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).

Philip Morris, Inc., 116 F. Supp. 2d at 148. In addition, the requisite "reasonable likelihood" of future violations may be established by inferences drawn from past conduct alone. Philip Morris USA, 316 F. Supp. 2d at 10 n.3.

The Findings of Fact demonstrate that Defendants' conduct "overwhelmingly satisfied each of the [D.C. Circuit's] three First City factors." First City, 890 F.2d at 1228. First, Defendants' RICO violations were not "isolated." On the contrary, the Findings of Fact describes more than 100 predicate acts spanning more than a half-century. Second, Defendants' RICO violations were not "technical in nature." As discussed above, Defendants' numerous misstatements and acts of concealment and deception were made intentionally and deliberately, rather than accidentally or negligently, as part of a multi-faceted, sophisticated scheme to defraud. Third, as this Court has already found, Defendants' business of manufacturing, selling and marketing tobacco products "present[s] opportunities to violate the law in the future." Philip Morris, 116 F. Supp. 2d at 149 (alteration in original). As the Government points out, as long as Defendants are in the business of selling and marketing tobacco products, they will have countless "opportunities" and temptations to take similar unlawful actions in order to maximize their revenues, just as they have done for the past five decades.

Where, as here, the United States seeks equitable relief brought by the United States under 18 U.S.C. § 1964(a), "the government need not, as [Defendants] assert, demonstrate a new RICO violation to justify issuance of the injunction." Local 560, 974 F.2d at 325 n.5 ("[Defendant] erroneously argues . . . that to succeed the government must prove a new RICO offense based on conduct which occurred after the March 16, 1984 Judgment Order"); see also United States v. Local 6A, Cement & Concrete Workers, 663 F. Supp. 192, 195 (S.D.N.Y. 1986) (rejecting argument that

"the Government must show present RICO violations to secure [injunctive] relief"). Instead, it is sufficient that the United States demonstrate a reasonable likelihood that the defendant might continue unlawful conduct in the future, which may be inferred from past conduct.[43] In making that determination, the court does not begin "with a clean slate" as if it were "a new case;" rather, the court considers the totality of the evidence of the underlying case. United States v. Local 560, Int'l Bhd. of Teamsters, 754 F. Supp. 395, 403 (D.N.J. 1991). Moreover, a defendant remains liable for the continuation of events it conspired to set in motion, even if a particular defendant has ceased its unlawful activity. For the Court to enter injunctive remedies, there need only be a reasonable likelihood that the unlawful conduct set in motion by the conspirators will continue.

The evidence in this case clearly establishes that Defendants have not ceased engaging in unlawful activity. Even after the Complaint in this action was filed in September 1999, Defendants continued to engage in conduct that is materially indistinguishable from their previous actions, activity that continues to this day. For example, most Defendants continue to fraudulently deny the adverse health effects of secondhand smoke which they recognize internally; all Defendants continue to market "low tar" cigarettes to consumers seeking to reduce their health risks or quit; all Defendants continue to fraudulently deny that they manipulate the nicotine delivery of their cigarettes in order to create and sustain addiction; some Defendants continue to deny that they market to youth in publications with significant youth readership and with imagery that targets youth;

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[43] See, e.g., United States v. Private Sanitation Indus. Ass'n, 995 F.2d 375, 377 (2d Cir. 1993); United States v. Local 30, United Slate, Tile & Composition Workers, 871 F.2d 401, 408-09 (3d Cir. 1989); United States v. Local 1804-1, Int'l Longshoremens Ass'n, 831 F. Supp. 177, 191 (S.D.N.Y. 1993); United States v. Local 295, Int'l Bhd. of Teamsters, 784 F. Supp. 15, 19-22 (E.D.N.Y. 1992) (RICO injunction granted based upon evidence of past corruptions, and the court noted that "[i]nstitutional practices and traditions tend to endure long after specific individuals are gone") (id. at 19); Local 6A, 663 F. Supp. at 194-95.

and some Defendants continue to suppress and conceal information which might undermine their public or litigation positions. See generally Findings of Fact Section V. Significantly, their conduct continues to further the objectives of the overarching scheme to defraud, which began by at least 1953. Their continuing conduct misleads consumers in order to maximize Defendants' revenues by recruiting new smokers (the majority of whom are under the age of 18), preventing current smokers from quitting, and thereby sustaining the industry.

