CTRMIN-BD000017-0020 (US 32572); CTRMIN-BD000021-0025 (US 32573); CTRMIN-BD000026-0029 (US 32574); CTRMIN-BD000030-0034 (US 32575);

CTRMIN-BD000035-0038 (US 32576); CTRMIN-BD000039-0044 (US 32577); CTRMIN-BD000045-0049 (US 32578); CTRMIN-BD000050-0054 (US 32579); CTRMIN-BD000055-0059 (US 32580); CTRMIN-BD000060-0109 (US 32581); CTRMIN-BD000110-0115 (US 32582); CTRMIN-BD000116-0121 (US 32583); CTRMIN-BD000122-0125 (US 32584); CTRMIN-BD000126-0129 (US 32585); CTRMIN-BD000135-0135 (US 32586); CTRMIN-BD000136-0140 (US 32587); CTRMIN-BD000141-0144 (US 32588); CTRMIN-BD000145-0146 (US 32589); CTRMIN-BD000147-0152 (US 32590); CTRMIN-BD000153-0157 (US 32591); CTRMIN-BD000158-0162 (US 32592); CTRMIN-BD000163-0165 (US 32593); CTRMIN-BD000172-0178 (US 32595); CTRMIN-BD000179-0182 (US 32596); CTRMIN-BD000187-0191 (US 32597); CTRMIN-BD000192-0194 (US 32598); CTRMIN-BD000200-0229 (US 32600); CTRMIN-BD000230-0235 (US 32601); CTRMIN-BD000236-0237 (US 32602); CTRMIN-BD000238-0245 (US 32603); CTRMIN-BD000246-0247 (US 32604); CTRMIN-BD000248-0251 (US 32605); CTRMIN-BD000252-0255 (US 32606); CTRMIN-BD000256-0260 (US 32607); CTRMIN-BD000261-0262 (US 32608); CTRMIN-BD000263-0267 (US 32609); CTRMIN-BD000268-0270 (US 32610); CTRMIN-BD000271-0275 (US 32611); CTRMIN-BD000276-0277 (US 32612); CTRMIN-BD000278-0283 (US 32613); CTRMIN-BD000284-0285 (US 32614); CTRMIN-BD000286-0291 (US 32615); 70000636–0638 (JE 31084); 70000275-0279 (US 31080); 70001297-1298 (US 31095); 70005382-5387 (JE 31103); 70005409-5416 (JE 31106); CTRMIN-BD000001-000303 (JD 093208); ARU1130828-0904 (US 86773); Kornegay PD, Cipollone v. Liggett, 8/17/84, 195:21-196:7.

40. While Philip Morris Companies was not a Class A member of CTR, Philip Morris Companies executives attended and participated in meetings of the CTR Board of Directors from 1985 to 1992. These executives included Thomas Ahrensfeld, Senior Vice President and General Counsel; Murray Bring, Senior Vice President and General Counsel; Hugh Cullman, Vice Chairman of the Board; Alexander Holtzman, Vice President and Associate General Counsel; John Murphy, President and CEO; and R. William Murray, President, CEO, and Vice Chairman of the Board. CTRMIN-BD000001-000303 at 0187, 0192, 0195, 0200, 0230, 0236, 0238, 0246, 0248, 0252, 0256, 0261, 0263, 0268 (JD 093208).

41. Lorraine Pollice, CTR Corporate Secretary and Treasurer for over twenty years, attended CTR Board of Directors Meetings and CTR Annual Member Meetings, and personally prepared minutes of those meetings. Pollice WD, 6:14-7:22; 7:23-12:12. Although the minutes of meeting after meeting show participation by Altria representatives, Pollice expressed confusion and uncertainty about the precise corporate affiliation of particular participants. See, e.g., CTRMIN-BD000187-0191 (US 32597); CTRMIN-BD000200-0229 (US 32600); CTRMIN-BD000230-0235 (US 32601); CTRMIN-BD000236-0237 (US 32602); CTRMIN-BD000238-0245 (US 32603); CTRMIN-BD000246-0247 (US 32604); CTRMIN-BD000248-0251 (US 32605); CTRMIN-BD000252-0255 (US 32606); CTRMIN-BD000256-0260 (US 32607); CTRMIN-BD000261-0262 (US 32608); CTRMIN-BD000263-0267 (US 32609); CTRMIN-BD000268-0270 (US 32610); CTRMIN-MOM000222-0233 (US 32630); CTRMIN-MOM000234-0244 (US 32631); CTRMIN-MOM000245-0255 (US 32632); CTRMIN-MOM000256-0268 (US 32633); CTRMIN-MOM000269-0280 (US 32634); CTRMIN-MOM000281-0294 (US 32635); CTRMIN-MOM000295-0306 (US 32636); CTRMIN-MOM000307-0318 (US 32637). Her testimony is

simply not credible since it was directly contrary to the documents themselves, which were never corrected by Pollice herself or by former CTR presidents or by outside counsel for CTR who reviewed and finalized the minutes. Pollice WD, 6:1-25; Pollice TT, 10/04/04, 01526:22-01527:14; Pollice TT, 10/04/04, 01528:19-01529:1.

42. From 1954 through October 31, 1999, payments to CTR's General Fund from Defendants totaled $473,369,512.22; $31,928,239.26 from American; $67,666,080.25 from B&W; $40,747,457.89 from Lorillard; $189,506,678.86 from Philip Morris; $141,890,169.04 from Reynolds; and $721,868.85 from Liggett. DXA0630917-1033 at 1017-1023 (US 75927); USX6390001-0400 at 0008 (US 89555).

43. From 1966 through October 31, 1990, payments to CTR's Special Projects fund (discussed at Section III(E)(2), infra) totaled $18,270,623.65, which included: $29,665.00 from American; $2,571,345.40 from B&W; $144,254.75 from Liggett; $1,638,490.68 from Lorillard; $5,837,923.49 from Philip Morris; and $6,029,255.33 from Reynolds. DXA0630917-1033 at 1024 (US 75927) (CTR Response to First Set of Interrogatories, Schedule C).

44. From 1971 through April 15, 1983, payments to CTR's Literature Retrieval Division (discussed at Section III(G), infra) totaled $16,870,480.00, which included: $2,214,135.00 from American; $2,681,358.00 from B&W; $606,043.50 from Liggett; $811,840.50 from Lorillard; $4,813,415.50 from Philip Morris; and $5,743,687.50 from Reynolds. DXA0630917-1033 at 1025 (US 75927) (CTR Response to First Set of Interrogatories, Schedule C).

1. Selection and Approval of TIRC's Scientific Advisory Board Members and Scientific Director

45. The first formal meeting of TIRC was held on January 18, 1954. At this first formal meeting, a budget of $1,200,000 was approved; an agreement between TIRC and Hill & Knowlton was approved; the research program, calling for a Scientific Director and a Scientific Advisory Board ("SAB") was approved; a Law Committee was appointed; and the research directors of TIRC member companies were designated as the Industry Technical Committee ("ITC") (discussed further at Section III(F)(2), infra). CTR-TIRC-MIN000001-000252 at 0001-0004, 0018-0032 (JD 093292); ARU1130828-0904 (US 86773); TLT0901400-1410 (US 88187); JH000395-0400 (US 21178).

46. The Law Committee was composed of Chairman George Whiteside of Chadbourne, Parke, Whiteside, Wolf & Brophy; John Vance Hewitt of Conboy, Hewitt, O'Brien & Boardman; Leighton Coleman of Davis, Polk, Wardwell, Sunderland & Kiendl; F.R. Wadlinger of Foulk, Porter & Wadlinger; and Freeman Daniels of Perkins, Daniels & Perkins. This committee drafted the TIRC bylaws. CTR-TIRC-MIN000001-000252 at 0001, 0006, 0021 (JD 093292); CTRMN039046-9106 at 9069 (JD 092825).

47. On January 7, 1954, the ITC held an informal meeting at which its members discussed qualifications for a Scientific Research Director for TIRC and efforts to find and retain a suitable scientist. The research directors were H.R. Hanmer of American; Irwin W. Tucker of B&W; H.B. Parmele of Lorillard; Robert N. DuPuis of Philip Morris; Grant Clarke of Reynolds; Hugh Cullman of Benson & Hedges; Clinton Baber of Larus & Brother; C.S. Stephano of Stephano Brothers; and Ward B. Bennett of United States Tobacco. CTRMN039046-9106 at 9070, 9076 (JD 092825);

TLT0901400-1410 (US 88187); CTRMIN-ITC000009-0011 (JD 095519); JH000395-0400 (US 21178).

48. At the January 7, 1954 meeting, the ITC members agreed that the TIRC Research Director should be a medical doctor, recognized in cancer research, and with experience in chemistry. The ITC nominated persons for the position of TIRC Research Director, and a subcommittee of the ITC, headed by Grant Clarke, Research Director for Reynolds, was appointed to process and screen the list of nominees. TLT0901400-1410 at 1404 (US 88187); JH000395-0400 at 0399 (US 21178).

49. At the March 15, 1954 meeting of TIRC, Chairman Paul Hahn of American, outlined the difficulties encountered in obtaining a Scientific Research Director, and suggested that SAB members be appointed before the Research Director so that they could then assist in selecting a Research Director. TLT0902041-2064 at 2043 (US 88360). The ITC was directed to draw up a suggested list of names for the SAB with the assistance of Hill & Knowlton. TIRC appointed a subcommittee to select scientists to be invited to become members of SAB. CTR-TIRC-MIN000001-000252 at 0005-0006 (JD 093292); TLT0903093-3094 (US 88363); USX6390001-0400 at 0011-0012 (US 89555) (CTR Response to Request for Admission No. 111); ARU1130828-0904 at 0884-0890 (US 86773) (CTR Response to Interrogatory No. 12).

50. The ITC, public relations counsel Hill & Knowlton, and the Law Committee were actively involved in searching for, interviewing, and selecting the scientists appointed to the first SAB. TLT0902041-2064 at 2043 (US 88360); TLT0903093-3094 (US 88363). The ITC screened the candidates being considered for membership on the SAB. 681879254-9715 at 9649 (US 21020).

51. Letters were sent to nine scientists inviting them to become members of the SAB, and acceptances were eventually obtained from seven. Their specialities included pathology, pharmacology, surgery, and statistics. The two scientists who did not accept were connected with the National Cancer Institute and believed that, as government employees, they should not, as a matter of policy, accept the invitation. CTR-TIRC-MIN000001-0252 at 0021 (JD 093292); CTRMN039046-9106 at 9051-9052 (JD 092825); 508775311-5311 (JD 093893); ARU1130828-0904 (US 86773).

52. The first meeting of the SAB was held on April 26, 1954. The SAB members chose as their Chairman, Clarence Cook Little, a well-known cancer researcher and geneticist of high integrity and national repute. At the second meeting of the SAB, Little was selected as Scientific Director on a part-time basis with an assistant who would serve on a full-time basis. In November 1954, Robert Hockett was chosen as Associate Scientific Director. Little served as SAB Chairman from 1954 to 1957 and as TIRC/CTR Scientific Director from 1954 to 1971. Little PD, Lartigue v. Reynolds, 10/5/60, 2713:20-21, 2715:4-12, 2721:9-11; Little PT, Zagurski v. American, 6/7/67, 652:21-653:2, 676:6-18. Following Little, the Scientific Directors were William Gardner (1973-1981), Sheldon Sommers (1981-1987), James Glenn (1988-1990), and Harmon McAllister (1991-1999). CTR-TIRC-MIN000001-0252 at 0022 (JD 093292); TLT0902041-2064 (US 88360); TLT0903105-3108 at 3105 (US 88366); ARU1130828-0904 (US 86773); CTRMN004928-4929 (US 85995); 11310050-0053 (JD 090066).

53. In a November 27, 1963 memorandum, Clarence Cook Little described the Enterprise's criteria for selecting the SAB members. Little wrote:

> In the selection of a Scientific Advisory Board and in the acceptance of the nomination by that Board of a Scientific Director, it was clearly shown that the attitude of the TIRC was to pick scientists interested broadly in the origin and nature of the diseases implicated and in the evaluation of smoking as a possible factor, not as a proven one.

70003601-3602 at 2601 (US 85993) (emphasis in original).

54. Clarence Cook Little's personal commitments and assumptions about cancer causality made him an ideal proponent of the industry's goal of maintaining a "controversy" rather than scientifically resolving the questions regarding smoking and health. Brandt WD, 86:10-18. Little explained at the press conference announcing his appointment that: "I am ultraconservative about cause and effect relationships." CW01054843-4879 at 4877 (US 20278). However, at that same press conference, Little made many claims about the health benefits of cigarette use:

> It is very well-known, for example, that tobacco has relaxed a great many people. It is a very good therapy for a great many nervous people.

CW01054843-4879 at 4845 (US 20278).

55. Little repeatedly centered attention on the so-called "constitutional hypothesis"; other environmental risks; and the need for more research into the basic etiology of the diseases associated with smoking. Brandt WD, 86:19-22; McAllister WD, 123:18-22; Little PT, Zagurski v. American, 6/7/67, 661:9-663:9, 665:7-666:20. He believed that "the causation of lung cancer was not known," that it was a complicated and unsolved problem with many factors involved, such as nutrition, heredity, the mental type of the individual, present or former or existing infection, air pollution, and radiation. This statement of his beliefs became known as the "constitutional hypothesis." Little PD, Lartigue v. Reynolds, 10/5/60, 2729:1-2730:15, 2735:11-2736:2; CTRMN005534-5541 (US 21156); (no bates) (US 21224); (no bates) (US 21233); (no bates) (US 21834) . He argued that "no positive

evidence has been advanced by anybody who believes in the tobacco guilt theory that has made me change my mind." Little PD, Lartigue v. Reynolds, 10/5/60, 2782:10-16. Under Little's leadership, the SAB funded studies on vitamins, influenza, twins, and viruses, but not on carcinogenic agents in tobacco smoke because: "we believe that no such agents have been found which are carcinogenic to men," id. at 2755:6-18; "[w]e don't believe they are there and a will-of-the-wisp hunt for something that hasn't yet been shown is a waste of money," id. at 2761:14-22; "[t]here are no carcinogenic agents in tobacco tar that have been proven to cause cancer in man. . . . And I say again that to transfer from the skin of a mouse to the lung of a man is not science," id. at 2762:23-2763:13.

56. The SAB met regularly from 1954 until at least 1997 to review, approve, and renew grant applications and contracts. Those who attended the SAB meetings, in addition to SAB members, were the ITC Chairman, TIRC/CTR staff members, public relations counsel for TIRC/CTR, and (at times) Defendants' attorneys and scientific guests. Zahn PD, Cipollone v. Liggett, 12/16/1986, 106:3-107:1; Zahn PD, Massachusetts v. Philip Morris, 5/28/98, 78:3-79:5, 80:2-21; Zahn PD, Richardson v. Philip Morris, 12/1/1998, 96:10-16; CTRMIN-SAB000001-1061, 70011735-1757 (JD 090960); CTRMIN-SAB000001-1061 (US 21146); CTRMIN-SAB000070-0074 (US 80382); CTRMIN-SAB000320-0325 (US 80429); CTRMIN-SAB000326-0330 (US 80430); CTRMIN-SAB000337-0341 (US 80432); CTRMIN-SAB000342-0350 (US 80433); CTRMN004320-4323 (US 21148); CTRMN004539-4544 (US 21151); CTRMIN048368-8369 (US 85996); ZN7912-7921 (US 64789); SM0120005-0009 (US 65442); 955011516-1520 (US 32362); TLT0903247-3251 (US 87521); TLT0903189-3193 (US 87522); TLT0903145-3148 (US 87523); TLT0903132-3135 (US 87524); TLT0903116-3117 (US 87525); TLT0903181-3185 (US 87526);

TLT0903177-3180 (US 87527); TLT0903166-3169 (US 87528); TLT0903208-3211 (US 88367); TLT0903202-3207 (US 88368); TLT0903197-3201 (US 88369).

57. Many meetings of the SAB had no written record. According to a confidential report on the December 9, 1981 meeting of the SAB, the following policy regarding meetings was reaffirmed: "to conduct informal 'in house' conferences on specific subjects 'off the record' held without minutes or publication, but not to sponsor open meetings with a resultant publication." This policy was in effect at least ten years prior to the 1981 meeting and continued into the late 1990s. CTRMIN-SAB 000611-0612 (US 80480); Lisanti PD, Richardson v. Philip Morris, 12/8/98, 112:16-21, 114:1-116:18.

58. Contrary to Defendants' assertions that the members of the SAB were disinterested parties who received no monetary compensation from the tobacco companies or from TIRC/CTR, sixteen members of the SAB (out of forty-three) were awarded over $5 million in grants-in-aid funding between 1954 and 1991. Sommers PD, Cipollone v. Liggett, 10/2/86, 130:4-131:1, 132:16-19; McAllister PD, United States v. Philip Morris, 5/23/02, 250:15-253:11; Zahn PD, Cipollone v. Liggett, 12/18/1986, 388:3-7; Lisanti PD, Engle v. Reynolds, 8/13/97, 111:23-112:3; McAllister WD, 76:16-18.

59. Defendants, through the CTR's Board of Directors, exercised control over the CTR research grant program throughout its existence by approving the total amount of funding for the grant program and, after the first few years, by selecting the CTR Scientific Directors and their staff. Zahn PD, Richardson v. Philip Morris, 12/16/98, 459:13-460:9; McAllister PD, United States v. Philip Morris, 5/23/02, 56:5-57:18; USX6390001-0400 at 0012 (US 89555); CTRMN003816-3835 (US 21147). In fact, Helmut Wakeham of Philip Morris complained to David Felton, a BATCo

scientist, that finding a Scientific Director to succeed Little after he resigned "was in the hands of the lawyers committee" and the Tobacco Institute without consultation with CTR or company scientists. 10315968-5971 (US 26378); (US 26379); (US 63573).

2. Research Activities of TIRC/CTR

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, 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. Zahn PD, Richardson v. Philip Morris, 12/16/98, 318:16-319:1, 319:3, 325:3-12, 325:20-328:6, 336:15-337:11, 561:21-562:7; Brandt WD, 57:13-23; 82:21-83:8, 127:17-19; Sommers PD, Cipollone v. Liggett, 10/2/86, 73:12-16, 73:20-22, 74:2, 74:8-15. From the outset, the dual functions of TIRC were intertwined, with the scientific program of TIRC always subservient to the goals of public relations. Brandt WD, 57:8-11.

61. Defendants' denials of the link between smoking and disease kept away many excellent researchers. In an October 1969 memorandum to Ross R. Millhiser of Philip Morris, Helmut Wakeham, Vice President and Director of Research for Philip Morris, expressed concern that

> the efforts of the tobacco industry through CTR and the American Medical Association have failed to involve the best investigators. At the beginning of our support of smoking and health research, this

> failure may have been connected with our consistent denial of the statistics and our continued assertion that there is nothing to the cigarette causation hypothesis.

1001609594-9595 (US 21437).

62. A year later, Wakeham again discussed CTR's strategy of frequent and public denials, in a December 1970 memorandum to Joseph Cullman, Chairman of Philip Morris and Chairman of the Executive Committee of the Tobacco Institute:

> It has been stated that CTR is a program to find out the "truth about smoking and health." What is truth to one is false to another. CTR and the Industry have publicly and frequently denied what others find as "truth." Let's face it. We are interested in evidence which we believe denies the allegation that cigarette smoking causes cancer.

1000255938-5940 (US 20085).

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. Brandt WD, 80:12-18.

64. TIRC/CTR funded research through a variety of mechanisms: grants, contracts, CTR Special Staff Services, and CTR Special Projects. ARU1130828-0904 (US 86773). See Section III(E)(2), infra for detailed discussion of CTR Special Projects.

65. Virtually none of the research funded by TIRC/CTR centered on immediate questions relating to carcinogenesis and tobacco that could resolve the question of the harms brought about by cigarette smoking. Although some TIRC/CTR-funded researchers explored alternative hypotheses, TIRC/CTR did not typically pursue direct research on cigarettes and disease. Rather than addressing

the constituents in tobacco smoke and their demonstrated effect on the human body, TIRC/CTR directed the majority of its resources to alternative theories of the origins of cancer centering on genetic factors and environmental risks. The major thrust of TIRC/CTR was to emphasize that human cancers were complex processes, difficult to study and difficult to understand, and to focus on the "need for more research." Brandt WD, 82:10-12, 85:12-86:3, 120:20-121:11. Although research funded by the SAB was irrelevant to the immediate questions associated with tobacco smoking and health, it did "create the appearance of [Defendants] devoting substantial resources to the problem without the risk of funding further 'contrary evidence.'" Harris WD, 104:23-105:7.

66. Two of CTR's Scientific Directors, Harmon McAllister and Sheldon Sommers, confirmed that the basic research funded by CTR was not immediately relevant to smoking and health. McAllister stated that they funded "basic medical research on the etiology of diseases that have been epidemiologically linked to smoking. That's our global [sic] -- that's the way we operate. Those are the sorts of applications we entertain." McAllister PD, Broin v. Philip Morris, 12/6/93, 46:2-16. Sommers stated that a CTR grant application's relevance to cigarette smoking and health was not the primary factor the SAB used in rating grant applications, but that "[s]cientific merit was of equal or of greater importance than relevance." Sommers PD, Cipollone v. Liggett, 10/2/86, 134:10-22, 135:4-6. Sommers was an SAB member from 1967 to 1989, SAB Chairman from 1970 to 1980, CTR Research Director from 1969 to 1972, and CTR Scientific Director from 1981 to 1987. Sommers PD, Galbraith v. Reynolds, 9/4/85, 10:12-25, 22:7-12, 23:22-24:16; Sommers PD, Rogers v. Reynolds, 12/17/85, 9:11-12, 13:14-18, 14:15-22; Sommers PD, Arch v. American, 7/14/97, 10:21-24, 11:9-24, 13:9-13, 16:14-21, 95:14-22; Sommers PD, Arch v. American, 7/15/97, 164:18-22.

67. During a four-week visit to the United States in 1958, the three British scientists who met with representatives of TIRC and TIRC's SAB, as well as representatives of American, Liggett, and Philip Morris, reported that

> Liggett & Meyers stayed out of TIRC originally because they doubted the sincerity of TIRC's motives and believed that the organization was too unwieldy to work efficiently. They remain convinced that their misgivings were justified. In their opinion TIRC has done little if anything constructive, the constantly reiterated 'not proven' statements in the face of mounting contrary evidence has thoroughly discredited TIRC, and the SAB of TIRC is supporting almost without exception projects which are not related directly to smoking and lung cancer.

TINY0003106-3116 (US 21369); 105408490-8499 at 8495 (US 21135), (US 76169); Brandt WD, 94:8-95:17.

68. After another visit to the United States in the fall of 1964, two different British scientists wrote in their report: "As we know, CTR supports only fundamental research of little relevance to present day problems." 1003119099-9135 (US 20152).

69. The Defendants knew that TIRC/CTR was funding research concerning cancer as a general issue, rather than the relationship of smoking to cancer. Brandt WD, 121:6-122:14. In January 1968, Addison Yeaman, B&W Vice President and General Counsel, wrote:

> Review of SAB's current grants indicates that a very sizable number of them are for projects in what might be called 'basic research' without specific orientation to the problem of the relationship of the use of tobacco to human health.

00552837-2839 at 2837 (US 22968).

70. In addition, Defendants appreciated the delays associated with the basic research approach. Janet Brown, outside counsel for American, explained CTR's strategy of undertaking only

basic research funding, as opposed to funding questions directly related to tobacco and health to Cy Hetsko, Vice President and General Counsel for American, and Addison Yeaman, Vice President and General Counsel for B&W, at a January 1968 meeting. The rationale was that basic research kept alive the Enterprise's open question argument on causation. Yeaman summarized Brown's position as:

> First, we maintain the position that the existing evidence of a relationship between the use of tobacco and health is inadequate to justify research more closely related to tobacco, and
>
> Secondly, that the study of the disease keeps constantly alive the argument that, until basic knowledge of the disease itself is further advanced, it is scientifically inappropriate to devote the major effort to tobacco.

68-262155-2157 (US 63527).

71. Geoffrey F. Todd, Executive Director of the Tobacco Research Council, a British organization equivalent to CTR (discussed further at Section III(I)(3), infra) made several visits to the United States, during which time he met with Defendants' representatives, attorneys, and scientists. After his 1973 trip, Todd wrote: "It was difficult to avoid the sad conclusion that C.T.R. has become a backwater of little significance in the world of smoking and health." 100226995-7033 (US 21134).

72. Throughout the existence of TIRC/CTR, representatives of the member companies and their attorneys were influential in its activities and research. Beginning in November 1971, CTR staff met semiannually with representatives of the member companies, usually the research directors and general counsel. The all-day meetings were designed to keep members of the Enterprise aware

of the status of research funded by Defendants through TIRC/CTR. CTRMIN-MOM000016-0034 at 0018, 0022 (US 21170).

73. The Enterprise, through TIRC/CTR, sought out certain researchers and/or areas of research and solicited grant applications. Clarence Cook Little admitted that, seeing a line of work that showed promise, TIRC/CTR approached researchers and asked them, "Are any of you willing to try this if we provide your institution with money and you with help?" Little PD, Lartigue v. Reynolds, 10/5-6/60, 2721:21-2722:9, 2800:12-25; Lisanti PD, Small v. Lorillard, 3/31/98, 478:11-480:25.

74. Sheldon Sommers, CTR Scientific Director, stated that CTR frequently initiated research and suggested particular research for which it would make grants available. He said, "Yes. I go out all the time looking for opportunities and new ideas and investigators in various fields of biomedicine." Sommers PD, Rogers v. R.J. Reynolds, 12/17/85, 50:19-52:15, 52:22-53:2, 53:7-18; Sommers PD, Cipollone v. Liggett, 10/3/86, 181:15-23, 182:12-183:10; Sommers PD, Small v. R.J. Reynolds, 10/8/97, 176:18-177:11; 85760397-0397 (US 85998).

75. One of the reasons that Paul Kotin decided to resign from the SAB was that he was disturbed by "the going out and requesting the submission of grants, of applications for grants. And I felt this circumvented the original foundation for the SAB, at least for my membership in the SAB." Kotin PD, Falise v. American , 7/6/00, 67:10-69:24. Kotin had served on the TIRC SAB from 1954 to 1965. Kotin PD, Falise v. American , 7/6/00, 9:9-15. Another reason for Kotin's resignation was reported by visitors from the United Kingdom's Tobacco Research Council in October 1964:

> The recent [CTR] Annual Report by Dr. Little was severely criticised by the U.S. Surgeon General at a Washington press conference. Dr. Kotin was also highly critical of it and talks privately of resigning

> from the S.A.B. if another report of the same nature is going to be published next year.

512678484-8499 (US 51653); 1003119099-9135 (US 20152), (US 35649*); 105407261-7329 (JE 34739); see also Kotin PD, Falise v. American , 7/6/00, 72:19-73:14; Kotin PD, Falise v. American, 7/7/00, 190:2-192:17, 197:13-198:2.

76. Similarly, John Craighead, who was an SAB member for approximately one year, was also disturbed by the nature of the CTR research program. Craighead resigned from the SAB in part because he felt that the research did not address the fundamental issues related to tobacco and because of the involvement of CTR Chairman Addison Yeaman into the direction of the CTR research program. Craighead PD, Butler v. Philip Morris, 11/13/96, 47:8-17, 84:13-86:3, 87:10-21, 88:6-10, 93:8-17, 107:19-25; Sommers PD, Small v. R.J. Reynolds, 10/7/97, 10:24-11:12, 12:2-13:19.

77. Sheldon Sommers acknowledged the influence and control wielded by CTR Chairmen and Presidents over the TIRC/CTR research program. All TIRC/CTR Presidents were from tobacco companies, Sommers PT, Cipollone v. Liggett, 4/19/88, 8736:7-12, and, until 1991, each and every TIRC/CTR Chairman was a retired tobacco company executive. McAllister WD, 18:15-16. In September 1981, Sommers wrote that "new Chairman Hobbs [from RJR] is more interested in basic research so relevance to smoking and health is no longer a crucial matter in funding." 85760397 (US 85998); Sommers PD, Cipollone v. Liggett, 10/2/86, 136:8-14. Sommers also testified that, after Addison Yeaman (from B&W) became CTR President and CEO, CTR began initiating more contracts because Yeaman believed that "the program was too diffuse and should be 'targeted.'" Sommers PD, Cipollone v. Liggett, 10/3/86, 297:16-298:2.

78. Following CTR's January 1975 annual meeting, the CTR staff was given more control over the grant and contract application process. According to the meeting minutes:

> The Chairman stated that in the continued effort to bring maximum information to the Scientific Advisory Board preliminary investigation is being made by the Council's staff. . . . Following this, the proposals are then submitted for study by a subcommittee of the Board [SAB]. . . .

CTRMIN-MOM000070-0087 at 0071 (US 32618).

3. Public Relations Activities of TIRC/CTR

79. In December 1953, Timothy Hartnett, President of B&W, summarized the crisis of the industry in the following terms:

> But cancer research, while certainly getting our support, can be only half an answer. . . . The other side of the coin is public relations . . . [which] is basically a selling tool and the most astute selling may well be needed to get the industry out of this hole. . . . It isn't exaggeration that no public relations expert has ever been handed so real and yet so delicate a multi-million dollar problem. . . . Finally, one of the roughest hurdles which must be anticipated is how to handle significantly negative research results, if, as, and when they develop.

1005039779-9783 (US 20190); Brandt WD, 55:22-56:11.

80. From the outset, the dual functions of TIRC -- public relations and scientific research -- were intertwined. Ernest Pepples, in an internal B&W letter dated April 4, 1978, acknowledged:

> Originally, CTR was organized as a public relations effort. The industry told the world CTR would look at the diseases which were being associated with smoking. There was even a suggestion by our political spokesmen that if a harmful element turned up the industry would try to root it out.

680212421-2423 at 2422 (US 54024); 682338651-8653 (US 22899).

81. One name initially proposed for TIRC/CTR, the "Tobacco Industry Committee for Public Information," reflected its public relations purpose. However, John Hill of the public relations firm Hill & Knowlton expressed skepticism that a public relations strategy that simply argued that the harms of cigarette smoking were "unproven" would succeed. Such a campaign might appear self-interested in the face of the serious health concerns being raised. Brandt WD, 54:11-19. As a result, Hill suggested that the industry should sponsor new research and use

> [t]he word "research" . . . in the name of the Committee to establish the fact that the group will carry on or sponsor fundamental scientific research and will not be solely an information agency.

TLT0900422-0430 at 0424 (US 88169); TLT0901541-1545 at 1542 (US 87225); TLT0901546-1549 (US 88191).

82. A white paper titled "A Scientific Perspective on the Cigarette Controversy" was one of the first public relations projects undertaken by Hill & Knowlton on behalf of its new client, TIRC. TLT0901688-1707 (US 88386). Hill & Knowlton/TIRC undertook the project because Defendants felt it necessary and urgent

> to present to leaders of public opinion the fact that there was no unanimity among scientists regarding the charges against cigarettes.

TLT0902041-2064 at 2054 (US 88360). The twenty-page booklet consisted of published quotations from some three dozen scientists and researchers who denied that there was any proof that linked smoking and lung cancer or who questioned the validity of statistical methods and the conclusions drawn from recent laboratory experiments with mice. TLT0901688-1707 (US 88386); TLT0902041-2064 at 2054 (US 88360), (US 88364); CTRMN004924-4927 (US 21152).

83. 205,000 copies of "A Scientific Perspective on the Cigarette Controversy" were released on April 14, 1954. CTRMN004924-4927 (US 21152). The booklet was sent to 176,800 doctors, as well as to deans of medical and dental colleges. TLT0902954-2955 (US 88388). The booklet with a press release went to a press distribution of 15,000, including: editors of daily and weekly newspapers, consumer magazines, veterans magazines, and medical and dental journals; news syndicate managers; business editors; editorial and science writers; radio and television commentators; news columnists; and Members of Congress. Id.; CTR-TIRC-MIN000001-0252 at 0006, 0007, 0010 (JD 093292); TLT0900159-0161 (US 87720).

84. In the June 1954 "Public Relations Report and Recommendations for Tobacco Industry Research Committee," Hill & Knowlton described the success of its public relations efforts for TIRC:

> Committee headquarters is steadily gaining recognition as a source of authoritative information on the subject of tobacco and health. The result is that news and magazine writers, columnists and commentators are turning to the Committee and its public relations counsel for more and more information.

TLT0901558-1563 at 1559 (US 88394); 514806129-6131 (US 20860).

85. Timothy Hartnett became the full-time chairman of TIRC on July 1, 1954, the day after his retirement as President of B&W, and continued to advance the Defendants' "open question" position in that role. In the press release generated by Hill & Knowlton announcing his appointment, Hartnett repeated the two commitments that TIRC had made in its Statement of Purpose and in its bylaws, i.e., (1) to carry on "comprehensive and objective scientific and statistical research to establish the facts," and (2) "report them to the public." After stating that the "tobacco industry is

determined to find the answers to the public's questions about smoking and health," Hartnett continued:

> It is an obligation of the Tobacco Industry Research Committee at this time to remind the public of [some] essential points: (1) There is no conclusive scientific proof of a link between smoking and cancer; (2) Medical research points to many possible causes of cancer; . . . (5) The millions of people who derive pleasure and satisfaction from smoking can be reassured that every scientific means will be used to get all the facts as soon as possible.

Brandt WD, 56:12-23; TLT0901831-1832 (US 88398).

86. Wilson Hoyt, who was initially a Hill & Knowlton employee with no scientific background whatsoever, held positions as TIRC/CTR Executive Secretary, Executive Director, Executive Vice President, and President in his three decades with TIRC/CTR. Brandt WD, 58:23-59:2. In his 1955 administrative reports as TIRC Executive Secretary and Hill & Knowlton executive, Hoyt affirmed the intertwined functions of public relations and research in TIRC's program. In his April 1955 report, he wrote:

> Essentially, the major purposes of the TIRC are Research and Public Relations. Our job is to maintain a balance between the two, and to continue to build soundly so that at all times Research and Public Relations complement each other. In that way we intend to assume the mantle of leadership and, ultimately, to create a condition where the public will look to the TIRC for answers rather than to others.

CTR-TIRC-MIN000033-0052 (US 33006); Brandt WD, 83:9-23. In his January 1955 report, he wrote, "Within this framework we have furthered and coordinated the two major purposes for which the Committee was organized namely, the public relations phase and the research program." CTR-TIRC-MIN000001-0252 at 0018-0032 (JD 093292); CTRMN003816-3835 at 3826 (US 21147).

87. Despite Defendants' assertion that TIRC/CTR was solely an organization that funded independent research for the purpose of finding answers to smoking and health question, it served to a great extent as an effective public relations tool and information conduit. In a July 1963 memorandum, Addison Yeaman, General Counsel for B&W, wrote:

> The TIRC cannot, in my opinion, provide the vehicle for such research. It was conceived as a public relations gesture and (however undefiled the Scientific Advisory Board and its grants may be) it has functioned as a public relations operation.

689033412-3416 (US 22034); Brandt WD, 116:17-117:22; VXA2510190-0194 (US 63599); 2046754905-4909 (US 20477); Duffin PD, Cipollone v. Liggett, 1/23/86, 118:14-17.

88. Alexander Spears, Lorillard's Director of Research, in 1974 echoed the sentiments of Addison Yeaman when he explained:

> Historically, the joint industry funded smoking and health research programs have not been selected against specific scientific goals, but rather for various purposes such as public relations, political relations, position for litigation, etc. Thus, it seems obvious that reviews of such programs for scientific relevance and merit in the smoking and health field are not likely to produce high ratings. In general, these programs have provided some buffer to the public and political attack of the industry, as well as background for litigious strategy.

01421596-1600 (US 20049); 83910516-0520 (US 55955); Brandt WD, 123:14-124:1.

89. In a 1975 speech to CTR members, Addison Yeaman gave his observations on the Council, noting, "It is my sober judgement that CTR, as it now operates is the greatest public relations asset you have in the problem of tobacco and health." 11303014-3020 at 3017 (US 86005) (emphasis in original). See Section III(D)(2), infra for more discussion of public relations activities.

4. Publications and Public Statements of TIRC/CTR

a. TIRC/CTR Annual Reports

90. TIRC/CTR published and issued Annual Reports from 1956 through 1997. McAllister WD, 20:10-11. Copies of the TIRC/CTR Annual Reports were sent to libraries, colleges and universities, deans of medical schools, science and medical editors and writers for the popular press, CTR grant recipients, and members of professional medical societies. McAllister WD, 20:14-24; Glenn PD, Sontag v. U.S. Tobacco, 10/16/96, 34:4-23; Sommers PD, Rogers v. R.J. Reynolds, 12/17/85, 18:8-19.

91. The TIRC/CTR Annual Reports routinely included, in varying formats: abstracts of articles published by researchers funded by TIRC/CTR grants; brief statements regarding organization and policy; lists of SAB members and their affiliations; lists of current and former grantees; lists of ongoing and completed projects; and research summaries, commentaries, rationales, and observations. Zahn PD, Cipollone v. Liggett, 12/16/86, 79:4-13, 81:1-9; CTRAR000001-0013 (JD 090000); CTRAR000015-0040 (JD 090001); CTRAR000041-0073 (JD 090002); CTRAR000074-0109 (JD 090003); CTRAR000110-0147 (JD 090004); CTRAR000148-0185 (JD 090005); CTRAR000186-0216 (JD 090006); CTRAR000217-0253 (JD 090007); CTRAR000254-0293 (JD 090008); CTRAR000294-0334 (JD 090009); CTRAR000335- 0376 (JD 090010); CTRAR000377-0433 (JD 090011); CTRAR000434-0477 (JD 090012); CTRAR000478-0526 (JD 090013); CTRAR000527-0580 (JD 090014); CTRAR000581-0629 (JD 090015); CTRAR000630-0675 (JD 090016); CTRAR000676-0717 (JD 090017); CTRAR000719-0763 (JD 090018); CTRAR000764-0807 (JD 090019); CTRAR000808-0861 (JD 090020); CTRAR000862-0916 (JD 090021); CTRAR000917-0974 (JD 090022); CTRAR000975-1036 (JD 090023); CTRAR001037-

1097 (JD 090024); CTRAR001098-1172 (JD 090025); CTRAR001173-1246 (JD 090026); CTRAR001247-1355 (JD 090027); CTRAR001356-1451 (JD 090028); CTRAR001452-1547 (JD 090029); CTRAR001548-1649 (JD 090030); CTRAR001650-1767 (JD 090031); CTRAR001768-1880 (JD 090032); CTRAR001881-2003 (JD 090033); CTRAR002004-2149 (JD 090034); CTRAR002150-2287 (JD 090035); CTRAR002288-2465 (JD 090036); CTRAR002466-2619 (JD 090037); CTRAR002620-2784 (JD 090038); 70000302-0618 (JD 090039); 85865669-5692 (US 22954); 85865742-5804 (US 21082); 85865805-5873 (US 21083); 85865874-5946 (US 21084); 01141473-1541 (US 20039); 85866020-6080 (US 21085); 1002315412-5483 (US 20125); 1002315484-5561 (US 20126); 1002315562-5640 (US 20010); 1002315641-5722 (US 20011); 1002315723-5834 (US 20127); 501773418-3466 (US 20686); 1002315835-5920 (US 21800); 85865693-5741 (US 22237); 1005082487-2584 (US 20202); 1005082585-2690 (US 20203); 1005082691-2788 (US 20012); 2028556086-6177 (US 20428); 1002316312-6397 (US 20128); 1002316398-6485 (US 20129); 1002316486-6571 (US 20130); 1002316572-6677 (US 20131); 1002316678-6780 (US 20132).

