Court File No. CV-19-615862-00CL
Court File No. CV-19-616077-00CL
Court File No. CV-19-616779-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **JTI-MACDONALD CORP.**

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **IMPERIAL TOBACCO CANADA LIMITED** AND **IMPERIAL TOBACCO COMPANY LIMITED**

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **ROTHMANS, BENSON & HEDGES INC.**

Applicants

RESPONDING MOTION RECORD

(Sanction Order and CCAA Plan Administrator Appointment Order)
Returnable on January 29, 2025

VOLUME 2 OF 2

January 20, 2025

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Court File No. CV-19-615862-00CL
Court File No. CV-19-616077-00CL
Court File No. CV-19-616779-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **JTI-MACDONALD CORP.**

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **IMPERIAL TOBACCO CANADA LIMITED** AND **IMPERIAL TOBACCO COMPANY LIMITED**

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **ROTHMANS, BENSON & HEDGES INC.**

Applicants

INDEX

TAB 2

Court File No. CV-19-615862-00CL
Court File No. CV-19-616077-00CL
Court File No. CV-19-616779-00CL

ONTARIO
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Applicants

AFFIDAVIT OF ROBERT SCHWARTZ (SWORN JANUARY 17, 2025)

I, Robert Schwartz, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am Executive Director of the Ontario Tobacco Research Unit at the University of Toronto, a position I have held since 2011 (I was previously Associate Director, 2006-2009, and Deputy Director 2009-2010). My other positions include Professor, Institute of Health, Policy, Management and Evaluation, Dalla Lana School of Public Health, University of Toronto (since 2016; Associate Professor 2006-2016); Senior Scientist, Centre for Addiction and Mental Health, Toronto (since 2011); Director, Collaborative Specialization in Public Health Policy (since 2012); and Affiliated Faculty, School of Public Policy and Governance, University of Toronto (since 2007). As such, I have personal knowledge of the matters contained in this Affidavit. To the extent that I refer to information that is not within my personal knowledge, I have stated the source of that information and believe it to be true.

2. This Affidavit is sworn in support of the Canadian Cancer Society ("**CCS**") response to the Motion for Plan Sanction Orders regarding the tobacco companies in these proceedings under the *Companies' Creditors Arrangement Act* ("**CCAA**"). In particular, this Affidavit supports changes sought by CCS to the CCAA Plans to restrict promotion; to require public disclosure of internal tobacco company documents provided in provincial lawsuits; and to expand the mandate of the Cy-près Foundation ("**Foundation**") to include programs and initiatives to reduce tobacco use. Each of these proposed changes would reduce tobacco use, and would reduce disease and death and improve public health.

Health Effects and Costs of Tobacco

3. Tobacco remains the leading preventable cause of disease and death in Canada, killing more than 46,000 Canadians each year. At least 1 of 2 long-term regular cigarette smokers who do not quit will die as result of smoking. Smoking causes cancer, heart disease, stroke, emphysema and many other health effects, as indicated by the health warnings including pictures required on cigarette packages, reproduced as Exhibit A. Nicotine is highly addictive. Exposure to second-hand smoke causes heart disease, lung cancer, and other health harms.

4. Tobacco industry conduct over decades has directly led to higher rates of smoking historically and today than would otherwise be the case, resulting in the massive toll of addiction, disease and death that has occurred, and will continue to occur into the future. While there has been progress at decreasing smoking prevalence, there remain 3.6 million Canadian adults who smoke, representing 11.4% of the population 18+ (2023).[1]

5. Reducing tobacco use also will benefit provincial and territorial governments not only by improving the health of the population, but also by reducing health care costs. Tobacco causes an estimated $5.4 billion per year in health care costs, and $11.2 billion per year in total economic costs. The total economic costs include costs related to health care ($5,429.0 million), lost productivity ($5,248.7 million), criminal justice ($5.5 million), federal research

[1] Canadian Community Health Survey, 2023.

and prevention ($60.7 million), fire damage ($186.1 million) and social assistance ($224.3 million). A breakdown by province of the deaths, health care costs and total economic costs is as follows:[2]

Province/ territory	Tobacco deaths per year	Tobacco health care costs per year	Total Tobacco Economic Costs Per Year
Canada	46,366	$5,428,998,004	$11,154,252,730
British Columbia	5,825	$688,416,598	$1,386,834,157
Alberta	4,404	$677,946,683	$1,331,669,411
Saskatchewan	1,518	$188,899,653	$365,513,945
Manitoba	1,525	$195,662,417	$368,243,296
Ontario	16,296	$2,204,298,407	$4,182,023,933
Quebec	12,371	$922,274,598	$2,348,410,823
New Brunswick	1,198	$151,531,157	$308,233,056
Nova Scotia	1,835	$210,503,255	$444,877,811
P.E.I.	266	$29,374,786	$69,704,432
Nfld & Lab	1,006	$123,230,974	$270,251,459
Yukon		$10,486,842	$13,171,286
Northwest Terr.		$10,585,820	$29,915,780
Nunavut		$15,786,814	$35,403,340

6. A 2006 study estimated that an employee who smokes costs the employer on average $3,396 per year due to increased absenteeism and to lost productivity due to smoke breaks.[3]

Promotion Restrictions

7. The promotion restrictions proposed by CCS for inclusion in the CCAA Plans would reduce tobacco use and thus benefit public health.

[2] Canadian Substance Use Costs and Harms Scientific Working Group. “Canadian substance use costs and harms 2007–2020” (Prepared by the Canadian Institute for Substance Use Research and the Canadian Centre on Substance Use and Addiction.) Ottawa, Ont.: Canadian Centre on Substance Use and Addiction, 2023; Canadian Centre on Substance Use and Addiction and the Canadian Institute for Substance Use Research. (2023). Canadian Substance Use Costs and Harms (Version 3.0.0) [online data visualization tool].

[3] Conference Board of Canada, “Smoking and the Bottom Line: Updating the Costs of Smoking in the Workplace” 2006.

8. Tobacco promotion expenditures in Canada remain extensive, with the biggest area being tobacco company promotional incentives and other promotions directed to retailers. Promotions include bonuses to retailers for achieving sales targets; reduced product prices based on the quantity purchased by a retailer; lower prices for some retailers but not others; chances for retail employees to win vacations or entertainment tickets; and others. Such promotions increase overall tobacco consumption in part because lower prices increase consumption. In 2024, Ontario's Chief Medical Officer of Health recommended a ban on such incentive promotions.[4]

9. As an example, a June 26, 2024, item in *Convenience Store News* refers to JTI-Macdonald's National Destination Contest as an incentive for retailers, with employees having a chance to win a vacation to the Dominican Republic or to British Columbia (Exhibit B). Promotions of this nature that motivate retailers to sell more product are inconsistent with public health objectives.

10. Based on the Reports of the Monitor for JTI-Macdonald from the First Report to the Supplement to the Seventeenth Report, the smallest of the three companies, JTI-Macdonald's annualized forecasted spending on "promotions and marketing" week periods ranged from $116.5 million to $164.3 million. This illustrates how promotional expenditures in Canada remain extensive. A compilation of extracts regarding JTI-Macdonald promotions and marketing expenditures referenced in the Reports of the Monitor is attached as Exhibit C.

Public Disclosure of Tobacco Industry Documents

11. CCS has proposed a change to the CCAA Plans to require public disclosure of internal tobacco company documents. Such a requirement would be highly valuable.

12. The tobacco industry has carried out the best and most extensive tobacco-related research and analysis in Canada, given their vast financial resources and capacity over decades. This research is valuable to researchers, with US tobacco documents giving rise to a very large

[4] 2023 Annual Report of the Chief Medical Officer of Health of Ontario to the Legislative Assembly of Ontario, released March 28, 2024.

number of published academic articles. Tobacco industry documents including research are valuable to develop better programs. For example, documents on nicotine and nicotine addiction can inform better treatments. The tobacco industry's internal knowledge very often has been far ahead of that of the public health community. Public disclosure of documents in the US has helped the public health community catch-up to the knowledge held by tobacco companies. That the tobacco industry's research and knowledge in the US remained concealed for so long impeded scientific and public policy progress on tobacco-related issues.

13. Tobacco company documents can assist with policy development, providing research, information and analysis that can be of relevance. Tobacco companies frequently deny that a policy proposed by government would be effective. Documents may contradict the public statements of the companies, providing evidence and acknowledgements of effectiveness.

14. There are many areas of tobacco control policy that remain to be implemented. For example, these could include: reducing the number and type of retail locations; minimum sales of age 21; a tobacco-free generation (prohibiting sales to anyone born after a specified date, such as January 1, 2009); many types of product regulation; further restrictions on tobacco promotion; smoke-free requirements in additional places, such as specific outdoor areas; future rounds of package health warnings, and many others.

15. As one example of product regulation, there has been increasing discussion of banning filter ventilation or banning filters altogether on the basis in part that consumers are deceived into thinking that these product characteristics reduce harm, when in fact harm is not reduced. Filter ventilation (very small holes in the filter) is often found in cigarettes that previously had deceptive descriptors such as "light", "mild", "extra light" or "ultra light".

16. Documents can also be valuable when federal and provincial governments defend constitutional challenges to laws. Tobacco companies have initiated many such constitutional challenges in Canada and can be expected to continue to do so in the future.

17. Public disclosure of documents can also deter detrimental behaviour of tobacco companies in the future. Once the true nature of a detrimental activity is publicly exposed, it becomes harder for the company to repeat that activity.

18. In Canada, there have many been public enquiries where the number of deaths or the public harm, though very serious, has been of an incredibly smaller scale than that of tobacco. These enquiries had the authority to compel disclosure of documents. Examples of enquiries include tainted blood (headed by Justice Krever), Walkerton contaminated water (headed by Justice O'Connor), Westray mine disaster (headed by Justice Richard), and drugs in sport (headed by Justice Dubin). These examples provide a further rationale for public disclosure of tobacco industry documents, given the unmatched health devastation caused by tobacco products and tobacco companies.

19. An emerging area is artificial intelligence, which is another example illustrating how the tobacco industry is so often far ahead of the public health community. The tobacco industry's use of artificial intelligence will present new challenges and difficulties for public health. Governments and the public health community are presently unaware of how the tobacco industry is using artificial intelligence, including in ways that may undermine public health such as recruiting youth or non-smokers into smoking, discouraging smokers from quitting, or encouraging ex-smokers to relapse back to smoking.

20. In 2024, *Convenience Store News* included comments from JTI-Macdonald employees regarding artificial intelligence. In response to the question "What will shape the business in the next 5 years?", JTI-Macdonald's Trade Loyalty, Engagement and Communications Manager stated "I have a feeling that artificial intelligence will shape the business in the years to come". In response to the question "What trends or innovations are [you] keeping an eye on right now. Is there anything you think will shape the business in the next 5 years?", JTI-Macdonald's Customer Service Manager stated "Without a doubt artificial intelligence." (See Exhibit D for the items from *Convenience Store News* dated June 26, 2024.)