As Defendants' senior executives took the witness stand at trial, one after another, it became exceedingly clear that these Defendants have not, as they claim, ceased their wrongdoing or, as they argued throughout the trial, undertaken fundamental or permanent institutional change. For example, during live testimony in January 2005, more than forty years after the 1964 Surgeon General's Report, Reynolds American Executive Chairman Andrew Schindler refused to admit that smoking causes disease. Schindler TT, 1/24/05, 10812:3-22. Nevertheless, Joint Defendants assert in their post-trial Proposed Findings of Fact that "Reynolds Concedes That Cigarette Smoking Causes Disease." JD FF ch. 8, § V.G.4. In reality, the RJR website on which Joint Defendants rely in making that statement is only a half-hearted concession with the same two conditions that Schindler made in open court: "R.J. Reynolds Tobacco Company (R.J. Reynolds) believes that smoking, in combination with other factors, causes disease in some individuals." March 18, 2005 RJR website printout (page 54 of 569) (JD 068012). The website minimizes smoking as being merely "a risk factor for many chronic diseases," and states that "[m]ost, if not all, chronic diseases result from the interaction of many risk factors including genetics, diet and lifestyle choices." Id.[44]

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[44] Schindler acknowledged at trial that "[i]f R.J. Reynolds wanted to convey the message on its Website that smoking causes disease, it could say that unequivocally," and that he (continued...)

RJR is not alone. Lorillard's CEO, Martin Orlowsky, likewise refused at trial to admit to the full extent of smoking's harm. He was asked, "Why hasn't Lorillard specifically stated publicly that smoking causes any diseases other than smoking emphysema, COPD or heart disease?" He responded: "We have – in certain instances, we do not know if in fact the evidence, the scientific evidence is such that it warrants saying it does cause. However, Lorillard's longstanding position, as long as I've been with the company, is that certainly smoking can, and is a risk factor for those diseases." Orlowsky TT, 10/13/04, 2303:7-15. Lorillard's website includes a July 28, 2003 press release, in which its general counsel Ronald Milstein falsely stated that, "Research has shown time and time again that willpower is the only smoking cessation aid that always works." (no bates) (US 86693). At trial, Milstein specifically refused to remove his statement from the website. Milstein TT, 1/7/05, 9288:12-19. He made those statements notwithstanding the fact that Defendants' internal documents indicate that they recognize that it is simply false that "willpower . . . always works." Clearly, then, any claim the Defendants have changed their behavior must be rejected.

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

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

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[44](...continued)
could make it happen "in a heartbeat," but he would not do so. Schindler TT, 1/24/05, 10816:25-10817:5, 10821:2-18.

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

Philip Morris, BATCo, B&W, Lorillard, and RJR all deny in this lawsuit and in public statements that ETS causes disease in nonsmokers, contrary to the definitive scientific evidence and their own internal acknowledgments.[45] As of August 2005, RJR's website asserted that it believes "that there are still legitimate scientific questions concerning the reported risks of secondhand smoke." (US 92012). Absent Court intervention, such denials and distortions of material health information and scientific evidence on ETS are, at a minimum, likely to continue.

Similarly, Defendants continue to engage in many practices which target youth, and deny that they do so. Despite the provisions of the MSA, Defendants continue to track youth behavior and preferences and market to youth using imagery which appeals to the needs and desires of adolescents. Defendants are well aware that over eighty percent of adult smokers began smoking before the age of 18, and therefore know that securing the youth market is critical to their survival.