92. From 1956 until 1993, TIRC/CTR public relations counsel Leonard Zahn was in charge of preparing and compiling the Annual Reports, making distribution recommendations, and drafting the Introduction section for some of them. Zahn PD, Cipollone v. Liggett, 12/18/86, 368:23-369:4, 369:10-370:14, 371:5-9, 371:11-372:8, 379:16-381:24, 382:17-21; Zahn PD, Massachusetts v. Philip Morris, 5/28/98, 41:22-45:12, 48:2-7, 49:6-17, 49:22-51:1, 51:14-21, 52:8-23; CTRMN015594-015613 (US 79903). In a December 1972 memo attached to his proposed outline for the next report, Zahn acknowledged that

> [t]he research section of the CTR [Annual] Report is based on published articles by grantees and, unfortunately, not much directly related to tobacco appeared in the last 18 months.

CTRMN015614-015616 (US 79904).

93. The commentary in the Annual Reports uniformly challenged the hypothesis that smoking was linked to lung cancer and emphasized that data regarding smoking and health were controversial, contradictory, and inconclusive. For example:

- 1957 Report of the Scientific Director ("[S]ound medical and experimental knowledge of tobacco use is relatively limited, at times contradictory, and often conjectural rather than factual. . . . There is not known today any simple or quick way to answer the question of whether any one factor has a role in causing human lung cancer . . . no one has established that cigarette smoke, or any one of its known constituents, is cancer causing to man. . . . Members of the [TIRC SAB] Board take the general position that definitive conclusions or predictions of individual risks are unwarranted by the present imperfect state of knowledge in the complex field of lung cancer causation," and describing cancer as "this so-called constitutional disease.");

- 1958 Report of the Scientific Director ("[A] problem may well be obscured, and its solution delayed, by the soothing acceptance of an oversimplified and immature [tobacco theory] hypothesis. . . . The proponents of the tobacco theory have generated increasingly intensive and extensive propaganda. . . . As a result, a non-scientific atmosphere, conducive to prematurity, unbalance, and inadequacy of public judgement, has pervaded the whole field. . . . The prohibition concept discounts or ignores all considerations of smoking benefits in terms of pleasure, relaxation, relief of tension or other functions.");

- 1961 Report of the Scientific Director ("[T]hose who most actively promote this [smoking-lung cancer] hypothesis have consistently ignored or, at best, have minimized the fact that numerous directly relevant experiments either have failed to support the hypothesis or have provided only weak or uncertain data.");

- 1963-64 Report of the Scientific Director ("After 10 years the fact remains that knowledge is insufficient either to provide adequate proof of any hypothesis or to define the basic mechanisms of health and disease with which we are concerned.");

- 1964-65 Report of the Scientific Director ("[E]vidence to support the thesis that cigarettes exercise a direct carcinogenic effect on man has not been forthcoming.");

- 1978 Report of the Council for Tobacco Research-U.S.A., Inc. ("[T]he complex etiology of these constitutional diseases [cancer, heart disease, chronic pulmonary ailments] remains unraveled. These diseases have been associated statistically with smoking, but such associations are not proof of cause and effect.").

CTRAR000015-0040 (JD 090001); 501773418-3466 (US 20686); Brandt WD, 86:19-87:20; 85865693-5741 (US 22237); CTRAR000041-0073 (JD 090002); 85865742-5804 (US 21082); CTRAR000148-0185 (JD 090005); 01141473-1541 (US 20039); CTRAR000217-0253 (JD 090007); 1002315412-5483 (US 20125); CTRAR000254-0293 (JD 090008); 1002315484-5561 (US 20126); CTRAR000808-0861 (JD 090020); 1002316572-6677 (US 20131).

94. For more than two decades, the commentaries in the Annual Reports also discounted the conclusions reached by the public health community and the Surgeon General linking smoking and disease and simply repeated the "open question" position of the tobacco industry. 515709297-9340 (US 20866); see Section (V)(A), infra. Robert Hockett, Associate Scientific Director at the Council for Tobacco Research–USA, which evaluated the content of the Annual Reports for the industry wrote: "The aim of [Little's] summations, much too apparently, seems to be to protect smoking." MNAT00515749-5762 at 5752 (US 63570); Brandt WD, 122:15-123:13; Lisanti PD, Small v. Lorillard, 3/31/98, 454:5-14.

95. A June 20, 1984 memorandum from Wendell Stone, attorney at Shook, Hardy & Bacon, during the Cipollone litigation, acknowledged the bias of CTR/TIRC's annual reports. Stone

commented that the reports, especially the early ones, "contained lengthy commentary . . . which read much like industry position papers." Stone also concluded:

> The TIRC/CTR commentary on research did not always seem to conform fully to the positions taken or implied in the abstract. For example, with respect to the Leuchtenberger inhalation research, the abstracts in the annual reports tend to give the impression that these researchers did in fact have a good animal model of lung cancer production by smoke inhalation. However, commentary on this research in the front material to the reports tended to argue away the relevance of the results.

515709297-515709340 (US 20866).

b. TIRC/CTR Newsletters

96. From October 1957 to at least 1968, first TIRC and then the Tobacco Institute published a newsletter variously named Tobacco and Health, Research Reports on Tobacco and Health, and Reports on Tobacco and Health Research. The newsletter was published two or three times a year; contained articles that disputed the relationship between smoking and disease; criticized research supporting such a relationship; and emphasized that differing opinions existed regarding tobacco use and health. Brandt WD, 84:10-85:9; TIMN0000713-0714 (US 21264); TIKU000006665-6668 (US 86007); TIMN0000719-0722 (US 86011); TIMN0000723-0726 (US 86012); TIMN0000727-0728 (US 86013); TIMN0000733-0734 (US 86014*); TIMN0000736-0738 (US 86015*); TIMN0000739-0744 (US 86016); TIMN0000745-0747 (US 86017); TIMN0000748-0750 (US 86045); TIMN0000751-0756 (US 86018); TIMN0000757-0762 (US 86019); TIMN0000763-0774 (US 86020); TIMN0000775-0780 (US 86021); TIMN0000781-0784 (US 86022); TIMN0000785-0788 (US 86023); TIMN0000789-0792 (US 86024); TIMN0000793-0796 (US 86025); TIMN0000797-0800 (US 86026); TIMN0000801-0804 (US

86027); TIMN0000805-0808 (US 86028); TIMN0000809-0812 (US 86029); TIMN0123324-3327 (US 21282); TIMN0130693-0696 (US 62844); TIMN0130707-0710 (US 62845); TIMN0130728-0731 (US 62847); TIMN0130802-0803 (US 62849); TIMN0130816-0817 (US 62851); TIMN0000713-0714 (US 21264); TIMN0123276-3279 (US 77059); TIMN0123304-3307 (US 77060); TIMN0130687-0690 (US 77068); TIMN0130742-0745 (US 77069); TIMN0130749-0752 (US 77070); TIMN0130778-0781 (US 77071); TITX0006679-6682 (US 77111); 502367882-7887 (US 49132); TIMN0123314-3317 (US 21345); TITX0006691-6694 (US 86044); TIMN0000748-0750 (US 86045); TIMN0130810-0811 (US 62850); TIMN0130735-0738 (US 62848); TIKU000006559-6562 (US 86048); TIKU000006545-6548 (US 86050); TIMN0130756-0761 (US 86051); TIMN0130714-0717 (US 62 846); TIKU000006538-6541 (US 86052); 511018410-8413 (US 22459); MNAT00515648-5651 (US 72185).

97. Initially, TIRC was to publish the Tobacco and Health newsletter. This provoked a strong reaction from members of the Scientific Advisory Board who received advance copies of the first issue. In a letter to SAB Chairman Clarence Little, SAB member McKeen Cattell classified the new publication as "obviously propaganda material" and expressed serious concern about the effect it would have on the SAB's program. 701235030-5030 (US 31474). Julius Comroe, another SAB member, advised that the SAB and TIRC should not be identified with the Tobacco and Health publication. 70123533-3533 (JD 093608); 70123536-3536 (JD 093610).

98. In response to these concerns, the Tobacco Information Committee, a subcommittee of TIRC, was formed in late 1957, from what was previously known as the TIRC Public Relations Committee. The committee was comprised of public relations employees from the companies and public relations counsel representing the companies, and one of its principal functions was to publish

the Tobacco and Health newsletter. The first two issues of the Tobacco and Health newsletter were issued under the name of the Tobacco Information Committee and financed from the TIRC budget. 70123534-3534 (JD 093609); CTR-TIRC-MIN000001-0252 at 0125-0127 (JD 093292); CTRMN039046-9106 at 9056 (JD 092825).

99. In 1958, after the first two issues were published, the Tobacco Institute assumed responsibility for publishing the Tobacco and Health newsletter on behalf of Defendants. Even when published by the Tobacco Institute, there was close coordination with TIRC, and most editorial material derived from TIRC annual reports, the TIRC library, and other materials available through TIRC. CTR-TIRC-MIN000001-0252 at 0154, 0162 (JD 093292).

100. A 1968 Tobacco and Health Research procedural memorandum from Hill & Knowlton to William Kloepfer, Tobacco Institute Vice President, admitted that "[m]ost papers used in TH&R come from the Council for Tobacco Research Library through advance distribution of Ken Austin of CTR." Zahn PD, Cipollone v. Liggett, 12/18/86, 344:9-22.

101. The Tobacco and Health newsletter was a public relations vehicle used to influence health professionals. Its primary purpose was to present directly to the medical and scientific communities research material related to tobacco and health -- material that frequently did not deal with tobacco but suggested other causes of cancer, such as viruses, air pollution, and previous chest ailments. Its secondary purpose was to attract the attention of the lay press to studies that challenged the validity of research linking cancer to cigarette use. A news release with each issue attracted press attention; one or both of the major wire services usually carried stories. In order to combat the effects of the Tobacco and Health newsletter, four non-governmental health agencies began issuing

a Medical Bulletin on Tobacco in 1962. TIMN0081443-1457 at 1443-1444 (US 21307); Brandt WD, 84:10-85:9.

102. In 1962, circulation of the newsletter reached 520,000, with about 315,000 copies going to doctors, dentists, and medical schools, and the rest going to writers and editors, public opinion leaders, all members of Congress, brokerage houses, tobacco groups, farm and supplier groups, industry groups, and member companies. Publication of research results helped make news and was coordinated with other publicity efforts. TIMN0070640-0656 at 0643 (US 21299); TIMN0070657-0674 at 0661 (US 22983); CTRMN015416-5435 at 5416-5417, 5421 (US 79889); CTRMN015485-5502 at 5489 (US 79893); CTRMN015412-5415 at 5415 (US 79888).

103. In a procedural memorandum, Hill & Knowlton delineated specific criteria for selecting reports to be included in Tobacco and Health. The memorandum stated that research did not have to always deal specifically with tobacco; for example, research which suggested that other factors may cause diseases associated with smoking should be included; "[t]he most important type of story is that which casts doubt on the cause and effect theory of disease and smoking." Brandt WD, 119:7-21; TIMN00721488-1491 (US 63575); (US 21302), (US 21614); CTRPUBLICSTMT001270-1281 (US 32646).

c. TIRC/CTR Press Releases and Other Public Statements

104. TIRC/CTR, with the assistance of its public relations counsel Hill & Knowlton, and later Leonard Zahn, was remarkably effective in making certain that the Defendants' position of "no proof" and the need for "more research" reached the national media, and thus the public. Typically, news accounts of new medical findings would be accompanied by a press release or statement from TIRC/CTR insisting that "nothing new" had been found and the studies were "merely" statistical.

Brandt WD, 78:18-79:2, 119:22-120:15. Moreover, TIRC/CTR was effective in mobilizing a relatively small group of skeptics and amplifying their views as if they were equal in number and significance to an emerging scientific consensus about the harms of smoking (discussed in detail at Section V(A)(3)(c), infra). Brandt WD, 79:6-8, 90:20-92:5; see, e.g., 500518759-8761 (US 20636) (1958 year-end Hill & Knowlton/TIRC press release in which TIRC Chairman Timothy Hartnett asserts that "scientists of high professional standing have produced additional evidence and opinions that challenge the validity of broad charges against tobacco use"); 503283464-3467 (US 22981) (TIRC's Clarence Cook Little's November 1959 response to Surgeon General Burney's statement that begins, "Today, more than ever before, scientific evidence is accumulating that conflicts with or fails to support the tobacco-smoking theories of lung cancer."); 500518873-8875 (US 63601) (1960 Hill & Knowlton/TIRC press release quoting Little and titled "New Evidence Shows Complexities of Lung Cancer, Scientist [Little] Says"); 00552685-2690 (US 47724) (1970 Leonard Zahn/CTR press release quoting Little that begins, "A considerable number of studies by independent scientists raise questions as to whether smoking has actually been shown to be a health hazard"); 60028206-8210 (US 53301); 670307882-7891 (US 21867); 670307882-7883 (US 63574) (1969 CTR press release quoting Little that begins, "The scientist [Little] who has been associated with more research in tobacco and health than any other person declared today that 'there is no demonstrated causal relationship between smoking and any disease. The gaps in knowledge are so great[.]'"); CTRPUBLICSTMT001241-1545 at 1265 (JD 043276) (1970 Leonard Zahn/CTR press release quoting Little on genetic and environmental factor theories); 500518873-8875 (US 20635); 500015901-5905 (US 47778).

105. The relationship between TIRC/CTR and Hill & Knowlton remained close for many years. Because TIRC had no headquarters and no staff when it was formed, Hill & Knowlton provided a working staff and temporary office space and assigned one of its experienced executives, Wilson Hoyt, to serve as Executive Secretary for the TIRC. In early 1956, the TIRC Executive Committee approved the relocation of TIRC's offices to the building where Hill & Knowlton's offices were located. At their January 29, 1964 meeting, the TIRC Executive Committee agreed to immediately transfer seven Hill & Knowlton employees, including Hoyt, to TIRC. TLT0902041-2064 (US 88364); 93218985-8986 (US 21116); TLT0900114-0115 (US 88402); CTRMN003816-3835 at 3825 (US 21147).

106. Even after the Tobacco Institute (discussed further infra at Section III(D)) was created in 1958, TIRC/CTR continued its public relations activities with the assistance of public relations counsel Hill & Knowlton, and later Leonard Zahn. 93218985-8986 (US 21116); 70057072-7073 (US 21983); 512678484-8499 (US 51653).

107. As noted earlier, Hill & Knowlton gave advice and direction to the leaders of the Enterprise even before its actual formation in December of 1953. Thereafter, it provided public relations services for TIRC/CTR from 1954 until 1964. It provided the same services for the Tobacco Institute from 1958 until 1968, in 1979, and again from 1987 through 1991. USX6390001-0400 at 0012 (US 89555). See also Adams PD, United States v. Philip Morris, 6/19/02, 495:5-17. Leonard Zahn was an integral part of TIRC/CTR's public relations program -- first as an employee of Hill & Knowlton assigned to the TIRC account, and later, on his own, as primary public relations counsel for CTR. Leonard Zahn was hired by Hill & Knowlton in 1955 to work on the TIRC account. In 1969, Zahn resigned from Hill & Knowlton; formed his own

company, Leonard Zahn & Associates; and was appointed CTR's public relations counsel. Zahn PD, Cipollone v. Liggett, 12/16/86, 9:19-21, 10:4-8, 43:17-20, 44:12-20, 45:15-18, 46:5-7, 16-17; Zahn PD, Massachusetts v. Philip Morris, 5/28/98, 48:15-22, 58:8-17, 59:9-17; Zahn PD, Richardson v. Philip Morris, 12/1/98, 16:9-17:8, 21:21-22:6, 25:13-26:16; Zahn PD, Richardson v. Philip Morris, 12/16/98, 308:7-14. Zahn & Associates served as CTR public relations counsel through 1993 and was paid $127,053 by CTR that last year. CTRMIN-BD 000001-0303 at 0277, 0283 (JD 093208). During his decades with TIRC/CTR, Zahn attended and reported on scientific conferences, attended SAB meetings, organized press conferences, served as liaison between CTR and the Tobacco Institute, prepared articles, and drafted press releases and public statements as well as the annual reports for CTR. Zahn PD, Richardson v. Philip Morris, 12/16/98, 308:7-14; McAllister WD, 188:20-189:5; Kornegay PD, Cipollone v. Liggett, 12/5/84, 529:4-530:10; 70124410-4414 (US 31512); CTR98CONG00070-0070 (US 25897); CTRMN015360-5360 (US 79868); CTRMN015361-5361 (US 79869); CTRMN015362-5365 (US 79870); CTRMN015370-5371 (US 79873); CTRMN015380-5381 (U. S. Ex. 79877); CTRMNZN475-477 (US 21160).

D. Tobacco Institute

1. Formation of the Tobacco Institute

108. As time passed, TIRC faced increasing difficulty reconciling its dual functions of public relations and research. On the one hand some SAB members had always wanted a more distinct separation between the SAB and TIRC. As early as October 1954, the SAB

> recognized the need for a more affirmative informational approach by the TIRC, and expressed the feeling that it would be in order for the Committee [TIRC] to take more positive action on its own through Mr. Hartnett as chairman without, at the same time, drawing the Advisory Board or the research program into such utterances.

CTRMN004227-4232 at 4230 (US 86073).

109. In addition, there was growing concern about TIRC making partisan arguments on behalf of the industry while it was sponsoring research that the industry wanted to be perceived as objective. Brandt WD, 90:4-9; Zahn PD, Massachusetts v. Philip Morris, 5/28/98, 98:25-99:16; BWX0011174-1187 at 1176 (US 21773). In 1958, a SAB member wrote a letter to those attending the February SAB meeting objecting to public statements which had been made by Clarence Cook Little, contending that when Little spoke as Scientific Director of the TIRC, the inference was that Little was also speaking for the SAB. CTRMN039046-9106 at 9055 (JD 092825). The dissenting SAB member indicated that, unless a more distinct separation could be established between the SAB and TIRC, he felt he could not continue to serve on the SAB. Two other SAB members joined in this statement. CTR-TIRC-MIN000001-0252 at 0142 (JD 093292); 681879254-9715 at 9391 (US 21020). According to SAB member Paul Kotin, members of the TIRC SAB made quite clear "the inadvisability and downright unacceptability" of the SAB or its members being quoted in TIRC press releases and public statements concerning the smoking and health controversy. Kotin PD, Falise v. American Tobacco, 10/31/00, 348:25-352:14.

110. On the other hand, some members of the Enterprise wanted an organization that would take a much more aggressive public relations stance to counter arguments linking smoking and disease and to oppose proposed labeling legislation facing the industry. BBAT030581-0582 (US 22058); MNAT00724279-4280 (US 22996); TLT0900385-0389 (US 88209).

111. Defendants finally decided to create a separate non-profit corporation, the Tobacco Institute ("TI"), which would be responsible for more aggressive public relations and political

lobbying and would not have the limitations associated with TIRC. 93481139-1140 (US 21117); Brandt WD, 88:20-90:3.

112. The creation of a separate organization was felt to be

> a way of keeping Little inviolate and untainted in his ivory tower while giving a new group a little more freedom of action in the public relations field . . . . [T]he legal people were especially interested in this argument because they thought of Dr. Little as a potential witness and were not anxious to have him making public statements which could compromise his usefulness to them in court.

Brandt WD, 90:4-19; BWX0011174-1187 at 1176 (US 21773).

113. In January 1958, twelve manufacturers of cigarettes, smoking and chewing tobacco, and snuff jointly announced the formation of the Tobacco Institute. The companies forming the Tobacco Institute included Defendants American, B&W, Liggett, Lorillard, Philip Morris, and Reynolds. 93481139-1140 (US 21117).

114. The Tobacco Institute was incorporated in New York State, TIMN0010606-0609 (US 21291), TIMN0011255-1260 (US 22250), and the Tobacco Institute bylaws were adopted at the meeting of the incorporators and members held on January 29, 1958. TIMN0005705-5712 at 5706 (US 21290); 1005136918-6933 (US 20223).

115. The Tobacco Institute was a trade association. According to its 1958 Certificate of Incorporation, the Tobacco Institute was formed

> to promote a better understanding by the public of the tobacco industry and its place in the national economy; to cooperate with governmental agencies and public officials with reference to the tobacco industry; to collect and disseminate information relating to the use of tobacco; to collect and disseminate scientific and medical material relating to tobacco; to collect and disseminate information relating to the tobacco industry published or released by any governmental agency, federal or state, or derived from other sources

> independent of the industry; to collect and disseminate information relating to legislative and administrative developments, federal or state, affecting the tobacco industry; to promote public good will.

(no bates) (US 21291); see also (no bates) (US 87552).

116. The Tobacco Institute had a Board of Directors "composed in a fashion similar to that of the Council for Tobacco Research" and an Executive Committee consisting of the chief executive officers of the major tobacco companies. 044227839-7844 (US 20066). That Committee, "[a]s a practical matter . . . for many years" was run by "a committee of four lawyers, one from each of the major member tobacco companies." Id.

117. The Tobacco Institute Board of Directors held its first meeting on January 30, 1958. Former Congressman James Richards of South Carolina was elected President and Executive Director; Joseph F. Cullman, III, President of Philip Morris, was elected Treasurer; and Chandler Kibbe, Vice President of Philip Morris, was elected Assistant Treasurer. Among those elected to membership at this meeting were American, Liggett, Lorillard, Philip Morris, and Reynolds. An Executive Committee was established, and its members were Cullman; Benjamin Few, President of Liggett; Bowman Gray, Chairman of Reynolds; Lewis Gruber, President and Chairman of Lorillard; and J. Whitney Peterson, President of United States Tobacco. TIMN0005705-5712 at 5705, 5707-5711 (US 21290).

118. At the first meeting of its Board of Directors, Hill & Knowlton was appointed Tobacco Institute public relations counsel, and Covington & Burling was appointed Tobacco Institute legal counsel. Id.; USX6390001-0400 at 0012 (US 89555). Both were to play a major role in setting the priorities for and guiding the future operation of the Tobacco Institute.

119. In addition to Covington & Burling, the Tobacco Institute also had a relationship with Shook, Hardy & Bacon. A May 1982 letter from William Shinn of Shook, Hardy & Bacon, to Robert Sachs, Counsel for B&W, and Arthur Stevens, General Counsel for Lorillard, described this relationship. Shinn divided the law firm's activities into four categories: Tobacco Institute Clearance Procedures, Tobacco Institute Committees, Science and Research, and General. Clearance procedures were defined as a number of standard operating procedures in examining Tobacco Institute materials with potential smoking and health overtones. Tobacco Institute Committee work involved attending meetings of the Committee of Counsel, Communications Committee, and Executive Committee. See Section III(D)(4), infra for detailed discussion of Tobacco Institute Committees. Science and Research work primarily concerned the development of special projects and industry witnesses. General work was a catchall category with activities ranging from literature review, for the purposes of identifying possible expert witnesses, to appearances at the Tobacco Institute's College of Tobacco Knowledge (discussed in detail at Section III(D)(5), infra). 521043046-3050 (US 20891); 2015035387-5391 (US 36651).

120. Members of the Enterprise convened regularly between 1958 and 1998 at the meetings of the Tobacco Institute's Board of Directors. At these meetings, representatives from the Enterprise discussed and passed resolutions regarding the Tobacco Institute's budget, programs and projects of the various divisions, election of officers, payment of dues, and amendments to the bylaws. TIMN0005705-5712 (US 21290); LG2000457-0461 (US 21876); 2025856215-6225 (US 23769); TIMN0006140-6146 (US 62658); TIMN0006405-6411 (US 62663); TIMN0012917-2923 (US 62779); TIOK0004462-4466 (US 63020); TIMN0017710-7711 (US 87550); TIMN0012893-2900 (US 88241); TIMN0006140-6146 (US 88243); TIMN0012951-2955 (US 88244);

TIMN0012974-2980 (US 88245); TIMN0012995-3000 (US 88246); TIMN0013001-3010 (US 88247); TIMN0006405-6411 (US 88248); TIMN0013203-3213 (US 88249); TIMN0014400-4410 (US 88250); TIMN0012963-2973 (US 88321); Stevens WD, 3:21-4:2, 4:14-23, 8:4-14, 17:14-19; see also Kornegay PD, Small v. Lorillard, 11/18/97, 36:11-19.

121. Although the membership fluctuated during the existence of the Tobacco Institute, all Defendants (except BATCo, CTR, and the Tobacco Institute itself) created, agreed to fund, and/or did jointly fund the Tobacco Institute over the years. TIFL0020285-0311 at 0297-0305 (JD 080429). From 1958 through 1999, payments to the Tobacco Institute from Defendants amounted to more than $618,432,000, including: $161,505,876 from Philip Morris; $1,848,530 from Liggett; $110,298,387 from Reynolds; $29,195,668 from Lorillard; $15,933,769 from B&W; and $19,146,216 from American. ARG0333104-3192 at 3175-3176 (US 75555); ARU5856402-6406 at 6403-6406 (US 75925); USX6400001-0527 at 0134-0135, 0223-0225, 0344-0346 (US 89561) (Defendants' Responses to Interrogatory No. 25).

122. Lorillard was not a member of the Tobacco Institute from 1968 to 1971. TIFL0020285-0311 at 0299-0305 (JD 080429). However, even during its non-membership, Lorillard it continued to "receive the releases and other information issued by the Institute," attended meetings of the lawyers of all the major companies at the Institute's offices, and was "kept apprised of the Institute's activities." 044227839-7844 (US 20066).

123. Executives of Defendant Philip Morris Companies attended and participated in meetings of the Tobacco Institute Board of Directors and the Executive Committee of the Board of Directors. These executives included Thomas Ahrensfeld, Senior Vice President and General Counsel; David Greenberg, Vice President; Kathleen Linehan, Vice President Government Affairs;

Howard Liebengood, Vice President; and Steve Parrish, Senior Vice President. 2025856215-6225 (US 23769); 2021266946-6951 (US 26055); 87718289-8294 (US 32068); 980166160-6167 (US 32464); 521500132-0136 (US 52769); TI16760371-0372 (US 62461); TIMN0014390-4393 (US 62782); TIMN0014955-4960 (US 62784); 2025856068-6073 (US 86509); 2023723951-3955 (US 86510); TIMN0017710-7711 (US 87550); TIMN0013651-3655 (US 88302); TIMN0013656-3659 (US 88303); TIMN0014418-4425 (US 88304); TIMN0017720-7722 (US 88305); TIMN0017725-7729 (US 88306); TIMN0017731-7736 (US 88307); TIMN0018436-8439 (US 88308); TIMN0018451-8455 (US 88309); TIMN0018462-8466 (US 88310); TIMN0018590-8593 (US 88311); TIMN0019234-9239 (US 88312); TIMN0013203-3213 (US 88249); TIMN0014400-4410 (US 88250); TIMN0010629-0629 (US 88252).

124. The Tobacco Institute's amended bylaws created two classes of membership. Class A members were the cigarette manufacturers (those members who as of the date of any election of directors would be subject to additional dues assessment per Article III, Section 1 of the bylaws). Class A members would be entitled to elect twice the number of directors as there were Class A members. Members not subject to such assessment would be entitled to elect the same number of directors as there were Class B members. In addition, the members determined that the chief executive of each member company would be designated to serve on the Tobacco Institute Executive Committee. LG20000457-0461 (US 86081); TIMN451429-1435 (US 87551); 2021266019-6028 at 6019 (US 26736).

125. The primary functions of the Tobacco Institute included: advancing -- through press releases, advertisements, publications, and other public statements -- the Enterprise's primary position that there were scientific and medical doubts concerning the relationship between smoking

and disease; disputing statements from health organizations about smoking and disease, and later about second hand smoke and disease; using the results of TIRC/CTR research projects and other industry-sponsored research projects to question the charges against smoking, to emphasize the complexities of those diseases with which smoking has been statistically associated, and to reassure the public that the industry was actively investigating the issues; denying that cigarette smoking was addictive; minimizing the difficulties of quitting smoking; and denying that the industry marketed to youth. USX6390001-0400 (US 89555).

126. In 1958, when the Tobacco Institute was created, Hill & Knowlton secured the account to handle its public relations. Brandt WD, 52:8-9. Two of the Hill & Knowlton employees assigned to handle the new Tobacco Institute account were Leonard Zahn and Carl Thompson, who were also handling the TIRC account. Zahn PD, Cipollone v. Liggett, 12/16/86, 85:16-86:20. One of four public relations objectives in Hill & Knowlton's March 1958 Recommendations to the Tobacco Institute was: "To create a better public understanding of facts regarding tobacco use and health, and of the contribution the industry is making to efforts of science to find the answers to health questions." CTRMN015402-5408 at 5402-5403 (US 79886).

127. A 1966 document titled "The 'Mission' of the President of the Tobacco Institute" explained that, to meet its objectives, "the full resources of the Institute must be directed toward a consistent and positive program to gain public exposure to research results and scientific opinions that question the charges against smoking and that point up the complexities of those diseases with which smoking has been statistically associated." 502645038S-5038Z (US 23053).

128. In a January 1968 memorandum to Earle Clements, Vice President William Kloepfer, who was responsible for public affairs, set forth what was to be the guiding public relations policy

for the Tobacco Institute: "to attempt to increase substantially public awareness of the cigarette controversy; putting it another way, to make a greater portion of the public aware that widespread indictment of cigarettes as a cause of poor health does not amount to conviction." CTRMN015575-5593 (US 79902).

129. However, in an April 1968 memorandum to Earle Clements, President of the Tobacco Institute, William Kloepfer, expressed concern that the industry's strategy of constant and consistent denial of smoking's harm was untenable. He wrote: "Our basic position in the cigarette controversy is subject to the charge, and maybe subject to a finding, that we are making false and misleading statements to promote the sale of cigarettes." VXA2511046-1048 (US 63576); Brandt WD, 117:23-119:6; 1005112459-2461 (US 20213).

2. Relationship Between the Tobacco Institute and TIRC/CTR

130. Creation of the Tobacco Institute did not end TIRC/CTR's public relations activities. Rather, it marked the beginning of a joint public relations effort, between CTR, the Tobacco Institute, and their overlapping Defendant-members in which the scientific and information functions of TIRC/CTR were used by the Tobacco Institute in its public relations activities, although there was never a totally precise division of labor between TIRC/CTR and the Tobacco Industry. Brandt WD, 89:23-90:3.

131. During the SAB's February 14-15, 1958 meeting, SAB Chairman Little asked TIRC Chairman Timothy Hartnett about the newly-formed Tobacco Institute, its purposes, and its relationship, if any, to TIRC. Hartnett explained that the Tobacco Institute was a separate entity and that its formation did not change or alter in any respect TIRC, its objectives, or its functions. He told the SAB members that it had become apparent, during the 1957 congressional hearings before the

Blatnik Committee which had addressed the disclosure of tar and nicotine yields in advertising, that the tobacco industry needed to have one spokesman, rather than someone from each tobacco company, represent it at various times and places. CTRMIN-SAB000001-1061 at 0114 (JD 090960); 681879254-9715 at 9391 (US 21020); see also Chilcote PD, Minnesota v. Philip Morris, 9/18/97, 27:5-28:6, 30:16-20.

132. TIRC Chairman Hartnett also informed the SAB members at that same meeting that Hill & Knowlton was acting as public relations counsel for both TIRC and the Tobacco Institute and "pointed out the desirability of this from both organizations' standpoint." CTRMIN-SAB000001-1061, 70011735-1757 at 0114 (JD 090960); see also Zahn PD, Cipollone v. Liggett, 12/16/86, 85:16-86:20.

133. At the July 1958 meeting of the Tobacco Institute Executive Committee, Chairman Bowman Gray of Reynolds reported that the respective functions of the Tobacco Institute and TIRC had been discussed at length, and announced "a tentative decision to let the matter of the respective functions of the two organizations (the Tobacco Institute and the TIRC) be decided on a case by case basis under the guidance of public relations counsel," Hill & Knowlton. 04209323-9326 at 9323 (US 47370); 681879254-9715 at 9391-9392 (US 21020).

134. Defendants expected the Tobacco Institute and TIRC/CTR to act in coordination when taking a position on specific news stories involving tobacco and health. In a February 1958 letter to John Hill of Hill & Knowlton, Paul Hahn, President of American, wrote, "In the present state of evidence, the position of the Institute should be compatible with that of TIRC and SAB." TLT0900385-0389 at 0387 (US 88209).

135. Hill & Knowlton understood that

> [c]omment from TIRC for the press remains an effective way to meet anti-tobacco publicity efforts and emphasizes the multiple factors that should be considered. This, of course, is complemented with a continuing program of supplying information to give editors and writers a balanced perspective on questions of tobacco and health.

HT0145148-5150 (US 21177).

136. Hill & Knowlton worked aggressively on behalf of both its clients, TIRC and the Tobacco Institute, to influence the media and ensure that the position and interests of the industry regarding smoking and health were well represented to journalists, broadcast reporters and magazine writers. Hill & Knowlton staff carefully documented their interventions, and their many successes. Brandt WD, 59:4-7, 131:18-132:1.

137. For example, Hill & Knowlton, having anticipated the appearance of an article by United States Surgeon General Leroy E. Burney in the November 1959 Journal of the American Medical Association, VXA2150046-0054 (US 63608), learned of its contents and provided the press, in advance of publication, with statements from both TIRC and Tobacco Institute representatives attacking the Surgeon General's assessment of the scientific evidence linking cigarettes to lung cancer. Brandt WD, 92:17-94:7; TIOK0000477-0477 (US 22720) (Tobacco Institute President James Richards); 503283464-3467 (US 22981) (TIRC Scientific Director Clarence Cook Little); HT0145148-5150 (US 21177); TIMN0110091-0091 (US 21319).

138. TIRC Chairman Timothy Hartnett reported to TIRC members in 1960 that:

> The staff of TIRC is constantly in touch with Hill & Knowlton, and consults on every phase of activity relating to health matters. For example, it provides speakers for platforms, helps analyze both scientific papers and charges against smoking which appear in the public press, and consults on statements which are issued to inform the public.

CTR-TIRC-MIN000174-0186 at 0184 (US 33016); CTR-TIRC-MIN000001-000252 at 0184 (JD 093292); 681879254-9715 at 9393 (US 21020).

139. In the 1970s, Defendants discussed the need for even closer cooperation between CTR and the Tobacco Institute. William Kloepfer and Fred Panzer, Tobacco Institute Vice Presidents, proposed specific guidelines to assist CTR Chairman Henry Ramm select a new Scientific Director for CTR. TIMN0004138-4141 (US 87588). The Tobacco Institute Executive Committee directed Tobacco Institute President Horace Kornegay to meet with Henry Ramm to discuss "closer cooperation between the Institute and the Council for Tobacco Research." Kornegay reported, at the April 2, 1973 meeting of the Tobacco Institute membership and Board of Directors, that "CTR did desire closer cooperation with the Institute and that the scientific personnel of the Institute would be invited to attend the May 15, 1973 CTR meeting in New York." LG2000457-0461 at 0459 (US 21876).

140. After four months as CTR President, Addison Yeaman, chaired his first meeting of the CTR membership on December 10, 1975. He told the members that, "all the resources [of CTR], all the knowledge [of CTR], all the help that CTR can give, should be available to the lawyers, to the Tobacco Institute, and to any other of the troops in the field," and that CTR should be independent but "independent within the policies set down by the membership." 11303014-3020 (US 86005); 682631405-1421 (US 21025).

141. In its press releases, advertisements, brochures, and other materials, the Tobacco Institute publicized the substance of TIRC/CTR research and the aggregate amount of the funds spent, as well as the amounts contributed by the industry in order to influence the public's perception of the industry's concern about cigarette smoking and health. Duffin PD, Cipollone v. Liggett,

1/23/86, 108:15-20; see, e.g., 502644592-4616 at 4615-4616 (US 20703); 2015046793-6839 at 6828 (US 25526).

142. A 1970 Tobacco Institute ad in the Washington Post discussed CTR grants totaling over $17 million under the heading "After millions of dollars and over 20 years of research: The question about smoking and health is still a question." TIMN0081352 (US 21305); 500004807-4809 (US 20608). A 1975 Tobacco Institute press release promoting its booklet "The Cigarette Controversy," an outline of doubts about the health risks of smoking, noted the industry's commitment of "$50 million to help support researchers who are seeking the truth." TIMN0120638-0639 (US 21698). In 1981, 1982, and 1984, Tobacco Institute brochures providing publicity for CTR funding of research were titled respectively "Tobacco Industry Research on Smoking and Health: A $104 Million Commitment," 2046754709-4719 (US 20474); "Tobacco Industry Research on Smoking and Health: A $111 Million Commitment," 670500617-0620 (US 20968); and "Tobacco Industry Research on Smoking and Health: A $120 Million Commitment." 2045377870-7876 (US 20460).

143. One Tobacco Institute advertisement that ran in major newspapers and magazines throughout the country consisted of a photocopy of a February 1969 CTR press release, 779023398-3400 (US 36484), quoting CTR's Scientific Director, Clarence Cook Little, with a headline declaring "How Much is Known about Smoking and Health." TIMN0000560-0561 (US 21874) (ad in Broadcasting); 1005132848-2849 (US 20222) (ad in New York Times); TIMN0081695-1696 (US 21308) (ad in February through April 1969 magazines and newspapers). The General Counsel of Philip Morris, Reynolds, B&W, Lorillard, and Liggett were asked to, and did, approve the running of the advertisement. 1005153098-3099 (US 20227); TIMN0081698-1698 (US 21309).

144. In a November 1962 interview on a Mutual Broadcasting System radio show discussing "Cigarette Smoking and Lung Cancer," Tobacco Institute President George Allen explained that the Tobacco Institute supported smoking and health research

> through a sister organization, the Tobacco [Industry] Research Committee, which has done more investigation in the eight years since it was established than any other private scientific organization or medical organization in the specific subject of lung cancer . . . over 100 individual grants . . . over five million dollars.

When asked about statistical studies which seemed to implicate smoking and disease, Allen replied with the Defendants' position that

> [t]hese statistical studies add up to the need for further intensive scientific work on the subject . . . nobody knows what causes cancer . . . this is a matter that remains to be found by thorough and energetic scientific investigation.

500052010-2018 at 2010-2011 (US 63600); Brandt WD, at 114:7-115:7.

145. Leonard Zahn, TIRC/CTR's public relations counsel, maintained close ties with the Tobacco Institute and served as a liaison between the two organizations. He kept in close touch with William Kloepfer at the Tobacco Institute, "advising [Kloepfer] in advance about meetings and other situations that might create a problem," such as an article or meeting "dealing with an adverse report on smokers." Zahn PD, Cipollone v. Liggett, 12/18/86, 408:5-409:19. Zahn sent carbon copies of his CTR reports to the Tobacco Institute; spoke at sessions of the Tobacco Institute College of Tobacco Knowledge; and was a member of the Tobacco Institute Communications Committee. Duffin PD, Cipollone v. Liggett, 1/23/86, 87:12-88:2; Zahn PD, Massachusetts v. Philip Morris, 5/28/98, 145:14-146:11, 149:25-150:10; TI04962331-2334 (US 86167); TI04962389-2389 (US 62201); TI04962390-2398 (US 62202); TIFL0068387-8387 (US 77028); Zahn PD, Cipollone v.