Expanding Mandate of the Foundation to Include Programs and Initiatives to Reduce Tobacco Use

21. At present in the CCAA Plans, the Foundation's mandate excludes programs and initiatives to reduce tobacco use, though tobacco-related research is included within the mandate. Expanding the Foundation's mandate to include programs and initiatives to reduce tobacco

use would increase the benefit and impact of the Foundation. Doing so would provide increased health benefits for individuals who use tobacco, who have quit and are at risk of relapse, or who may start to use tobacco.

22. Preventing disease in the first place is a much better health strategy than just trying to help people after they get disease. Moreover, not smoking improves health outcomes for individuals who contract disease due to tobacco use. Importantly, smoking not only causes cancer, but smoking can also substantially reduce survivability for a person diagnosed with cancer. Further, for a person who survives smoking-related cancer, not smoking greatly reduces the risk of subsequent disease, such as a second cancer, heart disease, stroke or emphysema.

23. It is well-established that properly funded, sustained, comprehensive tobacco control strategies are effective at reducing tobacco use.[5] The Foundation could fund a wide variety of programs and initiatives, including smoking cessation programs, mass media and other communication campaigns, community programs, and others.

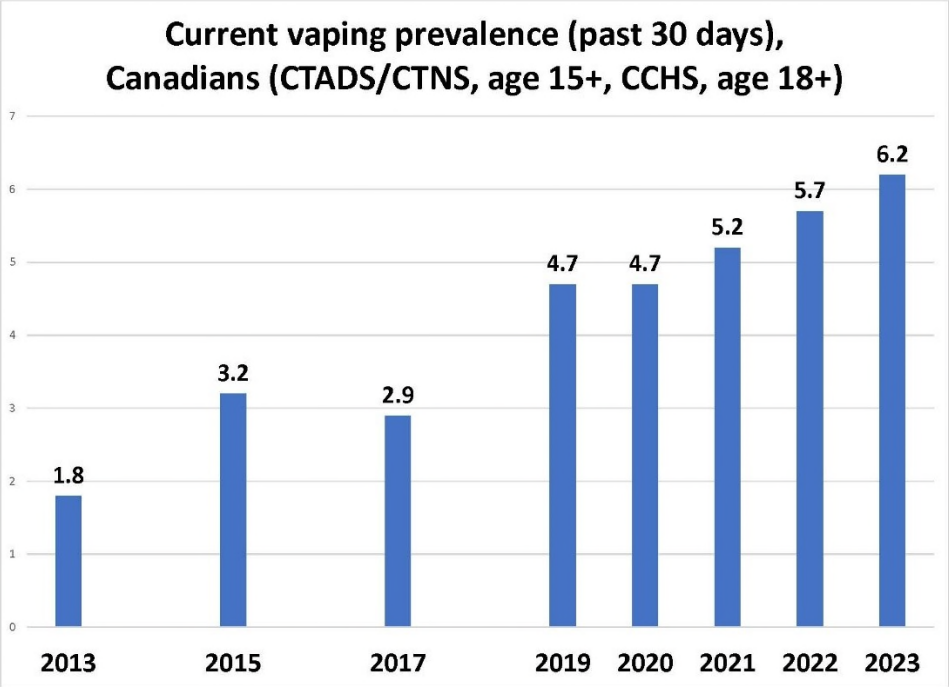
24. The Foundation, through its programs and initiatives, could also support work related to tobacco control policies. This would be beneficial to reduce tobacco use. As previously noted, there are many identified areas of tobacco control policy that remain to be implemented. Further, the Foundation's mandate should have full scope to fund tobacco-related research. Research related to tobacco control is important to support further advances. One reason this is important is the significant reduction in funding available for tobacco control research that has occurred in Canada in recent years.

[5] e.g. Centers for Disease Control and Prevention, "Best Practices for Comprehensive Tobacco Control Programs—2014. Atlanta: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2014. A comprehensive strategy is also reflected in part in the international tobacco control treaty, the WHO Framework Convention on Tobacco Control, and its guidelines. All 13 provinces and territories endorsed Canada's ratification of this treaty.

“Alternative Products” Business of Tobacco Companies

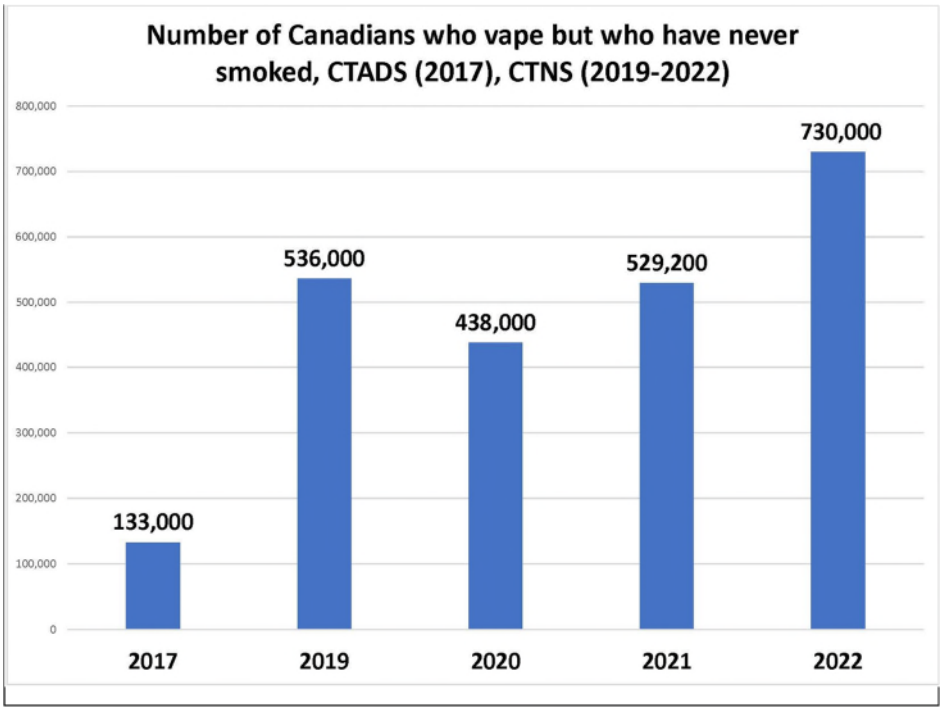
25. The CCAA Plans exclude the profits of the “Alternative Products” business of tobacco companies from being included towards the payments that must be made under the CCAA Plans, thus providing a significant financial benefit for tobacco companies. The definition of “Alternative Products” in the CCAA Plans includes electronic cigarettes (“**e-cigarettes**”), heated tobacco products, and nicotine pouches.

26. E-cigarettes with nicotine were legalized in Canada in May 2018. E-cigarette sales and the prevalence of e-cigarette use among Canadians have been rising significantly, providing a long-term substantial profit stream for tobacco companies. In 2023, past 30-day use of e-cigarettes among Canadians age 18+ was 6.2%, compared with smoking in the past 30 days of 11.4%.[6] Onset of e-cigarette use by teenagers and young adults has been a major driver in the increase in the prevalence of e-cigarette use in Canada. The following graph provides prevalence trend data for past 30-day e-cigarette use from 2013 to 2023:[7]



[6] Canadian Community Health Survey, 2023.
[7] Canadian Tobacco, Alcohol and Drugs Survey (CTADS), 2013-2017; Canadian Tobacco and Nicotine Survey (CTNS), 2019-2021; and Canadian Community Health Survey (CCHS), 2022-2023.

27. Of Canadians who use e-cigarettes, many are never smokers. While in 2017 the number of Canadians who used e-cigarettes and had never smoked was 133,000, this increased to 730,000 in 2022, as shown in the graph below.[8] Given that a substantial proportion of new users of e-cigarettes are teenagers or young adults, the number of Canadians who vape but who have never smoked would have been expected to have increased further in the years since 2022.



28. Rothmans, Benson & Hedges sells heated tobacco products in Canada under the brand name IQOS. In some countries, heated tobacco products have had significant sales volumes. In October 2023, Imperial Tobacco Canada Ltd. became the first company to sell nicotine pouches in Canada, doing so under the brand name Zonnic. In some countries where nicotine

[8] Canadian Tobacco, Alcohol and Drugs Survey (CTADS), 2017-2019; Canadian Tobacco and Nicotine Survey (CTNS), 2020-2022.

pouches were introduced into the market earlier than in Canada, including the United States and some countries in Europe, sales volumes of nicotine pouches have been growing rapidly.

SWORN by Robert Schwartz of the City of Toronto, in the Province of Ontario before me at the City of Toronto, in the Province of Ontario, on January 17, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely

Robert Schwartz

Commissioner for Taking Affidavits

KATELIN Z. PARKER

Katelin Zoe Parker, a Commissioner, etc.,
Province of Ontario, for Fogler, Rubinoff LLP,
Barristers and Solicitors. Expires April 23, 2026.

ROBERT SCHWARTZ

List of Exhibits to Affidavit

Exhibit A – Health warnings and messages required for cigarette packages in Canada.

Exhibit B – *Convenience Store News* item of June 26, 2024, referring to JTI-Macdonald's National Destination Contest.

Exhibit C – Compilation of JTI-Macdonald Forecasted Promotions and Marketing Expenditures from Reports of the Monitor to JTI-Macdonald, 2019-2024, January 17, 2025.

Exhibit D – *Convenience Store News* items of June 26, 2024, referring to JTI-Macdonald employees citing artificial intelligence.

This is Exhibit "A" referred to in the Affidavit of Robert Schwartz sworn by Robert Schwartz of the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on January 17, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

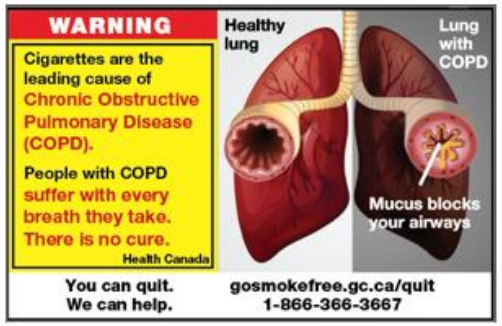
Commissioner for Taking Affidavits (or as may be)

Katelin Zoe Parker, a Commissioner, etc.,
Province of Ontario, for Fogler, Rubinoff LLP,
Barristers and Solicitors. Expires April 23, 2026.

Health warnings and messages required for cigarette packages in Canada

Health warnings and messages (English) required by *Tobacco Products Regulations (Plain and Standardized Appearance)*, SOR/2019-107, as amended by SOR/2023-97

HEALTH WARNINGS / CIGARETTES
ROTATION 1



HEALTH WARNINGS / CIGARETTES

ROTATION 2

HEALTH INFORMATION MESSAGES

CIGARETTES – ROTATION 1

HEALTH INFORMATION MESSAGES

CIGARETTES – ROTATION 2

ON-PRODUCT HEALTH WARNINGS / CIGARETTES

ROTATION 1

ROTATION 2

This is Exhibit "B" referred to in the Affidavit of Robert Schwartz sworn by Robert Schwartz of the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on January 17, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (or as may be)

Katelin Zoe Parker, a Commissioner, etc.,
Province of Ontario, for Fogler, Rubinoff LLP,
Barristers and Solicitors. Expires April 23, 2026.

https://ccentral.ca/2024-star-women-convenience-winner-melissa-oshea

2024 Star Women in Convenience winner: Melissa O'Shea

SHINING STAR

Convenience Store News, June 26, 2024

Trade marketer

JTI-Macdonald Corp.