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[45] From 1999-2001, the Philip Morris website publicly stated its disagreement with the scientific consensus as well:

> Many scientists and regulators have concluded that ETS poses a health risk to nonsmokers. Even though we do not agree with many of their conclusions, below we have provided some links so you can access some of their views.

(no bates) (US 92056 at 2); Parrish TT, 11080:23-11082:14.

While this case was pending, Philip Morris revised its position on ETS to delete its disagreement with the conclusions of "scientists and regulators." Philip Morris now states: "Public health officials have concluded that secondhand smoke from cigarettes causes disease, including lung cancer and heart disease in nonsmoking adults" as well as a number of adverse health effects in children. (no bates) (US 92055 at 1).

There is therefore no reason, especially given their long history of denial and deceit, to trust their assurances that they will not continue committing RICO violations denying their marketing to youth.

Although Defendants recently began to finally admit that smoking is addictive, no Defendant publicly informs consumers that nicotine is addictive, much less that smoking is a nicotine-driven addiction. See Findings of Fact Section V(B)(4). Defendants minimize the issue as a "quibble over the precise wording of the addictiveness of smoking." JD Br. at 39. To the contrary, the issue is Defendants' refusal to admit publicly that nicotine is physiologically addictive, that smoking is a nicotine-driven addiction, and that, therefore, quitting is not a simple act of willpower. At trial, the General Counsel for Philip Morris, Denise Keane, admitted that the "Smoking is Addictive" statement that Philip Morris removed from cigarette packs after buying three Liggett cigarette brands in 1999 was both correct and material. She also agreed that it is material for people to know that Philip Morris agrees that the nicotine delivered in cigarette smoking is addictive, but it does not say so publicly. Keane TT, 1/18/05, 10458:6-17. The deliberate omission of admittedly material information about nicotine addiction is not a mere "quibble." It is fraudulent, with consequences for those who smoke and those, especially young people, who are considering whether to start smoking. Defendants have thus made clear that, despite their internal research to the contrary, they remain unwilling to admit publicly that nicotine is addictive and that smoking is an addiction driven by nicotine. Such RICO violations are reasonably likely to continue.

Defendants also continue to deny that they manipulate the design and content of cigarettes in order to assure adequate nicotine delivery to create and sustain smokers' addiction. Such RICO violations are reasonably likely to continue.

In addition, Defendants have a continuing interest in suppressing research and information and destroying documents which could prove detrimental to their public and litigation positions. Although it is difficult to prove such suppression or destruction, the Court strongly believes such RICO violations are reasonably likely to continue.

Contrary to their internal documents, Defendants also continue to deny that low tar cigarettes are just as hazardous to smokers as full-flavor cigarettes, in part because of smoker compensation. In 1998, Philip Morris, RJR, B&W, and Lorillard jointly stated to the FTC that compensation was so "weakly documented" that the FTC should not require disclosure warnings to alert consumers, and that they were "unaware of evidence," other than that presented in Monograph 7, 520842199-2295 at 2243, 2289 (US 88618), that consumers viewed low-tar cigarettes as safer. Defendants are well aware from their own research that a majority of smokers believe that low-tar cigarettes are healthier, are willing to buy them for precisely that reason, and are willing to sacrifice taste for what they believe to be less harmful cigarettes. Nonetheless, to this day, Defendants still deny that, as Monograph 13 found, low-tar cigarettes are just as dangerous as full-flavor cigarettes. These RICO violations are likely to continue.

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

C. The MSA Has Not Sufficiently Altered Defendants' Conduct to Justify Not Imposing Appropriate Remedies

While the MSA has made significant strides towards preventing Defendants' fraudulent activities, for several reasons it alone cannot remove the reasonable likelihood of Defendants' future RICO violations.[46] As this Court has already noted:

> In arguing that the MSA obviates the need for injunctive relief, Defendants implicitly ask the Court to make the following two assumptions: that Defendants have complied with and will continue to comply with the terms of the MSA, and that the MSA has adequate enforcement mechanisms in the event of noncompliance.