Liggett, 12/16/86, 129:13-15, 18, 21-23, 130:1-3, 12-19, 130:22-131:2, 188:24-189:6; Zahn PD, Cipollone v. Liggett, 12/17/86, 274:2-8, 275:5-21; Zahn PD, Richardson v. Philip Morris, 12/1/98, 52:9-55:3, 275:17-276:6; Zahn PD, Richardson v. Philip Morris, 12/16/98, 308:7-14; Zahn PD, Richardson v. Philip Morris, 1/13/99, 837:6-21.

146. According to a 1969 letter, Robert Hockett, CTR's Associate Scientific Director, was asked to review Tobacco Institute publications, such as "The Cigarette Controversy" and "Eight Questions and Answers," and give suggestions for improvement. HK0108004 (US 21171).

147. Members of CTR's supposedly independent SAB, like Arthur Furst and Sheldon Sommers, appeared at Tobacco Institute press conferences to discredit mainstream scientific research. In an April 1970 briefing and update "on industry public relations in the field of smoking and health," Jim Bowling of Philip Morris reported to Robert Heimann, President of American, about Tobacco Institute plans to hold a press conference on April 30, 1970, to discredit the Auerbach-Hammond beagle study (discussed further at Section III(F)(3)(¶337-342), infra). The spokesmen for the industry were to be CTR's Arthur Furst and Sheldon Sommers who would "take a stand against the ACS [American Cancer Society] propaganda approach to 'science.'" 966000976-0977 (US 86084).

148. The Tobacco Institute invited Sheldon Sommers to testify before Congress on behalf of the industry. Sommers PD, Galbraith v. Reynolds, 9/4/85, 58:25-59:10. Leonard Zahn at TIRC/CTR edited the testimony that Sommers gave before Congress into a magazine article for American Druggist. Zahn PD, Cipollone v. Liggett, 12/17/1986, 223:12-224:11, 224:16-224:16, 225:7-225:12; Sommers PD, Cipollone v. Liggett, 10/3/86, 276:11-18; Sommers PT, Cipollone v. Liggett, 4/20/88, 8890:18-8890:25. The article titled "Smoking and Health: Many Unanswered

Questions" was published in the September 1970 issue of American Druggist. The editor's note identified author Sheldon Sommers as Chairman of the SAB. ZN16062-6065 (US 21161); CTRMN015361 (US 79869); CTRMN015362-5365 (US 79870); CTRMN015384-5387 (US 79879); CTRMN015389 (US 79881).

149. In 1974, William Kloepfer, Tobacco Institute Vice President for Public Affairs, conducted filmed interviews with several CTR-affiliated persons on issues related to smoking and health. The opinions of the CTR-affiliated persons were unanimously supportive of the Enterprise's positions on smoking and health issues, although both individuals claimed to be expressing their own individual personal opinions. Sheldon Sommers, CTR's Association Scientific Director and SAB Chairman, stated that "there is no sound evidence that smoking is harmful to the health of the nonsmoker." Domingo Aviado, CTR Special Project funding recipient, stated that "on the basis of existing scientific evidence, tobacco smoke, I think, constitutes no health hazard to normal nonsmokers in public places." Robert Hockett, CTR's Scientific Director at that time, stated that "it just seems to me there is no justification for any general laws with respect to the protecting of nonsmokers from smoke." TITX0001450-1455 (US 77110).

150. The Tobacco Institute failed to identify scientists as recipients of CTR Special Project funding and/or Lawyers Special Accounts funding (discussed further at Section (III)(E)(2-3), infra), when incorporating their statements and conclusions in press releases and other publications as those of supposedly independent researchers or research results. TIMN0120737-0738 (US 87601) (1982 press release challenging cigarette package warning, quoting Sterling); TI12431636-1650 (US 62384) (1984 review of medical/scientific testimony presented to Congress titled "The Cigarette Controversy: Why More Research Is Needed," quoting Aviado, Bick, Bing, Blau, Eysenck, Fisher,

Furst, Hickey, Rao, Salvaggio, Seltzer, Sterling); MNAT00224317-4354 (US 21223) (1978 brochure titled "The Smoking Controversy: A Perspective," quoting Seltzer, Feinstein, Aviado, Sterling, Huber); TNWL0019638-9640 (US 21703) (1983 press release opposing cigarette package warnings, quoting Blau, Fisher, Eysenck, and CTR's Scientific Director Sommers), TIMN0138444-8446 (US 85362), TIMN0120772-0773 (US 85363), (US 87625); TIMN0125189-5189 (US 77065) (1988 press release disputing Surgeon General Koop's statement that cigarette smoking was addictive and quoting Blau).

3. Tobacco Institute Press Releases, Public Statements, Advertisements, Brochures, and Other Publications

151. During its existence, the Tobacco Institute was the leading public voice of the Defendants. Chilcote PD, Minnesota v. Philip Morris Inc., 9/18/97, 27:5-28:6, 30:16-20; Merryman PD, Richardson v. Philip Morris Inc., 56:17-57:5; 60:1-15. To further the Enterprise's goals, the Tobacco Institute created, issued, and disseminated press releases, public statements, advertisements, brochures, pamphlets, and other written materials on behalf of Defendants (1) denying that there was any link between smoking and disease; that nicotine was addictive; that cigarette companies marketed to youth; and that environmental tobacco smoke ("ETS") posed a health risk; and (2) discrediting scientists and public health officials who took a different position on these issues (See e.g., Section V(A)(5)(c), infra). Dawson TT, 1/12/05, 9927:11-9928:18; Dawson WD, 34:5-7, 36:8-13, 37:4-9, 64:20-23, 65:1-7, 71:12-16, 80:17-23, 81:1-7, 81:13-16, 84:18-19; 87:6-11, 89:1-5, 89:14-19; Chilcote PD, Broin, 11/19/93, 25:8-26:17, 27:15-28:15; Merryman PD, Broin, 11/18/93, 27:18-22; USX6390001-0400 (US 89555); TIMN0081352-1352 (US 21305), (US 63572); TIMN0081695-1696 (US 21308); TIMN0053170-3176 (US 65600); TIMN333361-3363 (US

78730); MNAT00276115-6117 (US 87665); TIMN0120725-0726 (US 87596); TIMN0120727-0728 (US 87597); TIOK0034156-4181 (US 63019); TIMN0120729-0730 (US 65625); TIMN0120731-0732 (US 87598); TIMN0120733-0734 (US 87599); TIMN0120735-0736 (US 87600); TIMN0120737-0738 (US 87601); TIMN0120742-0742 (US 87603); TIMN0120743-0743 (US 87604); TIMN0120745-0745 (US 87606); TIMN012046-0746 (US 87607); TIMN0120747-0747 (US 87608); TIMN0120748-0748 (US 87609); TIMN0120750-0750 (US 87610); TIMN0120751-0751 (US 87611); TIMN0120752-0752 (US 87612); TIMN0120753-0753 (US 87613); TIMN0120754-0754 (US 87614); TIMN0120755-0755 (US 87615); TIMN0120756-0757 (US 87616); TIMN0120758-0759 (US 87617); TIMN0120760-0760 (US 87618); TIMN0120763-0764 (US 87621); TIMN0120768-0769 (US 87623); TIMN0120770-0771 (US 87624); TIMN0120772-0773 (US 87625); TIMN0131860-1861 (US 21744); TIMN0081712-1713 (US 87629); TIMN0081714-1714 (US 87630); TIMN0000471-0495 (US 87631); TIMN0133954-3960 (US 62653); TIMN0133707-3711 (US 87634); TIMN0076952-6961 (US 87635); TIMN0122571-2573 (US 87637); TIMN0122574-2576 (US 87638); TIMN0122577-2578 (US 87639); TIMN0120706-0708 (US 87640); TIMN0131847-1847 (US 87641); TIMN0120619-0619 (US 87642); TIMN0120618-0618 (US 87643); TIMN0109576-9576 (US 87644); TIMN0004099-4099 (US 87646); MNAT00275488-5498 (US 87667); TIMN0120792-0793 (US 87668); (no bates) (US 21239); 2025422955-2958 (US 89306); TI 1016-1258 (US 89307); TI1016-1261 (US 89308); TI 1016-1297-1298 (US 89309); 507789709-9710 (US 89310); TIDN 0012098-2099 (US 89311); TIDN 0005825-5826 (US 89312); 506649098-9099 (89313); 507610852-0853 (US 89314); TIMN334986-4988 (US 89315); 507793570-3571 (US 89316); 877161722-1723 (US 89317); TIMN354292-4294 (US 89318); (no bates) (US 89319); (no bates) (US 89320); (no bates) (US

89289); (no bates) (US 89290); (no bates) (US 89291); (no bates) (US 89292); (no bates) (US 89293); (no bates) (US 89294); (no bates) (US 89295); (no bates) (US 89296); (no bates) (US 89298); (no bates) (US 89299); (no bates) (US 89300); (no bates) (US 89301); (no bates) (US 89302); (no bates) (US 89321); (no bates) (US 21286); (no bates) (US 21363); (no bates) (US 87735); (no bates) (US 85150); TI0720452-0464 (US 87155*).

152. There is no question that the Tobacco Institute intended the public to rely on the public statements the organization made on behalf of its cigarette manufacturer members. Dawson TT, 1/12/05, 9930:2-18; Merryman PD, Minnesota v. Philip Morris, 7/15/97, 36:11-24, 38:15-17, 70:24-71:4. As already noted, the Tobacco Institute's public spokespersons appeared on various television shows broadcast on all major networks in all fifty U.S. states. Merryman PT, Minnesota v. Philip Morris, 2/6/98, 2717:22-2718:21; USX6390001-0400 (US 89555). Brennan Dawson, Vice President of Public Relations for the Tobacco Institute and one of its major spokespersons, stated that she, on behalf of the Tobacco Institute, intended the public to rely on the public statements she made on television, regardless of whether the statements she made were in response to questions posed by the media or were spontaneous statements she volunteered to the media. Walker Merryman, another long-time Tobacco Institute spokesperson, similarly stated that the Tobacco Institute intended the public to believe its public statements. Dawson TT, 1/12/05, 10110:1-6; Merryman PD, Minnesota v. Philip Morris, 7/15/97, 113:5-8, 113:15-114:11, 114:15-16, 125:11-19, 153:9-19, 155:6-11, 186:2-25, 189:14-20, 193:22-194:1, 202:19-23; 2025422955-2958 (US 89306); TI 1016-1258 (US 89307); TI1016-1261 (US 89308); TI 1016-1297-1298 (US 89309); 507789709-9710 (US 89310); TIDN 0012098-2099 (US 89311); TIDN 0005825-5826 (US 89312); 506649098-9099 (US 89313); 507610852-0853 (US 89314); TIMN334986-4988 (US 89315); 507793570-3571

(US 89316); 877161722-1723 (US 89317); TIMN354292-4294 (US 89318); 502823717-3718 (US 50255); TIMN347391-7398 (US 65675); (no bates) (US 89319); (no bates) (US 89320); (no bates) (US 89289); (no bates) (US 89290); (no bates) (US 89291); (no bates) (US 89292); (no bates) (US 89293); (no bates) (US 89294); (no bates) (US 89295); (no bates) (US 89296); (no bates) (US 89298); (no bates) (US 89299); (no bates) (US 89300); (no bates) (US 89301); (no bates) (US 89302); (no bates) (US 89321); (no bates) (US 21286); (no bates) (US 21363); (no bates) (US 87735); (no bates) (US 85150); TI0720452-0464 (US 87155*).

153. However, when asked about public scientific support for the public statements she was making on behalf of the Tobacco Institute, Brennan Dawson could not name a single public health organization that asserted, as did the Tobacco Institute, that it had not been proven that smoking caused disease during the time she was a spokesperson on behalf of the Tobacco Institute. Dawson WD, 76:8-11. Nor could Ms. Dawson name a single medical doctor, not associated with the tobacco industry, who took the position that it was not proven that smoking caused disease. Dawson WD, 76:12-15. Similarly, Walker Merryman, also a Tobacco Institute spokesperson for over twenty years, could not name a single medical doctor not affiliated with the tobacco industry who publicly took the position that there was some medical doubt as to whether smoking caused disease. Merryman PD, Broin, 28:6-29:2.

154. The function of the Public Relations Division of the Tobacco Institute was

> to represent our member companies with the press, general public, anyone who had a question about tobacco, specifically the smoking and health issue, but also economics, history. We represented all the companies, so that no one of them had to answer questions from a press person or stock analyst.

Duffin PD, Munn v. Philip Morris, 1/7/87, 93:21-94:5; Chilcote PD, Minnesota v. Philip Morris, 9/18/97, 27:5-28:6, 30:16-30:20. In other words, according to Tobacco Institute Vice President Brennan Dawson, the objectives of the Public Relations Division were "to make public statements and to provide the tobacco industry's point of view, not just one company's, but an industry-wide point of view on matters relating to tobacco." Dawson WD, 34:4-7; 34:13-15.

155. A May 1, 1972 memorandum from Fred Panzer, a public relations specialist with the Tobacco Institute, to Tobacco Institute President Horace Kornegay began by describing past industry action:

> For nearly twenty years, this industry has employed a single strategy to defend itself . . . it has always been a holding strategy, consisting of creating doubt about the health charge without actually denying it, advocating the public's right to smoke without actually urging them to take up the practice . . . encouraging objective scientific research as the only way to resolve the question of health hazard.

Panzer went on to discuss a proposed public relations campaign -- The Roper Proposal -- designed to persuade the public that "[c]igarette smoking may not be the health hazard that the anti-smoking people say it is because other alternatives are at least as probable" (emphasis omitted). The proposed campaign would suggest two such possible alternatives: (1) the constitutional hypothesis, i.e., smokers differ importantly from nonsmokers in terms of heredity, constitutional makeup, lifestyle, and stress; and (2) the multi-factorial hypothesis, i.e., other factors such as air pollution, viruses, food additives, and occupational hazards contribute to diseases for which smoking is considered a cause. TIMN0077551-7554 at 7551-7553 (US 63585); 87657703-7706 (US 21098), (US 79218); Brandt TT, 125:2-127:10; Panzer PD, Small v. Lorillard, 10/22/97, 206:16-207:20; Panzer PD, Iron

Workers v. Philip Morris, 12/18/98, 18:22-21:12; USX6390001-0400 (US 89555) (TI Response to Request for Admission Nos. 242, 243).

156. In order to issue public statements regarding smoking and health, the Tobacco Institute contracted with numerous scientists to conduct research on related issues. Such consultants included Salvatore DiNardi, Gio Gori, Larry Holcomb, Alan Katzentein, Peter Lee, Maurice LeVois, Mark Reasor, Sorell Schwartz, Murray Senkus, David Weeks, Lawrence Wexler, Philip Witorsch, and Ray Witorsch. WAX001 1075-1127 at 1084 (US 64758) (TI Response to Interrogatory No. 8).

157. During the twenty-one years that Anne Duffin, and the twenty-two years that Walker Merryman, worked for the Tobacco Institute's Public Affairs Division, they prepared many of the Tobacco Institute publications that disputed the existence of any link between smoking and disease; that nicotine was addictive; that cigarette companies marketed to youth; and that Environmental Tobacco Smoke ("ETS") posed a health risk. Titles of such publications include, but are not limited to: Cigarette Smoking and Heart Disease; Cigarette Smoking and Cancer: A Scientific Perspective: Smoking and Health, The Continuing Controversy 1964-1979; On Tobacco: 21 Questions and Answers; The Cigarette Controversy, Eight Questions and Answers; About Tobacco Smoking: Smoking and Women; and Vital Statistics -- How Accurate Are They? Duffin PD, Munn v. Philip Morris, 1/7/87, 64:22-65:6, 95:11-97:1, 100:10-102:8, 102:14-103:1, 113:8-21, 114:1-15, 20-24, 121:1-122:24, 123:3-15, 126:3-127:19, 133:21-135:12, 136:15-19, 139:5-140:3, 141:2-10; Duffin PD, Cipollone v. Liggett, 1/23/86, 63:10-64:16; Merryman PD, Minnesota v. Philip Morris, 7/16/97, 317:13-22; 519838352-8517 (US 87707); 519838518-8621 (US 87708); 519838622-8674 (US 87709); TI01071639 (US 62099); 2501112047-2098 (US 20561); 2025431644-1748 (US 20417); TIMN0121541-1558 (US 65632); TIMN0055304-5330 (US 62816); TIOK0027221-7226 (US

77109); 1005152849-2896 (US 20226); TIMN300233-0257 (US 65670); TIMN0121622-1646 (US 65626).

158. Over the years, the Tobacco Institute attempted to discredit many of the Surgeon General's Reports through its public statements, press conferences and other publications. Merryman PD, Kueper v. R.J. Reynolds, 6/26/92, 19:12-21:2; Kornegay PD, Cipollone v. Liggett, 12/6/94, 683:4-687:6; Duffin PD, Munn, 1/7/87, 100:10-102:8, 102:14-103:1, 111:10-112:9, 117:6-25; TIMN0125189 (US 67277); TLT0390022-0024 (US 76770). For example, a "personal and confidential" Lorillard memorandum dated January 8, 1979 from Curtis H. Judge to J. Robert Ave and Arthur J. Stevens, all high corporate officials of Defendants, related a January 5, 1979 conversation that Judge had with Alexander Spears of Lorillard and another conversation with Bill Kloepfer of the Tobacco Institute:

> Dr. Spears surmises that this carbon monoxide information may be the new "bombshell" part of the Surgeon General's report and the part of the report which is new and likely to attract the media. At 4:30 on Friday afternoon I talked with Bill Kloepfer at the Tobacco Institute and he had just learned of this information a few hours ago (about the same time we did) on what he described as an "intercept." He agrees with our conclusions as to how it will be used in the Surgeon General's report and the Institute will work on counteracting it. I promised that we would get the information to him should we receive it before he does.

85158126-8127 at 8126-8127 (US 56009).

159. The Enterprise's concern about the substance of the 1983 Surgeon General's Report was a constant theme throughout the Tobacco Institute's documents for months before the report was ever published. As early as July 1, 1982, "the Scientific Affairs Division was in the process of

devising strategies to counter the 1983 Surgeon General's Report." TI0396-1863-1866 at 1863 (US 62157). Before the Surgeon General's Report was even made public,

> Sam Chilcote . . . asked that [the Tobacco Institute] take certain steps to blunt the impact of the 1983 Surgeon General's report on the ground that, as in the past, it will lack objectivity. We expect the subject to be smoking and heart diseases.

Specifically, the plans directed the Scientific Division

> to prepare a relatively brief logical paper covering selected areas of inadequate knowledge and contradictions in the case for smoking as a cause of or risk factor in heart diseases.

The central role of legal counsel in the clearance process was also detailed in the memorandum:

> Shook, Hardy will provide clearance of the paper and of its final format which will be developed by the Public Relations Division. At the same time the PR staff and PR counsel will prepare a list of media people who may be expected to cover the Surgeon General's Report.

The following directive was issued by Kloepfer: "When the Surgeon General's Report is issued, the PR staff will stick to the TI position rather than commenting directly on the report." TI03961860-1861 (US 62156).

160. A document dated October 18, 1982, titled "Memorandum for the Record -- Subject: Planning TI's Response or Planning to Meet the 1983 Surgeon General's Report" detailed the entire chronology of this Tobacco Institute effort. TI03961863-1866 at 1863 (US 62157).

161. At the December 9, 1982 Tobacco Institute Board of Directors meeting, Tobacco Institute President Samuel D. Chilcote, Jr., discussed the Institute's approach to the upcoming 1983 Surgeon General's Report. The Tobacco Institute's plans included personally passing out summaries of its document on "Smoking and Cardiovascular Disease" to several dozen reporters; having George Schafer, Tobacco Institute Medical Director, on hand to answer the reporters' questions and lend

credibility; holding its "own press conference a day or so before the Surgeon General's press conference challenging the contention that smoking causes cardiovascular disease," with Shook, Hardy & Bacon providing assistance; and attempting to "encourage a non-tobacco state congressman to launch an investigation into MRFIT [Multiple Risk Factor Intervention Trials] shortly before the Surgeon General's conference," alleging that it was a waste of 115 million tax payers' dollars, "thereby putting the Surgeon General on the defensive." TIMN0017276-7303 (US 86118).

162. A January 11, 1983 memorandum detailing the monthly overview of the Tobacco Institute's Scientific Affairs Division listed as its first "key" item the "[p]reparation and refinement of Institute's response to the 1983 Surgeon General's forthcoming report on heart disease." TI03962431-2432 at 2431 (US 62160).

163. Similarly, the Tobacco Institute was very active in planning a response regarding the release of the 1987 Surgeon General's Report which discussed the addictive nature of smoking. Dawson WD, 21:21-22:7. Suggested strategies for the Tobacco Institute response and the public's potential reaction were carefully considered. TIMN34639-9639 (US 62752); TIMN349632-9633 (US 62751). Samuel Chilcote wrote informational memoranda about the Surgeon General's Reports for distribution to the Tobacco Institute Executive Committee. See, e.g., TINY 0009385-9387 (US 58830) (1992 Surgeon General's Report). Brennan Dawson, Vice President of Public Relations for the Tobacco Institute, also made a presentation at a 1988 Tobacco Institute Communications Committee meeting, about her plans to distribute editorials favorable to the industry about the 1987 Surgeon General's Reports to editorial writers. Dawson also invited additional distribution suggestions from Communications Committee members. Dawson WD, 21:21-22:7, see Section III(D)(4)(c), infra for detailed discussion of the Tobacco Institute Communications Committee.

164. In anticipation of the 1989 Surgeon General's Report, the Tobacco Institute launched its "Enough is Enough" campaign which included

> national advertising efforts in 19 newspapers, a new public opinion poll, a comprehensive tobacco issues brief, and a video with smokers and nonsmokers expressing their opinions on the anti-smoking movement.

TI09911581-1615 at 1601 (US 62252); 507635309-5348 (US 66484); Dawson WD, 66:14-69:22. The Tobacco Institute launched a major media campaign, distributing materials and information to some 2,500 reporters, conducting a private briefing for the Washington, D.C. press corps, and distributing both television and radio satellite press releases, all with the aim of publicly discrediting the forthcoming Surgeon General's Report. Dawson WD, 66:14-69:22; TI0991 1581-1615 at 1601 (US 62252). Tobacco Institute documents indicate that the Tobacco Institute believed its efforts were worthwhile since the first question the Surgeon General received at his press conference releasing his 1989 Report was generated by the "Enough is Enough" campaign. TI0991 1581-1615 at 1601 (US 62252); Dawson WD, 66:14-69:22.

165. Attorneys representing Defendants again played a major role in these efforts to discredit the Surgeon General's Reports and attack other scientific research linking smoking and disease. They meticulously edited and rewrote drafts of Tobacco Institute advertisements, articles, and public statements. Lawyers regularly recommended ideas for articles and provided materials to the Tobacco Institute for consideration. 1005134430-4432 (US 36107); 508089329-9329 (US 86089).

166. In a July 6, 1977 memorandum to William Kloepfer of the Tobacco Institute, attorney Donald Hoel of Shook, Hardy & Bacon significantly changed the draft of an article titled "Why the

Case Against Smoking is Not Closed" and recommended a "major rewriting effort." Hoel also expressed dissatisfaction that attorneys had not previously had the chance to review the article. He wrote that

> it would be beneficial and time-saving if the content of such material as the proposed article could be first "cleared" with the appropriate persons at the Tobacco Institute before an "approved" draft is sent here for legal clearance.

Hoel went on to recommend that the lawyers be given advance notice of such articles so they could "make suggestions and provide materials for consideration." TIMN262629-2629 (US 62734).

167. The Tobacco Institute also worked with its public relations counsel and its member companies to anonymously disseminate deceptive and misleading public statements, such as the True magazine article, to promote the sale of cigarettes. CTRMN 015575-15593 (US 79902); Zahn PD, Cipollone v. Liggett, 12/18/86, 349:1-4, 20-23, 351:4-14, 357:22-25, 361:3-8, 17-22. Joseph Fields, a public relations agent for B&W, arranged for a reporter named Stanley Frank to write a smoking and health article, titled "To Smoke or Not to Smoke - That Is Still The Question," which appeared in the January 1968 issue of True magazine. In the article, Frank stated that he had reviewed the evidence and found it contradictory and inconclusive; he concluded that the hazards of cigarette smoking were not so real as the public had been led to believe. TIMN462375-2380 (US 21660). Frank did not disclose that he had been paid $500 by the Defendants for his time and expenses in writing the article and had been guaranteed another $1250 in the event that it was not published; that tobacco industry representatives including Ed Jacob of Jacob & Medinger, attorneys for TIRC, had reviewed the article prior to publication; or that he worked for Hill & Knowlton. 690012994-2993 (US 54322); Zahn PD, Cipollone, 12/18/86, 349:1-4, 20-23, 351:4-14, 357:22-25, 361:3-8, 17-22.

168. Furthermore, one of the Tobacco Institute's public relations agencies, The Tiderock Corp., had arranged to run a one-half-page advertisement promoting the True article titled "Are Cigarettes Really Harmful to Your Health?" The advertisement ran in the top seventy-two markets in the United States at an estimated cost of $69,000 paid for by Defendants Philip Morris, Reynolds, B&W, American, and Lorillard. The public did not become aware of these facts until the information was revealed in a series of investigations by the Wall Street Journal, Consumer Reports, and Senator Warren Magnuson. Zahn PD, Cipollone, 12/18/86, 349:1-4, 20-23, 351:4-14, 357:22-25, 361:3-8, 17-22; TIMN462375-2380 (US 21660); TIMN0123336-3336 (US 21628).

169. In addition to its press releases and publications, the Tobacco Institute regularly published various newsletters to further publicize its viewpoint on behalf of the Enterprise. TIMN339121-9128 at 9121 (US 86127); TINY 0009385-9387 (US 62964); 947089976-9979 (US 32332); TI16300337-0345 (JE 062448). In May 1976, the Tobacco Institute published its first issue of its most widely distributed newsletter, The Tobacco Observer. The public purpose of the newsletter, as stated in the first issue, was to "enable 'thousands' whose livelihoods are associated with tobacco 'to be well informed about the problems facing tobacco.'" The Tobacco Observer was published bi-monthly from 1976 until December 1988, under the supervision of the Tobacco Institute's Special Projects. 690018786-8786 (US 86119); TIOK0015372-5378 at 5373 (US 86126); TIMN366674-6895 at 6864 (US 86120).

170. The Tobacco Institute circulated The Tobacco Observer free of charge to company employees, broadcasters, newspapers, and individuals. At the early stages of publication, the Tobacco Institute requested and received lists of names and addresses of potential subscribers from the tobacco companies. In 1978, the Tobacco Institute calculated circulation to have reached 80,000

and by 1988 circulation had almost doubled to 145,000. Most subscriptions, however, were unsolicited. According to a June 1, 1987 memorandum from Anne Duffin to Peter Sparber, "TTO [The Tobacco Observer] subscribers, some dating back 11 years, have never been asked if they want copies. Most were added to the subscription list by Institute staff through personal contact or tobacco group rosters[.]" 670059500-9506 at 9503 (US 86121); 690019767-9767 (US 86122); 680549177-9182 at 9179 (US 86123); TIOK0015372-5378 at 5372 (US 86126).

171. Articles in The Tobacco Observer perpetuated the Enterprise's denials of causation and harm from smoking. One headline announced, "Smoke not harmful to average non-smoker" (October 1978). In the May 1976 issue, one headline read "No Simple Answers; Research Disputes UPI;" this article followed another that stated, "no cause and effect relationship between cigarette smoking and pulmonary emphysema has been established." In a June 1, 1987 memorandum, Anne Duffin wrote candidly about The Tobacco Observer:

> Historically TTO [The Tobacco Observer] has related good news only, presenting the bad only in its most optimistic context . . . TTO's purpose was to inform, to cast favorable light upon tobacco's many controversies.

03048388-8399 at 8388 (US 86124); TIMN0127465-7475 at 7467 (US 86125); TIOK0015372-5378 at 5373 (US 86126).

4. Tobacco Institute Committees

172. The Tobacco Institute was run by a variety of committees, comprised of representatives and agents from Defendants Philip Morris, Lorillard, Liggett, Reynolds, and B&W, and employees from Defendant Tobacco Institute. The most influential and powerful of these were

the Tobacco Institute Committee of Counsel, the Tobacco Institute Executive Committee, and the Tobacco Institute Communications Committee.

a. Committee of Counsel and Outside Counsel

173. The Tobacco Institute Committee of Counsel was comprised of the general counsels of the sponsoring companies of the Tobacco Institute -- Philip Morris, Reynolds, Lorillard, Liggett, and B&W -- as well as counsel for American. 85686131-6131 (US 87589) (Lorillard); 1005147807-7807 (US 36119) (Philip Morris); 03654362-4362 (US 29296) (Reynolds); 517004087-4090 (US 20874) (B&W); LG2014927-4931 (US 86090) (Liggett); 681725305-5307 (US 21019) (American); Stevens WD, 2:18-22, 5:1-11, 5:12-23; Juchatz TT, 11/18/04, 06545:11-06546:2; Kornegay PD, Small v. Lorillard, 11/18/97, 34:11-18. Representatives from Philip Morris Companies also were members of the Committee of Counsel, and some Committee of Counsel meetings were held at Philip Morris Companies headquarters in New York. Northrip WD, 8:14-8:5; 2023033745-3745 (US 87590); 2023033795-3795 (US 87591). Members of the Committee of Counsel also included attorneys from the outside law firms of Covington & Burling, Jacob Medinger & Finnegan, and Shook, Hardy & Bacon. WAX0011075-1127 at 1088-1093 (US 64758); Hoel PD, United States v. Philip Morris, 6/27/02, 71:17-22; 521043046-3050 (US 20891); 680038350-8352 (US 20980); Stevens WD, 5:1-11; Stevens TT, 01278:10-01280:1.

174. The purpose of the Committee of Counsel meetings was to discuss legal issues related to the tobacco industry and to provide legal advice on any matter that member companies would bring before it. Northrip WD, 8:11-13.

175. The importance of the Committee of Counsel was described in an October 1964 trip report written by visitors from Britain's Tobacco Research Council:

> The leadership in the U.S. smoking and health situation therefore lies with the powerful Policy Committee of senior lawyers advising the industry, and their policy, very understandably, in effect, is "don't take any chances." It is a situation that does not encourage constructive or bold approaches to smoking and health problems, and it also means that the Policy Committee of lawyers exercises close control over all aspects of the problems.

1003119099-9135 (US 20152).

176. The primary function of the Committee of Counsel within the Enterprise was described in a document prepared by Ernest Pepples, General Counsel for B&W:

> [T]he primary function of this Committee of Counsel has been to circle the wagons, to coordinate not only the defense of active cases, but also to coordinate the advice which the General Counsels give to ongoing operations of their companies pertaining to products liability risks.

517004087-4090 (US 20874).

177. The Committee of Counsel met frequently over the years and the agenda of its meetings covered a wide range of topics that were of concern to the Defendants. Typical items discussed included various smoking and health related issues including addiction, industry witness development (especially in the area of ETS), Special Projects, Special Accounts, CTR's Literature Retrieval Division, review of the Tobacco Institute's ads, institutional research, and smoking and health litigation generally. Stevens WD, 6:10-12, 6:13-21; Northrip WD, 8:11-13; 680239427-9429 (US 30835); 03654134-4134 (US 29291); 85686132-6132 (US 87592); 85686235-6236 (US 87593); 85685497-5497 (US 32030); 03654220-4220 (US 29293); 03654179-4180 (US 87594); 503762768-2768 (US 86093); 03654341-4342 (US 29295); 03654327-4328 (US 29294); 85685745-5745 (US 86094); 503689705-9705 (US 86095); 85682380-2381 (US 32023); 1005085870-5870 (US 35994); LG2005471-5473 (US 88096); 03654160-4160 (US 86097); 03746187-6190 (US 86098);

LG2008241-8242 (US 21206); 03638986-8987 (US 86815); 03746184-6185 (US 20600); 2024671248-1255 (US 21584); 1005121522-1526 (US 23046); LDOJ2607427-7434 (US 86099); BWX0004268-4274 (US 36225); 03601453-1453 (US 86102); 01333625-3625 (US 26468); 03654139-4147 (US 86103); XBW0011405-1416 (US 86104); BWX0004264-4267 (US 36224); 680542504-2505 (US 86105); TIFL0407411-7411 (US 22044); TIFL0407410-7410 (US 22041); 681000290-0293 (US 21015).

178. Even when Liggett decided to cease participation in the Tobacco Institute as a Class A member, it continued to participate in the Committee of Counsel. In a September 21, 1993 letter from Liggett's in-house counsel Josiah Murray to the Tobacco Institute's President and Counsel, Liggett sought to reduce its payments to the Tobacco Institute, but at the same time sought Tobacco Institute approval to continue participating in the Tobacco Institute's Committee of Counsel, and to have continued access to Tobacco Institute information and data, including reports and memoranda from Covington & Burling to the Committee of Counsel. In seeking these materials, Murray assured the letter's recipients that Liggett would continue to conform its conduct in accordance with the Enterprise's strategies, writing:

> It is not the intent of Liggett to conduct its business in a manner adverse to the interest of the industry as a whole with respect to those legal and political issues as to which, by applicable law, the several competitor companies have a right to act in concert and in collaboration one with another, and attaining this objective is enhanced, of course by [Liggett] being adequately informed.

LWDOJ00023390-00023392 (US 25910).

179. The role of outside counsel, as opposed to the in-house general counsels, including Shook, Hardy & Bacon, Jacob, Medinger & Finnegan and Covington & Burling, was to assist the

Committee of Counsel. 03638986-8987 (US 86815); Rupp WD, 38:21-39:19; Northrip WD, 6:12-16; 6:22-6-1:25; Dawson WD, 15:15-21. As has already been mentioned, and will be further elaborated on infra, two of those law firms, in particular Covington & Burling, became the guiding strategists for the Enterprise and were deeply involved in implementation of those strategies once adopted.

180. Covington & Burling was counsel for the Tobacco Institute and was also described as counsel for the "industry." 682150942-0942 (US 86491); Rupp WD, 38:21-39:19. An attorney from Covington & Burling attended every meeting of the Committee of Counsel. Covington & Burling attorneys first reviewed agenda proposals for the Committee of Counsel meetings before they were sent to member companies. Blixt PD, United States v. Philip Morris, 10/31/02, 159:20-161:13, 169:13-170:1. Covington & Burling also cleared press releases issued by the Tobacco Institute. Merryman PD, Minnesota v. Philip Morris, 7/16/97, 414:21-415:2, 416:10-22.

181. Shook, Hardy & Bacon was counsel for Defendants Philip Morris, Philip Morris Companies, Lorillard, Reynolds, and B&W, and benefitted from a close association with Defendant Tobacco Institute. 521043046-3050 (US 20891); TIMN0245637-5638 (US 62723); 2015007199-7207 (US 20311); Northrip TT, 9/30/04, 01334:19-01335:5; Kornegay PD, Cipollone v. Liggett, 8/17/84, 177:23-178:3, 179:5-21, 185:20-186:3. In fact, Robert Northrip, following his attendance at a Committee of Counsel Meeting, would normally bill either three or four tobacco companies (including Phillip Morris, Lorillard, B&W and possibly Reynolds) for his time. Northrip TT, 9/30/04, 01346:12- 22; Northrip WD, 5:17-5-1:11.

182. In addition to John Rupp of Covington & Burling serving as counsel for the Tobacco Institute and the “industry,” Shook, Hardy & Bacon was also given a wide range of responsibilities

for the Enterprise. In a May 18, 1982 memorandum, William Shinn of the firm described its activities relating to the Tobacco Institute and noted that it examined "most material emanating from the Tobacco Institute which has potential smoking and health overtones." This memorandum was addressed to Robert Sachs, Assistant General Counsel for B&W, and Arthur Stevens, Senior Vice President and General Counsel for Lorillard, and copied to Thomas Ahrensfeld, Senior Vice President and General Counsel for Philip Morris; Alexander Holtzman, Assistant General Counsel for Philip Morris; Ernest Pepples, General Counsel for B&W; and Samuel Witt, General Counsel for Reynolds. Since the firm's review involved a great deal of give and take, it sometimes "prepar[ed] the final version" of the product. Shook, Hardy & Bacon also assisted the Tobacco Institute in setting strategy, preparing witnesses on smoking and health issues, briefings, reviewing press releases, advertisements, and other public statements, and orchestrating follow-up activities. Shinn remarked: "While we are asked occasionally to do something that we believe T.I. should do itself, we have always reserved the right to decline unless directed by the Committee of Counsel." 521043046-3050 (US 20891).

183. Shook, Hardy & Bacon's role was further explained in a June 28, 1988 memorandum from Donald Hoel of Shook, Hardy & Bacon to Todd Sollis, Associate General Counsel for Philip Morris Management Corporation. Hoel explained that

> [b]ecause SHB represents several of those [cigarette] manufacturers and enjoys a close association with the TI, the firm is able to move freely among industry members, facilitating cooperation and open communication. In this way, SHB helps eliminate potential difficulties within the tobacco industry that could reduce PM's ability to address effectively smoking and health issues and impair its defense of lawsuits.

2015007199-7207 (US 20311); Northrip TT, 9/30/04, 01334:19-01335:5.

184. Jacob, Medinger & Finnegan was yet another law firm which played a major advisory role as counsel for Reynolds, B&W, and CTR. Edwin Jacob attended and gave presentations at Committee of Counsel meetings; he was also involved in the administration of CTR Special Projects (discussed further at Section III(E)(2), infra). 680038350-8352 (US 20980); 1005121522-1526 (US 23046).

b. Tobacco Institute Executive Committee

185. The Tobacco Institute Executive Committee had the "final voice on TI matters" and Tobacco Institute statements. It included two representatives from each of the cigarette manufacturer member companies of the Tobacco Institute and had a rotating chairmanship. Chilcote PD, Richardson v. Philip Morris, 9/21/98, 92:21-97:2; Kornegay PD, Small v. Lorillard, 11/18/97, 25:13-29:1. The Executive Committee also set Tobacco Institute policy and determined resource allocation within the organization. Dawson WD, 10:13-11:2.