How did you get into this business?

I was working in the recruiting industry, and I thought that the recruiting world would be my career path. However, a good friend thought I would be a suitable fit with JTI-Macdonald. They referred me to a job posting, and the rest is history.

What work-related accomplishment are you most proud of during the last 12-18 months?

We had a district trade marketer incentive program for the whole year that was monitored by a scorecard and updated regularly so we could see our results. I was the top performer and received an award for my achievements in 2023.

What do you like most about your job?

Above all, it would be my customers. My passion is building relationships with retailers in my territory and helping them grow their businesses. Also, I enjoy learning about their families and the stories behind owning their businesses and hearing the pride they have for their stores.

What was the biggest challenge of your career?

Other than COVID, which would be on top of most people's lists. I would say starting my career as a key account sales associate and then moving into a trade marketer position. This move was quite the pivot, personally and professionally. During my first three years, I moved territories three times. I felt like every time I built a strong partnership with the retailers in my trade, a change would happen. This was always a challenge, but I took it as a positive for a fresh start!

Career highlight/biggest achievement?

Back-to-back JTI Drive Trade Marketer incentive winner. I was one of the few who had the pleasure to accompany retailers on the National Destination Contest. This trip happened outside of work and allowed me to get to know the retailers on a more personal level. The two destinations were in beautiful British Columbia and the Dominican Republic. Both these trips were a once-in-a-lifetime experience, and the quality time spent with the winning retailers and colleagues was memorable. JTI has given me so much and I am very proud to work for them. I feel grateful that I can be an example for my two daughters and show them you can love what you do. If you work hard and treat people with respect, the accolades will come.

What's the best advice you ever received?

Always treat others the way you would want to be treated. Never ask someone to do something you wouldn’t do yourself. Whatever you do, always give it 100%. Always aim for constant self-improvement and never stop learning.

What excites you most about the future of this channel?

Lately, there’s been a huge change in ownership and many new retailers are coming in. This allows for a fresh outlook on the convenience world and where it is headed. With beer, wine, cider and RTD cocktails coming to convenience stores in Ontario, this is also exciting: It will hopefully create more foot traffic at sites and provide another source of income to retailers.

This is Exhibit "C" referred to in the Affidavit of Robert Schwartz sworn by Robert Schwartz of the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on January 17, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (or as may be)

Katelin Zoe Parker, a Commissioner, etc.,
Province of Ontario, for Fogler, Rubinoff LLP,
Barristers and Solicitors. Expires April 23, 2026.

Compilation of JTI-Macdonald Forecasted Promotions and Marketing Expenditures from Reports of the Monitor to JTI-Macdonald, 2019-2024

January 17, 2025

Report of JTI's Monitor, and Date	Projection Period*	Promotions and Marketing Expenditure # $CAD ('000)	Annualized if 52 weeks $CAD ('000)
Report of proposed monitor, Mar. 8, 2019	13 weeks, Feb 25, 2019 to May 20, 2019	24,464	97,856
1st Report, Mar 28, 2019	27 weeks, Mar 25, 2019 to Sept 23, 2019	62,682	120,721
4th Report, June 21, 2019	27 weeks, June 17, 2019 to Dec. 16, 2019	78,086	150,388
5th Report, Sept 25, 2019	25 weeks, Sept 16, 2019 to Mar. 2, 2020	63,154	131,360
7th Report, Feb 13, 2020	35 weeks, Feb 3, 2020 to Sept 28, 2020	78,445	116,547
8th Report, Sept 18, 2020	30 weeks, Sept 7, 2020 to Mar 29, 2021	81,744	141,690
9th Report, Mar 22, 2021	30 weeks, Mar 8, 2021 to Sept 27, 2021	77,985	135,174
10th Report, Sept 20, 2021	30 weeks, Sept 6, 2021 to Mar 28, 2022	94,787	164,297
11th Report, Mar 10, 2022	31 weeks, Feb 27, 2022 to Sept 25, 2022	83,472	140,018
12th Report, Sept 21, 2022	30 weeks, Sept 5, 2022 to Mar 27, 2023	72,040	124,869
14th Report, Mar 22, 2023	30 weeks, Mar 6, 2023 to Sept 25, 2023	73,206	126,890
15th Report, Sept 20, 2023	30 weeks, Sept 4, 2023 to Mar 25, 2024	81,956	142,057
16th Report, Mar 18, 2024	31 weeks, May 27, 2024 to Sept 30, 2024	72,662	121,885
17th Report, Sept 27, 2024	8 weeks, Sept 9, 2024 to Oct 28, 2024	21,003	136,520
Supplement to 17th Report, Oct 25, 2024	26 weeks, Oct 7, 2024 to Mar 31, 2025	60,073	120,146

The expenditures are projections for the projection period.

*Dates refer to weeks beginning on that date

Beginning with the 11th Report, this expenditure was sometimes referred to as Promotions, Marketing and Distribution Support

Court File No. 19-CV-615862-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c.C-36 AS AMENDED

AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO JTI-MACDONALD CORP.

REPORT OF THE PROPOSED MONITOR
March 8, 2019

INTRODUCTION

1. Deloitte Restructuring Inc. ("**Deloitte**" or the "**Proposed Monitor**") understands that JTI-Macdonald Corp. ("**JTIM**" or the "**Applicant**") will be bringing an application before the Ontario Superior Court of Justice (Commercial List) (the "**Court**") seeking, among other things, an initial order (the "**Proposed Initial Order**") under the *Companies' Creditors Arrangement Act* (the "**CCAA**"). The Applicant proposes that Deloitte be appointed as Monitor in the CCAA proceedings.

2. This report (the "**Report**") has been prepared by the Proposed Monitor prior to and in contemplation of its appointment as Monitor in the CCAA proceedings to provide information to the Court for its consideration on the Applicant's initial hearing seeking protection pursuant to the CCAA.

JTI-Macdonald Corp.
13-week Cash Flow Statement
$CAD '000, unaudited

For the week beginning	Notes	25-Feb-19	4-Mar-19	11-Mar-19	18-Mar-19	25-Mar-19	1-Apr-19	8-Apr-19	15-Apr-19	22-Apr-19	29-Apr-19	6-May-19	13-May-19	20-May-19	13 weeks Total
Receipts															
Sales	2	17,657	17,941	18,165	18,418	18,680	18,960	20,644	17,244	20,077	20,838	22,137	23,340	23,305	257,407
Intercompany Receipts	3	4,064	6,349	4,664	7,840	8,417	4,992	4,992	8,128	4,992	5,101	5,173	5,173	6,074	75,959
Tax Refunds	4	972	-	1,000	-	-	-	-	1,000	-	-	-	1,000	-	3,972
Total Receipts		**22,694**	**24,290**	**23,830**	**26,258**	**27,097**	**23,952**	**25,635**	**26,372**	**25,069**	**25,939**	**27,310**	**29,513**	**29,380**	**337,338**
Disbursement															
General Expenses	5	2,276	2,381	2,381	2,281	2,381	2,273	2,273	2,173	2,273	2,083	1,957	1,957	1,857	28,543
Payroll and Benefits	6	1,845	445	1,845	945	1,845	445	1,845	445	2,345	445	1,845	445	2,345	17,085
Pension	7	-	-	-	767	-	-	-	767	-	-	-	767	-	2,301
Promotions and Marketing	8	878	1,610	1,610	1,610	1,610	2,562	2,562	2,562	2,562	2,004	1,632	1,632	1,632	24,464
Leaf	9	-	-	2,688	-	-	-	-	2,405	-	-	-	-	-	5,093
Capital Expenditures and Leases	10	249	-	1,689	-	241	-	-	-	-	1,757	-	-	-	3,936
Professional Fees	11	305	305	305	305	305	437	437	437	437	229	229	229	229	4,194
Restructuring Costs	12	264	168	168	168	249	153	153	153	249	153	153	153	249	2,430
Domestic and Import Duty	13	48,500	-	-	-	2,000	36,057	-	-	-	57,085	-	-	-	143,642
GST and HST	14	5,000	-	-	-	-	3,804	-	-	-	5,707	-	-	-	14,511
Intercompany Disbursements	15	2,258	350	4,538	10,456	5,258	5,811	5,811	6,665	5,811	6,779	5,468	5,468	6,093	70,766
Intercompany Royalties	16	828	-	-	-	707	-	-	-	-	749	-	-	-	2,284
Intercompany Interest	17	-	-	-	7,648	-	-	-	7,648	-	-	-	-	7,648	22,945
Intercompany Principal	17	-	-	-	-	-	-	-	-	-	-	-	-	933	933
Income Tax Instalments and PTT	18	16,180	1,500	-	-	-	2,660	1,500	-	-	2,660	1,500	-	-	26,000
Total Disbursements		**78,583**	**6,760**	**15,225**	**24,180**	**14,597**	**54,202**	**14,580**	**23,254**	**13,677**	**79,650**	**12,783**	**10,650**	**20,986**	**369,127**
Cashflow Surplus/Deficit (-)		**(55,889)**	**17,530**	**8,605**	**2,078**	**12,500**	**(30,250)**	**11,055**	**3,118**	**11,391**	**(53,711)**	**14,527**	**18,863**	**8,394**	**(31,789)**
Opening Cash Balance	1	**161,196**	**105,306**	**122,837**	**131,442**	**133,520**	**146,020**	**115,770**	**126,825**	**129,943**	**141,334**	**87,623**	**102,150**	**121,013**	**161,196**
Closing Cash Balance		**105,306**	**122,837**	**131,442**	**133,520**	**146,020**	**115,770**	**126,825**	**129,943**	**141,334**	**87,623**	**102,150**	**121,013**	**129,407**	**129,407**
Cash Collateral	19														
Opening Balance		8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900
Cash Collateral Withdrawal/(deposit)		-	-	-	-	-	-	-	-	-	-	-	-	-	-
Closing Balance		**8,900**	**8,900**	**8,900**	**8,900**	**8,900**	**8,900**	**8,900**	**8,900**	**8,900**	**8,900**	**8,900**	**8,900**	**8,900**	**8,900**
Closing Cash net of Cash Collateral		**96,406**	**113,937**	**122,542**	**124,620**	**137,120**	**106,870**	**117,925**	**121,043**	**132,434**	**78,723**	**93,250**	**112,113**	**120,507**	**120,507**

8. Promotions and Marketing

These projected disbursements relate to the various marketing and promotional initiatives, such as inventory support programs and brand support programs. Initiatives are generally paid 30 days in arrears or via quarterly installments.