United States v. Philip Morris Inc., 116 F. Supp. 2d at 149 (D.D.C. 2000).

First, Defendants have not fully complied with the letter or spirit of the MSA. For example:

- Even in the core area of youth marketing, RJR did nothing to change its magazine placement policies after signing the MSA in November 1998 until the day that the California attorney general filed suit against it in March 2001 (in a suit which found that both RJR's initial and March 2001 policies violated the MSA). People ex rel. Lockyer v.R.J. Reynolds Tobacco Co., 11 Cal. Rptr. 3d 317, 322-23 & n.3 (Cal. Ct. App. 2004). Indeed, the appellate court affirmed the trial court's determination that RJR "'studiously avoided' measuring its advertising exposure to youth, probably because [it] 'knew the likely result of such analysis.'" Id. at 327 (quoting trial court decision); see generally Findings of Fact Section VI(B)(2, 3).

- Likewise, after entering the MSA in November 1998, Lorillard did not change its principal "Pleasure" advertising campaign for Newport, the second-leading brand smoked among youth ages 12 to 17. Milstein TT, 1/10/05, 9312:1-

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[46] A defendant seeking to escape a permanent injunction bears the burden of demonstrating that "subsequent events made it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur." United States v. Concentrated Phosphate Export Ass'n, 393 U.S. 199, 203 (1968) (emphasis added); United States v. W.T. Grant Co., 345U.S. 629, 632 (1953).

9314:9; 9417:18-9421:25, discussed in Findings of Fact Section VI(B)(3).

- Defendants increased price promotions more than seven-fold from 1998 to 2003 after the MSA banned outdoor and billboard ads, even though youth are particularly vulnerable to such price promotions.

- Defendants Philip Morris and Altria continue to sponsor two Marlboro motor sports teams which receive heavy media coverage in the United States, despite the MSA's limitation of one sports sponsorship per MSA signatory. They rationalize this on the grounds that Altria is officially not a signatory to the MSA, overlooking the fact that Philip Morris CEO and chairman Michael Szymanczyk sits on Altria's Corporate Management Committee, and that Philip Morris is, of course, a signatory to the MSA. See Findings of Fact Section VI(B)(2, 3).

- Despite the same limitation of one sponsorship per signatory, Philip Morris decided in 2001 to sponsor Marlboro race cars in two different auto racing leagues in 2001 -- the Indy Racing League and the CART racing league -- and then changed course immediately when Washington State attorney general Christine Gregoire protested, suggesting that Philip Morris was well aware that its decision violated the MSA. Id.

- Even though the MSA required Defendants to shut down and disband CIAR, Philip Morris has reconstituted it at the same address and with the same director, under the name of the Philip Morris External Research Program. Id.

These are not the actions of companies which have fundamentally altered their conduct since entering the MSA.

Second, the Court is unable to rely upon the states to vigorously enforce the MSA. This comment is not a criticism, but rather a realistic acknowledgment that enforcement depends upon the commitment of resources by each state and that many are stretched very thin financially. Even though the MSA allots a certain amount of money to each state for purposes of enforcement, in light

of the fiscal pressures on states and the constant compromises they must make in reference to their financial priorities, this Court cannot be assured that adequate resources will be available in the future to enforce the MSA.

The MSA provision that authorizes the state attorneys general to inspect Defendants' books and interview their personnel begins expiring in 2006. See MSA § VII(g) at 52 (granting inspection authority to each State "following State-Specific Finality in a Settling State and for seven years thereafter"). This provision creates some amount of transparency in Defendants' business practices. Even if the Court were to accept Defendants' view that the MSA currently has adequate enforcement mechanisms while the states' inspection authority remains intact, the MSA's enforcement mechanisms will steadily become less and less adequate as the authority begins to expire in one state after another, starting this year. Additional inspection and discovery authority will be required to ensure that the MSA remains meaningful.