186. The Tobacco Institute Executive Committee met frequently to keep abreast of issues of common concern within the Enterprise. In addition to having final approval authority on all Tobacco Institute matters, the Executive Committee often discussed issues of joint industry research on smoking and health, research funded through CTR, and funding of Tobacco Institute advertising. Dawson WD, 11:3-6; Northrip WD, 8:11-13; Chilcote PD, Broin, 11/19/93, 34:5-35:5; 03677101-7103 (US 29313); TIMN0013425-3428 (US 88258); TIMN0013471-3476 (US 88259); TIMN0013429-3431 (US 88261); TIMN0013432-3435 (US 88262); TIMN0013460-3464 (US 88264); TIMN0013471-3476 (US 88265); TIMN0013508-3513 (US 88266); TIMN0013514-3517 (US 88267); TIMN0013518-3251 (US 88268); TIMN0013526-13530 (US 88269); TIMN0013554-3557 (US 88270); TIMN13450-3454 (US 88276); TIMN0013441-3445 (US 88289); TIMN0013455-

3456 (US 88291); TIMN0013477-3484 (US 88293); TIMN0013485-3489 (US 88294); TIMN0013490-3495 (US 88295); TIMN0013496-3499 (US 88296); TIMN0013500-3507 (US 88297); TIMN0013550-3553 (US 88298); TIMN0013558-3563 (US 88299); TIMN0013583-3589 (US 88300); TIMN0013628-3632 (US 88301); TIMN0013651-3655 (US 88302); TIMN0013656-3659 (US 88303); TIMN0014418-4425 (US 88304); TIMN0017720-7722 (US 88305); TIMN0017725-7729 (US 88306); TIMN0017731-7736 (US 88307); TIMN0018436-8439 (US 88308); TIMN0018451-8455 (US 88309); TIMN0018462-8466 (US 88310); TIMN0018590-8593 (US 88311); TIMN0019234-9239 (US 88312); LG0237151-7159 at 7154 (US 21194).

187. For example, the Tobacco Institute Executive Committee met on January 12, 1964, to discuss the implications of the 1964 Surgeon General's Report on Smoking and Health. The Executive Committee agreed that it was "considered to be of prime importance that the industry maintain a united front and that if one or more companies were to conduct themselves as a matter of self interest, particularly in advertising, obvious vulnerability would be the result." LG2008203-8210 (US 22682).

188. A 1974 Tobacco Institute report titled "Defending Tobacco" stated that the Tobacco Institute Board of Governors' adoption, in January 1971, of the Guidelines for Authority and Responsibility of the Tobacco Institute, had greatly improved the Tobacco Institute's overall efficiency. The report established authority and responsibility of the Tobacco Institute's staff and committees, placed more authority in its President, and required more frequent meetings of the Executive Committee to create and review Tobacco Institute policies, programs and objectives. The Guidelines eliminated much undue delay occasioned in the past in obtaining approval and authority

from the Tobacco Institute Executive Committee or its Board members for Tobacco Institute action and improved the overall efficiency of the Enterprise. TIMN217628-7639 (US 21263).

c. Tobacco Institute Communications Committee

189. The Tobacco Institute Communications Committee reviewed and approved Tobacco Institute advertisements, media plans, and public relations campaigns carried out by the Tobacco Institute on behalf of the Enterprise. Chilcote PD, Richardson v. Philip Morris, 9/21/98, 263:5-14.

190. Each Tobacco Institute member company designated its public relations people to attend meetings of the Communication Committee and to inform their respective companies about the activities of the Committee. Dawson WD, 17:9-23; Dawson TT, 1/12/05, 9899:20-9900:10; Duffin PD, Barnes v. American Tobacco, 10/6/97, 118:4-119:3, 119:7-121:2. Membership of the Communications Committee consisted of representatives of Reynolds, B&W, Phillip Morris, Lorillard, Liggett, and American, as well as outside lawyers from Shook, Hardy & Bacon and Covington & Burling, Tobacco Institute public relations staff and CTR public relations counsel Leonard Zahn. Dawson TT, 1/12/05, 9899:20-9900:10; Zahn PD, Richardson v. Philip Morris, 12/1/98, 52:9-55:3; Zahn PD, Cipollone, 12/17/86, 274:2-8; 275:5-21; 794003131-3132 (US 86107); TIMN0081843-1864 (US 86108); 03678709-8711 (US 88313); 680241704-1705 (US 54034); ZN21992-1995 (US 21375); 690014846-4848 (US 86111); TIMN0124674-4674 (US 88323); TIMN0124717-4718 (US 86113); 680570007-0008 (US 86114); 87716615-6618 (US 86117); TI16470337-0338 (US 62449); TI09911543-1580 (US 62251); TI09911581-1615 (US 62252); TI09911885-1920 (US 62255); TI09912151-2191 (US (62256); TIMN345630-5665 (US 77092); TIMN345741-5777 (US 77093).

191. Members of the Communications Committee considered CTR a public relations benefit for the Enterprise. According to minutes from the September 17, 1971 Communications Committee meeting, William Kloepfer, Vice President of the Tobacco Institute, briefed the committee on the status of industry-financed research, including research funded by CTR. Kloepfer called this research, "the best basis for affirmative public relations." Leonard Zahn, public relations counsel to CTR from 1955 until 1993, was even a member of the Tobacco Institute Communications Committee and attended committee meetings at the behest of Kloepfer of the Tobacco Institute. TIMN0003978-3980 (US 87595); Zahn PD, Cipollone, 12/16/86, 129:13-15, 18, 21-23; 130:1-3, 12-19, 130:22-131:2; Zahn PD, Richardson, 12/1/98, 52:9-55:3; Zahn PD, Cipollone, 12/17/86, 274:2-8, 275:5-21.

192. A 1974 Tobacco Institute report titled "Defending Tobacco" stated that, prior to 1967, much of the communication between member companies was through the Tobacco Institute Committee of Counsel, or by informational memoranda. According to this report, one change that greatly facilitated the internal information flow within the Enterprise was the creation in 1969 of the Communications Committee, which was made up of representatives of each major company and of the Tobacco Institute's legal counsel and who met frequently to advise on the Tobacco Institute's public relations strategy. TIMN217628-7639 (US 21263).

193. Through these Tobacco Institute committees, the Defendants, through their executives, employees, agents, and attorneys, controlled the Tobacco Institute and set its policy, including approving and authorizing the multitude of statements made by the Tobacco Institute about smoking and health. While this structure changed somewhat over time, Defendants always maintained control over the Tobacco Institute's activities and committees.

5. Tobacco Institute College of Tobacco Knowledge

194. Coordination of information and careful instruction on how information should be presented and disseminated to the public was a major aim of the Enterprise. It was considered vital to leave no member vulnerable to attack in litigation or to subject the industry to further regulation. One extremely successful method used to ensure that industry representatives understood and were able to publicly transmit consistent statements regarding smoking and health and other issues of common concern to the Defendants was the operation of training seminars by the Tobacco Institute's College of Tobacco Knowledge. The College began in the 1970s and operated for over a decade. Dawson WD, 26:7-21, 27:2-6, 28:6-8; Dawson TT, 1/12/05, 9920:19-21; 2025864882-4895 (US 86140).

195. Representatives of all the Defendants, including BATCo and Philip Morris Companies, Inc., as well as representatives of several international organizations (including TAC, INFOTAB, and ICOSI) (explained in detail infra) attended the College. 1000019640-9647 (US 86149*); 1000019649-9651 (US 86150); 2501290388-0396 (US 86156); TI16740660-0663 (US 72403); 503908538-8538 (US 29737); TI16740660-0663 (US 72403); 503908538-8538 (US 29737); TI04962210-2211 (US 67250); TI16740652-0659 (US 86168); TI16740741-0749 (US 86169); TI04962337-2341 (US 86170); (US 65473); TIFL0071151-1151 (US 86176); TIFL0071174-1174 (US 86142); TIFL0071152-1154 (US 86177); TIFL0071200-1202 (US 86178); TIFL0072275-2277 (US 86180); TI16740614-0616 (US 86181); TI11961414-1414 (US 86182); TIFL0072290-2303 (US 86183); 87645518-5522 (US 86184); TIFL0068394-8402 (US 86185); TI11961377-1377 (US 86186); TIFL0071027 (US 77029); Merryman PD, Florida v. American Tobacco, 7/25/97, 148:9-13.

196. Students who attended the College sessions were "people from the tobacco industry;" people whose responsibilities included public affairs, public relations, government relations; "[p]eople from all facets of the industry from seed bed to sales counter;" and industry lobbyists. Merryman PD, Florida v. American, 7/25/97, 148:17-149:8; Zahn PD, Massachusetts v. Philip Morris, 5/28/98, 145:2-13.

197. In accordance with the goal of achieving a unified public message for the industry, Walker Merryman, self-proclaimed "Dean of the College of Tobacco Knowledge" and also Vice President of Public Relations for the Tobacco Institute, gave presentations at the College during which he would "roam the room with a microphone and ask people questions [about what they had heard and learned over the two days] and see how they answered them." Merryman PD, Florida v. American, 7/25/97, 151:12-152:18; Merryman PD, Richardson v. Philip Morris, 4/9/98, 87:15-88:7; TI16740590-0593 (US 86148). For example, he might ask a student if he believed that there was a relationship between smoking and disease, and suggest that the better response was that "there is a statistical relationship between smoking and disease" rather than that "smoking causes disease." Merryman PD, Florida v. American, 7/25/97, 153:16-156:10.

198. The purpose of the Tobacco Institute College of Tobacco Knowledge was to "improve working relations with all major segments of the tobacco industry." Dawson WD, 28:6-8. For example, Brennan Dawson participated in a mock segment of "The Phil Donahue Show" titled "Should Smoking Be Restricted in the Workplace?" during the 1988 College of Tobacco Knowledge conference, playing the role of Tobacco Institute spokesperson while James Savarese played Donahue and they acted out a reaction on behalf of the tobacco industry to a Surgeon General's Report on the subject of ETS. Again, the College's intended purpose with the rehearsal was always

to ensure presentation of a unified and consistent public stance on smoking and health issues. Dawson WD, 29:6-30:1.

199. The College of Tobacco Knowledge "gave attendees an overview of a number of issues that the tobacco industry faces or faced at the time." Merryman PD, Florida v. American, 7/25/97, 147:16-148:2; Chilcote PD, Richardson v. Philip Morris, 9/21/98, 259:8-261:10; Duffin PD, Munn, 1/7/87, 187:3-190:25. The Tobacco Institute not only funded and operated the College of Tobacco Knowledge, it also developed the College's curriculum and its staff taught the sessions. Dawson WD, 26:16-21; Zahn PD, Massachusetts v. Philip Morris, 5/28/98, 147:14-18; Chilcote PD, Richardson v. Philip Morris, 9/21/98, 261:11-15; Duffin PD, Munn, 1/7/87, 187:3-190:25.

200. After Tobacco Institute executives Merryman, Kloepfer, and Chilcote approved the curriculum, the Tobacco Institute mailed announcements to its Communications Committee, the International Tobacco Information Center ("INFOTAB"), its senior staff, and other interested parties. TIFL0071011-1012 (US 86141); TIFL0071174-1174 (US 86142). In preparing for a College session, the Tobacco Institute would make its

> senior vice presidents aware of the fact that one of these seminars was scheduled. And if they had new employees that they wanted to have invited or if they thought there was a contract lobbyist who might benefit, they could invite that individual. We also would let our member companies know that another seminar was scheduled, and if they had people in mind whom they thought would benefit from such a seminar, they could be invited.

Merryman PD, Florida v. American, 7/25/97, 149:9-150:3; 85701033-1033 (US 86143), 85701041-1042 (US 86144); TIFL0069155-9155 (US 86145); TIFL0069161-9161 (US 86146).

201. A number of speakers generally spoke on a "half dozen or more different issues." Merryman PD, Florida v. American, 7/25/97, 157:24-158:2. Speakers at the College sessions

included Tobacco Institute employees with specialities in communications, public relations, and federal and state regulation; lawyers for the industry; medical consultants; state senators or representatives; economists; and statisticians. Merryman PD, Florida v. American, 7/25/97, 158:5-159:5; Rupp WD, 39:20-40:3.

202. The Enterprise wanted to achieve consistent public statements concerning various smoking and health related subject areas through its control of the College's curriculum. For example, there were frequent discussions at the College about the health hazards of smoking and of causation generally and how, according to the industry, causation had not yet been proven. Merryman PD, Florida v. American, 7/25/97, 159:13-160:4; 1000019640-9647 (US 86149*); TIFL0068950-8955 (US 86163).

203. The College's curriculum also included the topic of industry sponsored research and the function of CTR generally. For example, presentations by Leonard Zahn, CTR public relations counsel, would describe the activities of CTR and its research program "so that all the mid and perhaps slightly above mid-level employees from the various companies would have an idea, more exact knowledge, of what the Council was and how it worked." Zahn PD, Massachusetts v. Philip Morris, 5/28/98, 145:14-146:11, 149:25-150:10; TI04962331-2334 (US 86167); TI04962389-2389 (US 62201); TI04962390-2398 (US 62202); TIFL0068387-8387 (US 77028). In addition, Zahn distributed or made available to the participants CTR materials including the Annual Report. Zahn PD, Massachusetts v. Philip Morris, 5/28/98, 148:8-20.

204. Similarly, Addison Yeaman, CTR Chairman and President, spoke on the topic of sponsoring science, described in the syllabus as follows:

> For 25 years, tobacco manufacturers, growers and warehouse operators have funded independent scientific research into tobacco use and health. How it is done and what is being learned.

1000019640-9647 (US 86149*).

205. In addition to discussing the function of CTR, the College provided another opportunity for the Tobacco Institute and CTR to coordinate Enterprise activities. In a letter dated October 27, 1981, William Hobbs, CTR Chairman, wrote that CTR representatives "Tom Hoyt and Bob Gertenbach will attend T.I.'s College of Tobacco Knowledge November 16 and 17" providing an opportunity for the Tobacco Institute's Horace Kornegay to brief the CTR President and Executive Vice President on "T.I.'s advertising and research plans" because "it might be beneficial to CTR management." 503908538-8538 (US 29737).

206. Another topic frequently discussed at the College was Environmental Tobacco Smoke ("ETS") and the failure to determine its true health effects on nonsmokers. 1000019640-9647 (US 86149*); TIFL0068913-8926 (US 86159); TIFL0068913-8926 (US 86159); TIFL0068939-8939 (US 86161). Industry ETS consultants like Nancy Balter, John Graham and "Gray" Robertson also explained their opposition to public smoking restrictions. TIFL0071152-1154 (US 86177); TIFL0071200-1202 (US 86178).

207. The College curriculum also included an "international perspective" on smoking and health related issues. For example, Mary Covington, Secretary General of INFOTAB, spoke at the November 1981 College about international perspectives related to ETS, explaining that the College

> seminars offer an opportunity to learn a lot about smoking issues and industry programs in a very short time. . . . Without a concerted effort by the tobacco industry [initiatives to eliminate smoking in public places] will make gradual headway in changing attitudes towards smoking as a socially acceptable custom.

2501029891-9901 (US 20557).

208. The topic of public relations was woven into each of the subject areas discussed above in order to achieve a consistent public message. For example, at both 1983 sessions of the College, William Kloepfer of the Tobacco Institute spoke to the students on public relations issues. In addressing the issue of the "effectiveness and unity" of the tobacco industry, Kloepfer contended that because "what affects one affects all," the Tobacco Institute used many strategies "to keep us together, to keep us all aware." According to Kloepfer, the Tobacco Institute Public Relations Division was primarily responsible for four strategies: the Tobacco Institute Tobacco Observer newspaper reaching 150,000 readers six times a year; advertising in tobacco trade publications; appearing as speakers before trade and industry groups; and the Tobacco Institute College of Tobacco Knowledge that has helped "educate" and "orient hundreds of key family members . . . a united industry is our most potent public relations and legislative tool." TI04962436-2454 (US 86172); TIFL0526112-6125 (US 62625).

209. In addressing the issue of public smoking restrictions, Kloepfer noted that

> through our spokesmen, our literature, and our advertising, we broadcast two messages: (1) ambient smoke has not been proven dangerous to non-smokers, and (2) smoking restrictions cause unnecessary expense, inconvenience, and discrimination.

TI04962436-2454 (US 86172); TIFL0526112-6125 (US 62625). In addressing "our oldest, most frustrating issue," Kloepfer maintained, as late as 1983, that

> We call it the primary issue. It is the smoking and health controversy. We think of it as controversy . . . a subject far from decided . . . and through our spokesmen and literature we make that point.

TI04962436-2454 (US 86172); TIFL0526112-6125 (US 62625).

210. Finally, indications from those who attended the College were that the Enterprise, via the Tobacco College of Knowledge, was achieving its goal of uniting the industry and promoting a common public response to issues related to smoking and health. For example, Arthur Stevens, General Counsel for Lorillard, sent comments from the Lorillard attendees at one session to the Tobacco Institute. 03022004-2008 (US 86157); 85676573-6577 (US 86158). One employee wrote, "The information presented gave me a better view of the defensive position in which our industry finds itself." 03022004-2008 (US 86157); 85676573-6577 (US 86158). Similarly, in feedback after the September 1980 session regarding whether or not the College of Tobacco Knowledge was worthwhile, one Lorillard attendee wrote:

> Definitely -- The opportunity to meet with the pros, who fight in the trenches, was an experience which expanded my knowledge and commitment to our mutual goals.

85700954-0955 (US 86162). Further commentary by Lorillard attendees on the Seventh College included:

> [A]fter the program was completed, I definitely have a better understanding of the industries [sic] position in certain areas . . . past attendees should be updated whenever the industries [sic] stand on a position changes or new information is available, especially in the overall smoking and health controversy.

85180845-0846 (US 86164); 85700895-0895 (US 86166).

211. In addition to the formal training received by Defendants' employees on the industry position in smoking and health matters at the Tobacco Institute's College of Tobacco Knowledge, industry lawyers also informally instructed tobacco company employees on the industry's smoking and health positions. For example, Jeffrey Wigand, former Vice President of Research and Development of B&W, shortly after starting to work for B&W, was sent to the law offices of Shook,

Hardy & Bacon in Kansas City, Missouri, for an orientation. Shook, Hardy & Bacon attorneys William Shinn, Robert Northrip and Charles Wall instructed Wigand on the tobacco industry position on causation and addiction. Scott Appleton, a B&W toxicologist, also attended a training session at Shook, Hardy & Bacon. Wigand WD, 29:26-30:10.

6. Tobacco Institute Testing Laboratory

212. In June 1966, the Federal Trade Commission ("FTC") announced that it was establishing a laboratory to measure by machine the tar and nicotine content of cigarette smoke. That same year, the tobacco industry decided to establish its own laboratory, the Tobacco Institute Testing Laboratory ("TITL"), which would be a separate division of the Tobacco Institute. The TITL was established so that Defendants could conduct tests to determine the accuracy and reliability of the FTC laboratory's tests. The TITL was also used by Defendants for other testing purposes, such as the testing of the chemical Chemosol in the late 1960s and early 1970s. 500500320-0323 (US 20633); TIMN267142-7143 (US 21353); TIMN267120-7121 (US 21351). Murray Senkus, Director of Research at RJR, acknowledged that TITL was a "Mechanism for Mutual Cooperation" within the Tobacco Institute. 500500320-0323 (US 20633); TITL0003363-3374 (US 21931); TIMN267142-7143 (US 21353); TIMN267120-7121 (US 21351); TITL0003108-3111 (US 21597); 01246525-6537 (US 34516).

E. Joint Research Activity Directed by Defendants' Executives and Lawyers

1. Witness Development

213. Defendants Philip Morris, Reynolds, Lorillard, Liggett, B&W, American, CTR, and the Tobacco Institute developed a variety of joint research projects that were dubbed Special Projects. These projects assumed numerous forms and names, including CTR Special Projects,

Lawyers Special Projects (projects paid through Lawyers Special Accounts), and Tobacco Institute Special Projects. These projects were exclusively funded by these particular Defendants. The main purpose of these projects, which were primarily lawyer-developed, directed, and supervised, was to obtain and develop witnesses favorable to Defendants for testimony before Congress and other regulatory bodies, for use in litigation, and for support of industry public statements.

214. TIRC/CTR through its "Special Projects" allocated funding on a non-peer reviewed basis for research projects associated with litigation and witness preparation, Brandt WD, 127:20-22, and were not designed to address smoking and health issues in a way that would be helpful to increasing public knowledge about smoking and disease.

215. Special Projects were overseen by the main members of the Committee of Counsel, i.e., the General Counsels of Defendants Philip Morris, Reynolds, Lorillard, Liggett, B&W, and American. Stevens WD, 6:13-21; 2045752106-2110 at 2107 (US 20467); 1003718428-8432 at 8429 (US 35902); 01124376-4421 (US 26394); 01124445-4445 (US 26400).

216. The Committee of Counsel received frequent updates on Special Projects. 1005061626-1626 (US 35960); 1005061615-1615 (US 35958); 1005061616-6125 (US 35959); 1005061626-1626 (US 35960); 680305856-5858 (US 30887); 2501190758-0759 (US 20562).

217. Special Projects were often managed by yet another committee called the Ad Hoc Committee. The Ad Hoc Committee consisted of in-house counsel, litigating lawyers, and other agents such as public relations and research representatives of Defendants directed to conduct long range policy planning with respect to research and witness development. 2045752106-2110 (US 20467); 1003718428-8432 at 8429 (US 35902).

218. The focus on witness development, as opposed to scientific research, is illustrated in a letter dated October 28, 1966, where attorney Francis Decker advised David Hardy of Shook, Hardy & Bacon on the status of certain Ad Hoc matters. He stated,

> Dr. Pratt is presently only available on a limited basis. However, we intend to try to develop him as a possible witness. . . . Dr. Soloff made the remark about the finding that the non-smoker and ex-smoker have the same incidence of heart disease. Nonetheless, I think he could be an excellent witness. To begin with, I think he might be persuaded that the validity of the above statement is questionable.

1005105988-5990 (US 36020).

219. In January 1967, the Ad Hoc Committee was comprised of: (1) Janet C. Brown, Chadbourne & Parke, counsel to American and CTR; (2) Kevin L. Carroll, White & Case, counsel to B&W; (3) Donald J. Cohen, Webster, Sheffield, Fleischmann, Hitchcock & Chrystie, counsel to Liggett; (4) Edward J. Cooke, Jr., Davis, Polk & Wardell, counsel to Reynolds; (5) Francis Decker, Webster, Sheffield, Fleischmann, Hitchcock & Chrystie, counsel to Liggett; (6) Alexander Holtzman, Conboy, Hewitt, O'Brien & Boardman, counsel to Philip Morris; (7) Edwin J. Jacob, Jacob, Medinger & Finnegan, counsel to CTR, B&W, and Reynolds; and (8) William W. Shinn, Shook, Hardy, Ottman, Mitchell & Bacon (later "Shook, Hardy & Bacon"), counsel to Philip Morris, Lorillard, B&W, and Reynolds. 2015059690-9697 (US 20309).

220. At times, members of the Ad Hoc Committee and the Committee of Counsel held joint meetings to keep Defendants informed as to the status of joint research matters related to the enterprise, particularly "industry legislative" and litigation positions. BWX0000007-0007 (US 59828).

221. On December 17, 1965, at a meeting of the "Committee of Six [i.e., the Committee of Counsel]," representatives of at least CTR, B&W, and Reynolds, and outside counsel met to discuss CTR and Ad Hoc special projects in relation to the need for industry witness development. 95522182-2185 (US 56821); RC6033491-3496 (US 86225); 01124441-4444 (US 20034).

222. In a follow-up letter dated January 4, 1966, attorney John Russell of Perkins, Daniels & McCormack informed J.E. Bennett, President of Lorillard:

> As you are aware, the lawyers have, together with the staff of Council for Tobacco Research, been reviewing our industry's research program with a view toward developing some sort of a master plan.

Russell advised that there were three categories of research: "A. Adversary needs (Congress, litigation, etc.); B. Defensive needs; and C. Basic research." He further advised that some projects would be paid through Lawyers' Special Accounts and some out of CTR. 01124445-4445 (US 26400).

223. An April 12, 1966 Reynolds document describing the mission of the Tobacco Institute discussed Defendants' goals including witness development in upcoming health litigation. The document stated that the authorization and purpose of CTR Special Projects and Ad Hoc Committee lawyer projects was to assure efficient handling of medical evidence and to provide the industry with witnesses for health litigation. 502645038.S-5038.Z (US 23053).

224. David Hardy, partner at Shook, Hardy & Bacon, played a major role in Defendants' witness development plans to perpetuate the Enterprise's "open question" position. Hardy worked to secure possible witnesses for future litigation throughout the 1960s. For example, in a January 12, 1967 letter to the Ad Hoc Committee, he requested evaluations of potential industry witnesses. In the same letter, Hardy asked Ad Hoc Committee members to analyze the value of various CTR

and Ad Hoc projects in an effort to get practical use out of them in time for expected Congressional hearings. 2015059690-9697 (US 20309).

225. A February 8, 1967 letter to Hardy from Donald Cohen and Francis Decker, attorneys with Webster, Sheffield, Fleischmann, Hitchcock & Chrystie, responded to Hardy's request for comments and evaluations of potential industry witnesses. It addressed many areas of possible testimony in great detail and provided names of doctors and scientists, many of whom were CTR Special Projects recipients and funded by various Defendants in later years. Cohen and Decker stated that Defendants' witnesses

> should describe the unexplained paradoxes in the cigarette smoke theory of disease causation. [They] should present the idea that the statistics are as consistent, if not more so, with the constitutional theory as with the cigarette smoking theory.

Cohen and Decker also recommended that doctors and scientists who had received CTR grants-in-aid and CTR Special Project funding be used as potential witnesses. 1005154422-4435 at 4425 (US 20228).

226. William Shinn of Shook, Hardy & Bacon also responded to Hardy's request, with copies to members of the Ad Hoc Committee, regarding potential witnesses for Defendants in upcoming congressional hearings. 1005154472-4479 (US 20229); 2015059690-9697 (US 20309).

227. Similarly, on March 31, 1967, Robert Hockett, on behalf of CTR, sent a memorandum to Hardy describing Adolphe D. Jonas, a psychiatrist who had worked on the psychology of smoking. In this memorandum, Hockett mentioned Jonas as a potential industry witness. 2015034120-4121 (US 20319).

228. When a scientist was willing to act as a witness in litigation or before congressional hearings on behalf of the Enterprise, her work was often funded by CTR Special Projects. For example, on October 3, 1968, in an attempt to funnel names to Hardy as potential witnesses before awarding industry funding to scientists, Alexander Holtzman, General Counsel of Philip Morris, wrote a letter proposing CTR Special Project funding for Richard Hickey. Hickey's application to CTR for $30,000 had previously been turned down, but Holtzman stated that

> Dr. Hickey is willing to prepare a statement for Congress provided that he is put in a position to complete the analysis of data which he has in-hand and he would, in my opinion, make an excellent witness.

1005084784-4786 at 4784 (US 22988). Holtzman also wrote that

> I think we might be able to persuade him to make additional observations in these papers concerning the implications of his data in relation to the Public Health Service view on the smoking question.

Id.

229. Similarly, a November 17, 1978 Philip Morris memorandum noted that "CTR has supplied spokesmen for the industry at Congressional hearings. The monies spent at CTR provides a base for introduction of witnesses." 2045752106-2110 at 2107 (US 20467); 1003718428-8432 at 8429 (US 35902).

230. An industry document written by "A.H." (very likely Alexander Hotzman), describing what transpired at a General Counsels' meeting at the offices of Philip Morris on January 4, 1978, at which representatives from B&W, Liggett, Reynolds, the Tobacco Institute, and Philip Morris were present, demonstrated the development of Special Account No. 4 (a specific type of Lawyers Special Accounts, discussed at Section III(E)(3)(b), infra) to address Defendants' need for witnesses. The Enterprise used Special Account No. 4 to fund researchers and scientists and to pay fees to

consultants who could offer expert knowledge to Defendants and act as witnesses on their behalf. Recipients of such funding were sought out by Defendants' attorneys based on how helpful they would be in future litigation and congressional hearings. Funds were allocated accordingly. Discussions and details of the lawyers' special projects were to be kept confidential. In this same document describing what occurred at the January 4, 1978 meeting, attendees were advised not to discuss the details of Special Account No. 4 in writing, and instead discuss any questions on the matter in a phone call. No response to a letter within a given date was assumed to mean that "the matter [was] agreeable." BWX0004364-4375 (US 36228); 03658901-8901 (US 20061); LG2024193-4196 at 4196 (US 21212).

231. In a February 9, 1978 letter to Thomas F. Ahrensfeld, General Counsel for Philip Morris; Max H. Crohn, Jr., General Counsel for Reynolds; Joseph Greer, General Counsel for Liggett; Arnold Henson, an attorney with Chadbourne & Parke; Ernest Pepples, General Counsel for B&W; and Arthur J. Stevens, General Counsel for Lorillard, William Shinn of Shook, Hardy & Bacon wrote of the

> need for special areas of research with due regard for the politics of science, the importance of developing witnesses and the need for a responsive mechanism to meet unfounded claims made about tobacco.

In this document, Shinn recommended approval for funding of projects through Special Account No. 4 and CTR Special Projects. Once again, recipients of this letter were reminded not to retain notes on matters of witness development. 503655086-5088 at 5087 (US 20720); 503655086-5088 (US 75190).

232. By at least the late 1970s, the Tobacco Institute and its agents became coordinators in Defendants' efforts to develop a group of witnesses for future litigation and hearings. An August 30, 1978 letter from Ernest Pepples of B&W to Richard Maddox of BATCo discussed the request of Horace Kornegay, President of the Tobacco Institute, that the Committee of Counsel be involved in selecting and providing scientific witnesses and documentary testimony for use in hearings before Congress and elsewhere. During its years as an active trade association, the Tobacco Institute prepared or provided over 100 witnesses for testimony before Congress, courts or state legislatures. 681725305-5307 (US 21019); USX6390001-0400 at 0335 (US 89555).

233. A March 11, 1980 document drafted by Max Crohn of Reynolds acknowledged that longtime CTR Special Project and Special Account No. 4 recipient Theodor Sterling was "one of our industry's most valuable outside assets." In addition to numerous publications and studies, Crohn noted that "[Sterling] has continued to be one of the primary scientists available for consultation with Shook Hardy & Bacon in Kansas City." 503645463-5463 (US 29696).

234. A 1983 letter from Ernest Pepples of B&W to Jim Bowling of Philip Morris and Alexander Spears of Lorillard attached "a paper proposing recommendations which we might make to the [Tobacco Institute] Executive Committee." 80419202-9202 (US 21061). The attached paper titled "Industry Research Support – Recommendations" listed the following among its considerations for upcoming scientific funding:

> Be prepared to increase scientific funding of special projects to resolve scientific problems and develop witnesses. . . .
>
> Maintain company cooperation – philosophies about research may differ at times, but goals should be the same. . . .
>
> Improve cooperation between industry mechanisms such as CTR and TI.

80419203-9203 (US 21062).

235. In a February 2, 1984 memorandum written by Arthur Stevens, General Counsel for Lorillard, to Alexander Holtzman, General Counsel for Philip Morris; Ernest Pepples, General Counsel for B&W; Josiah Murray, General Counsel for Liggett; and Samuel Witt, General Counsel for Reynolds, Stevens discussed the intent of the Ad Hoc Committee to "propose a witness development plan" to assist the litigation and regulatory efforts of the member companies. 85687269-7270 at 7269 (US 21081).

236. An April 7, 1986 letter from Patrick Sirridge, Shook, Hardy & Bacon, to Alexander Holtzman, General Counsel for Philip Morris; Wayne W. Juchatz, General Counsel for Reynolds; Josiah J. Murray, III, General Counsel for Liggett; Ernest Pepples, General Counsel for B&W; Paul A. Randour, General Counsel for American; and Arthur J. Stevens, General Counsel for Lorillard, informed CTR Board members that Shook, Hardy & Bacon would take over both the administration of Special Account No. 4 from Jacob, Medinger & Finnegan and the submission of research proposals for CTR Special Projects. According to this letter, Shook, Hardy & Bacon anticipated higher funding requests for "certain witness development expenses incurred by national litigation counsel." 507877173-7174 at 7173 (US 20800).

237. Another long-time industry law firm involved in witness development was Wachtell, Lipton, Rosen & Katz. An April 28 memorandum from attorney David Murphy to attorneys Herbert Wachtell, Paul Vizcarrondo, Jr., and John Savarese described an issue that had arisen at Lorillard. Arthur Stevens and William Allinder of Lorillard wanted to know if Lorillard could "participate in funding through a Shook, Hardy special account the work of a Georgetown pathologist, Bennett Jensen." Murphy reported that he had been advised that Jensen had received CTR Special Project

funding in 1988, and now faced problems at Georgetown because of his ties to the tobacco industry. Shook, Hardy & Bacon proposed to

> "give him" $40,000 -- not for specific research . . . or with an eye to publication but solely in order to maintain a good relationship with him and secure his continued help in making contact with other scientists.

Murphy also reported that "Allinder admits that Shook, Hardy wants to give Jensen money to keep him happy and that there is no immediate value to his research." Jensen, however, was a potential witness in the Haines litigation and his contacts "could lead to legislative witnesses." 87715635-5636 (US 21101). Indeed, Robert Northrip, an attorney with Shook, Hardy & Bacon, acknowledged that one of the benefits of Special Projects was preserving the good will of former witnesses. Northrip WD, 10:6-11:2; Northrip TT, 9/30/04, 01366:7-01367:25; ATX9275490271-0280 at 0273 (US 36231).

2. CTR Special Projects

a. Nature of CTR Special Projects

238. CTR Special Projects were a separate category of research projects funded by CTR. Unlike the grant-in-aid category of research, CTR Special Projects were not screened by the CTR Scientific Advisory Board ("SAB"); instead the process was directed by the General Counsels of Philip Morris, Reynolds, Lorillard, Liggett, B&W, and American, as well as attorneys at outside law firms including Jacob, Medinger & Finnegan, and Shook, Hardy & Bacon. The work was specifically commissioned for possible use in litigation. Stevens WD, 13:22-16:16, 17:20-18:8; Juchatz TT, 11/22/04, 06736:17-06748:17, 06754:8-06782:3; (US 87024); McAllister WD, 159:12-14, 161:23-162:25; McAllister TT, 3/21/05, 16171:22-16175:13; Sommers PD, Arch v. American,

7/14/97, 49:7-9; see also Rupp WD, 38:1-8; Northrip TT, 9/30/04, 01369:25-01374:16, 01374:17-01375:3; Lisanti PD, Engle v. Reynolds, 8/13/97, 86:8-21; USX6390001-0400 (US 89555).

239. Because of the lawyer involvement and the lack of review by the SAB, there was recognition that CTR Special Projects did not constitute the independent research promised in the Frank Statement. Janet Brown, retained counsel for CTR, acknowledged the problem in a letter to David Hardy dated June 13, 1974:

> Where the industry is itself the arbiter of the amount and nature of research to be done, however, arguments that the research is self-serving -- that is, is too little, too late, does not bear reasonable relation to the nature and scope of the problems nor to the industry's market position, sales, profits, advertising expenditures -- gain in force and acceptance. Moreover, the industry may have little, if any leeway to disassociate itself from any results of such research with which it does not agree.

03659023-9025 at 9025 (US 87177).

240. From 1966 to 1990, Defendants contributed the following amounts to CTR Special Projects: American - $2,049,354; B&W - $2,571,354; Lorillard - $1,638,490; Philip Morris - $5,837,923; and Reynolds - $6,029,255. From 1966 to 1975, Liggett contributed approximately $144,000. DXA0630917-1033 at 1024 (US 75927).

241. Although Liggett withdrew from CTR in 1968, it continued to participate in CTR Special Projects. Stevens, WD, 17:14-19. Indeed, in its January 8, 1968 resignation letter, Liggett's President stated "we will continue to participate in defraying the cost of [CTR] Special Projects sponsored by the Council after evaluation of each Project on an individual basis." CTR-TIRC MIN000238-0244 at 0241 (US 33023).

242. Like CTR grants-in-aid, CTR Special Projects involved research into epidemiology, laboratory work, and animal experimentation. However, they were regarded by at least one prior Scientific Director of CTR as "soft science," which would not appeal to the CTR SAB. Sommers PD, Arch v. American Tobacco, 7/14/97, 49:7-24; 7/15/97, 215:22-24, 216:2-6.

243. CTR Special Projects allowed participating tobacco manufacturers access to papers and statements by scientists before they were submitted for publication to journals or to regulatory bodies. See e.g., US 34088; 62774. Special Project funding also allowed Defendants to have some say in publications resulting from such funding. See e.g., US 20469.

244. The lawyers who coordinated, requested and monitored CTR Special Projects were not scientists and did not have scientific backgrounds. The lawyers wished to avoid the CTR SAB method of funding because the SAB evaluated its project-funding requests in part for scientific legitimacy, while the lawyers were focused on litigation and liability objectives. Hoel PD, United States v. Philip Morris, 6/27/02, 58:20-59:19.

245. In the mid-1960s, Shook, Hardy & Bacon developed a smoking and health literature retrieval system within the firm to help the lawyers identify scientists friendly to the tobacco industry's liability positions so that these scientists could receive funding through the CTR Special Projects program. Hoel PD, United States v. Philip Morris, 6/27/02, 61:10-62:7, 62:11, 63:11-20.

246. An April 14, 1967 memorandum from Addison Yeaman, Vice President and General Counsel of B&W, addressed to Frederick Haas, General Counsel for Liggett; Cyril Hetsko, General Counsel for American; Henry Ramm, General Counsel for Reynolds; Paul Smith, Associate General Counsel for Philip Morris; and Earle Clements, President of the Tobacco Institute, explained how SAB projects had been "deliberately isolated" from lawyer-directed projects:

> We have deliberately isolated the SAB from those areas of research which they might consider were of a controversial or adversary nature and I see no reason why that isolation cannot and should not be maintained to the fullest preservation of the scientific integrity and dignity of the SAB, but with the release of funds from the SAB portion of CTR's budget to both research directly related to tobacco and the so-called Special Projects.

670307892-7894 (US 20967).

247. A February 24, 1969 Lorillard memorandum also described the origin of CTR Special Projects:

> For a number of years, certain representatives of the industry have felt that the work of the Council [for Tobacco Research] has not been as pertinent to our problems as it might be. . . . In an effort to meet this objection, in 1965 the Council embarked on a program of guided research. . . . In order to finance this phase of their activity, a special projects budget was developed.

044227839-7844 (US 20066).

248. An April 18, 1980 memorandum to file by Arthur Stevens stated: "I concluded that this work [of CTR Special Project recipients Kuper and Janis] is potentially useful from a litigation point of view." 01336290-6290 (US 88436).

249. A September 18, 1981 letter from Francis Decker, an attorney with Webster & Sheffield, to Joseph Greer, Vice President and General Counsel for Liggett, enclosed his notes from a September 10, 1981 meeting of the Committee of Counsel. Decker's notes described a discussion between Arthur Stevens, General Counsel for Lorillard, and Edwin Jacob, CTR attorney with Jacob, Medinger & Finnegan, noting the differences between CTR Special Projects and Lawyers Special Projects:

> Stevens: "I need to know what the historical reasons were for the difference between the criteria for lawyers' special projects and CTR special projects."
>
> * * *
>
> Jacob: "When we started the CTR Special Projects, the idea was that the scientific director of CTR would review a project. If he liked it, it was a CTR Special Project. If he did not like it, then it became a lawyers' special project."
>
> Stevens: "He took offense re scientific embarrassment to us, but not to CTR."
>
> Jacob: "With Spielberger, we were afraid of discovery for FTC and with Aviado, we wanted to protect it under the lawyers. We did not want it out in the open."

LG2000741-0750 at 0745-0746 (US 36269).

250. A 1984 document prepared by Lee Stanford of Shook, Hardy & Bacon to David Hardy of Shook, Hardy & Bacon, concerning the briefing of Alex Spears of Lorillard for a deposition, discussed CTR Special Projects. The document acknowledged that "[t]hese are initiated and developed through outside counsel (SHB and J&M)." 92456261-6268, (US 75420).