9. Leaf

These projected disbursements represent payments to third party suppliers of tobacco leaf. Third party purchases are used in circumstances where JTI-SA does not have a specific grade of tobacco available at the time required to meet the plant's tobacco blend requirements to reduce disruptions in the production process.

10. Capital Expenditures and Leases

These projected disbursements relate to capital expenditures for plant and equipment purchases at the Montreal production facility. These capital expenditures primarily relate to new plain packaging machinery for statutory compliance, machine upgrades, new product flow control systems and environmental health and safety. Additional expenditures are forecast for regional sales office leases, vehicles used by marketing representatives and miscellaneous information technology requirements.

11. Professional Fees

These projected disbursements include payments to JTIM's legal advisors for corporate litigation matters.

12. Restructuring Costs

These projected disbursements include payments to JTIM's legal advisors for specialist restructuring advice, the fees and costs of the Monitor and its counsel and the fees and costs of the Chief Restructuring Officer.

Court File No. 19-CV-615862-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c.C-36 AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO JTI-MACDONALD CORP.

FIRST REPORT OF THE MONITOR
MARCH 28, 2019

INTRODUCTION

1. On March 8, 2019 (the "**Filing Date**"), JTI-Macdonald Corp. ("**JTIM**" or the "**Applicant**") filed for and obtained protection under the *Companies' Creditors Arrangement Act* (the "**CCAA**"). Pursuant to the Order of this Court granted March 8, 2019 (as may be amended, restated or supplemented from time to time, the "**Initial Order**"), Deloitte Restructuring Inc. ("**Deloitte**") was appointed as the Monitor in these proceedings (in such capacity, the "**Monitor**"). The Initial Order provided for a stay of proceedings with respect to the Applicant until and including April 5, 2019 (the "**Stay Period**"). A hearing for a comeback motion (the "**Comeback Hearing**") in respect of the Initial Order has been scheduled for April 4 and April 5, 2019. The proceedings commenced by the Applicant under the CCAA will be referred to herein as the "**CCAA Proceedings**".

2. On March 8, 2019, Deloitte, in its capacity as proposed monitor, filed the Report of the Proposed Monitor (the "**Pre-Filing Report**") which, among other things, described certain

JTI-Macdonald Corp.
27-week Revised Cash Flow Statement
$CAD '000, unaudited

For the week beginning	Notes	25-Mar-19	1-Apr-19	8-Apr-19	15-Apr-19	22-Apr-19	29-Apr-19	6-May-19	13-May-19	20-May-19	27-May-19	3-Jun-19	10-Jun-19	17-Jun-19	24-Jun-19	1-Jul-19	8-Jul-19	15-Jul-19	22-Jul-19	29-Jul-19	5-Aug-19	12-Aug-19	19-Aug-19	26-Aug-19	2-Sep-19	9-Sep-19	16-Sep-19	23-Sep-19	27-week Total
Receipts																												
Sales	2	18,680	21,766	23,699	19,796	23,048	22,797	23,819	25,114	25,076	23,024	27,931	24,714	22,964	25,162	25,594	27,448	25,525	23,847	24,049	22,877	22,732	21,153	22,396	22,652	22,463	22,279	27,515	638,121
Intercompany Receipts	3	7,242	5,900	3,000	7,451	5,626	5,101	5,173	5,173	6,044	5,173	5,949	5,949	6,216	7,350	5,384	5,249	8,305	5,249	5,185	5,090	5,090	9,585	5,090	2,666	2,666	2,851	2,666	146,424
Tax Refunds	4	-	-	-	1,000	-	-	-	1,000	-	-	-	-	1,000	-	-	-	1,000	-	-	-	1,000	-	-	-	-	1,000	-	6,000
Total Receipts		**25,922**	**27,666**	**26,699**	**28,247**	**28,674**	**27,898**	**28,992**	**31,287**	**31,121**	**28,197**	**33,880**	**30,663**	**30,180**	**32,513**	**30,977**	**32,697**	**34,830**	**29,096**	**29,235**	**27,967**	**28,822**	**30,738**	**27,486**	**25,318**	**25,129**	**26,130**	**30,181**	**790,544**
Disbursement																												
General Expenses	5	2,381	2,273	2,273	2,173	2,273	2,083	1,957	1,957	1,857	1,957	2,250	2,250	2,250	2,250	2,826	2,826	2,826	2,826	2,605	2,273	2,273	2,273	2,273	1,905	1,905	1,905	1,905	60,800
Payroll and Benefits	6	1,845	445	1,845	445	2,345	445	1,845	445	2,345	445	1,845	445	2,345	445	1,845	445	1,845	945	1,845	445	1,845	945	1,845	445	1,845	945	1,845	34,615
Pension	7	200	-	200	767	200	-	200	767	200	-	200	-	967	-	200	-	967	-	200	-	967	-	200	-	200	767	200	7,402
Promotions and Marketing	8	1,610	2,562	2,562	2,562	2,562	2,004	1,632	1,632	1,632	1,632	2,075	2,075	2,075	2,075	3,016	3,016	3,016	3,016	2,518	1,770	1,770	1,770	1,770	3,083	3,083	3,083	3,083	62,682
Leaf	9	-	-	-	2,405	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	471	-	-	-	-	1,184	-	4,060
Capital Expenditures and Leases	10	241	-	-	-	-	399	-	-	-	7,816	-	-	-	578	-	-	-	-	420	-	-	-	913	-	-	-	-	10,367
Professional Fees	11	113	123	123	123	123	123	167	167	167	167	98	98	98	98	73	73	73	73	73	58	58	58	58	49	49	49	49	2,586
Restructuring Costs	12	258	275	165	154	165	209	111	111	126	111	184	86	104	107	184	86	104	107	184	86	104	104	86	184	104	107	86	3,690
Domestic and Import Duty	13	769	50,173	-	-	-	46,002	-	-	-	49,200	-	-	-	2,000	47,200	-	-	-	51,948	-	-	-	2,000	31,322	-	-	-	280,614
GST and HST	14	-	4,000	-	-	-	5,005	-	-	-	6,305	-	-	-	-	7,831	-	-	-	6,811	-	-	-	-	7,829	-	-	-	37,781
Intercompany Disbursements	15	5,799	5,590	6,336	12,301	6,522	7,900	7,270	8,471	7,120	6,727	7,032	7,032	7,650	8,196	6,219	6,219	7,010	6,219	7,093	5,451	5,451	6,174	6,626	6,313	6,313	6,844	6,313	186,190
Intercompany Royalties	16	-	-	750	-	-	749	1	-	-	867	1	-	-	-	1,051	1	-	-	939	1	-	-	-	1,058	1	-	-	5,415
Intercompany Interest	17	-	-	7,648	7,648	-	-	-	-	7,648	-	-	-	7,648	-	-	-	7,648	-	-	-	-	7,648	-	-	-	7,648	-	53,538
Intercompany Principal	17	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Income Tax Instalments and PTT	18	28	2,660	1,500	-	-	2,660	1,500	-	-	2,660	1,500	-	-	-	2,660	1,500	-	-	2,660	1,500	-	-	-	2,660	1,500	-	-	24,988
Total Disbursements		**13,245**	**68,100**	**23,401**	**28,577**	**14,189**	**67,578**	**14,682**	**13,550**	**21,095**	**77,886**	**15,185**	**11,986**	**23,138**	**15,750**	**73,105**	**14,166**	**23,489**	**13,187**	**77,295**	**11,583**	**12,938**	**18,972**	**15,770**	**54,847**	**15,000**	**22,533**	**13,481**	**774,728**
Cashflow Surplus/Deficit (-)		**12,677**	**(40,434)**	**3,298**	**(330)**	**14,485**	**(39,680)**	**14,310**	**17,737**	**10,026**	**(49,689)**	**18,695**	**18,676**	**7,042**	**16,762**	**(42,128)**	**18,532**	**11,341**	**15,909**	**(48,061)**	**16,384**	**15,884**	**11,766**	**11,716**	**(29,529)**	**10,129**	**3,597**	**16,700**	**15,816**
Opening Cash Balance	1	**154,308**	**166,985**	**126,552**	**129,849**	**129,519**	**144,005**	**104,325**	**118,635**	**136,372**	**146,398**	**96,709**	**115,404**	**134,081**	**141,122**	**157,885**	**115,757**	**134,288**	**145,629**	**161,538**	**113,478**	**129,861**	**145,745**	**157,511**	**169,227**	**139,698**	**149,827**	**153,424**	**154,308**
Closing Cash Balance		**166,985**	**126,552**	**129,849**	**129,519**	**144,005**	**104,325**	**118,635**	**136,372**	**146,398**	**96,709**	**115,404**	**134,081**	**141,122**	**157,885**	**115,757**	**134,288**	**145,629**	**161,538**	**113,478**	**129,861**	**145,745**	**157,511**	**169,227**	**139,698**	**149,827**	**153,424**	**170,124**	**170,124**
Cash Collateral pledged to Citibank	19																												
Opening Balance		8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900
Cash Collateral Withdrawal/(deposit)		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Closing Balance		**8,900**	**8,900**	**8,900**	**8,900**	**8,900**	**8,900**	**8,900**	**8,900**	**8,900**	**8,900**	**8,900**	**8,900**	**8,900**	**8,900**	**8,900**	**8,900**	**8,900**	**8,900**	**8,900**	**8,900**	**8,900**	**8,900**	**8,900**	**8,900**	**8,900**	**8,900**	**8,900**	**8,900**
Closing Cash net of Cash Collateral		**158,085**	**117,652**	**120,949**	**120,619**	**135,105**	**95,425**	**109,735**	**127,472**	**137,498**	**87,809**	**106,504**	**125,181**	**132,222**	**148,985**	**106,857**	**125,388**	**136,729**	**152,638**	**104,578**	**120,961**	**136,845**	**148,611**	**160,327**	**130,798**	**140,927**	**144,524**	**161,224**	**161,224**

8. Promotions and Marketing

These projected disbursements relate to the various marketing and promotional initiatives, such as inventory support programs and brand support programs. Initiatives are generally paid 30 days in arrears or via quarterly installments.

9. Leaf

These projected disbursements represent payments to third party suppliers of tobacco leaf. Third party purchases are used in circumstances where JTI-SA does not have a specific grade of tobacco available at the time required to meet the plant's tobacco blend requirements to reduce disruptions in the production process.

10. Capital Expenditures and Leases

These projected disbursements relate to capital expenditures for plant and equipment purchases at the Montreal production facility. These capital expenditures primarily relate to new plain packaging machinery for statutory compliance, machine upgrades, new product flow control systems and environmental health and safety. Additional expenditures are forecast for regional sales office leases, vehicles used by marketing representatives and miscellaneous information technology requirements.

11. Professional Fees

These projected disbursements include payments to JTIM's legal advisors for corporate litigation matters.

12. Restructuring Costs

These projected disbursements include payments to JTIM's legal advisors for specialist restructuring advice, the fees and costs of the Monitor and its counsel and the fees and costs of the Chief Restructuring Officer.

Court File No. 19-CV-615862-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c.C-36 AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO JTI-MACDONALD CORP.