In addition, while the MSA requires "mandatory consultation and discussion" for every alleged violation, this leads to time-consuming enforcement efforts. JD FF ch. 12, ¶ 58 (citing MSA §§ VII.(b)-(c), XVIII(m) (JD 045158)). See, e.g., Ohio ex rel. Petro v. R.J. Reynolds Tobacco Co., 820 N.E.2d 910 (Oh. 2004) (over five years required to achieve final court ruling that RJR violated MSA by advertising cigarette brand logos on promotional matchbooks); People ex rel. Lockyer v. R.J. Reynolds Tobacco Co., 11 Cal. Rptr. 3d 317 (Cal. Ct. App. 2004) (over four and a half years required to achieve ruling that RJR violated MSA by failing to modify magazine placement policies). Moreover, the MSA prohibits the states from seeking to enforce it on one another's behalf, MSA § VII(b), (c)(1) at 49 (JD 045158). Together, these structural issues in the MSA make it a far less powerful enforcement mechanism than Defendants claim.

Defendants nevertheless assert that the MSA's "liaison mechanism for mandatory consultation and discussion" "has almost always resulted in a satisfactory resolution of [the states'] concerns." JD FF ch. 12, ¶ 58. What Defendants do not acknowledge is that they are free to ignore complaints brought to their attention through this mandatory process. At trial, former Brown & Williamson executives Susan Ivey (now Chairman and CEO of RJR and President and CEO of RJR's parent company, Reynolds American Inc.) and Susan Smith (now Vice President of Marketing Services for RJR) acknowledged that although Brown & Williamson received complaints from NAAG and from Governor Laughton Chiles of Florida about its "B Kool" advertising campaign, the company took no action in response and suffered no consequences as a result. Smith WD, 32:20-33:8; Ivey WD, 11:4-12:1

Finally, two Defendants -- BATCo and Altria – are not even subject to the provisions of the MSA, while another, Liggett, is only subject to some MSA provisions. As the Court previously recognized, "the MSA cannot preclude relief in this RICO action because two of the Defendants, BATCo and Altria, are not even signatories to that Agreement." Philip Morris USA, 316 F. Supp. 2d at 12. The point is underscored by Defendants' rationalization – discussed above – that Philip Morris and Altria are free to sponsor multiple Marlboro auto racing teams because their Marlboro Formula 1 sponsorship is officially controlled by Altria, and Altria did not sign the MSA. See Findings of Fact V(F)(5)(e)(2).

D. As to Certain Defendants, There is Not a Reasonable Likelihood of Future Violations of 18 U.S.C. § 1962 (c) and (d)[47]

1. CTR

On November 6, 1998, pursuant to the terms of a consent judgment entered in the State of Minnesota case and a plan of dissolution approved by the New York State Supreme Court, CTR was dissolved under the New York Not-for-Profit Corporation Law upon its filing of a certificate of voluntary dissolution with the Secretary of State of the State of New York. McAllister WD at 10:20-13:25; 1998 CTR Certificate of Voluntary Dissolution, (JE 021048); 1998 State of Minnesota Settlement Agreement, (JD 012501); 1998 State of Minnesota Consent Judgment, (JD 093326); 1998 CTR Plan of Dissolution, (JD 093330); 1998 Order of the Supreme Court of the State of New York, (JD 093333).

The MSA expressly prohibits the tobacco companies from reconstituting CTR, or any successor companies performing similar activities. See (US 64359) (§ III(o)(5)) ("The Participating Manufacturers may not reconstitute CTR or its function in any form.").