251. A document prepared in or about 1992 titled "Funding Sources of Tobacco Industry Research" noted that CTR Special Projects were " - Research directed at industry problem - Witness development objective -Approved by general counsel -Funded through CTR." 01334642-4655 (US 34528).

252. An April 28, 1992 Wachtell Lipton memorandum from attorney David Murphy to attorneys Herbert Wachtell, Paul Vizcarrondo, Jr., and John Savarese discussed the nature of CTR Special Projects and raised the spectre of "perpetrating a fraud on the public":

> In my overcautious view, the Jensen issue raises a larger question -- whether "CTR Special Projects" funds (and after such activities were moved out of CTR, joint industry funds administered through Shook, Hardy) were used to purchase favorable judicial or legislative testimony, thereby perpetrating a fraud on the public. Admittedly, this notion of fraud was unknown to the common law, but if we assume the other side of the looking glass . . . perhaps it is cause for concern.

87715635-5636 (US 21101).

b. Lawyers' Involvement with CTR Special Projects

253. Attorneys at Jacob, Medinger & Finnegan and Shook, Hardy & Bacon kept the Committee of Counsel apprised of the status of CTR Special Projects and also made recommendations to Defendants' General Counsels and to each other as to whether projects should be conducted through CTR Special Projects. TIMN261386-1387 (US 21288); 1005048374-8374 (US 35939). See also Lisanti PD, Arch v. American Tobacco, 6/10/97, 80:9-81:19, 82:10-19.

254. For example, on May 19, 1967, William Shinn of Shook, Hardy & Bacon, sent a letter to Alexander Holtzman, Philip Morris General Counsel, regarding CTR Special Projects. He discussed 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; represented that stress (rather than nicotine addiction) explains why smoking clinics fail; and proposed to publicize the "image of smoking as 'right' for many people . . . as a scientifically approved 'diversion' to avoid disease causing stress." 1005083882-3882 (US 20204).

255. On February 5, 1974, Shinn sent a letter to the following General Counsels: Thomas Ahrensfeld of Philip Morris; DeBaun Bryant of B&W; Frederick Haas of Liggett; Cyril Hetsko of American; Henry Roemer of Reynolds; and Arthur Stevens of Lorillard, stating that "Dave Hardy

and I strongly recommend approval of the $50,000 grant for Dr. Carl D. Seltzer's work as a CTR special project" at Harvard University, citing the valuable research he was conducting and the works he had already published relating to smoking and health, which were helpful to the industry. 1005108380-8381 at 8381 (US 20209).

256. On June 3, 1986, Patrick Sirridge of Shook, Hardy & Bacon sent a letter to the following General Counsels: Alexander Holtzman of Philip Morris; Wayne Juchatz of Reynolds; Josiah Murray of Liggett; Ernest Pepples of B&W; Paul Randour of American; and Arthur Stevens of Lorillard, recommending approval for additional funding of Henry Rothschild through CTR Special Projects. 507878840-8840 (US 20802).

257. Such industry attorney recommendations continued into the 1970s and 1980s. LG2000429-0430 (US 34067); 1005083560-3561 (US 35991); LG2002513-2514 (US 34076); 1005070386-0387 (US 35981); 1005108380-8381 (US 20209); MNATPRIV00012777-2778 (US 86233); 503655086-5088 (US 20720); 03638976-8979 (US 20060); 03638976-8979 (US 46483); 01335398-5398 (US 26488); 507731976-1976 (US 86273); 521032586-2588 (US 85746); 01335965-5966 (US 26516); 01335571-5571 (US 26498); 03754226-4227 (US 29343); 01338391-8392 (US 26567); 01337575-7576 (US 26552); 1005125797-5798 (US 36097); 505741621-1622 (US 86245); BWX0003772-3773 (US 36199); 503645740-5741 (US 29699); 504339396-9397 (US 29751); BWX0002772-2773 (US 36171); 521030035-0036 (US 30458); 1005125390-5391 (US 36091); BWX0002884-2885 (US 36182); 1005125300-5301 (US 36089); 03747448-7449 (US 29327); ATX9277370208-0209 (US 36233); 503645752-5753 (US 29700); 1005064666-4667 (US 35973); LG2002762-2763 (US 34086); BWX0004202-4202 (US 36222); 507731371-1371 (US 86250); 1005064678-4679 (US 35975); 521032115-2116 (US 30470); 503645128-5129 (US 86251);

1005064711-4712 (US 35977); BWX0003460-3461 (US 36192); 1005064646-4647 (US 35972); 503566273-6274 (US 86253); 521031847-1848 (US 30466); 1005064594-4595 (US 35969); BWX0002886-2887 (US 36183); 503655382-5383 (US 86254); 503655216-5217 (US 86255); BWX0002866-2867 (US 36180); 1005064627-4628 (US 35971); BWX0002893-2894 (US 36185); 503653937-3938 (US 86256); 507731344-1344 (US 29862); 521029712-9713 (US 30451); 1005064547-4548 (US 35967); 503645684-5685 (US 86257); BWX0002888-2889 (US 36184); 521030984-0985 (US 86259); 507734475-4476 (US 86261); 507732105-2106 (US 86262); 507734379-4380 (US 29905); 507731548-1549 (US 86266); 507734458-4458 (US 86267); 507731658-1659 (US 86269); 507731764-1765 (US 86270); 507731469-1470 (US 86271); 507731758-1758 (US 29896); 507731648-1648 (US 29888); 507731575-1576 (US 86275); 507731487-1487 (US 86276); 507731973-1973 (US 86278); 507875993-5993 (US 22692); ATX300010994-0995 (US 22694); 521031106-1107 (US 22696); 01336194-6195 (US 22697); 01338089-8089 (US 22701); LG2000678-0679 (US 22703); 1005064682-4683 (US 35976); 03751975-1976 (US 29340); 03747528-7528 (US 29328); 01336110-6113 (US 26519); 1005064561-4561 (US 35968); 01335579-5579 (US 26499); 2015029385-9385 (US 36639); 01336499-6500 (US 26535); 507877111-7112 (US 88438); 86003017-3018 (US 56084); 01335472-5472 (US 26493); 01338515-8517 (US 26570); 01334899-4899 (US 26474); 01331881-1881 (US 26467); 503655440-5441 (US 29711); 01336191-6192 (US 26522); TLT0270555-0555 (US 85619); 03751370-1372 (US 29331); 01335959-5959 (US 26514); 01335967-5968 (US 26517); 521032312-2314 (US 30472); 1000781727-1727 (US 35321); 1005125129-5130 (US 36084).

258. In-house counsel also made recommendations for CTR Special Projects. On October 3, 1968, Alexander Holtzman of Philip Morris sent a letter to David Hardy of Shook, Hardy & Bacon

proposing that Richard Hickey, who had previously applied for funding through CTR but been rejected, receive Special Project funding. On October 21, 1968, Hardy endorsed that recommendation by sending a letter to Frederick Haas of Liggett; Cyril Hetsko of American; Henry Ramm, General Counsel for Reynolds; Paul Smith, General Counsel for Philip Morris; and Addison Yeaman, General Counsel for B&W, by also recommending approval for Hickey as a CTR Special Project. 1005084784-4786 (US 22988); 1005084799-4800 (US 20206).

259. By letter dated May 28, 1970, William Shinn of Shook, Hardy & Bacon advised Holtzman that he now had approval from Philip Morris, Reynolds, and Liggett "with respect to the Hickey Special Project," a reference to studies relating air pollution to lung cancer incidence by Dr. Richard J. Hickey of the Institute of Environmental Studies at the University of Pennsylvania, and that he intended to "call the other General Counsel, if I have not heard from them by then, early next week." 2015031514-1514 (US 20316).

260. In 1981, Arthur Stevens, Senior Vice President and General Counsel of Lorillard, engaged in extensive correspondence with Patrick Sirridge of Shook, Hardy & Bacon regarding the possibility of establishing an industry relationship with Henry Shotwell, a Sun Chemical employee who specialized in air-sampling analysis systems. 01349577-9577 (US 86281); 01349576-9576 (US 86282); 01349575-9575 (US 86283); 01349574-9574 (US 86284); 01349557-9557 (US 86285).

261. Similarly, on November 28, 1983, Arthur Stevens sent a letter to Patrick Sirridge of Shook, Hardy & Bacon, inquiring: "Is Binstock someone who might be appropriate for a special project?" 03746232-6232 (US 29322).

262. CTR personnel also recommended that certain projects be funded as CTR Special Projects. For example, on December 24, 1969, Arthur Furst, CTR consultant, sent a letter to David

Hardy recommending Special Project funding for Hans J. Eysenck, of the Institute of Psychiatry of Maudsleu and Bethlehem Royal Hospitals in London, to test the hypothesis of a relationship between the emotional make-up of people and cancer by conducting a pilot study of carcinogenesis in rats bred for different characteristics. 1005070515-0515 (US 20201).

263. According to CTR's Harmon McAllister, after lawyers had initiated a Special Project proposal, "a description of the proposed project and its cost [were] presented to CTR . . . for appraisal by the Scientific Director." McAllister WD, 161:4-18; CTRSP-FILES026162 (JD 090143). Individuals who presented the proposed project description and cost estimate to the CTR Scientific Director included company attorneys, attorneys from Shook, Hardy & Bacon, and attorneys from Jacob & Medinger. McAllister TT, 3/21/05, 16171:22-16172:22. The CTR Scientific Director would then review the Special Project proposal and either approve or reject it. McAllister TT, 3/21/05, 16178:16-24; McAllister WD, 19-25; CTRSP-FILES012009 (JD 093897). Sheldon Sommers reviewed and approved dozens of Special Project proposals during his tenure as CTR Scientific Director. See, e.g., 01335398-5398 (US 26488); 521032586-2588 (US 85746); 507731976-1976 (US 86273); 804122847-2848 (US 26525); 282002535-2536 (US 28076); 507731658-1659 (US 86269); 521028862-8863 (US 52693*); 804122847-2848 (US 23586); BWX0003460-3461 (US 36192); BWX0003808-3809 (US 36204); see also 503565787-5787 (US 29683); CTR98CONG00067 (US 32516); LWODJ9055269-5270 (US 26015).

264. If approved by the CTR Scientific Director, the proposal was presented to the General Counsels of Defendants Philip Morris, Reynolds, Lorillard, Liggett, B&W, and American who would make the final decision whether to fund it. McAllister WD, 162:8-18; McAllister TT, 3/21/05, 16179:7-16182:2. See also Lisanti PD, Arch v. American Tobacco, 6/10/97, 86:17-87:2.

Sometimes, general counsel would advise CTR directly if a project was approved for CTR Special Project funding. For example, on July 22, 1970, Henry Ramm, Senior Vice President and General Counsel of Reynolds, advised Robert Hockett, Associate Scientific Director of CTR, regarding the

> proposed Conference to be held in the West Indies in January 1972, counsel representing Philip Morris, B&W, 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.

CTRSP-FILES009810-9810 (US 21696); BWX0010831-0840 (US 36244).

265. The proposed conference was approved as a CTR Special Project in October 1970; was held on St. Martin Island on January 12-15, 1972; and was called the Conference on the Motivational Mechanisms of Cigarette Smoking. Among the attendees were A.K. Armitage from Britain's Tobacco Research Council; Robert Hockett, CTR Associate Scientific Director; Henry Ramm, CTR Chairman and President; Gilbert Huebner, Tobacco Institute Medical Director; Marvin Kastenbaum, Tobacco Institute Director of Statistics; and several of the Defendants' research directors, including William Bates of Liggett, I.W. Hughes of B&W, Murray Senkus of Reynolds, Alexander Spears of Lorillard, and Helmut Wakeham of Philip Morris; and several CTR Special Project funding recipients, including Hans Eysenck, Richard Hickey, Hans Selye, and Carl Seltzer. 503654881-4885 (US 88413); 105394371-4388 (US 88414).

266. In general, however, Defendants' General Counsels would advise attorneys at Jacob, Medinger & Finnegan or Shook, Hardy & Bacon whether or not their companies would agree to fund the recommended CTR Special Projects. The following are but a few examples: American: TLT0960501-0501 (US 87682); ATX300000157-0157 (US 21130). B&W: 521031038-1038 (US

20889); 521028861-8861 (US 52692*); 2050987576-7576 (US 27065); 521031875-1875 (US 30467); 521031322-1325 (US 30463); 521031846-1846 (US 30465); 521029712-9713 (US 30451). Lorillard: 01243259-3259 (US 20041); 01240219-0219 (US 26444); 01334994-4994 (US 26475); 01338114-8114 (US 26565); 01336286-6286 (US 26527); 01338207-8207 (US 26566); 01335922-5922 (US 20045); 80412203-2203 (US 21060); 85171343-1344 (US 22042); 80412199-2199 (US 21059); 91821884-1884 (US 57129); 1240455-0455 (US 26447); 01240436-0436 (US 26445); 01336587-6587 (US 26543); 01336855-6855 (US 26545); 01336555-6555 (US 26541); 00499935-9935 (US 29415); 01335470-5471 (US 26492); 01335522-5522 (US 26495); 01335570-5570 (US 26497); 01335958-5958 (US 26513); 01338086-8086 (US 26564); 01338514-8514 (US 26569); 01336289-6289 (US 26528); 01337806-7806 (US 26556); 01336501-6503 (US 26536); 01336504-6505 (US 26537); 01336190-6190 (US 26521); 01338062-8062 (US 26563); 01337090-7090 (US 26549); 01334735-4735 (US 26469); 01336268-6268 (US 26524); 01336271-6271 (US 26526); 01336959-6959 (US 26546); 01335008-5008 (US 26476); 01335403-5403 (US 86292); 01337994-7994 (US 26562); 01337733-7733 (US 26553); 01337962-7962 (US 26557); 01337543-7543 (US 26551); 01336249-6249 (US 26523); 01336089-6089 (US 26518); 01335396-5396 (US 26486); 01336438-6438 (US 26531); 80412203-2203 (US 21060); 85171343-1344 (US 22042); 80412199-2199 (US 21059); 87598541-8541 (US 56250). Reynolds: 507731453-1453 (US 29876); 503655278-5278 (US 21683); 507731762-1762 (US 20785); 507731377-1377 (US 29865); 507731370-1370 (US 29863); 508371649-1649 (US 86295); 03751438-1439) (US 29332); 507731343-1343 (US 29861); 503645683-5683 (US 29698); 507737625-7625 (US 29912) A); 507731653-1653 (US 22769); 507731427-1427 (US 29871); 50731762-1762 (US 20785); 507731504-1504 (US 51245); 507877123-7123 (US 29923); 507731975-1975 (US 29900);

507731649-1649 (US 29889); 507731757-1757 (US 29895); 507732210-2210 (US 29901); 507731486-1486 (US 29882); 507731727-1727 (US 29893); 507731568-1568 (US 29885); 507731646-1646 (US 29887); 507731972-1972 (US 29899); 507731572-1572 (US 29886). Liggett: 2015031514-1514 (US 20316); LG2002533-2533 (US 21198). Philip Morris: 1005053953-3953 (US 20198); 1005053931-3931 (US 86298). Philip Morris Companies: 2015047160-7160 (US 20326); 2015006925-6925 (US 20310); 2015006923-6923 (US 23047).

267. Once the General Counsels had approved a CTR Special Project, attorneys from Jacob, Medinger & Finnegan or Shook, Hardy & Bacon would advise CTR that the CTR Special Project had been approved. CTR would then assign each CTR Special Project a number and the CTR staff would administer and distribute the funds for that CTR Special Project to the recipient or his or her affiliated research institution from a separate bank account maintained by CTR for only the funding of CTR Special Projects. For example, on June 27, 1968, Ed Jacob of Jacob, Medinger & Finnegan sent a letter to W.T. Hoyt, Executive Director of CTR, with respect to approval of CTR Special Project funding for A. Clifford Barger, and requested: "[W]ould you please assign a CTR SP Number to the project and let me know what that number is." McAllister PD, United States v. Philip Morris, 5/24/02, 92:19-95:3, 136:2-136:7; Hoel PD, United States v. Philip Morris, 6/27/02, 56:9-20, 57:13-18; 515772203-2211 (US 87024); see also McAllister WD, 162:4-18.

268. CTR Special Projects were not part of CTR's general fund budget; CTR's members provided the funding for CTR Special Projects in separate transactions. Each company -- Philip Morris, Reynolds, Lorillard, Liggett, B&W, and American -- could decide whether or not to contribute to a particular project. The division of costs, however, was usually based upon the companies' respective market shares and the companies sent their share of a project's cost directly

to CTR and its separate account for Special Projects. CTR personnel often sent letters to the General Counsels of the six companies requesting payments for the CTR "Special Projects Fund." Hoel PD, United States v. Philip Morris, 6/27/02, 66:10-67:10; McAllister WD, 161:14-16; 680305856-5858 (US 30887); CTRSP-FILES026615-6615 (86302); 81616878-6882 (31968).

269. Letters advising of the funding of a CTR Special Project were sent directly from CTR to the CTR Special Project recipient. CTRSP-FILES010602-0603 (US 32710); CTRSP-FILES011331-1331 (US 32718); CTRSP-FILES011338-1338 (US 32720); CTRSP-FILES007790-7790 (US 32683); McAllister WD, 162:14-15.

270. CTR Special Project recipients were instructed to use an acknowledgment line in publications resulting from CTR Special Project funding which was different from the acknowledgment line recipients of CTR regular grants were instructed to use in their publications. The acknowledgment line, used by CTR Special Project recipients did not disclose that their research program was undertaken at the specific request of Defendants for predominantly litigation purposes and was not screened and approved by the CTR SAB. McAllister PD, United States v. Philip Morris, 5/24/02, 145:23-149:18.

271. CTR did not include information about CTR Special Project research in its Annual Reports, which were widely distributed to medical editors at newspapers, medical editors for television programs, deans of colleges and universities in the United States, libraries at colleges and universities, college and university grant offices, the CTR board of directors, members of the CTR Scientific Advisory Board, CTR grantees, CTR Class A and B members, and the Tobacco Institute, and contained information about current and terminated grants-in-aid, grantees, and their institutions. CTR also did not include information about CTR Special Projects in press releases. McAllister WD,

164:17-24; McAllister TT, 3/21/05, 16167:18-16168:12, 16182:3-11; Zahn PD, Massachusetts v. Philip Morris, 5/28/98, 55:1-9, 177:14-17.

272. CTR Special Project funding ended sometime around 1990. USX6390001-0400 at 0017 (US 89555). Thereafter, Philip Morris, Reynolds, Lorillard, Liggett, B&W, and American continued to jointly fund research projects on behalf of the Enterprise through Lawyers Special Accounts, discussed further below. For example, on March 2, 1990, Stevens sent a letter to Patrick Sirridge of Shook, Hardy & Bacon, enclosing a check for $46,461, which represented Lorillard's share of joint funding for Theodor Sterling, a long-time CTR Special Projects grantee. Stevens noted "that this is no longer a CTR project, but is now being funded directly by the Companies and administered as a Special Research Project through your firm." 87598486-8486 (US 21096).

273. On March 7, 1990, Wayne Juchatz of Reynolds sent a letter to Sirridge enclosing Reynolds' portion for the continued funding of Sterling. On March 19, 1990, Paul Randour of American also sent a letter to Sirridge indicating approval of the joint funding of Sterling. On July 23, 1990, Ernest Pepples of B&W sent a letter to Sirridge enclosing a check for $65,579, which represented B&W's share of funding for Sterling. Pepples sent another contribution for Sterling's work in 1991. 87598486-8486 (US 21096); 507731678-1678 (US 29892); ATX300004011-4011 (US 21131); 521100040-0040 (US 20893); 91765001-5001 (US 32125).

274. On September 26, 1990, Patrick Sirridge of Shook, Hardy & Bacon sent a letter to Wayne Juchatz of Reynolds, Josiah Murray of Liggett, Ernest Pepples of B&W, Paul Randour of American, Arthur Stevens of Lorillard, and Charles Wall of Philip Morris concerning funding for Rodger Bick, a practicing oncologist-hematologist who had been collecting data on lung cancer incidence in Kern County, California. Sirridge noted that

> [f]or over 10 years, Dr. Rodger Bick's research on lung cancer has been supported under a CTR Special Project. Dr. Bick has requested that his support be renewed so that he can continue the work. We recommend that this project be approved in the amount of $40,404.32 and be funded directly by the companies.

Philip Morris, Reynolds, B&W, Lorillard, and American all agreed to jointly fund the continued research. 86002659-2661 (US 32046); 507731850-1851 (US 86308); 680712948-2948 (US 30912); 512678317-8317 (US 30044); 2015002794-2794 (US 20307); 507731849-1849 (US 76279); 86002653-2653 (US 32045); 87688005-8005 (US 32060); 91768262-8262 (US 32126).

275. In 1990, the companies continued to jointly fund the work of Alvan Feinstein that had previously been funded as a CTR Special Project on behalf of the Enterprise. ATX300004098-4098 (US 58613); 507731403-1403 (US 29870).

276. By letter dated February 26, 1991, Sirridge requested continued funding from Randour of American and Juchatz of Reynolds for Carl Seltzer, a long-time CTR Special Project recipient. Sirridge advised that B&W, Lorillard, and Philip Morris had already agreed to the continued funding. BWX0003847-3848 (US 36212).

277. In March 1992, Bernard O'Neill of Shook, Hardy & Bacon sent a letter to Wayne Juchatz of Reynolds, Ernest Pepples of B&W, Paul Randour of American, Arthur Stevens of Lorillard, and Charles Wall of Philip Morris, and copied Steven Parrish of Philip Morris, recommending another extension of joint industry funding of Theodor Sterling. 2015002947-2955 at 2947-2948 (US 20308).

278. On May 18, 1992, Charles Wall, Vice President and Associate General Counsel of Philip Morris Companies, sent a letter to O'Neill of Shook, Hardy & Bacon enclosing a check

representing Philip Morris Companies' contribution to Sterling's research efforts. 2023230770-0770 (US 20384).

c. Scientists Funded Through CTR Special Projects

279. Documents reflect that the following scientists were funded through the CTR Special Project program: William H. Alban; Austin; Domingo M. Aviado; Roberto Bachi; Claus B. Bahnson; William J. Bair; Clifford A. Barger; Bevilacqua; Cesare Biancifiori; Rodger L. Bick; Herman V. Boenig; Brian Bozelka; Lyman A. Brewer, III; Geoffrey L. Brinkman; Barbara B. Brown; Brunner; Victor B. Buhler; John Robert Carter; Jeffrey N. Clark; Richard C. Clelland; Irven DeVore; Salvatore R. DiNardi; William L. Dunn (Philip Morris); Kurt Enslein; Hans J. Eysenck; Alvan R. Feinstein; T.N. Finley; G.H. Friedell; H. Hugh Fudenberg; Arthur Furst (CTR); Arvin S. Glicksman; Victor Gould; John G. Gruhn; Michael R. Guerin; William H. Gutstein; Frederick Hecht; Norman W. Heimstra; Doris L. Herman; Katherine M. Herrold; Richard J. Hickey; Robert C. Hockett (CTR); Ebbe Curtis Hoff; Freddy Homburger; E. Lee Husting; Duncan Hutcheon; Joseph M. Janis; Alfred Bennett Jenson; William V. Judy; Marvin A. Kastenbaum (Tobacco Institute); Leo Katz; David M. Kissen; Jerome Kleinerman; Suzanne Knoebel; Lawrence L. Kuper; Hiram T. Langston; Mariano LaVia; Leonard A. Lee; Samuel B. Lehrer; Eleanor J. MacDonald; Thomas F. Mancuso; J.H. Manhold; Marcus M. Mason; Neal L. McNiven; Aldo Misefari; Kenneth M. Moser; Harry Ness; S. O'Shea; Joseph M. Ogura; Ingram Olkin; Oser; Harold Perry; Charles D. Puglia; L.G.S. Rao; Herbert L. Ratcliffe; Vernon Riley; J.B. Roberts; Jay Roberts; Gray Robertson; Lisa Rosenblatt; Henry Rothschild; Linda Russek; Henry I. Russek; John Salvaggio; G.N. Schrauzer; Segi; Carl C. Seltzer; Hans Selye; Lucio Severi; James F. Smith; Louis A. Soloff; Darrel H. Spackman; Douglas H. Sprunt; R. Stankus; Frederick J. Stare; Russell Stedman; Theodor D. Sterling; David A. Sterling;

Harold L. Stewart; Guiseppe Teti; Thomas; J.R. Trinidad; James A. Wakefield; John S. Waugh; John Vivian Wells; Carolyn K.Wells; Travis Winsor; George Wolf; and J. Yerushalmy. 92613920-4198 (US 32132); 2048925665-5704 (US 38726); 503654113-4113 (86310); 503654114-4153 (86311).

3. Lawyers' Special Accounts

280. In addition to CTR Special Projects, Philip Morris, Reynolds, Lorillard, Liggett, B&W, and American funded still another category of special research projects on behalf of the Enterprise, often referred to as Lawyers' Special Accounts. These accounts were directed by industry lawyers, including the Ad Hoc Committee. Stevens WD, 16:17-17:19, 18:19-19:4; 2045752106-2110 at 2107 (US 20467); 1003718428-8432 at 8429 (US 35902).

281. Defendants would often fund the same scientist through both CTR Special Projects and Lawyers' Special Accounts. For example, on September 26, 1977, Edwin Jacob sent a letter to Shinn, which enclosed a proposal from L.G.S. Rao. Jacob noted that

> it now appears that this research is not appropriate for consideration as a CTR Special Project. Nevertheless, the work is of obvious value. . . . Dr. Rao should be a most effective proponent of some of his views and, under appropriate circumstances, might well be able to provide useful information to a Congressional Committee or other body inquiring into certain aspects of smoking and health. . . . For these, reasons, I would recommend that we fund Dr. Rao as a special project through Special Account No. 4.

503673274-3275 (US 29716).

282. On September 4, 1986, Patrick Sirridge of Shook, Hardy & Bacon sent a letter to General Counsel Alexander Holtzman of Philip Morris, Wayne Juchatz of Reynolds, Josiah Murray of Liggett, Ernest Pepples of B&W, Paul Randour of Reynolds, and Arthur Stevens of Lorillard, recommending that Richard Hickey receive continued funding:

> Because Dr. Hickey no longer has an official university position, we believe it is an appropriate time for his CTR Special Project support to end. However . . . Dr. Hickey [should be paid] for one year, $12,000. The consultancy would be paid from Shook Hardy & Bacon Special Account.

507875961-5962 at 5961 (US 20796).

283. Another example is the multiple source funding for Dr. Hans Eysenck's work on the relationship between lung cancer and the patient's "emotional makeup." Eysenck received CTR Special Project funding after initially applying -- and being turned down -- for a CTR SAB grant in 1969. Eysenck continued to receive CTR Special Project funding for a number of projects through 1986. Eysenck also received CTR SAB grant funding from 1973 through 1976. And Jacob also recommended to Thomas Ahrensfeld of Philip Morris, Max Crohn of Reynolds, Joseph Greer of Liggett, Arnold Henson of American, Ernest Pepples of B&W, and Arthur Stevens of Lorillard that Eysenck receive funding through Special Account No. 4 in 1978 and 1979. CTRSP-FILES008806-8806 (US 21168); CTRSP-FILES008804-8804 (US 21167); CTRSP-FILES 08799-8799 (US 21165); HK1698002-8002 (US 21473); 507731385-1385 (US 20784); 03747024-7205 (US 21538); 507731387-1388 (US 29868).

284. Lawyers' Special Accounts were primarily handled through Special Account No. 3, Special Account No. 4, Special Account No. 5, and separate institutional grants, discussed below.

a. Special Account No. 3

285. Special Account No. 3 was not used to fund research, but to coordinate smoking and health databases for use by the members of the Enterprise, especially litigating counsel. Contributors to Special Account No. 3 included: American, B&W, Liggett, Lorillard, Philip Morris, and Reynolds. 682150942-0942 (US 86491); Stevens WD, 20:3-7.

b. Special Account No. 4

286. From 1969 through at least 1989, American, Philip Morris, Reynolds, B&W, Liggett, and Lorillard contributed to Special Account No. 4, which was used on behalf of the Enterprise for lawyers' special project funding, consultancy fees, and witness expenses. Stevens WD, 16:17-17:19, 18:9-19:4; 80680301-0303 (US 21066); 80680283-0285 (US 21065); 2015028333-8336 (US 20314); 1005122219-2222 (US 20214); 1005122237-2240 (US 20215); 1005122246-2249 (US 20216); 1005122257-2260 (US 20217); 1005122262-2265 (US 20218); 1005122267-2271 (US 20219); 03638929-8931 (US 20059); 2015042056-2059 (US 21862); 2015042069-2072 (US 22949); 507875857-5859 (US 20795); 507876993-6994 (US 20799); 507875832-5834 (US 20794); 507876986-6987 (US 20798); 507875698-5700 (US 22953); ATX140000938-0939 (US 21122).

287. A May 18, 1971 document prepared by Arthur Stevens of Lorillard noted the nature of "Special Account No. 4, which is used for Congressional and regulatory matters." 80680229-0229 (US 31967).

288. A September 19, 1973 document prepared by DeBaun Bryant of B&W stated that Special Account No. 4

> is used to maintain expenses incurred for certain research work such as that done by Arthur D. Little on multivariate analysis; work performed by witnesses in preparation for Congressional or federal agencies hearings. The following companies contribute equal amounts to this account: American Brands, B&W, Liggett & Myers, P. Lorillard, Philip Morris, Reynolds.

682150942-0942 (US 86491).

289. A December 9, 1977 document prepared by Max Crohn, Assistant General Counsel for Reynolds, further described Special Account No. 4: "Special Account No. 4 has been used to pay

expenses and fees connected with expert consultancies and statement preparation." 03638986-8987 (US 86815).

290. A document titled "Special Account No. 4 -- funding of Crohn Subcommittee Expenses and General Review" indicated that during a "General Counsel meeting" on January 4, 1978, it was agreed that "Special Account No. 4 could be used for paying fees and expenses of expert witnesses willing to prepare statements or consult." 03658901-8901 (US 20061).

291. A January 27, 1978 memorandum to the file prepared by Arthur Stevens of Lorillard noted that:

> At a Committee of Counsel meeting on January 4, 1978 the future handling of Special Account No. 4 was discussed. Each project to be funded out of Special Account No. 4 will be the subject of specific prior approval by the Committee of Counsel. However, blanket approval was given by the Committee of Counsel for expenditures out of the account not to exceed $10,000 per year, without the need for prior approval. L&M noted that it will participate in the funding of Special Account No. 4 during 1978 only to the extent that it did in 1977 (approximately $40-$45,000?).

85675219-5219 (US 32009).

292. A February 9, 1978 memorandum from William Shinn of Shook, Hardy & Bacon to Thomas Ahrensfeld, General Counsel for Philip Morris; Max Crohn, Assistant General Counsel for Reynolds; Joseph Greer, Vice President and General Counsel for Liggett; Arnold Henson, General Counsel for American; Ernest Pepples, Vice President and General Counsel for B&W; and Arthur Stevens, General Counsel for Lorillard, stated in part:

> Some of you have asked for additional information concerning funding through Special Account No. 4. This account is administered by Jacob & Medinger and Ed Jacob and I have reviewed the enclosed report. I also enclose a memorandum with regard to funding of projects and would appreciate your advice if you find this to be

> incorrect in any way. There is probably no need for you to retain those notes once you have satisfied yourself of the current situation.

503655086-5088 at 5086 (US 20720); 503655086-5088 (US 75190).

293. Another 1978 document described the present and future commitments of Special Account No. 4 funds and the procedure for the approval of emergency matters. The list of industry witnesses included: Aviado, Brown, Eysenck, Spielberger, Hine, Ridgon, Seltzer, Rao, Booker, E. Fisher, Valentin, Heimstra, Dunlap, Farris, F. Fisher, Hickey, Moser, Okun, Sterling, Weil, Jones, Bick, Soloff, Kuper, Harvard Medical School (Huber), Stanford Research Institute, Franklin Institute, and the Industry Research Liaison Committee. LG2024193-4196 at 4195 (US 21212); 89694310-4312 (US 32089); 89694319-4325 (US 32091); 89694313-4318 (US 32090).

294. In the 1980s, Defendants Philip Morris, Reynolds, B&W, American, Lorillard, and Liggett, through the law firm of Shook, Hardy & Bacon, contracted with Battelle Laboratories of Columbus, Ohio to conduct studies on tobacco smoke and nicotine in the environment. Special Account No. 4 was used to fund the project. 01348599-8599 (US 87689); 01348503-8503 (US 86316); 01348490-8490 (US 86317); 01348473-8473 (US 86318); 01348483-8488 (US 86319); 01348489-8489 (US 86320); 01348465-8465 (US 86321); 01348315-8315 (US 26580); 502667789-7790 (US 29584); 503673514-3515 (US 29720); 521028996-8997 (US 30443); 01348441-8441 (US 34535); 01348727-8727 (US 86322); 521028981-8982 (US 30442); 503673416-3417 (US 29719); 2010045875-5876 (US 36519); 01346204-6205 (US 34532); 01346206-6208 (US 34533).

295. A February 22, 1980 letter from Arthur Stevens, Senior Vice President-General Counsel of Lorillard, to Timothy Finnegan of Jacob & Medinger and copied to Thomas F. Ahrensfeld, Alexander Holtzman, Max H. Crohn, Joseph H. Greer, Arnold Henson, Ernest Pepples,

William W. Shinn, Ed Jacob, and Janet C. Brown acknowledged exactly why Special Account No. 4 was used to fund scientists. Stevens stated:

> I am mindful of the continuing mandate with which your office, Shook, Hardy and others have been charged by your respective clients on behalf of the Industry: that is, to find witnesses and researchers -- and, if necessary in order to determine the feasibility of developing a relationship with them, engage them as consultants, or as researchers on initially modest projects. . . . [T]his [is an] important aspect of the Industry's work, that is, to attempt to posture ourselves to defend product liability litigation and related attacks on our products.

BWX0004097-4099 (US 36218); 85676690-6692 (US 32012); 1005146510-6512 (US 36118); 01110668-0670 (US 87679); 01335053-5055 (US 26480); 85676690-6692 (US 32012).

296. As with CTR Special Projects, progress and status reports of Lawyers' Special Accounts projects were sent to Committee of Counsel members. For example, on March 27, 1980, Edwin Jacob sent a letter to Thomas Ahrensfeld, Max Crohn, Joseph Greer, Arnold Henson, Ernest Pepples, and Art Stevens, enclosing research papers "in part supported by the consultation research funds you have provided to Professor Eysenck through Special Account #4." 521029758-9788 (US 30452).

297. On March 28, 1980, Jacob sent a letter to Thomas Ahrensfeld, Max Crohn, Joseph Greer, Arnold Henson, Ernest Pepples, and Art Stevens enclosing a progress report from Professor Spielberger, a recipient of Special Account No. 4 funding. 521032463-2496 (US 30476); 500515939-5939 (US 29465); 502822004-2004 (US 29586); 01355540-5540 (US 26583); BWX0002848-2848 (US 36175).

298. On September 10, 1981, a report was prepared on "Meeting of Company Counsel and Ad Hoc Committee Members" which discussed special projects and the Literature Retrieval

Division. In it, the following comments were attributed to Edwin Jacob: "These 'special projects' are litigation and hearing oriented," and:

> Difference between C.T.R. and Special Four (lawyers' projects). Director of C.T.R. reviews special projects -- if project was problem for C.T.R., use Special Four. Also, if there are work product claims, need the lawyers' protection . . . done through Special Four because of possibility that C.T.R. would be subpoenaed.

The comment, "Concerned that science has become diluted and secondary to lawyers' advocacy interests," was attributed to Stevens of Lorillard. Thomas Bezanson of Chadbourne & Parke also prepared a memorandum regarding the September 10, 1981 meeting. 2023918181-8185 at 8181(US 20397); 2045752086-2093 (US 20466); ATX9275490271-0280 (US 36231).

299. A January 10, 1983 chart demonstrates that Defendants jointly funded through Special Account No. 4 both consultancies (listed were Domingo Aviado, Theodore Blau, Walter Booker, Marc Micossi, Ragner Rylander, Carl Seltzer, and Murray Senkus of Reynolds) and research projects (listed were Battelle Columbus Laboratories, Melvin First, Arthur Furst, Nancy Mello and Jack Mendelson, L.G.S. Rao, and Charles Spielberger). This chart was sent on January 11, 1983, by Patrick Sirridge of Shook, Hardy & Bacon to Joseph Greer, General Counsel for Liggett; Arnold Henson, General Counsel for American; Alexander Holtzman, General Counsel for Philip Morris; Ernest Pepples, General Counsel for B&W; Arthur Stevens, General Counsel for Lorillard; and Samuel Witt, General Counsel for Reynolds. LG2002618-2626 (US 21200); LG2002617-2617 (US 21199); 1005061636-1636 (US 35962); 1005061637-1645 (US 35963).

300. Special Account No. 4 was first administered by Jacob & Medinger and then by Shook, Hardy & Bacon starting in 1986. Attorneys from both firms would periodically request contributions from Philip Morris, Reynolds, American, B&W, Lorillard, and Liggett. The

companies were also sent accountant's reports regarding the activity in the account. 507877173-7174 (US 20800); 507877176-7176 (US 29925); 680302487-2487 (US 30885); 86002376-2377 (US 32044).

301. In 1986, Shook, Hardy & Bacon reminded Committee of Counsel members that "[y]ou will recall that Special Fund 4 also is used to cover certain witness development expenses incurred by national litigation counsel." 507877173-7174 at 7173 (US 20800).

302. General Counsel from Philip Morris, Reynolds, Lorillard, Liggett, B&W, and American and lawyers from Jacob, Medinger & Finnegan and Shook, Hardy & Bacon made recommendations with respect to the funding of Special Account No. 4 projects. For example, on February 9, 1978, William Shinn of Shook, Hardy & Bacon sent a letter to Thomas Ahrensfeld, General Counsel of Philip Morris; Max Crohn, General Counsel of Reynolds; Joseph Greer, General Counsel of Liggett; Arnold Henson, General Counsel of American; Ernest Pepples, General Counsel of B&W; and Arthur Stevens, General Counsel of Lorillard, recommending the approval of funding for Hans Eysenck through Special Account No. 4. 03638976-8979 (US 46483).

303. On February 12, 1982, Pepples sent a letter to Patrick Sirridge of Shook, Hardy & Bacon, recommending the renewal of an annual grant to Arthur Furst be paid from Special Account No. 4. 521029995-0008 (US 20887).

304. Such industry attorney recommendations lasted from at least the 1980s through the early 1990s. 01335056-5057 (US 26481); 01347171-7172 (US 26579); 01346134-6135 (US 26577); 1005125796-5796 (US 36096); 1005125153-5154 (US 36085); 1005047922-7923 (US 35938); 1005064674-4674 (US 35974); 1005064613-4613 (US 35970); 03751441-1442 (US 29333); 80411597-1598 (US 31961); 86002656-2656 (US 56082); 86002593-2594 (US 56081).