FOURTH REPORT OF THE MONITOR
JUNE 21, 2019

INTRODUCTION

1. On March 8, 2019, JTI-Macdonald Corp. ("**JTIM**" or the "**Applicant**") filed for and obtained protection under the *Companies' Creditors Arrangement Act* (the "**CCAA**"). Pursuant to the Order of this Court granted on the same date (the "**Original Initial Order**"), Deloitte Restructuring Inc. was appointed as the Monitor in these proceedings (in such capacity, the "**Monitor**"). The Original Initial Order provided for a stay of proceedings (the "**Stay**") in respect of, among other parties, the Applicant, until and including April 5, 2019 (the "**Stay Period**"). The Original Initial Order provided that the Stay could be lifted with leave of the Court or on the consent of the Applicant and the Monitor. The proceedings commenced by the Applicant under the CCAA will be referred to herein as the "**CCAA Proceedings**".

2. On March 19, 2019, the Court issued an endorsement (the "**March 19 Endorsement**") suspending the payments of principal and interest, in respect of certain secured

JTI-Macdonald Corp.
27-week Revised Cash Flow Statement
$CAD '000, unaudited

For the week beginning	Notes	17-Jun-19	24-Jun-19	1-Jul-19	8-Jul-19	15-Jul-19	22-Jul-19	29-Jul-19	5-Aug-19	12-Aug-19	19-Aug-19	26-Aug-19	2-Sep-19	9-Sep-19	16-Sep-19	23-Sep-19	30-Sep-19	7-Oct-19	14-Oct-19	21-Oct-19	28-Oct-19	4-Nov-19	11-Nov-19	18-Nov-19	25-Nov-19	2-Dec-19	9-Dec-19	16-Dec-19	27-week Total to December 20, 2019
Receipts																												
Sales	2	26,201	26,201	26,403	26,403	26,403	26,403	26,617	23,944	23,944	23,944	23,944	22,309	24,787	24,787	24,787	24,639	24,623	23,623	24,623	22,867	21,637	21,637	21,637	21,637	27,026	27,026	27,026	665,077
Intercompany Receipts	3	4,552	5,982	4,326	4,326	6,660	4,326	4,431	4,588	4,588	4,820	4,588	2,808	3,510	3,820	3,510	4,754	5,065	6,556	5,065	5,202	5,751	5,751	8,171	5,751	4,018	4,018	6,418	133,358
Tax Refunds	4	1,000	-	-	-	1,000	-	-	-	1,000	-	-	-	-	1,000	-	-	-	1,000	-	-	-	1,000	-	-	-	-	1,000	7,000
Other Receipts	5	-	-	160	-	-	-	190	-	-	-	-	230	-	-	-	265	-	-	-	280	-	-	-	-	340	-	-	1,465
Total Receipts		**31,753**	**32,183**	**30,890**	**30,730**	**34,063**	**30,730**	**31,238**	**28,532**	**29,532**	**28,764**	**28,532**	**25,346**	**28,297**	**29,607**	**28,297**	**29,658**	**29,688**	**31,179**	**29,688**	**28,349**	**27,388**	**28,388**	**29,808**	**27,388**	**31,385**	**31,045**	**34,444**	**806,900**
Disbursement																												
General Expenses	6	2,250	2,250	2,826	2,826	2,826	2,826	2,605	2,273	2,273	2,273	2,273	1,600	2,000	2,000	2,000	1,945	1,932	1,545	1,932	1,950	2,024	2,024	2,024	2,024	2,125	2,125	2,125	58,875
Payroll and Benefits	7	2,345	445	1,845	445	1,845	945	1,845	445	1,845	945	1,845	445	1,845	945	1,845	445	1,845	445	2,345	445	1,845	445	2,345	445	1,845	445	2,345	35,115
Pension	8	967	-	200	-	967	-	200	-	967	-	200	-	200	767	200	-	200	767	200	-	200	767	200	-	200	-	1,041	8,243
Promotions and Marketing	9	2,067	2,067	3,244	3,244	3,244	3,244	2,696	1,873	1,873	1,873	1,873	2,413	3,016	3,016	3,016	2,573	2,462	1,970	2,462	2,435	2,328	2,328	2,328	2,328	6,037	6,037	6,037	78,086
Leaf	10	310	-	-	-	310	-	-	-	303	-	-	-	-	197	-	-	-	413	-	-	-	4,537	-	-	-	-	-	6,069
Capital Expenditures and Leases	11	-	512	-	-	-	-	1,935	-	-	-	103	-	-	-	-	7,947	-	-	-	1,597	-	-	-	2,730	-	-	-	14,824
Professional Fees	12	170	170	84	84	84	84	49	39	39	39	39	39	39	39	39	32	32	32	32	25	25	25	25	25	32	32	32	1,389
Restructuring Costs	13	164	-	125	-	606	100	100	208	531	208	100	208	531	208	100	100	225	531	225	100	208	531	208	100	208	531	208	6,362
Domestic and Import Duty	14	-	43,398	-	-	(450)	-	41,099	-	-	-	42,919	-	-	-	30,832	-	-	-	-	40,143	-	-	-	44,919	-	-	-	242,860
GST and HST	15	-	6,957	-	-	-	-	5,748	-	-	-	6,974	-	-	-	5,801	-	-	-	-	5,358	-	-	-	6,384	-	-	-	37,222
Intercompany Disbursements	16	7,026	7,625	4,855	4,855	5,582	4,855	6,561	6,343	6,343	6,032	7,450	5,219	6,524	7,083	6,524	5,640	4,035	3,949	4,035	5,762	7,133	7,133	7,547	8,237	7,405	7,405	10,590	171,749
Intercompany Royalties	17	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Intercompany Interest	18	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Intercompany Principal	18	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Income Tax Instalments and PTT	19	-	2,770	-	1,500	-	-	2,770	1,500	-	-	2,770	-	1,500	-	2,770	-	1,500	-	-	2,770	1,500	-	-	2,770	-	1,500	-	25,620
Total Disbursements		**15,299**	**66,194**	**13,179**	**12,954**	**15,015**	**12,054**	**65,607**	**12,681**	**14,174**	**11,370**	**66,546**	**9,924**	**15,655**	**14,255**	**53,127**	**18,683**	**12,232**	**9,653**	**11,232**	**60,586**	**15,263**	**17,791**	**14,677**	**69,962**	**17,851**	**18,075**	**22,377**	**686,413**
Cashflow Surplus/Deficit (-)		**16,454**	**(34,011)**	**17,710**	**17,775**	**19,049**	**18,675**	**(34,369)**	**15,851**	**15,358**	**17,394**	**(38,014)**	**15,423**	**12,642**	**15,352**	**(24,830)**	**10,976**	**17,456**	**21,526**	**18,456**	**(32,237)**	**12,125**	**10,597**	**15,131**	**(42,574)**	**13,534**	**12,970**	**12,068**	**120,487**
Opening Cash Balance	1	**149,098**	**165,552**	**131,541**	**149,251**	**167,027**	**186,076**	**204,751**	**170,382**	**186,234**	**201,591**	**218,985**	**180,971**	**196,394**	**209,035**	**224,387**	**199,557**	**210,533**	**227,989**	**249,515**	**267,971**	**235,735**	**247,860**	**258,457**	**273,588**	**231,014**	**244,547**	**257,517**	**149,098**
Closing Cash Balance		**165,552**	**131,541**	**149,251**	**167,027**	**186,076**	**204,751**	**170,382**	**186,234**	**201,591**	**218,985**	**180,971**	**196,394**	**209,035**	**224,387**	**199,557**	**210,533**	**227,989**	**249,515**	**267,971**	**235,735**	**247,860**	**258,457**	**273,588**	**231,014**	**244,547**	**257,517**	**269,585**	**269,585**
Cash Collateral pledged to Citibank	20																												
Opening Balance		8,900	8,900	8,900	8,900	8,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	8,900
Cash Collateral Deposit / (Withdrawal)		-	-	-	-	3,000	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	3,000
Closing Balance		**8,900**	**8,900**	**8,900**	**8,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**
Closing Cash net of Cash Collateral		**156,652**	**122,641**	**140,351**	**158,127**	**174,176**	**192,851**	**158,482**	**174,334**	**189,691**	**207,085**	**169,071**	**184,494**	**197,135**	**212,487**	**187,657**	**198,633**	**216,089**	**237,615**	**256,071**	**223,835**	**235,960**	**246,557**	**261,688**	**219,114**	**232,647**	**245,617**	**257,685**	**257,685**

8. Pension

These projected disbursements represent payments to JTIM's registered employees plan, registered executive employees plan and the executive supplemental benefit plan. The pension amounts forecast in the cash flow include all current and special obligation amounts.

9. Promotions and Marketing

These projected disbursements relate to the various marketing and promotional initiatives, such as inventory support programs and brand support programs. Initiatives are generally paid 30 days in arrears or via quarterly installments.

10. Leaf

These projected disbursements represent payments to third party suppliers of tobacco leaf. Third party purchases are used in circumstances where JTI-SA does not have a specific grade of tobacco available at the time required to meet the plant's tobacco blend requirements to reduce disruptions in the production process.

11. Capital Expenditures and Leases

These projected disbursements relate to capital expenditures for plant and equipment purchases at the Montreal production facility. These capital expenditures primarily relate to new plain packaging machinery for statutory compliance, machine upgrades, new product flow control systems and environmental health and safety. Additional expenditures are forecast for regional sales office leases, vehicles used by marketing representatives and miscellaneous information technology requirements.

12. Professional Fees

These projected disbursements include payments to JTIM's legal advisors for corporate matters.

Court File No. CV-19-615862-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c.C-36 AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO JTI-MACDONALD CORP.