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[47] In an effort to demonstrate that it is not reasonably likely to violate RICO in the United States in the future, BATCo argues that it conducts no business in the United States and that it is unlikely to have anything more than "incidental" contact with tobacco manufacturers in the United States. JD Br. at 126-127. In addition to the fact that future action within the United States is not required, each of these assertions is inaccurate. First, BATCo conducts business in the United States through an agreement with Lane Limited (which is now owned by Reynolds American, Inc.), which sells and markets millions of BATCo's State Express 555 brand cigarettes in the United States. (no bates) (US 77453). Second, BATCo continues to participate with other Defendants in international organizations that play an important role in the operation of the Enterprise, such as Tobacco Mfrs. Association and CECCM. Third, BATCo remains closely affiliated with Reynolds American, Inc., the parent company of R.J. Reynolds Tobacco Company and Brown & Williamson Tobacco Corp. See JD FF Chap. 12, § IV.D.1. ¶¶ 338, 343, 345. In light of BATCo's extensive participation in the Enterprise's violations of 1962(c) and (d) and the ongoing activities described here, the Court finds BATCo's arguments on its reasonable likelihood of future RICO violations wholly unpersuasive.

In the spring of 1997, in anticipation of the possibility of its dissolution, CTR suspended the review, approval and funding of new grants. See McAllister WD at 11:4-22; (no bates) (JD 090039) (1997 CTR Annual Report). Under the Plan of Dissolution, the moratorium on new grants became permanent. CTR accelerated the funding of grants that had been awarded as of April 1997, paying out the last of the grant funds by the end of March 1999. CTR's last Annual Report was published in the spring of 1998. See McAllister WD at 13:12-25; see, e.g., (no bates) (JD 093371).

Since it made its final payments to grantees in March 1999, CTR has existed as a dissolved corporation for the limited purpose of winding up its activities, including storing, maintaining, and making available CTR historical documents and defending itself and its member companies in litigation. See McAllister WD at 10:24-11:3, 14:20-15:6; 1998 CTR Plan of Dissolution, (JD 093330 at §§ 5, 6).

CTR has had no employees since November 30, 2004. Dr. McAllister, now serving as a part-time consultant to CTR, remains responsible, as CTR's appointed agent, for ensuring that CTR meets its continuing legal obligations as a dissolved corporation. See McAllister WD at 1:7-14. CTR has had no office since the end of 2004. See McAllister WD at 14:1-14.

In sum, no new CTR Special Projects were initiated after 1986. The last check drafted to fund a CTR Special Project was written in 1990. See McAllister WD at 219:6-10. CTR issued its last press release in 1997. See McAllister WD at 219:13-14. CTR's last Annual Report (the 1997 Annual Report) was issued in the spring of 1998. See McAllister WD at 219:11-12. CTR stopped funding all scientific research in March 1999 -- more than six years ago. See McAllister WD at 219:15-16.

Consequently, CTR is unable to "continue alleged past RICO violations." See Mem. Op. and Order #549 (at 6 n.5) ("The Court is not unsympathetic to the arguments of CTR and TI [made in their Joint Motion for Summary Judgment], who have effectively ceased to exist and seem to have no actual ability to continue alleged past RICO violations. The Court hopes that the Government will exercise good litigation judgment in its assessment of what, if any, value there is in proceeding against CTR and TI."). Accordingly, even though CTR is liable for past violations of 18 U.S.C. § 1962 (c) and (d), there is no reasonable likelihood of future violations, and therefore no remedies will be entered against CTR.

2. The Tobacco Institute

The Master Settlement Agreement ("MSA") provided for cessation by TI of operations and for dissolution of TI. Section III (o)(2) of the MSA provides:

> The Tobacco Institute, Inc. ("TI") (a not-for-profit corporation formed under the laws of the State of New York) shall, pursuant to a plan of dissolution to be negotiated by the Attorney General of the State of New York and the Original Participating Manufacturers in accordance with Exhibit G hereto, 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 (and with the preservation of all applicable privileges held by any member company of TI).

MSA § III(o)(2) US 64359 (at VXA 104 0635). Following the execution of the MSA, TI immediately began winding down its operations and arranging for severance of its employees. W. Adams, USA Dep., 6/18/02 at 22:19-23:9, 42:10-23. TI ceased its public relations, lobbying and other ongoing trade association functions. Id. at 42:10-43:7.