305. Documents reflect that, at a minimum, the following individuals and organizations received funding through Special Account No. 4 beginning in the 1960s and ending in the 1990s: Able-Lands, Inc.; Lauren Ackerman; ACVA Atlantic Inc.; George Albee; Aleph Foundation; Arthur D. Little, Inc.; Aspen Conference; Atmospheric Health Sciences; Domingo Aviado; James Ballenger; Alvan L. Barach; Walter Barker; Broda O. Barnes; Battelle Columbus Laboratories; Battelle Memorial Institute; Walter Becker; Peter Berger; Rodger L. Bick; Billings & Gussman, Inc.; Richard Bing; BioResearch Laboratories; Theodore Blau; Irvin Blose; Walter Booker; Evelyn J. Bowers; Thomas H. Brem; Lyman A. Brewer, III; Brigham Young University; Oliver Brooke; Richard Brotman; Barbara B. Brown; K. Alexander Brownlee; Katherine Bryant; Victor B. Buhler; Thomas Burford; J. Harold Burn; Marie Burnett; Maurice Campbell; Carney Enterprises, Inc.; Duane Carr; Rune Cederlof; Domenic V. Cicchetti; Martin Cline; Code Consultants Inc.; Cohen, Coleghety Foundation, Inc.; Colucci, & Associates, Inc.; Computerland; W. Clark Cooper; A. Cosentino; Daniel Cox; Gertrude Cox; CTR; Geza De Takato; Bertram D. Dimmens; Charles Dunlap; Henry W. Elliott; Engineered Energy Mgt. Inc.; Environmental Policy Institute; J. Earle Estes; Frederick J. Evans; William Evans; Expenses related to Congressional Hearings in Washington D.C.; Hans J. Eysenck; Eysenck Institute of Psychiatry; Jack M. Farris; Sherwin J. Feinhandler; Alvan R. Feinstein; Herman Feldman; Edward Fickes; T. Finley; Melvin First; Edwin Fisher; R. Fisher; Merritt W. Foster; Richard Freedman; Herbert Freudenberger; Fudenberg; Arthur Furst; Nicholas Gerber; Menard M. Gertler; Jean Gibbons; Carl Glasser; Donald Goodwin; B. Greenberg; Alan Griffen; F. Gyntelberg; Harvard Medical School; Hearings-Kennedy-Hart Bill; William Heavlin; Norman Heimstra; Joseph Herkson; Richard J. Hickey; Carlos Hilado; Charles H. Hine; Hine, Inc.; Harold C. Hodge; Gary Huber; Wilhelm C. Hueper; Darrell Huff; Duncan Hutcheon; Industry

Research Liaison Committee; Information Intersciences, Inc.; International Consultancy; International Technology Corporation; International Information Institute, Inc.; J.B. Spalding Statistical Service; J.F. Smith Research Account; Jacob, Medinger & Finnegan; Joseph Janis; Roger Jenkins; Marvin Kastenbaum; Leo Katz; Marti Kirschbaum; Kravetz Levine & Spotnitz; Lawrence L. Kuper; Mariano La Via; H. Langston; William G. Leaman; Michael Lebowitz; Samuel B. Lehrer; William Lerner; Edward Raynar Levine; G.J. Lieberman; S.C. Littlechild; Eleanor Macdonald; Thomas Mancuso; Nathan Mantel; R. McFarland; Meckler Engineering Group; Milton Meckler; Nancy Mello; Jack Mendelson; Michigan State University; Marc Micozzi; Irvin Miller; K. Moser; Albert Niden; Judith O'Fallon; John O'Lane; William Ober; J.H. Ogura; Ronald Okun; Ingram Olkin; Thomas Osdene (Philip Morris); Peat, Marwick Main & Co.; Thomas L. Petty; Pitney, Hardin & Kipp; Leslie Preger; Walter J. Priest; R. Proctor; Terrence P. Pshler; Public Smoking Research Group; R.W. Andersohn & Assoc.; L.G.S. Rao; Herbert L. Ratcliffe; Attilio Renzetti; Response Analysis Project; Response Analysis Consultation; R.H. Rigdon; Jay Roberts; Milton B. Rosenblatt; John Rosencrans; Walter Rosenkrantz; Ray H. Rosenman; Linda Russek; Henry Russek; Ragnar Rylander; George L. Saiger; D.E. Sailagyi; I. Richard Savage; Richard S. Schilling; Schirmer Engineering Corp.; S. Schor; G.N. Schrauzer; Charles Schultz; John Schwab; Carl L. Seltzer; Murray Senkus (Reynolds); Paul Shalmy; R. Shilling; Shook, Hardy & Bacon; Henry Shotwell; Allen Silberberg; N. Skolnik; JF Smith; Louis A. Soloff; Sheldon C. Sommers (CTR); JB Spalding; Charles Spielberg; Charles Spielberger; Lawrence Spielvogel; St. George Hospital & Medical School; Stanford Research Institution Project; Russell Stedman; Arthur Stein; Elia Sterling; Theodor Sterling; Thomas Szasz; The Foundation for Research in Bronchial Asthma and Related Diseases; The Futures Group; Paul Toannidis; Trenton, New Jersey Hearings; Chris P. Tsokos; University of

South Florida; Helmut Valentin; Richard Wagner; Norman Wall; Wayne State University; Weinberg Consulting Group; Roger Wilson; Wisconsin Alumni Research Foundation; Jack Wiseman; George Wright; John P. Wyatt; J. Yerushalmy; and Irving Zeidman. 01347232-7243 (US 75293); 03638929-8931 (US 20059); 03746309-6316 at 6313 (US 85355); 03746320-6331 at 6327 (US 75305); 86002410-2413 (US 85716); ATX140000938-0939 (US 21122); 507875698-5700 (US 22953); 507875832-5834 (US 20794); 507875857-5859 (US 20795); 507876993-6994 (US 20799); 1005122219-2222 (US 20214); 1005122237-2240 (US 20215); 1005122262-2265 (US 20218); 1005122267-2271 (US 20219); 2015028333-8336 (US 20314); 1005122246-2249 (US 20216); 1005122257-2260 (US 20217); 2010047954-7955 (US 86358); 2015041994-1997 (US 36654); 2015042056-2059 (US 21862); 2015042069-2072 (US 22949); 507876986-6987 (US 20798); 80680283-0285 (US 21065); 80680301-0303 (US 21066); 86002393-2396 (US 86359).

c. Special Account No. 5

306. Another avenue used by Defendants for joint funding of scientists was the research supported through Lawyers' Special Account No. 5. In a memorandum dated November 8, 1978 to Thomas Ahrensfeld of Philip Morris; Joseph Greer, Liggett; Arnold Henson, American; Ernest Pepples, B&W; Henry Roemer, Reynolds; and Arthur Stevens, Lorillard, and copied to Janet Brown of Chadbourne & Parke; DeBaun Bryant, B&W; Max Crohn, Reynolds; Alexander Holtzman, Philip Morris; Lester Pollack, Lorillard; and William Shinn of Shook, Hardy & Bacon, Edwin Jacob of Jacob & Medinger enclosed a two-year, $400,000 research proposal from Alfred M. Freedman and Richard Brotman. Jacob advised: "Janet Brown, Bill Shinn and I have discussed this proposal with [Brotman and Freedman]. We recommend its approval." The Brotman/Freedman research, related to defining risks and "unhealthy" behavior, was designated by counsel to be a Special Account No.

5 project.[10] 521029470-9485 (US 30450); 03639217-9217 (US 29290); 682070027-0027 (US 36145); 03746884-6884 (US 29324).

307. In July 1982, Arthur Stevens of Lorillard sent an updated Brotman/Freedman proposal to Lorillard scientist Alexander W. Spears for review. In his assessment, Spears concluded that the Brotman/Freedman proposals were of "little potential value to this Industry," but acknowledged "the area of Brotman's and Freedman's value as witnesses in legislative proceedings." Lorillard participated in the joint funding of the first phase of the project, but did not participate in the second phase. Stevens WD, 16:17-17:3; 01335523-5523 (US 26496); 01335522-5522 (US 26495); 521029470-9485 (US 30450); 01335521-5521 (US 26494).

308. The Brotman/Freedman project was approved in 1982 by four of the Defendants: American, Reynolds, Philip Morris and B&W and ran through the mid-1980s. 521029470-9485 (US 30450); 86002376-2377 (US 32044).

d. Institutional Grants

309. Lawyers' Special Accounts were also used to pay for the institutional grants funded by Philip Morris, Reynolds, Lorillard, Liggett, B&W, and American. Defendants funded projects at Harvard University, University of California Los Angeles ("UCLA"), and Washington University. Stevens WD, 19:7-15.

310. In a November 17, 1978 memorandum, Robert Seligman, Vice President of R&D of Philip Morris, described how Defendants used institutional grants to refurbish their scientific image. Seligman reported that at the meeting Shook, Hardy & Bacon attorney William Shinn had stated:

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[10] Lorillard did not participate in the second phase of funding for the Brotman/Freedman research. (US 30450).

> CTR began to lose their luster in the mid-60's and the tobacco industry looked around for more beneficial ways to spend their research dollars on smoking and health. It was at this time that special projects were instituted at Washington University, Harvard University, and UCLA. . . . [T]he industry received a major public relation 'plus' when monies were given to Harvard Medical School.

2045752106-2110 at 2107 (US 20467); 1003718428-8432 at 8429 (US 35902).

311. Defendants' institutional grant to Washington University in St. Louis was to research the immunologic aspects of cancer. 2045752106-2110 at 2107 (US 20467); 1003718428-8432 at 8429 (US 35902); 01338888-8888 (US 26572); 521033382-3383 (US 30478); 521033485-3486 (US 30479).

312. Defendants' institutional grant to Harvard University was under the direction of Dr. Gary Huber, who was conducting in vivo and in vitro animal studies on the biologic responses to tobacco smoke. Funding began in 1972, and the participating companies were Defendants American, B&W, Liggett, Lorillard, Philip Morris, Reynolds, along with Larus & Brother, Tobacco Associates, and United States Tobacco. The project was to be funded for a total of $2,792,750 over a five-year period. Arnold Henson of American acknowledged that one of the main reasons for the Harvard project was "the PR value of the Harvard name." ZN25950-5956 (US 64794); 955030735-0737 (US 86365); BWX0004364-4375 (US 36228); 968003136-3137 (US 25857); 961016507-6508 (US 25854); 1000207774-7775 (US 26078); 2015057132-7132 (US 86366); 980076941-6942 (US 86367); BWX0004364-4375 (US 36228); 1005053856-3856 (US 20197); 86001059-1071 (US 86369); 968003658-3666 (US 25860); 961017594-7594 (US 86370); 968003658-3666 at 3665 (US 25860); 502026481-6487 (US 29549); 2010048605-8606 (US 36525); 100371866-8669 (US 35905); 2010048831-8834 (US 36526); 961017379-7379 (US 86371); 680260639-0642 (US 30860);

961000834-0834 (US 32366) (Confidential); 01335777-5778 (US 26508); 01335779-5779 (US 26509); 01335794-5794 (US 86374); 01335789-5789 (US 26510); 01347161-7161 (US 86375); 503646200-6200 (US 29701); 01335767-5772 (US 26506); 01335774-5774 (US 26507); 01335761-5764 (US 26505); 980078407-8411 (US 25865). See Section III(E)(3)(d), infra, for discussion of the Harvard/Huber research.

313. Joint funding at UCLA began in 1974, and the participating companies were Defendants Philip Morris, Reynolds, and B&W, along with United States Tobacco and Tobacco Associates. ZN25950-5956 (US 64794); TIMN217740-7743 (US 62720); TIMN217738-7739 (US 62719).

F. Committees

1. Research Review Committee, Research Liaison Committee, and Industry Research Committee

314. In February 1974, a consensus had developed among Defendants that an industry committee should be established to review their support of medical research and to make recommendations as to the future course Defendants' support should take. At a CTR meeting, Lorillard, through its President Curtis Judge, agreed to participate in an increased budget for CTR only on condition that such a review of industry research be undertaken. BWX0007549-7588 (US 86832); ARU1130828-0904 (US 86773).

315. One set of suggested guidelines from the mid-1970s for an Industry Committee for the Review of Industry's Overall Independent Scientific Research Effort was: (1) to reconsider the CTR research program, both SAB grants and Special Projects; (2) to reconsider non-CTR research projects undertaken by one or more individual tobacco companies; and (3) to consider the

establishment of a means of coordinating the research undertaken in (1) and (2). 2015040937-0938 (US 20322); 2015040955-0955 (US 20323); TIOK0032723-2724 (US 63004); 2015057143-7144 (US 87693); 03659038-9039 (US 29304); 2015057135-7136 (US 86379); 2015057134-7134 (US 86380); 2010070308-0308 (US 86381); 2015040955-0955 (US 20323); 2015057145-7150 (US 86384); CTRMM015322-5327 (US 79854).

316. William Smith, Chairman of the Tobacco Institute's Executive Committee, wrote in April 1974, that agreement had been reached with each of the major manufacturers as to their representative on the "committee to study the research programs funded by our industry, both through CTR and independent projects." Smith reported that David Hardy of Shook, Hardy & Bacon would chair the committee; Horace Kornegay and William Kloepfer would represent the Tobacco Institute; and William Gardner and Leonard Zahn would represent CTR. Smith stated that the members of the committee were charged with the responsibility for studying industry research programs and research projects funded outside of CTR, such as those at Harvard, Washington University, and UCLA, and reporting their recommendations to the chief executives of the six major cigarette companies -- American, B&W, Liggett, Lorillard, Philip Morris, and Reynolds. Meetings of the Industry Research Committee began on May 7, 1974. After meeting several times in 1974, the committee recommended that a Research Liaison Committee be appointed to serve indefinitely to achieve "a coordinated and informed overview of all industry research." CTRMN015328-5329 (US 21600); ZN22613-2614 (US 64796); 03659035-9036 (US 29303); LWODJ9055585-5585 (US 26006) (Confidential); LWODJ9055586-5587 (US 26007) (Confidential); LWODJ9055585-5585 (US 26006) (Confidential); LWODJ9055586-5587 (US 26007) (Confidential); BWX0007549-7588 (US 86832); 03659013-9016 (US 29300); LWODJ9055779-5781 (US 26008) (Confidential);

LWODJ9055531-5532 (US 26009) (Confidential); 2015040862-0863 (US 36652); ZN22408-2408 (US 86391); CTR98CONG01187-1189 (US 21137); 03540217-0225 (US 22294); LWODJ9055501-5505 (US 25957) (Confidential); 03659013-9016 (US 29300).

317. Creation of the Research Liaison Committee was approved at a meeting of the Tobacco Institute on October 3, 1974, as a successor to the Research Review Committee which had been established in April 1974. The newly formed Research Liaison Committee existed through early 1978. The aims and functions of the Research Liaison Committee were to devise and implement fiscal and peer review for institutional grants, and to consider and make recommendations with respect to proposals for institutional and other research projects in light of all research efforts in and outside of the industry. Members of the Research Liaison Committee were encouraged to attend meetings with CTR in order to keep informed about its plans and projects. Stevens WD, 29:8-19; Zahn PD, Cipollone v. Liggett, 12/16/86, 138:2-139:24, 148:12-16; Zahn PD, Cipollone v. Liggett, 12/17/86, 208:20-209:1; Zahn PD, Massachusetts v. Philip Morris, 5/28/98, 106:11-22, 114:14-115:4; Zahn PD, Richardson v. Philip Morris, 12/16/98, 375:3-10; Kornegay PD, Cipollone v. Liggett, 8/17/94, 196:25-201:2, 208:10-212:18, 213:8-217:8; LWODJ9055332-5332 (US 25953) (Confidential); BWX0007549-7588 (US 86832); BWX0002609-2611 (US 36165); ARU113 0828-0904 (US 86773); 2015057125-7125 (US 86400); 955002251-2251 (US 32354); 01404441-4441 (US 86401); 70124410-4414 (US 31512); 1003719192-9192 (US 35906); 503673145-3146 (US 86405); 1003719175-9179 (US 86406); PM010430-0437 (US 86408); 1003712682-2688 (US 86409); 1000255997-6001 (US 20086).

318. At its January 1975 meeting, the Research Liaison Committee decided that the expenses of considering the feasibility of research projects and proposals would be funded through

the CTR Special Projects fund and funded by those companies agreeing to the research study. The Committee also decided that participating companies would pay for the auditing expenses for the institutional projects at Harvard, UCLA, and Washington University, and discussed problems regarding funding of the Harvard/Huber research project at Harvard Medical School. BWX0002613-2614 (US 36166); BWX0007549-7588 (US 86832).

319. A report dated November 19, 1977, written by Janet Brown, attorney for American from Chadbourne & Parke, summarized the activity of the Research Liaison Committee from its inception as the Research Review Committee in April 1974 through 1977. Brown advised that American might wish to maintain a representative on the Research Liaison Committee after the departure of its representative, Cyril Hetsko. BWX0007549-7588 (US 20286).

320. In 1978, the budget and direction of the CTR was again an area of concern for Defendants. Accordingly, Defendants proposed that yet another committee be convened again "to take up the general question of what kind of research the industry should be into through CTR or elsewhere." A Lorillard document dated April 21, 1978, also articulated the need for a new committee:

> We have again "abdicated" the scientific research directional management of the Industry to the "Lawyers" with virtually <u>no</u> involvement on the part of scientific or business management side of the business.

Industry representatives held meetings and reported to the companies' General Counsels. The name of this new committee was the Industry Research Committee, which essentially performed the same functions as the prior Research Liaison Committee. 01346204-6205 (US 34532) (emphasis in original); Stevens WD, 29:20-38:15; 95539849-9850 (US 56829); TIOK0032721-2722 (US 63003);

03537201-7201 (US 86411); 680252124-2125 (US 30859); 03638976-8979 (US 20060); BWX0007531-7548 (US 36238).

321. An internal letter from Ernest Pepples, B&W Vice President and General Counsel, to Joseph E. Edens, Charles I. McCarty, I.W. Hughes and DeBaun Bryant dated April 4, 1978, discussed the new committee. Pepples reported:

> That Committee, as you know, has a number of disciplines and attitudes represented including research and development, public relations, legal and one CEO (Curt Judge). It is the proper place to take up the general question of what kind of research the industry should be into through CTR or elsewhere. It can also deal with the issue of contract research versus grant research.

680212421-2423 (US 54024); 682338651-8653 (US 22899).

322. The new Industry Research Committee met on November 6, 1978. In attendance were: Ernest Pepples, B&W; Charles Tucker, Reynolds; Arnold Henson, American; Janet Brown, attorney with Chadbourne & Park; James Bowling, Philip Morris; Edwin Jacob, attorney for CTR; and Donald Hoel, attorney with Shook, Hardy & Bacon. An even larger meeting was held on December 13, 1978, and meetings continued throughout 1979, 1980 and 1981 which were attended by Defendants' representatives and industry attorneys. With respect to the direction and role of CTR, "[i]t was agreed that the CTR role would be one of basic research into the disease areas that have been statistically associated with smoking. CTR would not, however, engage in research designed to test the effects of tobacco smoke or tobacco products in animal or human systems," contrary to the promises made in the original Frank Statement. Stevens WD, 29:20-36:9; 2075318262-8268 (US 43667); 1000041870-1876 (US 35102); 03677101-7103 (US 29313); 03754196-4198 (US

29342); 521032356-2357 (US 31474); 01346193-6196 (US 20046); 01346186-6186 (US 26578); 01346656-6656 (US 86416); 80419203-9203 (US 21062).

2. Industry Technical Committee

323. TIRC designated the research directors of its tobacco company members as the Industry Technical Committee ("ITC") in January 1954. The research directors on the first ITC included representatives from American, B&W, Lorillard, Philip Morris, and Reynolds. JH000395-0400 (US 21178); TLT0901400-1410 (US 88187); see also USX6390001-0400 at 0011 (US 89555).

324. The ITC provided technical information to the TIRC SAB concerning tobacco, its constituents, and other matters. The chairman of the ITC was invited to sit in on all SAB meetings in order to ensure coordination between the SAB and ITC. Members of the ITC attended SAB meetings and answered questions from the SAB. Zahn PD, Cipollone v. Liggett, 12/16/86, 107:2-11, 107:20-108:23, 113:6-8, 114:6-9; Zahn PD, Massachusetts v. Philip Morris, 5/28/98, 77:4-18; CTRMIN-SAB000001-1061 at 0002 (US 21146); CTRMIN-SAB000001-1061, 70011735-1757 (JD 090960); CTRMIN-ITC000009-0011 (JD 95519); ATX300000015-0017 (US 21129); CTRMN039046-9106 (JD 092825); 500500320-0323 (US 20633); 955036231-6240 (US 32364); 950148087-8088 (US 32347); 507079688-9689 (US 29831).

325. At a 1967 ITC meeting held at CTR, with representatives present from CTR, Chadbourne & Parke, Liggett, American, B&W, Reynolds, Lorillard and Philip Morris, Osdene of Philip Morris reported that

> Dr. Hockett stated that CTR is moving into an era of active collaboration with the industry and they wish to make the technical committee more effective by including biologists. . . . Programs will be developed in which Hockett wishes to use the industry technical committee people to give advice which will go into the development

> of plans for submission to the SAB. C.C. Little would like to meet with this committee either before or after the SAB meeting. He feels that this would be an opportunity to build a creative future and that CTR would move with more speed.

682011463-1466 (US 86418); 1001609316-9320 (US 86419).

326. A subsequent 1967 meeting was called to "organize the Industry Technical Committee." Present again at the meeting were representatives from CTR, American, B&W, Reynolds, Lorillard, Philip Morris, and Chadbourne & Parke.

> It was stated that the Scientific Advisory Board and the C.T.R. staff [were] desirous of obtaining the regular and organized assistance of the industry technical group. Functions of the ITC [were]: 1. To bring its technical know-how to bear on problems in which it is desired. 2. To assist the staff. 3. Make suggestions. . . . While the makeup of the I.T.C. has usually consisted of the Research Directors of the various participating companies, it was recognized that any company could designate whomever it wished as I.T.C. member.

ATX300008549-8551 (US 58614).

327. A meeting of the ITC was held on April 26, 1968, at the CTR office in New York and was called specifically by W.T. Hoyt of CTR on behalf of the CTR staff. Representatives from CTR, B&W, Lorillard, Philip Morris, Reynolds, and American attended the meeting. The meeting was called "to hear presentations by the CTR-staff of the contract research program being proposed by Mason Research Institute," which was to involve large-scale, long-term mouse inhalation experiments. 955033996-4012 (US 32363). It was noted that:

> a) the contract status as proposed represents a significant change of "tact" [sic]. b) the proposed program represents very considerable increase in costs and outlay. c) and therefore, this entire program may represent a significant "departure from CTR plans and policy."

955033996-4012 (US 32363).

328. In describing the background for the Mason contract, Arthur W. Burke of American reported that the CTR staff had taken an interest in inhalation toxicology ten years prior:

> About this time the CTR-staff began to visit the various grantees to learn what was forthcoming from their studies, and on a visit to the Leuchtenbergers' laboratory learned that evidence was accumulating that adenocarcinomas of mouse lung were occurring with smoke inhalations. . . . "Since foes of Industry might snatch-up such preliminary findings and misuse the information, the CTR staff entertained a limited project at Mason Research Institute, the purpose of which would be to set-up and compare the operation of several animal exposure-smoking machines in one place and at one time, using the same mouse strain, etc. -- <u>in short to study the smoking machines per se</u>. This work was initiated at Mason about one year ago." In the course of these machine evaluations, Mason noted some deficiencies in some of these machines, and the "CTR recognized that they were piddling in some dangerous areas."

955033996-4012 (US 32363) (emphasis in original).

329. At an October 25, 1968 ITC meeting, there was also a discussion of the relationship between the ITC and the CTR Scientific Advisory Board. Hoyt voiced the opinion that the SAB is considering "more targeted research with closer CTR staff monitoring which would be in a) academia by grants, and b) other places by contract -- where necessary." 955036231-6240 (US 32364).

330. In a 1970 report, the Defendants' research directors -- Helmut Wakeham of Philip Morris; Preston Leake of American; Alexander Spears of Lorillard; Murray Senkus of Reynolds; William W. Bates of Liggett; and I.W. Hughes of B&W -- expressed their displeasure with CTR's research program, its focus on studies of diseases that were associated with smoking, its defensive posture, and its lack of guidance for future strategy of the tobacco industry in the area of smoking

and health. The report offered opinions as to how CTR might become more effective as an instrument for the good of the tobacco industry. 1002636362-6365 (US 22998).

331. In the 1960s, the ITC assisted the Tobacco Institute, and ITC members were encouraged to attend meetings at the Tobacco Institute. An ITC meeting at the Tobacco Institute was called "to discuss the possible implications of a $50,000 grant from National Institutes of Health to the F.T.C. laboratory to develop a smoking machine capable of carbon monoxide analysis." Present at the meeting were representatives of Liggett, American, Reynolds, Lorillard, Philip Morris, B&W, Covington & Burling, and the Tobacco Institute. There was much concern over the possibility that the FTC intended to publish brand carbon monoxide levels. The attendees suggested that Defendants be ready to demand public hearings on methodology and be prepared to "counteract the increasingly irrational public image being drawn by anti-smoking forces" on carbon monoxide hazard. TIMN0134876-4877 (US 65574); 950148089-8091 (US 32348).

3. Tobacco Working Group

332. In March 1968, the National Cancer Institute created the Tobacco Working Group ("TWG") to serve as an advisory group to its Smoking and Health Program which was directed by Dr. Gio B. Gori. 87754028-4373 (US 22259). The Group was composed of a broad cross-section of scientists, researchers, and treating physicians specializing in smoking and health. Four of its members were from the tobacco industry: Murray Senkus, Director of Research for RJR; Alexander Spears, Director of Research and Development for Lorillard; Helmut Wakeham, Vice President of Corporate Research and Development for Philip Morris; and Charles Kensler of Arthur D. Little, Inc. By 1969, William Bates, Director of Research at Liggett, was attending TWG meetings, and by 1971, I.W. Hughes of Brown & Williamson had accepted membership. The TWG existed in various

forms from 1968 through 1977, when it was dissolved as a cost cutting measure. HHA6060033-0036 (US 86422); 501555964-5966 (US 22284); LDOJ3002797-2803 (US 86423); LG0267405-7405 (US 59094*); 680231778-1778 (US 86424); Stevens WD, 43:23-46:9; 680142974-2974 (US 22254); 680142966-2966 (US 30817); 680142967-2967 (US 54018); TLT1022905-2912 (US 86842); TIMN0102540-2560 (US 86843).

333. Industry representatives repeatedly informed the TWG that they were participating in their individual capacities, and not as representatives of their individual tobacco company employers. Moreover, they emphasized that their participation did not represent acceptance of the view that cigarettes were hazardous to health or caused lung cancer. U.S. 88, 489. In his 1968 letter accepting membership in the TWG, Murray Senkus stated "I am in no manner accepting the view (1) that present cigarettes are hazardous or (2) that the smoke of such cigarettes causes or contributes to the development of human lung cancer." See also US 22263; US 69276; US 22269; US 26069.

334. Participation by industry representatives proved valuable by allowing Defendants to keep abreast of what the United States Government was doing with respect to smoking and health issues. Their participation also provided a mechanism by which Defendants could try to influence the United States Government's activities in the smoking and health arena. An undated B&W document, discussing United States Department of Health, Education and Welfare activity in the 1960s, clearly articulated the reasons for Defendants' participation on the TWG:

> Of these four actions [taken by the United States Department of Health, Education and Welfare with respect to smoking and health issues], the first three [developing epidemiological evidence linking smoking and certain diseases; launching a program to alert the public about the dangers of smoking; and pushing for legislation which would reduce cigarette consumption] have been of such immediate concern that they have received most of the attention of the tobacco

> industry. However, the later [initiating a research program designed to produce a "less hazardous cigarette"] is probably as important, or perhaps more important for the long-term future of the industry. Although work in this area is in its initial stages, the direction of this work seems clearly indicated and should be evaluated.
>
> * * *
>
> One can logically expect that any reluctance on the part of industry to voluntarily produce commercial cigarettes on the basis of positive results from this program would result in legislation to force adoption. In all probability, little attention is likely to be given to the commercial acceptability of the [unreadable] from this program.
>
> * * *
>
> Since industry has representatives on this committee, it should be possible to remain completely aware of all actions taken and to have at least some influence on these actions. If one assumes complete and frank interchange of information arising from within this committee among all companies, the companies should then operate from a common base.

HHS1330992-0998 (US 76082).

335. Similarly, a March 9, 1972 document drafted by Alexander W. Spears of Lorillard recognized:

> If I were to withdraw [from the TWG], Lorillard would lose considerable insight into the workings of the National Cancer Institute program with respect to cigarettes. There is a very real possibility that this program is going to have a profound effect on the cigarette industry, and I believe that we should be aware of these effects as soon as they become clear. We also have some significant influence on the course of the detailed activities and, therefore, some effect on ultimate results.

01240178-0178 (US 22282).

336. Defendants' approach to the TWG and all Defendants' related activities were jointly formulated and closely monitored by committees of industry lawyers and executives to ensure that

such "participation" in the TWG did not threaten -- and indeed served -- Defendants' common purposes. Defendants' representatives to the TWG regularly reported to their counsel, who kept company executives, CTR, the Tobacco Institute, and one another abreast of TWG activities. 501556259-6263 (US 22283); 501555964-5966 (US 22284); 500502060-2063 (US 22286); 501990370-0374 (US 22287); 1005070117-0121 (US 22288); 1005070122-0122 (US 22903); 680142648-2648 (US 22374); 2015040862-0863 (US 36652); 680143084-3084 (US 22293); 03540217-0225 (US 22294); BWX0003934-3938 (US 86425); 03753993-3994 (US 22295); 03646227-6228 (US 22296); LG0208389-8389 (US 59040).

337. The Enterprise engaged in a concerted effort to prevent, curtail, and ultimately to neutralize the TWG's efforts to evaluate cigarettes' effects using an animal inhalation bioassay developed by researcher Oscar Auerbach. 1000298389-8392 (US 26082); 1005086254-6254 (US 86426); 1002906624-6625 (US 86427); 1000298389-8392 (US 26082); 1005086254-6254 (US 86426); 1002906624-6625 (US 86427); 500006051-6051 (US 86428); CTRMN015382-5383 (US 79878). See also Kornegay PD, Cipollone v. Liggett, 12/6/94, 588:11-589:4, 590:2-8, 592:23-594:6, 598:20-604:7.

338. In Auerbach's study, beagle dogs smoked cigarettes for up to 2.3 years through a throat opening in their windpipes. Two of the eighty-six dogs which started the test developed early squamous cell bronchial carcinoma, the most common lung cancer occurring in humans. An April 3, 1970 report from a United Kingdom tobacco manufacturer, Gallahers, circulated among Defendants, concluded that "we believe the Auerbach work proves beyond a reasonable doubt that fresh whole cigarette smoke is carcinogenic to dog lungs and therefore it is highly likely that it is carcinogenic to human lungs." US 21688. Dr. Auerbach and his co-researcher E. Cuyler Hammond

applied to NCI to conduct follow-up studies on the effects of nicotine on cardiovascular disease in dogs, and made a presentation to the TWG at a meeting in November of 1970. US 29546, 22298.

339. The Tobacco Institute carefully researched Auerbach and his past research projects and shared information with its member companies on behalf of the Enterprise. 2015047506-7506 (US 86431); 508775596-5596 (US 86432); 500006028-6028 (US 86433); 1005086194-6194 (US 86434); 1005086196-6196 (US 86435); 1005086198-6198 (US 86436); 03758481-8482 (US 86437); 1005086201-6201 (US 86438); 2024991017-1017 (US 86439); TIMN221636-1636 (US 86440). Helmut Wakeman indicated in a December 22, 1971 letter to other industry TWG members that "[t]he very great probability that this proposal will be accepted and funded by the N.C.I. is a matter of considerable concern to the tobacco industry." U.S. 22261.

340. Despite the findings of Defendants' scientists, which affirmed the significance of the Auerbach study, the Tobacco Institute publically questioned the results. A 1970 Tobacco Institute press release stated, "We have good reason to question whether lung cancer experts in this review group were able to confirm any finding of lung cancer[.]" TIMN0109556-9560 (US 87698); see also CTRMN015379-5379 (US 79876).

341. Representatives of the Defendants also decided to try to block the TWG from replicating Auerbach's research. Edwin Jacob, counsel to CTR and Reynolds, instructed Reynolds's scientists Murray Senkus and Alan Rodgman, as well as other Defendants' scientists, to prevent the TWG from performing dog inhalation studies such as those deemed necessary to develop new products. Jacob argued against such studies on the grounds that they would be an admission by Defendants that existing cigarette products were harmful. Moreover, Jacob -- an attorney, not a

scientist -- feared that these experiments might show proof of nicotine habituation. 515872408-2456 at 2424-2429 (US 22261).

342. In his report to the Tobacco Institute Annual Meeting on January 28, 1971, William Kloepfer boasted that

> [o]ur constant pressure on Hammond's and Auerbach's shaggy -- or shabby -- dog story has put that work as reported so far into a permanent file marked controversy -- especially among scientists. It did more than that. It demonstrated our counterattack capability as a team. During the rest of the year we missed no event worth talking about in which our comment wasn't issued -- and printed and broadcast -- the same day.

TIMN0081403-1405 (US 77050).

343. In addition to trying to shape the path of research undertaken by the TWG, Defendants' lawyers and executives determined that their scientist representatives on the TWG would offer no suggestions about experiments to conduct or projects to pursue in the search for a less hazardous cigarette. 1005056343-6343 at 6343 (US 22272*).

344. Defendants also utilized the relationships they developed with certain government scientists through the TWG. After the TWG was disbanded, they retained two of its members, Dr. Gio Gori, former Chairman of the TWG from NCI and Dr. T.C. Tso from USDA, as consultants. Gori has been a spokesperson and consultant for the industry since leaving the NCI in the 1980s and Philip Morris secured the services of Tso upon his retirement from USDA in 1983. Bloch PD, United States v. Philip Morris, 2/14/02, 1815:20-1819:20; Tso PD, United States v. Philip Morris, 6/5/02, 178:1-181:12, 182:19-183:2, 183:16-184:23; HHS1091046-1048 (US 88738); 680900035-0045 (US 21013); 1005082903-2903 (US 21529); TIMN435245-5245 (US 22487); 2050986280-

6281 (US 27064); 2023799642-9642 (US 87701); 2000511301-1302 (US 87703); 2000596045-6045 (US 87704); 2001202319-2319 (US 87705).

G. Coordinated Smoking and Health Literature Collection and Retrieval

345. One of Defendants' paramount objectives has consistently been to avoid the issuance of any liability findings that could result in large damage awards as well as increased public recognition of the harmful effects of smoking. In pursuit of that objective, Defendants collectively gathered, organized, stored, and eventually automated medical and scientific literature related to smoking and health research.

346. According to a February 1969 Lorillard memorandum, Defendants' "Central File" was started in the late 1950s, was supported financially by all members of the industry, and was supervised by the Ad Hoc Committee. It was eventually consolidated and put under the direct supervision of Defendants' attorney Edwin Jacob. The "Central File" was a collection of every document which could be found relating to the smoking and health controversy. Beginning in or about 1967, the major tobacco companies, with the exception of Lorillard, also joined together and established an "Information Center" for the collection, summarization, and computerization of all information and documents concerning smoking and health. The purpose of the Information Center was to have information readily available to the industry for litigation and congressional hearings. 044227839-7844 (US 20066); 044227839-7844 (US 20066); 500289915-9918 (US 29454); 01422304-2304 (US 20288); 85649920-9920 (US 21080); 80680229-0229 (US 31967).

347. By 1964, indices of scientific literature were also being compiled separately by the individual Defendants and their agents for litigation purposes. Edwin Jacob, attorney for CTR, Reynolds, and B&W, employed a supervisor and three other employees to abstract and catalogue

current medical and scientific literature by subject and author for litigation purposes. Henry Ramm, attorney for Reynolds, kept a similar but larger index, containing over 20,000 documents in eight volumes. In addition, Kenneth Austin and three other CTR staff members compiled indices of scientific literature for litigation purposes. Litigation indices were also kept by Janet Brown, attorney for American, and Alexander Holtzman, attorney for Philip Morris. Liggett hired a person to gather literature and advocated using space at an outside law firm of one of the companies to do the task, so that future literature could be collected "under the wing" of counsel. 1003119099-9135 (US 20152); LG2017032-7034 (US 34100).

348. In a mid-1960s report, Lorillard stated

> Because of the continued attacks on the industry . . . it is in the best interests of Lorillard to join forces with all other members of the industry concerning the health controversy.

Although each cigarette company handled its own litigation through various trial attorneys,

> there is a high degree of cooperation between the companies through . . . the "Ad Hoc Committee" which finds medical witnesses and prepares testimony. Lorillard's representative on this Committee is Mr. David Hardy. The Committee supervises the Central File which is a collection of every document which can be found relating to the smoking and health controversy. This cooperation must be continued. An adverse decision against any member of the industry would be disastrous to all.

80684691-4695 (US 21067).

349. Defendants shared the expense of bibliographic services and analysis performed for the Central File. 85649920-9920 (US 21080); 80680229-0229 (US 31967).

350. In 1971, the services supported under the Central File and the services performed by the Information Center were transferred to CTR. At the first meeting of CTR's Board of Directors

after its incorporation in 1971, the Board gave approval to CTR to take over and operate, as a CTR Special Project, an information and retrieval system and to computerize medical literature, articles, and other published documents relating to tobacco and health, with the expenses to be borne by the participating companies. At the first annual meeting of CTR members after incorporation, the members approved the name Information Systems for this special project. Information Systems became a division of CTR which analyzed, summarized, indexed, and retrieved scientific and medical literature at the direction of Defendants' attorneys. Defendants relied on this division of CTR to review the medical literature relating to smoking and health even though they continued to monitor literature in-house. CTRMIN-BD000001-0303 at 0007-0008 (JD 093208); CTRMIN-MOM000001-0015 (US 21145); Zahn PD, Massachusetts v. Philip Morris, 5/28/98, 143:8-23; Lisanti PD, Arch v. American Tobacco, 6/10/97, 101:10-102:15.

351. The Report of the Chairman to the second annual meeting of CTR members held on January 28, 1972, revealed that Information Systems had been changed to Information Retrieval Division. The Division was staffed by a group of twenty-six people and financed separately from the general budget; its name was eventually changed to the Literature Retrieval Division. CTRMIN-MOM000016-0034 (US 21170); McAllister TT, 3/21/05, 16161:16-16162:6; Duffin PD, Munn, 1/7/87, 161:17-25, 164:23-167:10, 171:7-15; DXA0630917-1033 at 0964-0965 (US 75927); WAX001 0698-0786 at 0771-0772 (US 75555); USX6400001-0527 at 0347-0350 (US 89561); USX6400001-0527 at 0225-0227 (US 89561); USX6400001-0527 at 0136-0138 (US 89561).

352. CTR maintained a separate checking account called CTR Special Account No. 1 for the Literature Retrieval Division. CTR requested, received, and deposited monies from its sponsor companies for the Literature Retrieval Division. Pollice WD, 3:3-5:1.

353. In addition to the CTR Literature Retrieval Division, Defendants American, B&W, Liggett, Lorillard, Philip Morris, and Reynolds also continued to fund Special Account No. 3 through Edwin Jacob's firm. The account was designated as a "File for Litigation" and was "used to maintain an office where several doctors work on an analysis of medical literature." 682150942-0942 (US 86491).

