IX. ALTRIA IS LIABLE FOR ITS VIOLATIONS OF 18 U.S.C. §1962(c) AND (d)

Defendants claim that Altria Group Inc., as a holding company, can not be liable for violations of 18 U.S.C. 1962 (c) and (d) simply by virtue of its parental relationship to Philip Morris USA. Their argument misses the point, since that is not the basis on which its liability rests. Since its creation in 1985, Altria, formerly Philip Morris Companies Inc., has participated directly in the conduct of the Enterprise and conspired to violate 1962(c). Even though there is overwhelming evidence that Altria effectively controlled Philip Morris USA and therefore "caused" some of its predicate Racketeering Acts, Altria's liability in this case stands on its own.

Defendant Altria effectively and actively controls the activities of all of its subsidiaries, including Defendant Philip Morris USA Inc. and Philip Morris International, Inc. Altria management sets overall policy on all major components of the companies' operations, and senior Altria executives, employees, and agents participate in and/or control decisions about how the operating companies should implement those policies, through both formal and informal reporting relationships. Berlind PD, U.S. v. Philip Morris, 5/23/02, 8:4-10:13; US 23061*. It is disingenuous to argue, as Altria does, that its control, through the reporting relationship, of decisions taken by Altria Corporate Services ("ACS") employees on behalf of its subsidiaries does not constitute "control" of those decisions. Altria's relationship with its subsidiaries was structured to maintain

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[42](...continued)
defense to substantive mail and securities fraud offenses, the court explained, "A party's 'withdrawal' from a scheme is [] no defense to the crime because membership in the scheme is not an element of the offense. [The defendant] is liable for mail fraud as a principal or as an aider and abettor, not a conspirator." Id. at 1240; accord United States v. Waldrop, 786 F.Supp. 1194, 1201 (E.D. Pa. 1991) ("withdrawal is no defense to mail fraud"), aff'd, 983 F.2d 1054 (3d Cir. 1992) (Table). Accordingly, Liggett's withdrawal from the RICO conspiracy does not preclude its liability under 18 U.S.C. §1962(c) for the substantive mail and wire fraud offenses that underlie the civil RICO lawsuit for equitable relief brought by the United States.

consistency among its companies on sensitive issues such as smoking and health, addiction, and passive smoking. For example, the CEO and Chairman of Philip Morris Companies, Geoffrey Bible, was the ultimate authority on content of public statements on smoking and health made by Philip Morris Companies subsidiaries, including Philip Morris USA. Bible PD, U.S. v. Philip Morris, 8/22/02, 83:9-84:9, 85:22-86:25. Moreover, the Court has already found that the document retention procedures and policies that led to the destruction of email by and to senior executives at Philip Morris while this lawsuit was pending were created with and approved by Altria. United States v. Philip Morris USA, 327 F. Supp. 2d 21, 24 (D.D.C. 2004).

Steven Parrish, Altria's Senior Vice President of Corporate Affairs, testified that officers and members of the Board of Directors of Altria were involved in activities of CTR and TI. Parrish TT, 1/27/05, 11349:8-11. Altria's General Counsel Murray Bring and William Murray, who served as President and COO of Altria and, later, Chairman of its Board of Directors, were members of the Board of Directors of CTR and attended its meetings. Id. at 11350:6-12; (no bates) (US 32606); (no bates) (US 32608); (no bates) (US 32610). Alexander Holtzman, an attorney in the legal department at Altria, was also active in CTR leadership.

Altria's active participation extended to the Tobacco Institute. Parrish continued to attend meetings of the TI Executive Committee after leaving PM USA and joining the corporate affairs department at Altria. Parrish TT, 1/27/05, 11352:24-11353:24; US 62461. Moreover, Altria's Vice-President of Government Affairs served as a Class A Director of TI, because "the head of Government Affairs always sat on the TI Executive Committee." Parrish TT, 1/27/05, 11353:25-11354:25; (no bates) (US 88252); (no bates) (US 88308).

In addition, Parrish noted that Altria had approval authority for CTR Special Projects in the late 1980s and early 1990s. Parrish TT, 1/27/05, 11351:20-11352:2. Altria (operating as Philip Morris Companies) issued checks to fund CTR Special Projects. Id. at 11352:3-23.

Accordingly, because Altria has participated in the Enterprise and conspiracy, both directly and indirectly, it cannot escape liability simply by virtue of being a holding company.

X. THERE IS A LIKELIHOOD OF PRESENT AND FUTURE VIOLATIONS OF RICO

A. Applicable Law

18 U.S.C. §1964 (a) limits the granting of remedies for liability under 1962(c) to those which "prevent and restrain violations of section 1962. . . ." As the D.C. Circuit explained, "[t]his language indicates that the jurisdiction is limited to forward-looking remedies that are aimed at future violations." United States v. Philip Morris USA Inc., 396 F.3d 1190, 1198 (D.C. Cir 2004).

This Court has already held that:

> To obtain injunctive relief in this Circuit, a plaintiff must show that the defendant's past unlawful conduct indicates a "'reasonable likelihood of further violation(s) in the future.'" SEC v. Kenton Capital, Ltd., 69 F. Supp.2d 1, 15 (D.D.C. 1998) (Kollar-Kotelly, J.) (quoting SEC v. Savoy Ind., Inc., 587 F.2d 1149, 1168 (D.C. Cir. 1978)); SEC v. Bilzerian, 29 F.3d 689, 695 (D.C. Cir.1994).
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> To determine whether there is a "reasonable likelihood" of future violations, the following factors must be considered: "[1] whether a defendant's violation was isolated or part of a pattern, [2]whether the violation was flagrant and deliberate or merely technical in nature, and [3] whether the defendant's business will present opportunities to violate the law in the future." [SEC v. First City Financial Corp., 890 F.2d 1215, 1228 (D.C. Cir. 1989)] (citing Savoy Indus., 587 F.2d at 1168); Bilzerian, 29 F.3d at 695. None of these three factors is determinative; rather, "the district court should determine the propensity for future violations based on the totality of circumstances." First City, 890 F. 2d at 1228 (citing SEC v. Youmans, 729 F.2d 413, 415 (6th Cir. 1984).