FIFTH REPORT OF THE MONITOR

September 25, 2019

JTI-Macdonald Corp.
25-week Revised Cash Flow Statement
$CAD '000, unaudited

For the week beginning	Notes	16-Sep-19	23-Sep-19	30-Sep-19	7-Oct-19	14-Oct-19	21-Oct-19	28-Oct-19	4-Nov-19	11-Nov-19	18-Nov-19	25-Nov-19	2-Dec-19	9-Dec-19	16-Dec-19	23-Dec-19	30-Dec-19	6-Jan-20	13-Jan-20	20-Jan-20	27-Jan-20	3-Feb-20	10-Feb-20	17-Feb-20	24-Feb-20	2-Mar-20	25-week Total to March 6, 2020
Receipts																											
Sales	2	24,787	24,787	24,639	24,623	23,623	24,623	22,867	21,637	21,637	21,637	21,637	27,026	27,026	27,026	18,864	8,108	6,067	30,333	30,333	30,333	18,750	18,750	18,750	18,750	22,727	559,340
Intercompany Receipts	3	3,820	3,510	4,754	5,065	6,556	5,065	5,202	5,751	5,751	8,171	5,751	4,018	4,018	6,418	2,411	1,607	5,091	3,984	3,636	3,636	3,864	3,864	6,066	3,864	6,705	118,580
Tax Refunds	4	1,000	-	-	-	1,000	-	-	-	1,000	-	-	-	-	1,000	-	-	-	1,000	-	-	-	-	1,000	-	-	6,000
Other Receipts	5	-	-	265	-	-	-	280	-	-	-	-	340	-	-	-	350	-	-	-	-	380	-	-	-	400	2,015
Total Receipts		**29,607**	**28,297**	**29,658**	**29,688**	**31,179**	**29,688**	**28,349**	**27,388**	**28,388**	**29,808**	**27,388**	**31,385**	**31,045**	**34,444**	**21,275**	**10,065**	**11,158**	**35,318**	**33,970**	**33,970**	**22,994**	**22,614**	**25,816**	**22,614**	**29,832**	**685,934**
Disbursement																											
General Expenses	6	2,000	2,000	1,945	1,932	1,545	1,932	1,950	2,024	2,024	2,024	2,024	2,125	2,125	2,125	1,275	850	2,673	1,909	1,909	1,909	1,625	1,625	1,625	1,625	1,818	46,618
Payroll and Benefits	7	945	1,845	445	1,845	445	2,345	445	1,845	445	2,345	445	1,845	445	2,345	445	1,845	445	1,845	945	1,845	445	1,845	945	1,845	445	30,925
Pension	8	617	200	-	200	511	200	-	200	510	200	-	200	-	774	-	200	-	691	-	200	-	200	491	200	-	5,593
Promotions and Marketing	9	3,016	3,016	2,573	2,462	1,970	2,462	2,435	2,328	2,328	2,328	2,328	6,037	6,037	6,037	3,622	2,415	1,305	932	932	932	1,375	1,375	1,375	1,375	2,159	63,154
Leaf	10	197	-	-	-	413	-	-	-	4,537	-	-	-	-	-	-	-	-	1,100	-	-	-	-	-	-	-	6,247
Capital Expenditures and Leases	11	-	-	7,947	-	-	-	1,597	-	-	-	2,730	-	-	-	-	589	-	-	-	-	-	-	-	-	-	12,863
Professional Fees	12	39	39	42	42	42	42	38	38	38	38	38	46	46	46	46	-	59	29	29	29	30	30	30	30	29	918
Restructuring Costs	13	108	-	-	133	479	133	-	125	524	125	-	125	524	125	-	-	242	260	242	-	242	260	242	-	258	4,147
Domestic and Import Duty	14	-	30,832	-	-	-	-	40,143	-	-	-	44,919	-	-	-	-	31,218	-	-	-	27,849	-	-	-	49,000	-	223,960
GST and HST	15	-	5,801	-	-	-	-	5,358	-	-	-	6,384	-	-	-	-	4,793	-	-	-	6,040	-	-	-	5,000	-	33,376
Intercompany Disbursements	16	7,083	6,524	5,640	4,035	3,949	4,035	5,762	7,133	7,133	7,547	8,237	7,405	7,405	10,590	4,443	4,065	7,445	6,112	5,318	6,422	5,875	5,875	6,669	6,978	6,250	157,932
Intercompany Royalties	17	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Intercompany Interest	18	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Intercompany Principal	18	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Income Tax Instalments and PTT	19	-	2,770	-	1,500	-	-	2,770	1,500	-	-	2,770	-	1,500	-	-	2,770	1,500	-	-	2,770	-	1,500	-	2,770	-	24,120
Total Disbursements		**14,005**	**53,027**	**18,593**	**12,149**	**9,354**	**11,149**	**60,499**	**15,194**	**17,539**	**14,608**	**69,875**	**17,784**	**18,083**	**22,043**	**9,831**	**48,745**	**13,669**	**12,878**	**9,376**	**47,995**	**9,592**	**12,709**	**11,377**	**68,823**	**10,959**	**609,854**
Cashflow Surplus/Deficit (-)		**15,602**	**(24,730)**	**11,065**	**17,538**	**21,825**	**18,538**	**(32,149)**	**12,194**	**10,849**	**15,200**	**(42,487)**	**13,601**	**12,962**	**12,402**	**11,444**	**(38,679)**	**(2,511)**	**22,440**	**24,594**	**(14,026)**	**13,402**	**9,904**	**14,439**	**(46,210)**	**18,873**	**76,080**
Opening Cash Balance	1	**224,242**	**239,844**	**215,114**	**226,179**	**243,718**	**265,542**	**284,081**	**251,931**	**264,126**	**274,975**	**290,175**	**247,688**	**261,289**	**274,251**	**286,652**	**298,096**	**259,417**	**256,906**	**279,346**	**303,940**	**289,914**	**303,316**	**313,220**	**327,659**	**281,449**	**224,242**
Closing Cash Balance		**239,844**	**215,114**	**226,179**	**243,718**	**265,542**	**284,081**	**251,931**	**264,126**	**274,975**	**290,175**	**247,688**	**261,289**	**274,251**	**286,652**	**298,096**	**259,417**	**256,906**	**279,346**	**303,940**	**289,914**	**303,316**	**313,220**	**327,659**	**281,449**	**300,322**	**300,322**
Cash Collateral pledged to Citibank	20																										
Opening Balance		11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900
Cash Collateral Deposit / (Withdrawal)		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Closing Balance		**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**
Closing Cash net of Cash Collateral		**227,944**	**203,214**	**214,279**	**231,818**	**253,642**	**272,181**	**240,031**	**252,226**	**263,075**	**278,275**	**235,788**	**249,389**	**262,351**	**274,752**	**286,196**	**247,517**	**245,006**	**267,446**	**292,040**	**278,014**	**291,416**	**301,320**	**315,759**	**269,549**	**288,422**	**288,422**

8. Pension

These projected disbursements represent payments to JTIM's registered employees plan, registered executive employees plan and the executive supplemental benefit plan. The pension amounts forecast in the cash flow include all current and special obligation amounts.

9. Promotions and Marketing

These projected disbursements relate to the various marketing and promotional initiatives, such as inventory support programs and brand support programs. Initiatives are generally paid 30 days in arrears or via quarterly installments.

10. Leaf

These projected disbursements represent payments to third party suppliers of tobacco leaf. Third party purchases are used in circumstances where JTI-SA does not have a specific grade of tobacco available at the time required to meet the plant's tobacco blend requirements to reduce disruptions in the production process.

11. Capital Expenditures and Leases

These projected disbursements relate to capital expenditures for plant and equipment purchases at the Montreal production facility. These capital expenditures include investments in new plain packaging machinery for statutory compliance, machine upgrades, new product flow control systems and environmental health and safety. Additional expenditures are forecast for regional sales office leases, vehicles used by marketing representatives and miscellaneous information technology requirements.

12. Professional Fees

These projected disbursements include payments to JTIM's legal advisors for corporate matters.

Court File No. CV-19-615862-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c.C-36 AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO JTI-MACDONALD CORP.

SEVENTH REPORT OF THE MONITOR
February 13, 2020

JTI-Macdonald Corp.
35-week Revised Cash Flow Statement
$CAD '000, unaudited

For the week beginning	Notes	3-Feb-20	10-Feb-20	17-Feb-20	24-Feb-20	2-Mar-20	9-Mar-20	16-Mar-20	23-Mar-20	30-Mar-20	6-Apr-20	13-Apr-20	20-Apr-20	27-Apr-20	4-May-20	11-May-20	18-May-20	25-May-20	1-Jun-20	8-Jun-20	15-Jun-20
Receipts																					
Sales	2	19,938	16,846	16,358	18,014	27,846	15,533	18,343	21,246	21,683	23,322	24,250	23,158	23,632	24,091	24,428	30,251	22,651	25,207	25,372	25,553
Intercompany Receipts	3	4,048	4,048	4,469	4,166	5,019	4,907	6,125	4,907	5,275	5,521	10,034	5,521	5,509	5,462	6,704	5,462	5,462	4,600	4,600	7,506
Tax Refunds	4	-	1,200	-	-	1,200	-	-	-	1,200	-	-	-	1,200	-	-	-	-	1,200	-	-
Other Receipts	5	200	80	60	120	300	80	60	120	330	80	60	120	350	80	60	120	-	380	80	60
Total Receipts		**24,186**	**22,174**	**20,887**	**22,300**	**34,365**	**20,520**	**24,528**	**26,273**	**28,488**	**28,923**	**34,344**	**28,799**	**30,691**	**29,633**	**31,192**	**35,833**	**28,113**	**31,387**	**30,052**	**33,118**
Disbursement																					
General Expenses	6	1,500	1,500	1,500	1,500	1,591	1,591	1,591	1,591	1,591	1,591	1,591	1,591	1,558	1,429	1,429	1,429	1,429	1,250	1,250	1,250
Payroll and Benefits	7	617	1,897	10,947	1,897	617	1,897	947	1,897	447	2,067	447	2,397	447	2,067	447	2,397	447	2,067	447	1,897
Pension	8	-	150	561	150	-	150	561	150	-	150	561	150	-	150	561	150	-	150	-	711
Promotions and Marketing	9	2,139	2,139	2,139	2,139	1,969	1,969	1,969	1,969	2,316	2,548	2,548	2,548	2,467	2,143	2,143	2,143	2,143	1,919	1,919	1,919
Leaf	10	-	-	463	-	-	-	687	-	-	-	610	-	-	-	265	-	-	-	-	40
Capital Expenditures	11	-	-	2,502	-	-	-	1,856	-	-	-	688	-	-	-	1,759	-	-	-	-	704
Professional Fees	12	-	-	-	152	-	-	-	-	145	-	-	-	145	-	-	-	145	-	-	-
Restructuring Costs	13	1,054	-	-	-	1,014	-	-	-	1,014	-	-	-	1,014	-	-	-	-	1,014	-	-
Domestic and Import Duty	14	-	-	-	33,250	-	-	-	250	40,392	-	-	-	46,711	-	-	-	46,668	-	-	-
GST and HST	15	-	-	-	3,000	-	-	-	-	4,116	-	-	-	4,855	-	-	-	5,943	-	-	-
Intercompany Disbursements	16	3,921	3,921	5,514	4,383	4,688	4,688	6,401	4,688	5,683	6,237	7,631	6,237	6,527	7,355	9,255	7,355	7,421	6,638	6,638	7,963
Intercompany Royalties	17	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Intercompany Interest	18	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Intercompany Principal	18	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Income Tax Instalments and PTT	19	1,200	300	-	6,230	-	1,200	300	-	2,655	1,200	300	-	2,655	1,200	300	-	2,655	-	1,200	300
Total Disbursements		**10,431**	**9,907**	**23,627**	**52,702**	**9,878**	**11,494**	**14,311**	**10,544**	**58,360**	**13,793**	**14,376**	**12,923**	**66,379**	**14,343**	**16,158**	**13,473**	**66,850**	**13,037**	**11,453**	**14,784**
Cashflow Surplus/Deficit (-)		**13,755**	**12,267**	**(2,740)**	**(30,402)**	**24,487**	**9,026**	**10,218**	**15,728**	**(29,871)**	**15,130**	**19,968**	**15,876**	**(35,688)**	**15,290**	**15,034**	**22,360**	**(38,737)**	**18,350**	**18,599**	**18,334**
Opening Cash Balance	1	297,939	311,693	323,960	321,221	290,819	315,306	324,332	334,550	350,278	320,407	335,536	355,504	371,380	335,692	350,982	366,016	388,376	349,639	367,989	386,587
Closing Cash Balance		**311,693**	**323,960**	**321,221**	**290,819**	**315,306**	**324,332**	**334,550**	**350,278**	**320,407**	**335,536**	**355,504**	**371,380**	**335,692**	**350,982**	**366,016**	**388,376**	**349,639**	**367,989**	**386,587**	**404,921**
Cash Collateral pledged to Citibank	20																				
Opening Balance		11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900
Cash Collateral Deposit / (Withdrawal)		-	-	-	-		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Closing Balance		**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**
Closing Cash net of Cash Collateral		**299,793**	**312,060**	**309,321**	**278,919**	**303,406**	**312,432**	**322,650**	**338,378**	**308,507**	**323,636**	**343,604**	**359,480**	**323,792**	**339,082**	**354,116**	**376,476**	**337,739**	**356,089**	**374,687**	**393,021**