354. Yearly expenditures for the Literature Retrieval Division continued to be shared by Defendants from 1970 until the Literature Retrieval Division ceased to exist in 1983. 70124547-4547, CTRLRD004193-4193 (US 31557); 70124546-4546, CTRLRD004192-4192 (US 31556); 70124548-4548, CTRLRD004233-4233 (US 31558); 70124544-4544, CTRLRD004190-4190 (US 31554); 70124545-4545, CTRLRD004191-4191 (US 31555); 11275453-5453, CTRLRD004232-4232 (US 26402).

355. During her tenure in the Public Affairs Division of the Tobacco Institute, Anne Duffin obtained source material from the Literature Retrieval Division to assist her in writing articles, pamphlets, handouts, and other publications. Examples include "Smoking and Health 1964-1979, The Continuing Controversy," "Cigarette Smoking and Cancer: A Scientific Perspective, 1982," and "Cigarette Smoking and Heart Disease, 1983." Duffin PD, Munn v. Philip Morris, 1/7/87, 161:17-162:3, 162:20-163:15, 164:23-168:5, 169:4-16, 171:7-15, 173:2-174:3, 174:11-19, 176:18-22; 519838352-8517 (US 87707); 519838518-8621 (US 87708); 519838622-8674 (US 87709).

356. Alexander Spears's informal review report described the Literature Retrieval Division operation as "nearly complete coverage of the world medical literature on tobacco and health available at each user location with essentially state of art information search and retrieval

capability." Because the Literature Retrieval Division system was useful to Lorillard "in the area of tobacco and health related to litigation and governmental regulatory proceedings," Spears supported the decision by Lorillard to fund the Literature Retrieval Division "since it seems an integral part of defending the industry and this company in the defined area." Lorillard funded the Literature Retrieval Division from 1980 through 1983. 01422327-2328 (US 20050); Stevens WD, 42:19-43:22; DXA0630917-1033 at 1025 (US 75927).

357. In September 1981, the Ad Hoc Committee, including William Shinn and Robert Northrip from Shook, Hardy & Bacon, met and discussed a proposal to sever the Literature Retrieval Division from CTR and reorganize it, along with the Central File (sometimes referred to as the Tobacco Litigation File), into a separate corporation. By providing litigation support services to counsel defending smoking and health actions, the separate corporation would be able to provide more extensive and reliable work product protection for the Literature Retrieval Division's microfilmed, computerized database and abstracts on smoking and health information when discovery was sought in litigation. See (no bates) (US 36321 at 275). The proposal, which was ultimately adopted and implemented, recommended that: (1) the Literature Retrieval Division be removed to the custody of defense counsel into a new business corporation to be formed called LS, Inc., the stock of which would be owned by the four law firms; (2) payments to LS, Inc. by the law firms would be on a per client market share basis for all functions; (3) the only users of the system would be the four law firms plus Covington & Burling, representing the Tobacco Institute; (4) the only use of the system would be for litigation, which would be defined to include administrative proceedings and legislative hearings, at which proceedings and hearings the law firms were representing their clients; and (5) Fred Giller, then-Director of CTR's Literature Retrieval Division,

would be appointed President and CEO of LS, Inc. Stevens WD, 42:19-43:22; DXA0630917-1033 at 0964-0965 (US 75927); USX6400001-0527 at 0225-0227 (US 89561); USX6400001-0527 at 0136-0138 (US 89561); USX6400001-0527 at 0347-0350 (US 89561); ATX9275490271-0280 (US 36231); LG2000741-0750 (US 36269); 515848825-8830 (US 21583); 2015020054-0054 (US 36628); 2015020046-0046 (US 36627); 2015020038-0038 (US 36626); 2015020032-0032 (US 36625); 2015020021-0021 (US 36624).

358. In March 1983, the Committee of Counsel approved the implementation and incorporation of LS, Inc. LG2000823-0832 (US 21544); 2047663658-3695 (US 20481); 2047663658-3695 (US 20481).

H. Defendants' Organizations Focused on ETS Issues

359. From the 1970s forward, members of the Enterprise, specifically Philip Morris, Reynolds, Lorillard, B&W, BATCo, and the Tobacco Institute on behalf of its member companies, pooled their resources and coordinated their activities with respect to passive smoking, or environmental tobacco smoke ("ETS"), issues through a variety of committees and organizations (discussed in detail at Section V(G)(6), infra). The aims of the many different industry ETS organizations were to coordinate an industry position on passive smoking and to fund projects that would generate data supporting the industry's position that tobacco smoke was not a proven health risk to nonsmokers.

360. The first industry committee dedicated specifically to addressing ETS concerns was formed as early as 1975. The committee, chaired by Shook, Hardy & Bacon counsel Don Hoel, met under the direction of the Research Liaison Committee to address ETS-specific projects which, at the time, were funded via Special Account 4. 1003293761-3763 (US 86502); 1003293752-3753 (US

20169), (US 75204); 500294698-4698 (US 24145); 504126505-6507 (US 24216); 03638976-8979 (US 46483); 01337388-7388 (US 86504). Regular members of this committee, sometimes referred to as the Public Smoking Committee or Advisory Group, included company scientists from Reynolds, Philip Morris, B&W, and Lorillard. 1000125386-5386 (US 86505); 504339411-9412 (US 86506).

361. Defendants reestablished this committee in 1984 under the name of the Tobacco Institute ETS Advisory Committee, or TI-ETSAG. ETSAG met almost monthly to propose, review, and manage scientific projects that the Committee of Counsel approved for funding. Regular members of ETSAG also included company scientists from Reynolds, Philip Morris, B&W, and Lorillard, in addition to Tobacco Institute representatives, Don Hoel, and Covington & Burling attorney John Rupp. 2021004058-4064 (US 20339). While neither Liggett nor American directly participated in ETSAG, both participated with the funding of approved projects. Id. at 4058; see also Adams PD, United States v. Philip Morris, 6/18/02, 226:15-235:20, 236:2-237:24, 255:24-256:18, 257:8-20, 262:13-263:5, 266:7-268:18, 284:1-24, 285:5-289:6.

362. The Center for Indoor Air Research ("CIAR") was formally established in 1988 to carry out industry-funded research related to passive smoking; the original charter members were Defendants Philip Morris, Reynolds, and Lorillard. 506300804-0814 at 0804 (US 20756); 506647151-7156 at 7151 (US 20761); 321141105-1144 at 1142 (US 20588); TIMN0014390-4393 (US 62782); 2071412978-3143 at 3082-3096 (US 23061*); 506662315-2316 (US 75277). See also Adams PD, United States v. Philip Morris, 6/19/02, 302:4-15, 304:5-306:11. Although CIAR had a Scientific Advisory Board to review the merit of project proposals, only the CIAR Board of Directors had authority to approve a project for funding. Moreover, a large number of industry-

favorable CIAR projects were approved directly by the CIAR Board of Directors without any review by its SAB. 517577761-7761 (US 20867).

363. These committees and organizations furthered Defendants' collective goals by: (1) coordinating and funding Defendants' efforts to generate evidence to support its position that there remained an "open controversy" as to the health implications of exposure to ETS; (2) leading the attack on the Government's efforts to act on evidence linking ETS to disease; and, (3) in the case of CIAR, appearing to be an independent research funding organization when it was really a facade for concealing industry participation in certain studies.

I. International Organizations, Committees, and Groups

1. Overview

364. There is overwhelming evidence demonstrating Defendants' recognition that their economic interests would best be served by pursuing a united front on smoking and health issues and by a global coordination of their activities to protect and enhance their market positions in their respective countries. To further their shared objectives, the Defendants, over an extended period of time, created, controlled, used, or participated in an astonishing array of international entities, including, among many others (all of which will be discussed infra), the Tobacco Manufacturers' Standing Committee ("TMSC"), which became the Tobacco Research Council ("TRC") and then the Tobacco Advisory Council ("TAC"); the International Committee on Smoking Issues ("ICOSI"), which became the International Tobacco Information Center, Inc. ("INFOTAB") and then the International Tobacco Documentation Center ("TDC"); and the Center for Cooperation in Scientific Research Relative to Tobacco/Centre de Coopération pour les Recherches Scientifiques Relatives au Tabac ("CORESTA").

365. Defendants coordinated their efforts to further their economic interests through multiple meetings around the globe. These numerous meetings, held between the 1950s and at least 2000, were scheduled by correspondence and memoranda that were sent via facsimile and by mail. 536202391-2391 (US 86553); 2025495788-5788 (US 22856); 2025495795-5795 (US 26848); 2065260331-0331 (US 86555); 2024771391-1391 (US 86556); 2025477955-7955 (US 26834); 700533941-3941 (US 86558); 503089421-9433 (US 86573); 2078348038-8038 (US 86906); 700533921-3921 (US 88565); 300543355-3356 (US 88506). While the cited exhibits are to meetings in the 1990s, many other exhibits cited throughout these Findings pertain to meetings between the 1950s and 2000.

366. Agendas were usually transmitted in advance of the meetings and Defendants agreed, through correspondence, which of their industry representatives would and should attend. 2023244315-4315 (US 86585); 2023244363-4363 (US 86586); 2028454705-4705 (US 22852); 2028360079-0079 (US 86587); 2023897308-7308 (US 37062); 2024210630-0631 (US 22868); 2051810327-0327 (US 86588); 2065260325-0325 (US 86589); 700533917-3917 (US 86590); 2065260328-0328 (US 66825); 300543980-3980 (US 87574); 300543954-3954 (US 87575); 300543357-3358 (US 87576); 300512229-2232 (US 88507); 300543968-3968 (US 67755); 300543811-3813 (US 88508); 2025495656-5656 (US 88509); 2078742951-2951 (US 27724); 2078742952-2952 (US 27725); 2078742954-2954 (US 27727); 2078742955-2955 (US 27728); 2502250184-0185 (US 45981); 2047315966-5966 (US 88512); 300543817-3817 (US 88513); 2065260344-0344 (US 88514); 2072424257-4257 (US 88516); 2072424213-4214A (US 88517); 2046546145-6145 (US 88524); 2072417268-7269 (US 88528); 321569333-9336 (US 88536); see also Blackie WD, 101:13-104:21, 127:3-140:3.

367. In many instances, meeting participants summarized the substance of the meetings, recorded the nature of the discussions, and identified the company representatives in attendance. 507973108-3109 (US 86598); 536202400-2404 (US 86599); 507974116-4116 (US 51286); 2025493306A-3307 (US 86600); 2023897315-7318 (US 86601); 2051809368-9369 (US 86603); 2028363540-3549 at 3541 (US 86604); 2028372583-2596 at 2594 (US 22926); 517002090-2091 (US 66527); 300512244-2245 (US 67752); 300543979-3979 (US 87578); 300545676-5680 (US 87579); 300545701-5704 (US 87581); 300543440-3454 (US 87582); 300544202-4208 (US 87583); 2047315978-5978 (US 88636); 2078742947-2948 (US 27721); 2078742962-2963 (US 45192); 2078742949-2949 (US 27722); 300543360-3366 (US 88545); 300543940-3942 (US 88546); see also Blackie WD, 104:22-113:20; 128:7-132:18.

368. Defendants used international meetings to identify and coordinate the respective responsibilities of the many international organizations affiliated with the tobacco industry such as the International ETS Management Committee ("IEMC"), Confederation of European Community Cigarette Manufacturers Limited ("CECCM"), TAC, INFOTAB, and others. Scores of documents demonstrate the sophisticated planning and coordination, as well as the division of labor, between the industry's international organizations. Blackie WD, 101:13-104:21, 104:22-113:20. To cite just one example of allocation of responsibilities, W. David Rowland of Rothman's International summarized the "end product" of a July 25, 1995 IEMC meeting by stating: "However, it was eventually resolved: IEMC will develop the messages (globally), CECCM will deliver these messages (in Europe)." 900006204-6204 (US 88482).

369. United States Summary Exhibit 17361 (A) summarizes a vast number of Defendants' memoranda, agendas, and meeting minutes, all used to coordinate Defendants' meetings throughout

the world. As this Summary Exhibit demonstrates, high-level decision-makers, including corporate officers, legal counsel, and experienced public relations and scientific personnel, attended Defendants' international meetings. It is clear from the frequency with which the names of the following individuals appear in the Summary Exhibit that they each played a central role in coordinating Defendants' efforts and ensuring that a united front was developed and followed on smoking and health issues: Sharon Blackie, a BAT scientist; John Rupp, Covington & Burling attorney; Charles Green, RJR Principal Scientist; Helmut Reif, Principal Scientist at a Philip Morris subsidiary and member of CIAR Board of Directors; Richard Carchman, Philip Morris Director of Scientific Affairs; J. Kendrick Wells III, B&W General Counsel; and Christopher Proctor, BATCo Head of Scientific & Regulatory Affairs at Chadbourne & Parke in United States between 1989 and 1993. 401033458-3463 (US 85530); 507973108-3109 (US 86598); 507974116-4116 (US 51286); 507782317-2318 (US 20788); 2078742962-2963 (US 45192); 2023053733-3733 (US 86513); 2023897315-7318 (US 86601); 2072424257-4257 (US 88516); 2047315978-5978 (US 88636); 202502102-2134 (US 20346); 506617595-7596 (US 20760); 507782317-2318 (US 20788); 681000290-0293 (US 21015); 2024270524-0527 (US 75083); 505347172-7174 (US 20739); 2024210630-0631 (US 22868); 681000290-0293 (US 21015); 321569333-9336 (US 88536).

370. Defendants used their many international meetings as opportunities to meet, coordinate and cooperate in identifying "threats" to the industry and to develop responses to these perceived "threats" as they evolved over time. For example, Sharon Blackie, John Rupp, Matt Winokur, J. Kendrick Wells, Chadbourne & Parke attorney Thomas Bezanson, and Christopher Proctor met on several occasions to discuss the activity of EPA and IARC, including the status and timing of the impending EPA risk assessment (discussed at Section V(G)(2)(¶¶3340-3344), infra)

and IARC study (discussed at Section V(G)(2)(¶3347), infra) and Defendants' potential responses thereto. Similarly, Defendants used INFOTAB to prepare a response to the perceived threats to the tobacco industry posed by the forthcoming IARC report. 2021595753-5910 at 5769, 5897, 5903 (US 85541); 300543979-3979 (US 87578); 300543954-3954 (US 87575); 2065260328-0328 (US 66825); 2072417681-7682 (US 89132); Blackie WD, 94:6-95:5; Blackie WD, 143:18-144:4.

371. Defendants closely tracked regulatory "threats" to the industry in the United States. For example, the minutes of an August 26, 1996 CECCM meeting in Amsterdam read:

> [N]ational Developments. USA. President Clinton has taken the decision to put tobacco under FDA jurisdiction. This decision will be challenged by the cigarette manufacturers. Since this decision has reactivated the debate on children and smoking, the Chairman will raise the issues again at the next Board meeting.

800123779-3782 at 3781 (US 89137).

372. ICOSI, one of the organizations that afforded Defendants an opportunity to meet regularly, explicitly recognized the international nature of the "threat" to Defendants' business. An April 1979 ICOSI document noted:

> The problems and attacks proposing restrictions of smoking and normal commercial activities like advertising and publicity have become highly international. . . . No one industry in one country nor any one company can wage and win the battle against this sort of organised world-wide attack. . . . The whole Industry, companies and Trade Associations alike must unite with common targets and common approaches.

1003717317-7330 at 7318 (US 86518) (emphasis in original).

373. The extent to which Defendants' far-reaching cooperative international conduct affected United States' interests is demonstrated by the following: meetings were held on United States soil; representatives of United States companies and organizations, including Defendants,

attended meetings of the cooperating organizations both in the United States and abroad; at these meetings extensive consideration was given to the impact of United States litigation on overseas tobacco companies, as well as the impact of overseas development upon litigation in the United States; and express coordination with the United States tobacco industry, including Defendants, was planned and organized. For instance, in 1973, the Tobacco Institute's Committee of Counsel discussed expanding the Tobacco Institute's central role in the Enterprise to offshore activities, including combating foreign anti-cigarette activity. The purpose of expanding the Tobacco Institute's role was to preserve Defendants' position on smoking and health abroad and prevent erosion of public industry positions that had been adopted and publicized in the United States by the actions of non-domestic companies.

> It is preferable for the domestic industry to act together to combat foreign activity than for individual companies to act. On the subject of smoking and health the domestic industry has acted in concert through the Institute in the past, as it is legally permitted to do and presumably intends to continue to do. Thus, the policy with respect to combating anti-cigarette activity abroad would be but an extension of the domestic policy.

502429369-9373 (US 29556); TI16740660-0663 (US 72403); 2501029891-9901 (US 20557); TI04962210-2211 (US 67250); see also 1002610069-0069 (US 86541).

374. Additional examples of the nexus between Defendants' international organizations and the United States include a December 1978 memorandum asserting that the effectiveness of ICOSI required coordination with and input from the Tobacco Institute and Shook, Hardy & Bacon, 2501018326-8327 (US 21505); a September 1983 INFOTAB meeting, held in Washington, D.C., concerning "[h]ow to use a tobacco network-U.S. hearings," 2501021486-1489 (US 25366); INFOTAB's 1991 retention of Lovell, White & Durrant to provide legal clearance for all documents

related to smoking and health, and of Chadbourne & Parke to review the documents with an eye toward making sure that "due consideration is given to the legal position in the United States," 2023237649-7650 (US 87025); a January 1993 CECCM meeting in Bonn, Germany, considering the "E.P.A. report on risk assessment of ETS" and "[r]eview of the published literature on smoking and work performance prepared by Covington & Burling," 300543360-3366 (US 88545); a February 1997 meeting concerning IARC Action, scheduled to "[r]eview status of study release . . . expectations re: timing, risk, number, U.S. vs. European release" and "U.S.-based Scientific Assessment Team (on all in event of publication in U.S.-based journal)," 2072417268-7269 (US 88528); and a May 1997 International Counsel Meeting, held in New York, regarding the "[i]mpact of US litigation resolution discussions on other countries," as well as British and Australian matters, 321569333-9336 (US 88536).

375. BATCo participated in many industry meetings related to ETS issues, as shown in US 18325, a demonstrative exhibit showing a sampling of the many meetings that included direct contact with one or more representatives of BATCo. 300543979-3979 (US 87578); 517002090-2091 (US 66527); 300512229-2232 (US 88507); 507974116-4116 (US 51286); 300543968-3968 (US 67755); 300545701-5704 (US 87581); 2025495795-5795 (US 26848); 503089421-9433 (US 86573); 2051810327-0327 (US 86588); 2065260328-0328 (US 66825); 321569333-9336 (US 88536).

2. TMSC – Tobacco Manufacturers' Standing Committee

376. On February 12, 1954, the British Minister of Health made a statement before the House of Parliament regarding the report of a special committee appointed by the British Health Ministry suggesting that the statistical evidence pointed to a possible causal relationship between

smoking and lung cancer. The British tobacco manufacturers in the United Kingdom approached the Minister of Health and, on his advice, agreed to donate £250,000, to be spread over seven years, to the Medical Research Council for research into smoking and lung cancer. Brandt WD, 76:1-12; 110070785-0842 at 0788 (US 20270); 321310317-0342 (JD 031027); (no bates) (JD 011382).

377. In March 1954, John Hill of Hill & Knowlton, TIRC's public relations counsel, and Alan Campbell-Johnson, the London associate of Hill & Knowlton, met with D.M. Oppenheim, BATCo Chairman; Robert Sinclair, Imperial Tobacco Chairman; and E.P. Partridge, Imperial Tobacco Director and Secretary, to discuss the newly-formed TIRC and a possible relationship between TIRC and the tobacco manufacturers in the United Kingdom. Hill outlined proposed plans, policies, functions, and responsibilities for TIRC, the TIRC SAB, and the TIRC Research Director, and showed the group proofs of the about-to-be published white paper (detailed discussion of Hill & Knowlton/TIRC white paper at Section III(B), supra). The British executives offered suggestions for changes to the white paper because "[q]uite naturally the British Tobacco group is vitally interested in what we do because the repercussions of what happens in the United States will affect Great Britain and vice versa." Timothy Hartnett, President of B&W, and other members of the TIRC Board "had asked [Hill] to discuss with [the BATCo and Imperial Tobacco executives] the possibility of some form of liaison between the two groups" and to suggest

> that this could be worked through Hill & Knowlton, Inc. and our London Associate Campbell-Johnson, or in any other way they might suggest. The reaction to the idea of liaison was most favourable.

TLT0900159-0161 (US 87720). The arrangement by which Campbell-Johnson would "act as liaison through which the British industry could clear information regarding developments which it desired

to communicate to TIRC" was confirmed by Timothy Hartnett when he was in London later in the spring of 1954. TLT0902041-2064 at 2060 (US 88360).

378. In June 1956, the Tobacco Manufacturers' Standing Committee ("TMSC") was formed by BATCo and other United Kingdom tobacco manufacturers, giving

> formal status to the co-operation in research of the group of manufacturers who in 1954 made a donation of £250,000 to the Medical Research Council for investigation into the causes of lung cancer.

Its stated purpose was

> to assist research into questions concerned with the relationship between smoking and health, to keep in touch with scientists and others working on this subject in the United Kingdom and abroad, and to make information available to scientific workers and the public.

Geoffrey F. Todd was appointed Director of TMSC. Alan Campbell-Johnson, Hill & Knowlton's London associate, was appointed public relations consultant to TMSC. TSMC occupied a position in the United Kingdom analogous to the position of TIRC in the United States. 110070785-0842 at 0788-0789 (US 20270); TLT0900822-0825 (87725); (no bates) (JD 011382); Read TT, 3/21/05, 16327:25-16328:14.

379. As of August 31, 1959, the members of TMSC were Anthony McCormick and D.M. Oppenheim of BATCo; Alexander H. Maxwell; E.R. Adler of Carreras; R.S.W. Clark and E.J. Partridge of Imperial Tobacco; E.J. Foord of Gallahers; P.A.G. Phillips of Godfrey Phillips, Ltd.; J. Wallington of Ardath Tobacco Co., Ltd.; and F.H. Wright of J. Wix & Sons, Ltd. TMSC also had a Technical Subcommittee which was comprised of members of the various UK tobacco manufacturers. (no bates) (US 47043).

380. In June 1957, the Medical Research Council in England issued a statement, supplemented by a statement from the Minister of Health, condemning tobacco as a major cause of lung cancer and calling for a program by local health authorities and their education departments that would inform the general public of the risks of smoking. CTR-TIRC-MIN000001-0252 at 0130 (JD 093292).

381. TMSC member companies in the United Kingdom and TIRC member companies in the United States coordinated their efforts to promote the open question on the relationship between smoking and disease and to deny causation. After Timothy Hartnett, TIRC Chairman, traveled to England to meet with TMSC members in June 1956, Campbell-Johnson wrote to John Hill that Hartnett's "presence at that particular moment should do much materially to help to get relations between TIRC and the new committee [TMSC] off to a good start." Campbell-Johnson ended the letter by counseling that:

> [C]lose thought is needed on the relationship between TIRC and TMSC and the public relations implications of this are clearly left to our discretion to consider. While it is fully appreciated that the operations are, in fact, and should appear to be entirely separate, there clearly will be occasions when pronouncements emanating from one or other side of the Atlantic, from our respective authorities, can be usefully promoted at both ends. There now exists a potential interest in TIRC dicta on this side of the Atlantic and perhaps in TMSC statements on your side.

TLT0900822-0825 (US 87725).

382. Minutes of a November 15, 1960 TIRC meeting state, in part:

> A close working relationship is maintained with the Tobacco Manufacturers' Standing Committee in England, which organization parallels the TIRC. Although methods of operation are considerably different, our cooperation, both in research and public relations, has proven very valuable.

CTR-TIRC-MIN000001-0252 at 0183 (JD 093292).

383. Representatives from TMSC, which included BATCo representatives, came to the United States in 1958 and met with representatives from TIRC, American, Liggett, and Philip Morris, among others. Clarence Cook Little, the first scientific director of TIRC, was among the individuals interviewed. A memorandum, drafted by BAT representatives and titled "Report on Visit to U.S.A. and Canada, 17th April-12th May 1958," demonstrated that although "Defendant manufacturers continued to assert publicly that there was no proof that cigarette smoking caused any disease," these public positions clearly "did not accord with the private views of their own scientists." 105408490-8499 at 8492 (US 21135); Harris WD, 99:15-100:9.

384. G.F. Todd, Director of TMSC, attended a number of TIRC SAB meetings in the 1960s. CTRMIN-SAB000001-1061 at 0187, 0190, 0206, 0207, 0230 (JD 090960).

385. In 1963, TMSC decided to conduct its own smoking and health research program. To reflect that fact, TMSC was renamed the Tobacco Research Council in January, but retained the same purpose and mission as its predecessor. 321310317-0342 (JD 031027); Read TT, 3/21/05, 16327:25-16328:14.

3. TRC – Tobacco Research Council

386. When TMSC changed its name to the Tobacco Research Council ("TRC") in 1963, TRC continued to be funded by BATCo and other United Kingdom tobacco manufacturers. TRC built the Harrogate Labs in England. BATCo sat on the board at the Harrogate Laboratories and was one of the entities that directed the research at Harrogate. Research was conducted at the TRC laboratories in Harrogate from 1962 through 1974, when Harrogate was sold. Its projects included mouse skin painting, inhalation studies, other biological assays, and nicotine pharmacology. Harris

TT, 10/18/04, 2752:11-14; Henningfield TT, 11/29/04, 7204:14-19; 321310317-0342 (JD 031027); Read TT, 3/21/05, 16329:5-9.

387. An October 1964 TRC trip report confirmed that Sir Philip J. Rogers, TRC Chairman, and Geoffrey F. Todd, TRC Director, had visited the United States and met with representatives of Defendants RJR, American, B&W, Philip Morris, Liggett, Lorillard, CTR, and the Tobacco Institute, as well as Hill & Knowlton executives and attorney Edwin Jacob, in a series of meetings. The United States manufacturers' main criticism of TRC's bio-assay research at Harrogate was that the research was an "implied admission that cigarettes are harmful." B&W considered TRC's research policy "particularly prejudicial to them through their association with B.A.T." The TRC representatives agreed that Harrogate bio-assay research might be seen as an implied admission, but pointed out that

> TRC constantly bore in mind the possible repercussions of its actions in U.S.A. and that T.R.C. research was based on the needs of the situation in the U.K., including a need from the legal point of view to give no grounds for an accusation of negligence against the manufacturers.

At one of the meetings with Philip Morris, "[t]he informal agreement between TRC members not to make health claims was explained." 1003119099-9135 at 9106, 9108, 9115 (US 20152); Read TT, 3/21/05, 16335:11-14.

388. Correspondence from Addison Yeaman, B&W General Counsel, to Anthony D. McCormick, BATCo's company secretary, in February 1966 sought to arrange for "a closer liaison between Harrogate, Hamburg and our C.T.R." It noted that "the cigarette companies in the U.S. have given the prime responsibility in the health area to their lawyers" and suggested that the lawyers, who direct "day-by-day decision and policy directions . . . in the first instance" could

facilitate this communication, in lieu of the "executive heads" of the respective tobacco companies. The letter noted that Ed Finch, as Chairman of the Executive Committee of the Tobacco Institute and President of B&W, could head the group and that Ed Jacob of Jacob & Medinger, counsel to CTR, should be included as he "is on retainer from RJR as well as B&W." Yeaman indicated in his letter that he was "troubled" that a prospective Harrogate research report might

> concede a significant causal relation between the use of tobacco and cancer of the lung . . . . [W]e would hope to be afforded the opportunity of consulting with the people on your side concerning the way Harrogate's work is presented, admittedly with the hope of "slanting" the report.

680204115-4117 (US 20990); Read TT, 3/21/05, 16335:1-10, 16335:17-16336:5.

389. On February 14, 1967, A.W.H. Stewart-Moore, a member of the TRC Executive Committee, sent a letter to Virgil D. Heger, Executive Vice President of American Tobacco, notifying him that TRC would be sending a delegation of scientists to the United States in March to discuss nicotine with scientists designated by CTR. Despite the scientific nature of the meetings, Stewart-Moore indicated that the meetings would include "the lawyers from the major American tobacco manufacturers." 0060293378-3378 (US 85326).

4. TAC -- Tobacco Advisory Council

390. The TRC was re-named the Tobacco Advisory Council ("TAC") on August 31, 1978. 109840381-0383 at 0383 (US 20261); Read TT, 3/22/05, 16354:12-20, 16407:6-11.

391. Various members of the Enterprise participated in the TAC, including BATCo, RJR, and Philip Morris, John Rupp of Covington & Burling and Don Hoel of Shook, Hardy & Bacon. The last TAC meetings occurred in May of 1999. (no bates) (US 17361); 505347172-7174 (US 20739); 508226799-6804 (US 75279); 2025025510-5512 (US 37221); Henningfield TT, 11/29/04,

7277:18-23; see also 300545676-5680 (US 87579); 300543360-3366 (US 88545); 800123779-3782 (US 89137).

392. Alex Marine, BATCO counsel, in notes prepared on October 3, 1983 of a recent TAC Meeting on Smoking and Health, stated that:

> [I]n BAT's view, the biggest single threat facing the industry, in both this country and elsewhere, is the issue of smoking and health. Because of this, we believe that the industry must be united in its universal stand on this issue and that no member company should seek to exploit the smoking and health issue for its own commercial advantage. . . . The industry is acutely aware of the possible impact on our business of the Product Liability laws around the world, and in particular those in the U.S.A. . . . I need not remind you that over the past 20 years, no less than 100 civil suits in the U.S.A. have been successfully defended by our Industry. Continuous success has not been coincidental. On the contrary, it has very largely been achieved by a co-ordinated and consistently applied self-discipline on the subject of smoking and health within the Industry.

301043570-3571 (US 93210); Read TT, 3/22/05, 16406:24-16408:24.

393. At a November 16-17, 1983 meeting, the TAC member company tobacco research directors agreed to modify a TAC publication, "Review of Research Activities," in response to

> the eleventh hour intervention by BAT lawyers on many aspects of the galley proof of the publication [because of] the extreme sensitivity of many of the issues, and of the vital need to be safe rather than sorry.

The participants agreed to replace summaries of the results of grantees' research -- which the researchers had written -- with "much shorter statements of results prepared by TAC and agreed to by the grantees." 109840381-0383 at 0383 (US 20261).

394. TAC continued the British tobacco industry's relationship with public relations and research entities in the United States with respect to ETS issues. A February 24, 1986 RJR

interoffice memorandum from Charles Green, RJR scientist, to his superior, Alan Rodgman, concerning the International ETS Working Committee stated:

> A proposal has been made to Mr. Don Hoel, an attorney for Shook, Hardy & Bacon and chairman of the TI-ETS Working Committee, that more formal cooperation be established between the scientific committees concerned with ETS.

The memorandum further pointed out that members of the TAC were

> prepared to meet with representatives of the U.S. Tobacco Institute ETS Working Committee in London on April 8th. Mr. Hoel has requested that Dr. Tom Osdene of Philip Morris and I accompany him to this meeting. It is expected that this will be the first of two or three meetings per year where the various committees will exchange scientific information and coordinate proposed studies.

Green requested permission from RJR to attend the meetings as "the value of our participation in these meetings should be obvious." Handwritten comments on the typed memorandum read:

> Bob: Neither legal nor I have a problem with this. In fact, Mary Ward thinks it's a great idea. May we have your approval for Dr. Green to participate? -Alan 2/24/86; Approved! Bob 2/26/86.

508192982-2982 (US 86533). In 1986, Mary Ward served as Assistant Counsel in RJR's R&D Department. Ward WD, 2:13-19.

395. On April 8, 1986, a "joint meeting of the ETS advisory groups from West Germany, the United Kingdom, and the United States as well as the INFOTAB Board of Directors" was held at TAC's London office to discuss "scientific and public relations problems related to environmental tobacco smoke." The meeting included representatives from Defendants Philip Morris, BATCo, RJR, and the Tobacco Institute, as well as "the entire Tobacco Advisory Research Committee," and the law firm of Shook, Hardy & Bacon. The attendees discussed various research projects which could be used to address proposed regulations with respect to ETS, including projects and programs

sponsored by the Tobacco Institute and the "cooperative [United States] industry study to measure carbon monoxide, nicotine, and particulate matter in restaurants." 505347172-7174 at 7172-7173 (US 20739); 2022932502-2506 (US 22828); Ward WD, 70:21-71:16.

396. Representatives of TAC also met with the Tobacco Institute, Germany's Verband der Cigarettenindustrie ("Verband"), and Japan Tobacco International in Washington, D.C. on March 18-19, 1987, to address the need for increased cooperation among the participating countries and on an international level. The meeting was designed to inform participants about the current status of ETS scientific research, public affairs, and political nuances in each of the countries. The Verband is the German equivalent of the Tobacco Institute. Philip Morris International, BATCo, and other cigarette manufacturers are affiliated with the Verband. TI00682162-2163 (US 21240); 2501458142-8148 (US 27951); Parrish TT, 1/26/05, 11163:21-11164:4; Ogden TT, 3/16/05, 15831:19-22.

397. An April 6, 1987 RJR Interoffice Memorandum from Charles Green to Alan Rodgman, and copied to several individuals, including Mary Ward, discussed the joint meeting held in Washington, D.C. in March 1987. This April 1987 memorandum described the meeting discussions on "Industry-Sponsored Research on ETS," "Non-Industry Sponsored Research," "Current Public Affairs/Political Concerns," and "Future Research Needs" and stated:

> The first session of the second day included presentations by Trevor King, Gerhardt Scherer, Y. Shimitzu, Bill Kloepfer, and John Rupp. There were many similarities among all the presentations and the need for close cooperation between scientists and public relations professionals was expressed repeatedly. R.J. Reynolds was praised by several speakers as an example of an effective research and public relations relationship.

This memorandum further stated that:

> Dr. Spears stated that the Industry has only a short time (5 years) to solve the ETS problem. Vigorous denial is not a satisfactory defensive strategy. All agreed that the most significant ETS problem facing the Industry is the result of epidemiological studies which indicate a low risk related to ETS exposure. More industry sponsored research is needed to address this issue. . . . All of the attendees left this meeting with a better appreciation of the international ETS problem. Concerted action is needed to improve the Industry's position.

A proposed follow-up meeting "with the purpose of generating a world-wide ETS action plan" is further described. 508226799-6804 (US 75279); Ward WD, 71:17-72:6, 72:10-73:17.

398. Sharon Blackie, formerly of BATCo and B&W, and one of the major organizers of the Defendants' international initiatives, acknowledged that she collaborated with representatives of other tobacco companies in fashioning consistent ETS public statements. Defendants who cooperated in this way included BAT, Philip Morris and RJR. Blackie WD, 17:3-14.

399. Defendants circulated revised versions of TAC publications. According to a March 10, 1987 internal memorandum, Philip Morris planned to distribute the TAC publication "Tobacco Smoke and the Non-Smoker" to industrial organizations on behalf of the Enterprise once the document had met with the approval of industry attorneys. 2501009269-9269 (US 27917).

400. According to a March 17, 1987 letter to Hans Verkerk of INFOTAB, William Kloepfer of the Tobacco Institute planned to "compare notes on the ETS issue" with his colleagues at TAC before attending a steering committee meeting in connection with the Sixth World Conference on Smoking and Health. TI12261173-1173 (US 62338).

401. In a May 27, 1987 memorandum, Tobacco Institute Vice President William Kloepfer reported to Samuel Chilcote, Tobacco Institute President, about his meetings with TAC in London. According to Kloepfer's memorandum, he gave the TAC public relations committee an overview

of Tobacco Institute issues and management. According to Kloepfer, TAC recognized ETS as its primary issue and wanted to adapt Tobacco Institute consultant Gray Robertson's video for TAC's use. TI05261937-1938 (US 62213); TIDN0012090-2091 (US 77023).

402. TAC and the Tobacco Institute continued to share information on how to confront the ETS issue publically. On August 23, 1989, Clive Turner, TAC Deputy Chief Executive, wrote to Sam Chilcote, Tobacco Institute President, requesting an ETS publication kit prepared by the Tobacco Institute. TI12240317-0317 (US 86537).

403. In January 1994, TAC changed its name to the Tobacco Manufacturers Association ("TMA") because "the name TAC did not clearly reflect the change of focus in its role to that of a trade association for the UK companies." TMA members included Defendants BATCo and RJR. TMA held meetings as recently as 2000, the date of the discovery deadline established in this case. 321103764-3771 at 3764 (US 67807); 321103761-3761 (US 28286); 321310317-0342 (JD 031027); (no bates) (US 17361).

5. ICOSI – International Committee on Smoking Issues

404. August 2, 2006On December 3, 1976, Hugh Cullman, Executive Vice President of Philip Morris, talked by telephone with R.A. (Tony) Garrett, Chairman of Imperial Tobacco. Cullman's notes from that call indicate that Garrett explained he had been exploring, with a number of major tobacco companies, including Defendants BATCo and RJR, as well as Rothmans International and Reemtsma (Germany), whether company heads might be prepared "to meet discreetly to develop a defensive smoking and health strategy, to avoid our countries and/or companies being picked off one by one, with a resultant domino effect." The initial objective of this group would be

> to develop a smoking and health strategy which would include a voluntary agreement that no concessions beyond a certain point would be voluntarily made by the members [to their governments] and, if further concessions were required by respective governments, that these not be agreed to and that governments be forced to legislate.

The proposed agenda for the meeting included

> Consideration of the international dimension to smoking and health. This might include such matters as . . . how do developments in one country affect others.

Defendants' effort was ultimately termed "Operation Berkshire" (discussed further at Section V(G)(6)(a)((2)), infra). 2025025347-5348 (US 75149); 2025025286-5286 (US 20407); 2025025290-5291 (US 22980); 2025025347-5348 (US 20410).

405. On March 24, 1977, R.A. Garrett of Imperial Tobacco wrote to Alexander Holtzman, Associate General Counsel for Philip Morris, about "Operation Berkshire," an upcoming meeting between the executives of certain tobacco companies. Participants included representatives from Defendants BATCo, Philip Morris, and RJR, as well as Reemstma, Rothmans International, and Imperial Tobacco. The purpose of the meeting was to form a group to develop a common international position on smoking and health issues. The group formed was called the International Committee on Smoking Issues ("ICOSI"). The resulting position paper was reviewed and edited by the law firm of Jacob & Medinger, which represented RJR, B&W, and CTR. 2025025288-5289 (US 20408); 2025025313-5318 (US 23741); 2025025341-5343 (US 20409); 2025025347-5348 (US 20410); 2025025347-5348 (US 75149); 2025025369-5369 (US 20411); 500269225-9228 (US 20622); 2025024797-4803 (US 20406); 2501020298-0308 (US 21903); 2501024103-4107 (US

21909); 2501024103-4107 (US 75181); 2501024571-4575 (US 21904); 502948580-8591 (US 21908).

406. The charter of ICOSI, states that its purposes and objectives are:

> the establishment of a forum for exchange of views and information on international smoking issues (to include tobacco and health) by the coordination of data and information in economic, scientific, and technical areas. The general objectives are to broaden the knowledge of its members, of consumers, and of appropriate authorities. In large part accomplishment of these objectives will be sought by providing information to various national and other tobacco trade associations and by serving as a resource of expertise, data analysis and opinion on these subjects of interest to the industry and its public. The dissemination of the generality of this information will be made in the form of bulletins, reports, articles, surveys, pamphlets, and other analogous means.