With the execution of the MSA, TI ceased issuing press releases or otherwise making public statements or comments concerning tobacco issues. Id. at 75:7-19. In January 31, 1999, TI

discharged its operating employees except for a skeleton staff which was retained to perform administrative, closedown and litigation support functions. Id. at 22:7-23:9, 42:10-43:7.

The limited TI staff retained after January 31, 1999 were engaged solely in closing out TI's affairs in accordance with the MSA. (See id. at 22:7-23:9, 42:10-43:7). Their functions were limited to activities such as vacating TI's former office space, disposing of office furnishings and equipment, making arrangements for TI employees' medical and pension plans to be carried out, and placing TI records in storage. Id.

In accordance with Section III(o)(2) of the MSA, a final Plan of Dissolution for TI was prepared by TI and approved by the Attorney General of New York. The Plan of Dissolution was then presented to the Supreme Court of New York for approval. On August 31, 2000, that court entered an Order Approving TI's Plan of Corporate Dissolution and Certificate of Dissolution. See (no bates) (JE 022000) and (no bates) (JD 080768).

Under the terms of the Plan as entered and approved by the New York court, TI is obligated to "promptly wind up its non-litigation affairs" and "shall not perform any function or activities not contemplated by this Plan." See TI1491-0989 at 0900-0901 (JE 022000). The only functions or activities permitted by the Plan are winding up TI's affairs and defense of litigations. (Id. at 0901).

The only employees or consultants TI is permitted to have are those "reasonably needed for the conduct of litigation activities," Id. at 0902, 0905, which is defined as "the right [of TI] to defend itself against any claims threatened or asserted against it now or in the future." Id. at 0904. Upon the conclusion of litigation against it, TI is required to terminate any remaining employees and

consultants and "cease all function." Id. at 0905. Once all litigation against TI has been concluded, TI will cease to exist entirely. W. Adams, United States Dep., 6/18/02, at 14:19-15:2.

TI is also directed by the Plan of Dissolution, after making all payments and distributions referred to in the Plan, to deliver all its remaining assets "to one or more not-for-profit health or child welfare organizations selected by TI and agreed to by the Attorney General." TI14910898-0918 at 0813 (JE 022000).

TI's Plan also contains an express blanket prohibition on public statements concerning tobacco. Section 5.6 of the Plan provides:

> *No Public Statements*. Upon entry of an order approving this Plan, neither TI nor any of its employees or agents acting in their official capacity on behalf of TI will issue any statements, press releases, or other public statements concerning tobacco, except as necessary in the course of litigation defense as set forth in section 5 of this Plan.

TI14910898-0918 (JE 022000).

TI's last employee was released on November 30, 2000. W. Adams, United States Dep., 6/18/02, at 21:16-19. Since then, TI has had no employees and no consultants other than a Senior Vice President-Administration, William Adams, who remains an officer of TI solely to support its litigation defense and handle any remaining administrative matters. Id. at 16:7-23. Once litigation against TI as been concluded, Mr. Adams will cease to have any role at all. Id.

TI has no office, no telephone, and no funds or other liquid assets. W. Adams Dep., 6/18/02, at 19:5-23. TI's sole assets consist of an appeal bond posted by TI in connection with the pending appeal of a trial court judgment entered against TI in a Florida case, Engle v. R.J. Reynolds Tobacco Co., et al. Id. at 14:4-7.

Accordingly, even though TI is liable for past violations of 18 U.S.C. § 1962 (c) and (d), there is no reasonable likelihood of future violations, and therefore no remedies will be entered against TI.