JTI-Macdonald Corp.
35-week Revised Cash Flow Statement
$CAD '000, unaudited

For the week beginning	Notes	22-Jun-20	29-Jun-20	6-Jul-20	13-Jul-20	20-Jul-20	27-Jul-20	3-Aug-20	10-Aug-20	17-Aug-20	24-Aug-20	31-Aug-20	7-Sep-20	14-Sep-20	21-Sep-20	28-Sep-20	35-week Total to October 2, 2020
Receipts																	
Sales	2	28,159	28,216	24,022	26,047	26,063	26,048	28,552	23,446	25,745	25,611	25,450	31,460	22,727	24,832	24,583	838,683
Intercompany Receipts	3	4,600	4,832	4,987	7,538	4,987	4,987	2,570	2,570	2,978	2,570	4,194	4,600	5,803	4,600	4,846	176,013
Tax Refunds	4	-	1,200	-	-	-	-	1,200	-	-	-	1,200	-	-	-	1,200	10,800
Other Receipts	5	120	425	80	60	120	-	470	80	60	120	495	80	60	120	560	5,590
Total Receipts		**32,880**	**34,674**	**29,090**	**33,645**	**31,170**	**31,035**	**32,792**	**26,097**	**28,783**	**28,301**	**31,339**	**36,141**	**28,590**	**29,553**	**31,189**	**1,031,086**
Disbursement																	
General Expenses	6	1,250	1,609	1,848	1,848	1,848	1,848	1,548	1,548	1,548	1,548	1,738	1,786	1,786	1,786	1,890	55,175
Payroll and Benefits	7	947	1,897	617	1,897	947	1,897	617	1,897	947	1,897	447	2,067	447	2,397	447	55,655
Pension	8	-	150	-	711	-	150	-	150	561	150	-	150	561	150	-	7,038
Promotions and Marketing	9	1,919	2,546	2,965	2,965	2,965	2,965	1,924	1,924	1,924	1,924	2,179	2,243	2,243	2,243	2,328	78,445
Leaf	10	-	-	-	153	-	-	-	-	574	-	-	-	503	-	-	3,294
Capital Expenditures	11	-	-	-	1,155	-	-	-	-	2,801	-	-	-	2,690	-	-	14,154
Professional Fees	12	-	145	-	-	-	145	-	-	-	-	145	-	-	-	145	1,165
Restructuring Costs	13	-	1,014	-	-	-	-	1,014	-	-	-	1,054	-	-	-	1,014	9,206
Domestic and Import Duty	14	-	41,408	-	-	-	46,479	-	-	-	31,670	-	-	-	-	31,717	318,544
GST and HST	15	-	5,914	-	-	-	7,185	-	-	-	6,775	-	-	-	-	6,169	43,957
Intercompany Disbursements	16	6,638	6,077	5,594	6,799	5,594	5,660	6,945	6,945	8,436	6,945	3,958	3,129	4,549	3,129	4,284	207,825
Intercompany Royalties	17	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Intercompany Interest	18	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Intercompany Principal	18	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Income Tax Instalments and PTT	19	-	2,655	1,200	300	-	2,655	1,200	300	-	2,655	-	1,200	300	-	2,655	36,815
Total Disbursements		**10,753**	**63,415**	**12,224**	**15,828**	**11,354**	**68,983**	**13,248**	**12,764**	**16,791**	**53,564**	**9,521**	**10,575**	**13,078**	**9,705**	**50,648**	**831,274**
Cashflow Surplus/Deficit (-)		**22,126**	**(28,741)**	**16,866**	**17,817**	**19,817**	**(37,948)**	**19,545**	**13,333**	**11,992**	**(25,263)**	**21,818**	**25,566**	**15,512**	**19,848**	**(19,459)**	**199,812**
Opening Cash Balance	1	404,921	427,048	398,306	415,172	432,989	452,806	414,858	434,403	447,736	459,728	434,465	456,283	481,850	497,362	517,210	297,939
Closing Cash Balance		**427,048**	**398,306**	**415,172**	**432,989**	**452,806**	**414,858**	**434,403**	**447,736**	**459,728**	**434,465**	**456,283**	**481,850**	**497,362**	**517,210**	**497,751**	**497,751**
Cash Collateral pledged to Citibank	20																
Opening Balance		11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900
Cash Collateral Deposit / (Withdrawal)		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Closing Balance		**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**
Closing Cash net of Cash Collateral		**415,148**	**386,406**	**403,272**	**421,089**	**440,906**	**402,958**	**422,503**	**435,836**	**447,828**	**422,565**	**444,383**	**469,950**	**485,462**	**505,310**	**485,851**	**485,851**

8. Pension

These projected disbursements represent payments to JTIM's registered employees plan, registered executive employees plan and the executive supplemental benefit plan. The pension amounts forecast in the cash flow include all current and special obligation amounts.

9. Promotions and Marketing

These projected disbursements relate to the various marketing and promotional initiatives, such as inventory support programs and brand support programs. Initiatives are generally paid 30 days in arrears or via quarterly installments.

10. Leaf

These projected disbursements represent payments to third party suppliers of tobacco leaf. Third party purchases are used in circumstances where JTI-SA does not have a specific grade of tobacco available at the time required to meet the plant's tobacco blend requirements to reduce disruptions in the production process.

11. Capital Expenditures

These projected disbursements relate to capital expenditures for plant and equipment purchases at the Montreal production facility. These capital expenditures include investments in new plain packaging machinery for statutory compliance, machine upgrades, new product flow control systems and environmental health and safety.

12. Professional Fees

These projected disbursements include payments to JTIM's legal advisors for corporate matters.

Court File No. CV-19-615862-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c.C-36 AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO JTI-MACDONALD CORP.

EIGHTH REPORT OF THE MONITOR
September 18, 2020

JTI-Macdonald Corp.
30-week Revised Cash Flow Statement
$CAD '000, unaudited

For the week beginning	Notes	7-Sep-20	14-Sep-20	21-Sep-20	28-Sep-20	5-Oct-20	12-Oct-20	19-Oct-20	26-Oct-20	2-Nov-20	9-Nov-20	16-Nov-20	23-Nov-20	30-Nov-20	7-Dec-20	14-Dec-20	21-Dec-20
Receipts																	
Sales	2	29,806	21,816	23,731	23,374	23,309	28,657	21,107	22,919	22,543	22,390	20,328	19,952	19,575	20,199	28,415	40,945
Intercompany Receipts	3	3,023	3,815	5,291	4,401	5,334	4,303	5,334	10,450	4,491	4,491	4,612	6,698	4,742	4,804	4,840	7,572
Tax Refunds	4	3,000	-	-	381	-	4,290	-	261	-	-	1,200	261	-	-	1,200	-
Other Receipts	5	60	35	60	35	60	35	60	-	35	60	35	60	35	60	35	60
Total Receipts		**35,889**	**25,666**	**29,082**	**28,191**	**28,703**	**37,285**	**26,501**	**33,630**	**27,068**	**26,941**	**26,175**	**26,971**	**24,351**	**25,064**	**34,491**	**48,577**
Disbursement																	
General Expenses	6	1,371	1,371	1,371	1,867	2,095	2,095	2,095	2,095	1,333	1,333	1,333	1,333	2,152	2,357	2,357	2,357
Payroll and Benefits	7	1,855	455	1,855	620	1,855	455	1,855	455	2,020	455	1,855	455	2,020	455	1,855	455
Pension	8	160	624	160	-	160	624	160	-	160	-	784	-	160	-	827	-
Promotions and Marketing	9	2,292	2,865	2,865	3,252	3,833	3,067	3,833	3,833	2,517	2,517	2,517	2,517	4,376	4,841	4,841	3,873
Leaf	10	-	-	-	-	-	-	-	-	-	-	1,239	-	-	-	-	-
Capital Expenditures	11	164	164	164	164	336	336	336	336	250	250	250	250	264	264	264	264
Professional Fees	12	27	27	27	27	27	27	27	27	27	27	27	27	27	27	27	27
Restructuring Costs	13	267	267	267	267	278	278	278	278	220	220	220	220	220	321	321	321
Domestic and Import Duty	14	-	-	-	35,066	-	-	-	47,658	-	-	-	38,350	-	-	-	-
GST and HST	15	-	-	-	7,023	-	-	-	7,559	-	-	-	7,174	-	-	-	-
Intercompany Disbursements	16	5,793	7,315	7,242	7,756	4,957	3,966	5,030	6,380	6,923	6,923	6,996	8,287	6,085	5,876	5,949	6,570
Intercompany Royalties	17	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Intercompany Interest	18	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Intercompany Principal	18	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Income Tax Instalments and PTT	19	2,000	-	-	2,655	2,200	-	-	2,655	-	3,500	-	2,655	-	2,100	-	-
Total Disbursements		**13,929**	**13,088**	**13,951**	**58,696**	**15,742**	**10,848**	**13,615**	**71,277**	**13,451**	**15,226**	**15,221**	**61,269**	**15,305**	**16,241**	**16,441**	**13,867**
Cashflow Surplus/Deficit (-)		**21,960**	**12,579**	**15,131**	**(30,505)**	**12,961**	**26,438**	**12,887**	**(37,647)**	**13,618**	**11,715**	**10,953**	**(34,298)**	**9,046**	**8,822**	**18,049**	**34,710**
Opening Cash Balance	1	536,129	558,089	570,668	585,799	555,294	568,255	594,692	607,579	569,932	583,550	595,265	606,218	571,920	580,966	589,788	607,837
Closing Cash Balance		**558,089**	**570,668**	**585,799**	**555,294**	**568,255**	**594,692**	**607,579**	**569,932**	**583,550**	**595,265**	**606,218**	**571,920**	**580,966**	**589,788**	**607,837**	**642,547**
Cash Collateral pledged to Citibank	20																
Opening Balance		11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900
Cash Collateral Deposit / (Withdrawal)		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Closing Balance		**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**
Closing Cash net of Cash Collateral		**546,189**	**558,768**	**573,899**	**543,394**	**556,355**	**582,792**	**595,679**	**558,032**	**571,650**	**583,365**	**594,318**	**560,020**	**569,066**	**577,888**	**595,937**	**630,647**