2025048998-9014 at 8999 (US 20412); see also 503143820-4106 at 3909 (US 75974).

407. ICOSI's inaugural meeting, held in June 1977, at Shockerwick House in Britain served as the beginning of Operation Berkshire. This meeting, which was called by BAT CEO Tony Garrett, was attended by representatives of the major United States tobacco manufacturing companies. The meeting participants jointly agreed to "hold the line on admissions concerning what they would admit to their individual governments concerning smoking and health, among other things." Harris TT, 10/14/04, 2576:10-24, 2577:11-18; see also 2025025295-5300 (US 75146). According to notes in BATCo's files from a March 1978 meeting in Australia, the objective of ICOSI was "defensive research aimed at throwing up a smoke screen and to throw doubts on smoking research findings which show smoke causes deceases [sic]." 321588692-8692 (US 28544).

408. Mary Covington, Secretary General of INFOTAB, told attendees at the November 1981 Tobacco Institute College of Tobacco Knowledge in Washington, D.C. that the organization

(first named ICOSI and later renamed INFOTAB) was founded to perform internationally the functions that the Tobacco Institute performed for the domestic industry in the United States: "From the outset, the members recognized that the social acceptability of smoking, including the public smoking issue was a subject on which attention should be focused [sic]." 2501029891-9901 at 9896 (US 20557); see also TI04962210-2210 (US 67250); Blackie TT, 10/26/04, 3846:18-22.

409. ICOSI's key officers included the chairmen and other principals of the member companies who attended the Operation Berkshire meeting: Patrick Sheehy, BATCo Chairman; Kit Stuart Lockhart, BATCo Deputy Chairman; William Hobbs, RJR Chairman; William Murray, President of Philip Morris Europe; Alexander Holtzman, Associate General Counsel for Philip Morris; and Andrew Whist, Director Corporate Affairs of Philip Morris (Australia) Ltd. 2025025341-5343 (US 20409); 2025025369-5369 (US 20411).

410. There were two governing groups of ICOSI. The Board of Governors was responsible for establishing policy, included one principal from each member company, and met at least annually. The Executive Committee was responsible for implementing the policies of ICOSI in those areas where decision-making powers had been delegated to the Committee by the Board of Governors. 2501020298-0308 (US 21903).

411. Representatives of the participating Defendants attended numerous meetings of several different ICOSI working groups and task forces, including the Social Acceptability Working Group, which dealt with ETS issues, the Medical and Behavioral Research Group, the EEC Task Force, the Product Liability Task Force, and the Swiss Referendum Task Force. 2501020298-0308 (US 21903); 321588692-8692 (US 28544); 2025025295-5300 at 5295 (US 75146).

412. ICOSI was registered as a non-profit association in Geneva, Switzerland, on December 1, 1978. The seven founding members of ICOSI were Defendants BATCo, Philip Morris, and RJR, as well as Gallahers, Imperial Tobacco, Reemstma, and Rothmans International. TIMN257288-7303 (US 21343); 321588692-8692 (US 28544); 1003717317-7330 at 7318 (US 86518); 301079919-9998 (US 87411*).

413. ICOSI representatives met six times between June 1977 and February 1979, to agree upon "the fundamentals of ICOSI's policy, form, organization, financing and work-programmes." 1003717317-7330 at 7319 (US 86518).

414. ICOSI member companies agreed to act together to respond to smoking and health risk challenges worldwide by promoting the "open question" controversy and the myth of independent research. On October 14, 1977, Dennis Durden, Vice President of RJR and then-Chairman of ICOSI's Working Party on the Social Acceptability of Smoking, forwarded a report to the members of ICOSI regarding the research and analysis activities that would be conducted by the working party. Members of the working party listed in the summary included representatives of Defendants RJR (Durden and James Hind, RJR Vice President of Planning), BATCo (Richard Haddon, Public Relations Manager), and Philip Morris (John T. Landry, Senior Vice President). 501472756-2794 at 2758, 2759, 2762 (US 66342).

415. On April 21, 1978, P. Isenring distributed a letter to Alexander Holtzman, Philip Morris Vice President and General Counsel, and others about the ICOSI EEC Task Force on Consumerism. Isenring urged cooperation and coordination between Philip Morris and RJR concerning the involvement of the law firms of Jacob & Medinger and Shook, Hardy & Bacon, both of which represented several Defendants. Specifically, Isenring discussed the fact that the ICOSI

EEC Task Force on Consumerism had to prepare an industry response to the EEC Consumer Consultative Committee's anti-smoking paper "Tobacco and the Health of the Consumer" and suggested that ICOSI members and their respective law firms work together on a common approach to the response, given their exposure to the situation in Europe over the years. 2501025098-5099 (US 86515); 2501025100-5100 (US 86516); 2501025108-5108 (US 86517).

416. In advance of the June 1979 Fourth World Conference on Smoking and Health, ICOSI formed a Task Force to "monitor and combat on the spot the strong propaganda expected to be generated at this Conference" which is "sponsored by the World Health Organisation and the Swedish Health Authorities." In furtherance of this effort, the ICOSI Task Force met in Kansas City, Missouri on November 20-21, 1978, scheduled two task force meetings for early 1979, and another meeting just prior to the conference. Attendees of the Kansas City meeting included: Gwynn Hargrove of BATCo; Murray Senkus of RJR; William Kloepfer of Tobacco Institute; Leonard Zahn, public relations counsel for CTR; Tim Finnegan of CTR's lawyers Jacob & Medinger; Hugh Grice of TAC; and Donald Hoel of Shook, Hardy & Bacon. ICOSI engaged a Stockholm-based public relations agency to "monitor the Conference organizers' activities and to assist with press room activities at the Conference." Additionally, the Task Force was charged with preparing a post-conference report covering several matters, including "contradictions," "Conference recommendations to governments," an evaluation of the possible impact of the Conference, and "industry positions as they relate to the Conference." 2501015475-5480 at 5475-5476 (US 27921); 2501015328-5331 at 5328, 5329, 5331 (US 86519); 1003717317-7330 at 7328 (US 86518); Zahn PD, Richardson, 12/16/98, 309:12-17, 505:6-505:17, 506:6-14, 512:8-10, 517:2-518:10, 525:12-526:3, 537:1-538:18, 581:10-582:5; see also 680241699-1701 (US 30846).

417. In March 1980, the Executive Committee of ICOSI was disbanded. Instead, the Board of Governors consisting of two named representatives of each member company were to meet at least twice a year. Each member company was to have one vote at the meetings of the Board of Governors. Chairmanship was held in rotation by each member company. William D. Hobbs, Chairman of RJR, was Chairman of the Board of Governors between 1979 and March 31, 1980. 2501020298-0308 (US 21903).

6. INFOTAB – International Tobacco Information Center

418. ICOSI was renamed the International Tobacco Information Center/Centre International d'Information Du Tabac ("INFOTAB") and registered in Geneva, Switzerland, on December 8, 1980. 504934906-4953 (US 20737); Ward TT, 11/3/04, 4950:10-12. INFOTAB's charter, filed with the Swiss Government on November 2, 1982, was substantially the same as ICOSI's charter. 2025048998-9014 at 8999 (US 20412).

419. The six founding members of INFOTAB were Defendants BATCo, Philip Morris, and RJR, as well as Imperial Tobacco, Reemtsma, and Rothmans International. 504934906-4953 (US 20737); Tully PD, United States v. Philip Morris, 6/13/02, 33:7-14.

420. Defendant BATCo belonged to INFOTAB from 1981 or 1982 to approximately May 1990. Proctor PD, United States v. Philip Morris, 6/12/02, 16:8-18.

421. INFOTAB had three categories of membership: Founding Members, Associate Members, and Allied Members. Defendants Liggett and Lorillard were Associate Members, while Defendant Tobacco Institute was an Allied Member, as was Britain's TAC. 504934906-4953 (US 20737). Lorillard later withdrew from participation in INFOTAB because if felt that its contribution

and participation in the Tobacco Institute provided adequate support for INFOTAB. Stevens WD, 4:3-13; 85174260-4260 (US 56011).

422. In the mid-1980s, Hugh Cullman of Philip Morris, R.L.O. Ely of BATCo, Andrew Whist of Philip Morris, and Richard J. Marcotullio of RJR were on the INFOTAB Board of Governors, which was later re-named simply "the Board of Directors." Cullman was the Chairman of the Board of Directors. 504934906-4953 at 4948 (US 20737); 2025013308-3308 (US 21585).

423. Tobacco Institute representatives, Peter Sparber and Bill Kloepfer (Senior Vice President, Public Relations), participated in an October 7-10, 1985 INFOTAB workshop in Copenhagen. Thereafter, INFOTAB's Secretary General wrote to Tobacco Institute President Samuel Chilcote to thank him for the Tobacco Institute's participation. According to the conference program, the workshop included discussions about "the Social Acceptance of Smoking," "The Health Controversy -- Some Aspects Old and New," and "Ambient Tobacco Smoke, Defense - Medical, Defense - Political, and Relation with Indoor Pollution." According to the conference program, Hugh Cullman (then Vice Chairman, Philip Morris Companies and 1985/86 INFOTAB Chairman), John Tollison (then Institute Director of the Tobacco Institute of Australia Ltd.), and Hugh Grice (then Executive Director of the TAC) were also among the speakers, discussion group leaders and moderators scheduled to attend the workshop. TI12263348-3361 (US 62369*).

424. A November 30, 1989 INFOTAB document listed INFOTAB's "most important" roles, including: "'Think tank' for industry cooperation worldwide, in association with member companies," "Preparation of positions agreed by the industry," "Preparation of published materials and kit sets for use by NMA's and lead companies," and "Promulgation of strategies agreed by the industry." 300528729-8731 (US 46572).

425. INFOTAB prepared various materials on smoking and health issues including research-related materials, public relations campaign materials, and advocacy papers. For example, in 1986, INFOTAB produced an Issues Binder which provided

> members with reference materials and quotations in response to the major allegations in the smoking and health area. The binder [was] organized around nine issues -- "addiction," advertising and sponsorship, developing countries, the public smoking issue, legislation, smoking and health, social costs, taxation and warning labels.

504934906-4953 (US 20737).

426. J. Kendrick Wells of B&W sent a memorandum to Ernest Pepples of B&W dated October 27, 1981, concerning his recent discussion with L.C.F. Blackman, Director of the Group Research and Development Center of BATCo in Southampton, England, about Blackman's slide presentation titled "Basic Approach to Government and Medical Authorities." Wells voiced his concern with Blackman that the initial document "admit[ted], despite a disclaimer, that cigarettes are harmful to health in proportion to delivery." Wells further noted that the document "runs against important argument the U.S. industry is making in response to the FTC Staff Report and may need to make in response to charges that cigarettes are addictive." Blackman agreed to change the document and send it to the other INFOTAB members. 680585063-5064 (US 21007); 680585041-5042 (US 21006).

427. BATCo relied on position papers developed for the industry by INFOTAB. An internal BATCo memorandum, distributed "[t]o all No. 1's and Public Relations Managers of Operating Companies, transmitted an updated INFOTAB paper on "Advertising Argumentation,"

which provided arguments against advertising restrictions. The transmittal memo urged its recipients to "ensure that no mention is made of its source." 100439233-9233 (US 34655).

428. BATCo and other Defendants used INFOTAB to monitor research that suggested smoking caused cancer. 2021594539-4540 (US 36773).

429. A June 28, 1988 memorandum addressed to Todd Sollis, Assistant General Counsel of Philip Morris, from Donald Hoel, attorney with Shook, Hardy & Bacon, described the central role played by Shook, Hardy & Bacon with respect to INFOTAB. Hoel stated:

> SHB, as counsel to PM and other international manufacturers, was instrumental in the founding of INFOTAB to help strengthen and coordinate the activities of the various national manufacturers associations. The firm remains active in the operation of INFOTAB. It monitors the meetings and clears the draft minutes of the INFOTAB Board of Directors and the Global Issues Working Party, as well as INFOTAB workshops. All materials prepared by INFOTAB on smoking and health issues, including briefing documents sent to national manufacturers associations and presentations by the INFOTAB staff, are cleared by SHB in order to protect the member association and member companies. SHB also approves all public relations campaigns, tactics and strategies which address smoking and health issues.

2015007199-7207 at 7204-7205 (US 20311).

430. A 1989 INFOTAB document outlined how to attack the WHO [World Health Organization]. The tactics it suggested included the following:

> Criticize budget management, Address health priorities, Expose resource blackmail, Highlight regional failures, Attack "behaviourism," Counter on public issues, Discredit activists' credentials, Engage in statistical warfare, Invest in press relations, Show impact of "cuckoo" organisations.

The document also suggested the industry should attack IOCU [the International Organization of Consumer Unions] with the following program goals: "Relieve NGO pressure on WHO, Expose

activists' 'credentials,' Counter 'behaviourist' regulation, correct anti-business slant." 2021595753-5910 at 5769, 5897, 5903 (US 85541).

431. In 1990, INFOTAB also issued an INFOTAB publication titled "Children & Smoking -- The Balanced View" that addressed various World Health Organization claims. It stated that tobacco is not addictive, and that there were inconsistent findings as to whether smoking causes low birth weight, birth defects, and delayed mental and physical development in infancy. 2070052572-2578 (US 87151); 2501342105-2110 (US 20565).

432. On January 19, 1990, Ron Loader, INFOTAB Director of Information Services, confirmed the first meeting of a worldwide industry working group at the offices of the Tobacco Institute in Washington, D.C. for the purpose of planning a Global Argumentation Project. The Global Argumentation Project was an effort to develop a standardized and comprehensive collection of argumentation papers on smoking and health issues, including ETS and youth marketing, which could be used by local management and National Manufacturing Associations ("NMAs") for lobbying, public information campaigns, or as basic documents for responding to public health advocates. Representatives from INFOTAB, the Tobacco Institute, Shook, Hardy & Bacon, and several European and United States cigarette manufacturers attended the meeting, including Kay Comer of BATCo, Cynthia von Maerestetten of Philip Morris, Jim Goold of RJR; Donald Hoel and Jim Newsome of Shook, Hardy & Bacon, and Charles Powers and Fred Panzer of the Tobacco Institute. It had been decided that for several reasons "it would be sensible to hold this first meeting in Washington" because "we need to involve the US TI at an early stage in order to take advantage of their detailed information/argumentation/lobbying materials developed over years in practical situations and needing personal discussion"; "most members of the Working Group are already in,

or need to be in, the States (i.e. 8 out of 11)"; and "it provides the opportunity for INFOTAB coordinators to review other information sources (e.g., RJR) at first hand." TIMN362946-2949 (US 62874); TIMN362950-2952 (US 62872); TIMN362918-2922 (US 62919).

433. INFOTAB also collaborated with the IEMC. 507782317-2318 (US 20788).

7. TDC – Tobacco Documentation Centre

434. On December 4, 1991, the Tobacco Documentation Centre ("TDC"), was established as a successor entity to INFOTAB. BATCo joined the TDC at its inception. Its charter stated:

> The Association has as its purpose the establishment of a forum for exchange of views and information on international tobacco issues by the coordination of data and information in economic, social, scientific and technical areas. The general objectives are to broaden the knowledge of its members. In large part accomplishment of these objectives will be sought by providing information to various national and other tobacco trade associations and by serving as a resource of expertise and data analysis on these subjects of interest to the industry.

301159092-9101 (JD 031017); 301159136-9151 (JD 031018); 700495549-5561 at 5550 (JD 031478); Proctor PD, United States, 6/12/02, 16:8-18, 113:7-11; Tully PD; United States, 6/13/02, 38:9-24.

435. The Founding Members of the TDC and subscription levels for each were as follows: Philip Morris International, Inc., 20%; RJR Tobacco International, Inc., 20%; BATCo, 20%; Gallahers, 10%; Reemtsma, 10%; and Rothmans International, 20%. Subscription levels of membership categories were based on annual production. On the unanimous proposal from Charter members, the following persons were unanimously elected to the Board of Directors for 1992: D.J. Bacon of BATCo, L.E. Birks of Gallahers, Richard J. Marcotullio of RJR International, F.J. Moreno

of Philip Morris, C.J. Walther of Reemtsma, and A.A. Woods of Rothmans International. 301159092-9101 (JD 031017); 301159136-9151 (JD 031018).

436. The TDC was formed

> to act as a central information resource for the tobacco industry worldwide. [Predecessor] INFOTAB had an extensive information collection and database, which was considered valuable and worth maintaining.

502601564-1567 at 1565 (US 29570).

437. The IEMC and CECCM scheduled meetings from time to time at TDC's offices. 700494467-4471 (US 89139); 2024210630-0631 (US 22868); 2028363540-3549 (US 86604); 2078742951-2951 (US 27724); 2078742947-2948 (US 27721); 2078742962-2963 (US 45192); 900006204-6204 (US 88482); 2051809368-9369 (US 86603).

438. On April 28, 1992, the International ETS Management Committee ("IEMC"), which was comprised of representatives from Defendants BATCo, Philip Morris, and RJR, prepared comments for distribution by the TDC regarding the draft EPA Risk Assessment on the health hazards of ETS. All national manufacturer associations ("NMA") were to use these comments in responding to inquiries regarding the draft Risk Assessment. The document was also provided to TDC member companies. 515622547-2547 (US 20865).

439. TDC distributed the IEMC ETS position papers, dated May 6, 1992, to the NMAs and lead companies, stating that the documents had been cleared for use by Defendants BATCo, Philip Morris, and RJR. TI13040345-0424 (US 86522).

440. On June 19, 1992, Matt Winokur, Director of Corporate Affairs at Philip Morris International, informed Geoffrey Bible, President of Philip Morris, and other Philip Morris employees, that the EPA talking points prepared by Covington & Burling were

> also being used by our international competitors and by National Manufacturers Association via the TDC. This coordinated approach to communications is highly desirable. It enables the entire global industry to espouse a common position immediately, an essential element in quickly responding to local government and media.

2021173016-3016 (US 20342).

8. CORESTA – Center for Cooperation in Scientific Research Relative to Tobacco/Centre de Coopération pour les Recherches Scientifiques Relatives au Tabac

441. The Center for Cooperation in Scientific Research Relative to Tobacco/Centre de Coopération pour les Recherches Scientifiques Relatives au Tabac ("CORESTA") was created following the resolutions approved by the First International Scientific Tobacco Congress held in Paris, France, on September 10, 1955. It was created "[i]n order to operate a permanent Secretariat for international co-operation in scientific studies relative to tobacco." Its registered offices are located in Paris, and every world-wide major tobacco company and tobacco industry organization is a member. Meetings have been held every two years and, as of 1992, CORESTA had approximately 190 members, including Defendants BATCo, Philip Morris, Lorillard, B&W, Liggett, and RJR. 401349241-9242 (US 47550); 401349243-9248 at 9243 (US 21788); 401349330-9333 (US 47575); Stevens WD, 4:3-5.

442. A March 31, 1992 BATCo document described CORESTA's value to the tobacco industry:

> It is perceived as being objective, technical and independent. It is this perception which makes CORESTA unique and very valuable. Unlike other organizations, e.g., CECCM[,] it is not regarded as a lobbying organisation of the tobacco industry.

401349243-9248 at 9243 (US 21788) .

443. In June 2001, representatives from Defendants Lorillard, Philip Morris, and RJR, along with other delegates from the industry, convened at CORESTA's ETS Sub Group meeting, where they discussed trends in ETS research. In November 2001, the CORESTA Sidestream Task Force, which included representatives from Defendants BATCo, RJR, and Philip Morris, among others, met to review research conducted on sidestream tar and nicotine. 525302822-2823 (US 86526); 525302728-2729 (US 86527); 525776902-6936 (US 86528); 325260347-0362 at 0348 (US 29146); 524596882-6890 at 6883 (US 66571).

9. Tobacco Institute Interaction with Overseas and International Groups

444. As described above, the Tobacco Institute worked closely and consistently over a lengthy period of time with overseas and international tobacco organizations to present a unified front on issues of common concern; to influence public opinion; to convince government officials to adopt the public positions of the United States tobacco industry; to maintain the Defendants' open question position on the relationship between smoking and adverse health effects; to avoid adverse liability verdicts in lawsuits brought around the world; and as an overarching goal to preserve and enhance Defendants' profits.

445. In a document dated October 1, 1973, and titled "International Activities of the Tobacco Institute, Inc.," J.C.B. Ehringhaus, Jr., Tobacco Institute General Counsel, advocated that the Tobacco Institute have an increased role internationally. Ehringhaus noted that

> any success of the anti-smoking group in another country "diminishes" us. I think we have to do something about it, to be aware and to participate in order to protect the interests of the American companies.

He further suggested:

> We would keep aware of what's going on around the world and be able to advise our industry people in one country of these happenings so that they may be guided in dealing with their own local situations.

2010030234-0235 (US 88447).

446. The Tobacco Institute's role in international matters was then discussed at the October 4, 1973 meeting of the Tobacco Institute Executive Committee, and it was agreed that "the Committee of Counsel should continue consideration of this area." TIMN0013425-3428 at 3427 (US 88448).

447. One way in which the Tobacco Institute coordinated worldwide industry positions was by publishing brochures, pamphlets, "backgrounders," industry position papers, and other materials on the Enterprise's stance on controversial smoking and health issues and making them available for overseas distribution, often through INFOTAB. USX6400001-0527 at 0506-0507 (US 89561).

448. The Tobacco Institute developed a Tobacco Institute "backgrounder" titled "Tobacco in the Developing Nations" and announced its availability in a Tobacco Institute newsletter on January 14, 1980. Copies were to be forwarded to international public relations personnel of member companies, overseas NMAs and other trade associations, and international organizations such as INFOTAB and ICOSI. TIMN0241954-1971 (US 21545); TI16740349-0366 (US 86538).

449. On October 15, 1981, Donald Hoel of Shook, Hardy & Bacon, sent a letter to Horace Kornegay, President of the Tobacco Institute, transmitting a draft of a "Public Smoking Paper" for use by INFOTAB. TIMN0144678-4678 (US 23015).

450. In anticipation of the 1983 Surgeon General's Report on heart disease, the Tobacco Institute issued a report "Cigarette smoking and heart disease." The report was distributed to Tobacco Institute member companies who were requested not to distribute it widely, but to use it only for internal purposes until the Surgeon General's report on heart disease was released when additional copies would be made available. INFOTAB distributed the report as well, advising its members that the Tobacco Institute would acquaint news reporters with its views about smoking and heart disease before the release of the 1983 Surgeon General's report. 2501023645-3645 (US 20556).

451. In anticipation of the 1985 Surgeon General's Report on smoking and the workplace, the Tobacco Institute staff gathered prior publications on similar subjects by the prospective authors of the report chapters in order to forecast the conclusions of the report with some degree of accuracy and develop "shadow" papers by scientists who would question or reject such conclusions. TIMN0061572-1572 (US 88450). Thereafter, INFOTAB informed NMAs throughout the world, including Britain's TMA, of which BATCo was a member, that the Tobacco Institute had assembled material for use in framing answers to possible specific questions from the media regarding the 1985 Surgeon General's Report. INFOTAB forwarded a copy of this material for use as a basic reference by Defendants and spokespersons from the NMAs. 2501444186-4187 (US 27948).

452. The Tobacco Institute's William Kloepfer was given six draft briefing papers in June 1987 that were to be presented at the Sixth World Conference on Smoking and Health. The papers

discussed ETS and Indoor Air Quality; the Science of ETS; ETS Legislation; Tobacco and Developing Countries; Smoking and Young People; and Smoking and Women. Kloepfer was asked to, and did, rewrite all papers except the one on Smoking and Women. TIMN0269920-9944 (US 86540); TI12261173-1173 (US 62338).

453. In a 1990 memorandum listing "Allies to Be Notified of Industry Youth Initiatives," the Tobacco Institute directed that, prior to public announcement of any new industry initiatives in the area of youth smoking, the Tobacco Institute staff would provide organizations within the tobacco family, groups, and allies of the new program with advance copies of press and program materials and a cover letter to be signed by the Tobacco Institute President or other appropriate staff. Among the international organizations to be kept abreast of the Tobacco Institute's activities on behalf of the industry were INFOTAB and TMA. TIMS00026152-6153 (US 88451).

454. A letter dated March 6, 1992, from William Kloepfer, Tobacco Institute Senior Vice President, to Ron Tully of INFOTAB, and others, provided information about the Surgeon General's Report titled "Smoking and Health in the Americas" which was to be released on March 12, 1992. The letter explained that the Tobacco Institute would comment on the Surgeon General's Report, if asked, to United States media and Latin America media; that the Pan American Health Organization would be issuing a country-by-country status report on tobacco prevention and control measures; and that Kloepfer would bring materials prepared by Don Hoel of Shook, Hardy & Bacon and others to the briefing sessions. 2500121043-1043 (US 20552).

455. The Tobacco Institute furnished advice, assistance, and financial support to international industry-related groups and organizations as these groups worked on projects,

publications, videos, conferences, briefing papers, and lobbying materials. USX6400001-0527 at 0506-0507 (US 89561).

456. In a January 17, 1983 form letter to its members, TAC informed each of its member companies, one of which was Defendant BATCo, that the Tobacco Institute had provided TAC with a copy of a Tobacco Institute videotape compilation showing their spokespersons' team in action:

> It shows extracts of the four members of the team being interviewed on television and speaking to live audiences. Two points are of particular interest. The first, the way in which they publicly face and handle health issues. The second that all the team are first and foremost media trained and therefore utterly familiar with, and relaxed in, dealing with hostile interviews and audiences: their knowledge of tobacco matters, while vitally important, is a secondary consideration in the selection and training process.

2024919702-9702 (US 26821).

457. The Tobacco Institute provided facilities at its offices for an INFOTAB Workshop for NMAs held on September 19-22, 1983. William Kloepfer, Tobacco Institute, Vice President, and Tony St. Aubyn, TAC Assistant Director, were among the presenters. TI13161263-1266 (US 88499); 100294426-4429 (US 88500); 2501021530-1532 (US 27924); 2501021486-1489 (US 25366); USX6400001-0527 at 0506-0507 (US 89561).

458. During 1984, the Tobacco Institute paid $70,000 for one half the cost of a monograph commissioned by INFOTAB, edited by Robert Tollison, Professor of Economics at Virginia's George Mason University, titled "Smoking in Society." TIMN371669-1669 (US 65655); USX6400001-0527 at 0506-0507 (US 89561).

459. In November 1990, Samuel Chilcote, Tobacco Institute President, sent Martin Oldman of INFOTAB a list of "messages and sub-messages [that] could be helpful as a starting point for any global and/or NMA ETS campaign." TI12200663-0663 (US 62313).

460. The Tobacco Institute provided guidance, advice, strategies, and tactics to overseas organizations and groups for setting up tobacco alliances outside the United States, as the following examples demonstrate.

461. On November 16, 1981, Mary Covington, Secretary General of INFOTAB, speaking on an "International Perspective on Smoking Issues and Related Activities of the Tobacco Industry," noted that INFOTAB had received outstanding help from the Tobacco Institute, "a valuable source of information and ideas." 2501029891-9901 (US 20557).

462. In a March 5, 1986 letter to Bryan Simpson, INFOTAB Secretary General, Arthur Stevens, Lorillard Senior Vice President and General Counsel, stated that:

> Lorillard will not be renewing its INFOTAB membership subscription for 1986. Please understand that our action in no way reflects any disagreement or dissatisfaction with either the mission or the achievements of INFOTAB, all of which are credible and significant. . . . However, as active and significant contributors to the program of the U.S. Tobacco Institute, whose assistance is generously and frequently afforded to INFOTAB, we believe we are already supporting INFOTAB's efforts to a very significant degree.

91820409-0410 (US 57120).

463. Simpson wrote back to Stevens on March 21, 1986, confirming Lorillard's withdrawal as a member of INFOTAB and acknowledging that "we are aware of your major contribution to TI, and the benefits that we receive indirectly." 85174260-4260 (US 56011).

464. According to an October 2, 1981 BATCo document, the Tobacco Institute commented on the importance of INFOTAB: "INFOTAB has without any doubt at all made an immense change in the general atmosphere in the industry and this has led to an enormous increase in cooperation." This document further stated that the Institute had been

> looking for 15 years for an international umbrella to enable them to deal with other NMAs and to improve the strength of the industry as a whole; -- the back-wash from events and attacks affecting the industry in smaller countries comes back powerfully to the USA; . . . INFOTAB helps the industry to unite in trying to combat the attacks; -- for years it had been hoped that there would be some sort of organisation of international trade associations, which never happened.

321796064-6067 at 6067 (US 28685).

465. In remarks on September 20, 1983, at an INFOTAB workshop in Washington, D.C. on "How to Set Up a Tobacco Alliance," the Assistant Director of Britain's TAC, stated that the tobacco industry in the United Kingdom initially turned to the Tobacco Institute for guidance on setting up a tobacco alliance in early summer 1982.

> [T]hanks to the unstinting help they gave us, we were able to draw much of our conceptual thinking from their experience with the Tobacco Action Network . . . T.I.'s experience, and especially their warnings of some of the problems and pitfalls we had to avoid, was invaluable.

2501021530-1532 at 1530 (US 27924); 2024919702-9702 (US 26821).

466. Tobacco Institute representatives served on international teams, committees, and boards, along with industry representatives from outside the United States, in which strategies were developed for a coordinated approach to scientific research studies and public relations campaigns. USX6400001-0527 at 0506-0507 (US 89561); TI12431630-1630 (US 62383); TI13111755-1755

(US 62412); TI13110904-0904 (US 62410); TI12200663-0663 (US 62313); TI12432168-2168 (US 62385); William Adams PD, United States v. Philip Morris, 6/18/02, 17:16-20.

467. The Tobacco Institute made countless presentations for INFOTAB and other international group workshops, seminars, symposia, and conferences outlining Defendants' strategies for attacking what Defendants deemed "anti-smoking" research and programs linking smoking and health and ETS and health. USX6400001-0527 at 0506-0507 (US 89561).

468. For example, on March 29, 1984, William Kloepfer, Tobacco Institute Vice President, participated in a meeting of the Passive Smoking Project Group, an INFOTAB committee, in Lausanne, Switzerland. TI12431630-1630 (US 62383); TI12432168-2168 (US 62385); USX6400001-0527 at 0506-0507 (US 89561).

469. On June 4, 1984, William Kloepfer attended the meeting of the INFOTAB ETS Committee in Brussels, Belgium. Scientists from Defendants Philip Morris and RJR also attended. TI13111755-1755 (US 62412); USX6400001-0527 at 0506-0507 (US 89561) (TI Response to Interrogatory No. 15).

470. On October 10, 1985, Tobacco Institute President Samuel Chilcote spoke at an INFOTAB International Workshop on the credibility gap between the tobacco industry and the public. TIMN371764-1795 (US 77095); TIMN350605-0605 (US 88498).

471. On October 14-16, 1986, William Kloepfer spoke on Smoking in the Workplace at an INFOTAB International Workshop in Brussels, calling ambient smoke a political issue rather than a health issue. R.L.O. Ely, head of BATCo Public Affairs, addressed World Health Organization ("WHO") Initiatives. Tom Osdene, Philip Morris Director of Research, Charles Green, RJR scientist, and Donald Hoel, lawyer at Shook, Hardy & Bacon, took part in a panel discussion on ETS.

2021594646-4648 (US 26059); TIOK0029712-9712 (US 86546); TIOK0029713-9723 (US 86547); TIOK0029724-9734 (US 86548); 86024168-4172 (US 21089); TI12820001-0004 (US 62398); TI12820005-0290 (US 62399).

472. On October 18, 1988, Walker Merryman, Tobacco Institute Vice President, spoke at an INFOTAB Workshop in Malaga, Spain, on anti-smoking activists. TI12261398-1399 (US 62348).

473. The Tobacco Institute arranged visits and briefing sessions for domestic and foreign industry representatives to discuss current and emerging issues that the Tobacco Institute believed threatened the industry. For example, after attending a luncheon in Washington, D.C., hosted by the Tobacco Institute's Horace Kornegay, members of Japan Tobacco, Inc. ("JTI") were invited to attend a Tobacco Institute ETS Advisory Group meeting in Washington, D.C. In his July 15, 1986 letter to JTI's S. Takeda, Donald Hoel, Chairman of the ETS Advisory Group, wrote:

> One of the purposes and benefits from the proposed joint meeting would be to exchange detailed information as to current research projects . . . . The second day would include identification of research needs and perceived problems.

TI00610156-0156 (US 86549); TI00610153-0154 (US 62064).

474. In 1990, Charles H. Powers, Tobacco Institute Senior Vice President, arranged a visit and briefing session between the Tobacco Institute and the Canadian Tobacco Manufacturers' Council on current emerging issues in the two countries, particularly those issues which might produce spill-over effects from the United States to Canada and/or vice versa. TI12910068-0069 (US 86550).

475. Tobacco industry representatives from around the world attended the Tobacco Institute's College of Tobacco Knowledge, the seminars held to provide industry managers and other employees the most up to date information and industry positions on smoking and health related issues (discussed in detail at Section III(D)(5), supra). At the October 1982 session, for example, seventeen of the forty-nine students were from foreign countries, e.g., Paraguay, Canada, United Kingdom, Australia, Brazil, Switzerland, Holland, Venezuela, and Guatemala. 04163285-3285 (US 74872); 04235250-5251 (US 75000); TI04962210-2211 (US 67250); TI04962207-2207 (US 88501).

476. Employees from INFOTAB were also invited to, and did attend, sessions of the Tobacco Institute College of Tobacco Knowledge. TIFL0067876-7877 (US 88633); TIFL0071174-1174 (US 86142); TIFL0071332-1332 (US 88634); TI11961377-1377 (US 86186); TI16740660-0663 (US 72403); USX6400001-0527 at 0506-0507 (US 89561). For example, five members of INFOTAB attended the November 1981 session of the College. 501029891-9901 (US 20557).

J. Dissolution of CTR and the Tobacco Institute

477. In November 1998, most of the State Attorneys General entered into a settlement agreement, referred to as the Master Settlement Agreement ("MSA"), with Philip Morris, R.J. Reynolds, B&W, Lorillard, Liggett, and Commonwealth Brands, Inc., to resolve all pending Medicaid recoupment litigation. The State Attorneys General for Florida, Mississippi, Minnesota, and Texas had already entered into settlements with tobacco defendants prior to November 1998. The MSA required that CTR and the Tobacco Institute cease all operations and dissolve. In addition, the tobacco products manufacturers signing the MSA were prohibited from reconstituting CTR or its function in any form. JDX4100001-0328 (JD 045158).

1. CTR

478. On May 8, 1998, in connection with State of Minnesota v. Philip Morris, B&W, Lorillard, Philip Morris, and R.J. Reynolds (the four Class A members of CTR) entered into a Settlement Agreement and Stipulation for Entry of a Consent Judgment with the State of Minnesota ("Minnesota Settlement Agreement"), in which, among other things, the companies agreed to dissolve CTR and enter into a consent judgment ("Minnesota Consent Judgment"). Section VI of the Minnesota Consent Judgment, entered on May 19, 1998, provided that, within ninety days of May 8, 1998, CTR would cease all operations except as necessary to comply with existing grants or contracts and to continue its defense of other lawsuits and that CTR would be disbanded and dissolved within a reasonable time period thereafter. 2060571342-1361 at 1342 (US 86853).

479. The members of CTR held a special meeting on October 19, 1998, at CTR's offices in New York City at which the Plan of Corporate Dissolution and Distribution of Assets of The Council for Tobacco Research-U.S.A., Inc. was approved by a unanimous vote of the members present. The Class A members present were B&W, represented by Senior Vice President Ernest Pepples; Philip Morris, represented by Senior Vice President of Operations John Nelson; Lorillard, represented by Chairman and CEO Alexander Spears; and R.J. Reynolds, represented by President and CEO Andrew Schindler. The Class B members present were Bright Belt Warehouse Association, Tobacco Association, Inc., Burley Auction Warehouse Association, Burley Tobacco Growers Cooperative Association, Inc., and United States Tobacco. 2060571342-1361 at 1359-1361 (US 86853). The Plan of Corporate Dissolution allowed CTR to continue to defend itself and to protect its interest in litigation, and to assist in the defense of Defendants and CTR's other members

in litigation, pursuant to joint defense agreements or arrangements. 2060571342-1361 at 1344, 1348-1349 (US 86853).

480. CTR and the Attorney General of New York agreed to the terms of the dissolution, and the New York Supreme Court entered an Order Approving CTR's Plan of Corporate Dissolution and Certificate of Dissolution on or about October 21, 1998. 70005153-5362 at 5153-5186 (JE 021048).

481. In March 1998, James Glenn, CTR President, sent a memorandum to the members of the Scientific Advisory Board requesting that they indicate their willingness to serve as a consultant or as a participant in any future activities of CTR or any successor organization. Glenn received mixed responses to his request. Some members, such as Carlo Croce, replied affirmatively expressing their willingness to continue with CTR's activities. Others such as Judith Swain, declined any further relationship with CTR, stating,

> because of the information that has come out of the tobacco litigation process, I do not feel that I can continue as a member of the Council of Tobacco Research . . . the information from previous years indicates that the Council may not have been totally independent of the tobacco industry.

TLT0270372-0372 (US 76330); TLT027 0370-0370 (US 76328).

2. Tobacco Institute

482. Pursuant to a plan of dissolution that was to be negotiated by the Attorney General of the State of New York and the Original Participating Manufacturers, B&W, Lorillard, Philip Morris, and R.J. Reynolds, in accordance with Exhibit G of the MSA, the Tobacco Institute was to cease all operations and be dissolved in accordance with the laws of the State of New York and

under the authority of the Attorney General of the State of New York, with the preservation of all applicable privileges held by any member company of the Tobacco Institute. (no bates) (JD 045158).

483. The Tobacco Institute's Plan of Corporate Dissolution and Distribution of Assets was approved on August 7, 2000, by its Class A members: Ernest Pepples, Senior Vice President of B&W; Michael Szymanczyk, CEO of Philip Morris, Inc.; Alexander Spears, Chairman of Lorillard; and Charles Blixt, Executive Vice President and General Counsel of R.J. Reynolds. TI31113058-3165 (US 21261). The Plan of Corporate Dissolution allowed the Tobacco Institute to continue to defend itself and to protect its interest in litigation, and to assist in the defense of its members in litigation, pursuant to joint defense agreements or arrangements. Id. at 3060, 3065.

484. The Tobacco Institute's Dissolution Plan was adopted by the Tobacco Institute Board of Directors. The members of the Board of Directors at the time were Nicholas Brookes and Ernest Pepples for B&W, Ronald Milstein and Alexander Spears for Lorillard, Tommy Payne and Andrew Schindler for R.J. Reynolds, Michael Szymanczyk for Philip Morris, Inc., and Howard Liebengood for Philip Morris Companies. TI31113205-3207 (JD 053521).

485. The Supreme Court of New York County entered an Order Approving the Tobacco Institute's Plan of Corporate Dissolution and Certificate of Dissolution on or about September 1, 2000. TI31113204-3214 at 3208-3213 (JD 080768).

IV. THE DEFENDANTS ARE ENGAGED IN AND THEIR ACTIVITIES AFFECT INTERSTATE AND FOREIGN COMMERCE

486. Defendants in this case at all relevant times have been and are engaged in interstate and foreign commerce and their activities have affected, and continue to affect, interstate and foreign