3. Liggett

Liggett does not have a reasonable likelihood of future RICO violations as part of the Enterprise. As discussed in detail in the Findings of Fact, in the mid-1990s, Liggett took historic steps when it became the first domestic tobacco company to admit that smoking causes cancer and is addictive, and to include product warnings on its packages beyond those required by law. Liggett is the only company to disclose the ingredients of its cigarettes on its cartons and was the first to expand voluntarily advertising restrictions and agree to submit to FDA jurisdiction. Of the greatest significance, however, is the fact that Liggett provided cooperation and assistance to the dozens of States Attorneys General as well as the United States Department of Justice in the prosecution of their claims against other tobacco companies. By doing so, Liggett changed the face of tobacco litigation in this country and, not surprisingly, distanced itself from the other Defendants.

As a result of these actions, the Court has already found that Liggett withdrew from Defendants' RICO conspiracy. See Section VIII(C), supra. While it remains liable for its substantive violations of 1962(c) from the past, Liggett poses no reasonable likelihood of future RICO violations.

Liggett today continues to act independently of the other Defendants, even beyond what is required of it by the law or the MSA. LeBow WD, 8-10. For example, Liggett continues to take the public position that cigarettes are a cause of lung cancer and other serious diseases, and that smoking is addictive. Liggett continues to state publicly that it agrees with the positions on these issues as

stated by the United States Surgeon General and the public health authorities. (Albino WD, 8). Liggett continues to include an additional, voluntary product warning on its packages beyond those required by law, and Liggett is the only domestic tobacco company that prints a list of ingredients of its cigarettes on its cartons. LeBow WD, 8-9

In addition, Liggett continues to cooperate with public health authorities on a variety of smoking and health issues. Beginning in 1997, Liggett has been providing on an annual basis, both to the Centers for Disease Control and the Massachusetts Department of Public Health, a complete listing of all additives and ingredients in all of Liggett's cigarettes on a brand-by-brand, style-by-style basis. LeBow WD, 9-10. The ingredients of Liggett's cigarettes are listed in weight order as they appear in Liggett's cigarettes, exactly in the manner requested by the public health authorities. Id.

Moreover, Liggett today is a small player in the domestic tobacco market, with a market share of 2.4% of the cigarettes sold in the United States. LeBow WD, 10.[48] Liggett today employs between 300-400 persons, and manufactures and sells predominately discount, nonbranded cigarettes that compete generally on price alone. LeBow WD, 10. Unlike the other Defendant tobacco companies, Liggett does not have brand equity, and competes for its small percentage of the domestic market with tobacco companies that are not defendants in this action. Dennis W. Carlton, Ph.D. WD, 6, 32. Accordingly, Liggett does not rely on traditional consumer advertising and engages in virtually no print or billboard advertising.

Finally, the Government's own witnesses have stated that Liggett made important contributions to the public health community, and distinguishes Liggett's current conduct from other

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[48] Liggett today is the fifth largest producer of cigarettes in the United States. LeBow WD, 11.

tobacco company Defendants. Govt Findings of Fact, Section IV.C., paras. 607, 1059-1070. The Government nevertheless asserts that Liggett has ongoing RICO violations because it continues to market low tar cigarettes and does not admit that they are no less hazardous than their full-flavor counterparts.

Despite the fact that Liggett continues to sell low tar cigarettes, the Court finds that, based on Liggett's behavior in every other component of the Enterprise's scheme to defraud and Liggett's withdrawal from the RICO conspiracy, the totality of the circumstances demonstrates that Liggett is not reasonably likely to commit future RICO violations.[49]

Accordingly, even though Liggett is liable for past violations of 18 U.S.C. § 1962 (c) and (d), there is no reasonable likelihood of future violations, and therefore no remedies will be entered against Liggett.

XI. REMEDIES

A. Legal Standards Governing Remedies

Once RICO liability is established, 18 U.S.C. § 1964(a) states that:

> The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter [18 USCS § 1962] by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons."

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[49] Moreover, because Liggett engages in virtually no consumer advertising, there is little opportunity for it to influence smoker beliefs concerning low-tar cigarettes. See JD Final Proposed Findings of Fact.