JTI-Macdonald Corp.
30-week Revised Cash Flow Statement
$CAD '000, unaudited

For the week beginning	Notes	28-Dec-20	4-Jan-21	11-Jan-21	18-Jan-21	25-Jan-21	1-Feb-21	8-Feb-21	15-Feb-21	22-Feb-21	1-Mar-21	8-Mar-21	15-Mar-21	22-Mar-21	29-Mar-21	30-week Total to April 2, 2021
Receipts																
Sales	2	15,216	19,265	18,632	19,025	19,425	19,794	18,945	20,612	21,023	21,460	21,868	22,272	22,668	22,621	671,892
Intercompany Receipts	3	2,883	3,250	4,245	3,286	4,058	4,000	4,000	4,166	4,608	4,783	4,783	6,663	5,613	5,142	145,679
Tax Refunds	4	261	-	1,200	-	261	-	-	1,200	261	-	-	1,200	-	261	15,237
Other Receipts	5	60	35	35	60	-	35	60	35	60	35	60	35	60	-	1,295
Total Receipts		**18,419**	**22,550**	**24,112**	**22,371**	**23,744**	**23,829**	**23,005**	**26,013**	**25,952**	**26,278**	**26,711**	**30,169**	**28,341**	**28,025**	**834,104**
Disbursement																
General Expenses	6	1,414	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,478	1,478	1,478	1,478	1,505	49,752
Payroll and Benefits	7	2,020	455	1,855	455	2,020	455	1,855	455	12,020	455	1,855	455	2,020	455	45,805
Pension	8	160	-	890	-	160	-	160	730	160	-	160	730	160	-	7,129
Promotions and Marketing	9	2,905	1,900	1,900	1,900	1,900	2,150	2,150	2,150	2,150	1,891	1,891	1,891	1,891	1,237	81,744
Leaf	10	-	-	-	-	-	-	-	-	-	-	-	2,780	-	-	4,019
Capital Expenditures	11	264	200	200	200	200	163	163	163	163	140	140	140	140	140	6,471
Professional Fees	12	27	27	27	27	27	27	27	27	27	27	27	27	27	27	810
Restructuring Costs	13	321	275	275	275	275	275	275	275	275	275	275	275	275	275	8,142
Domestic and Import Duty	14	41,460	-	-	-	40,100	-	-	-	32,145	-	-	-	-	43,205	277,984
GST and HST	15	6,069	-	-	-	2,100	-	-	-	4,500	-	-	-	-	7,500	41,925
Intercompany Disbursements	16	3,526	5,500	5,500	5,573	6,927	4,000	4,000	4,073	6,157	4,565	4,565	4,638	6,593	5,285	172,948
Intercompany Royalties	17	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Intercompany Interest	18	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Intercompany Principal	18	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Income Tax Instalments and PTT	19	2,655	3,100	-	-	3,645	-	2,000	-	14,955	-	2,500	-	-	3,645	50,265
Total Disbursements		**60,821**	**12,957**	**12,147**	**9,930**	**58,854**	**8,570**	**12,130**	**9,373**	**74,052**	**8,832**	**12,892**	**12,415**	**12,585**	**63,273**	**746,995**
Cashflow Surplus/Deficit (-)		**(42,402)**	**9,593**	**11,965**	**12,441**	**(35,110)**	**15,259**	**10,876**	**16,641**	**(48,099)**	**17,446**	**13,819**	**17,754**	**15,756**	**(35,249)**	**87,109**
Opening Cash Balance	1	642,547	600,145	609,738	621,703	634,144	599,034	614,293	625,169	641,810	593,711	611,157	624,976	642,730	658,486	536,129
Closing Cash Balance		**600,145**	**609,738**	**621,703**	**634,144**	**599,034**	**614,293**	**625,169**	**641,810**	**593,711**	**611,157**	**624,976**	**642,730**	**658,486**	**623,238**	**623,238**
Cash Collateral pledged to Citibank	20															
Opening Balance		11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900
Cash Collateral Deposit / (Withdrawal)		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Closing Balance		**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**
Closing Cash net of Cash Collateral		**588,245**	**597,838**	**609,803**	**622,244**	**587,134**	**602,393**	**613,269**	**629,910**	**581,811**	**599,257**	**613,076**	**630,830**	**646,586**	**611,338**	**611,338**

8. Pension

These projected disbursements represent payments to JTIM's registered employees plan, registered executive employees plan and the executive supplemental benefit plan. The pension amounts forecast in the cash flow include all current and special obligation amounts.

9. Promotions and Marketing

These projected disbursements relate to the various marketing and promotional initiatives, such as inventory support programs and brand support programs. Initiatives are generally paid 30 days in arrears or via quarterly installments.

10. Leaf

These projected disbursements represent payments to third party suppliers of tobacco leaf. Third party purchases are used in circumstances where JTI-SA does not have a specific grade of tobacco available at the time required to meet the plant's tobacco blend requirements to reduce disruptions in the production process.

11. Capital Expenditures

These projected disbursements relate to capital expenditures for plant and equipment purchases at the Montreal production facility. These capital expenditures include investments in new plain packaging machinery for statutory compliance, machine upgrades, new product flow control systems and environmental health and safety.

12. Professional Fees

These projected disbursements include payments to JTIM's legal advisors for corporate matters.

Court File No. CV-19-615862-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c.C-36 AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO JTI-MACDONALD CORP.

NINTH REPORT OF THE MONITOR
March 22, 2021

JTI-Macdonald Corp.
30-week Revised Cash Flow Statement
$CAD '000, unaudited

For the week beginning	Notes	8-Mar-21	15-Mar-21	22-Mar-21	29-Mar-21	5-Apr-21	12-Apr-21	19-Apr-21	26-Apr-21	3-May-21	10-May-21	17-May-21	24-May-21	31-May-21	7-Jun-21	14-Jun-21
Receipts																
Sales	2	21,123	21,605	25,595	23,101	21,945	26,136	26,639	27,123	26,025	29,242	26,805	23,070	27,663	28,015	32,353
Intercompany Receipts	3	5,088	5,340	5,071	4,725	8,410	7,892	6,598	6,655	5,936	6,001	6,766	4,805	5,504	5,396	6,994
Tax Refunds	4	-	1,461	-	3,428	3,272	1,200	261	-	-	1,200	261	-	-	-	1,200
Other Receipts	5	69	13	28	63	69	13	-	28	63	69	13	28	63	69	13
Total Receipts		**26,280**	**28,420**	**30,695**	**31,317**	**33,697**	**35,241**	**33,498**	**33,806**	**32,023**	**36,512**	**33,844**	**27,903**	**33,230**	**33,481**	**40,561**
Disbursements																
General Expenses	6	2,043	2,043	2,043	1,583	1,786	1,786	1,786	1,786	1,700	1,700	1,700	1,360	1,795	1,818	1,818
Payroll and Benefits	7	2,025	455	2,355	625	2,466	455	2,355	625	1,855	455	2,355	455	2,025	455	1,855
Pension	8	160	752	160	-	160	752	160	-	160	-	912	-	160	-	912
Promotions and Marketing	9	1,780	1,780	1,780	1,591	2,616	2,616	2,616	2,616	3,159	3,159	3,159	2,527	2,694	2,578	2,578
Leaf	10	-	278	-	-	-	21	-	-	-	-	53	-	-	-	63
Capital Expenditures	11	226	226	226	226	-	-	-	-	-	-	-	-	2,720	2,720	2,720
Professional Fees	12	24	24	24	24	31	31	31	31	31	31	31	31	24	24	24
Restructuring Costs	13	225	225	225	225	322	322	322	322	347	347	347	347	269	269	269
Domestic and Import Duty	14	-	-	-	40,572	-	-	-	48,315	-	-	-	200	41,439	-	-
GST and HST	15	-	-	-	6,492	-	-	-	6,973	-	-	-	-	7,838	-	-
Intercompany Disbursements	16	6,841	8,800	7,086	5,581	7,455	9,147	7,593	7,419	9,446	9,376	10,838	7,754	7,788	7,292	8,736
Intercompany Royalties	17	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Intercompany Interest	18	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Intercompany Principal	18	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Income Tax Instalments and PTT	19	2,100	-	-	7,600	1,500	-	-	7,600	-	3,100	-	-	7,600	4,200	-
Total Disbursements		**15,425**	**14,583**	**13,899**	**64,520**	**16,335**	**15,129**	**14,862**	**75,687**	**16,697**	**18,167**	**19,394**	**12,673**	**74,353**	**19,357**	**18,975**
Cashflow Surplus/Deficit (-)		**10,855**	**13,836**	**16,796**	**(33,203)**	**17,362**	**20,112**	**18,637**	**(41,881)**	**15,327**	**18,345**	**14,450**	**15,229**	**(41,123)**	**14,124**	**21,585**
Opening Cash Balance	1	581,861	592,716	606,553	623,348	590,145	607,507	627,620	646,256	604,376	619,702	638,047	652,497	667,726	626,603	640,727
Closing Cash Balance		**592,716**	**606,553**	**623,348**	**590,145**	**607,507**	**627,620**	**646,256**	**604,376**	**619,702**	**638,047**	**652,497**	**667,726**	**626,603**	**640,727**	**662,312**
Cash Collateral pledged to Citibank	20															
Opening Balance		11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900
Cash Collateral Deposit / (Withdrawal)		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Closing Balance		**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**
Closing Cash net of Cash Collateral		**580,816**	**594,653**	**611,448**	**578,245**	**595,607**	**615,720**	**634,356**	**592,476**	**607,802**	**626,147**	**640,597**	**655,826**	**614,703**	**628,827**	**650,412**

JTI-Macdonald Corp.
30-week Revised Cash Flow Statement
$CAD '000, unaudited

For the week beginning	Notes	21-Jun-21	28-Jun-21	5-Jul-21	12-Jul-21	19-Jul-21	26-Jul-21	2-Aug-21	9-Aug-21	16-Aug-21	23-Aug-21	30-Aug-21	6-Sep-21	13-Sep-21	20-Sep-21	27-Sep-21	30-week Total to October 1, 2021
Receipts																	
Sales	2	28,606	24,433	30,040	30,074	30,056	29,989	27,147	27,151	26,963	28,552	30,182	22,877	28,150	27,779	30,115	808,557
Intercompany Receipts	3	5,453	4,439	6,006	7,321	6,006	6,063	3,108	3,885	4,775	3,942	4,097	3,390	4,397	4,238	4,708	163,009
Tax Refunds	4	261	-	-	1,200	261	-	-	1,200	261	-	-	-	1,200	261	-	16,928
Other Receipts	5	-	91	69	13	-	28	63	69	13	28	63	69	13	-	91	1,211
Total Receipts		**34,319**	**28,963**	**36,116**	**38,607**	**36,323**	**36,080**	**30,318**	**32,306**	**32,012**	**32,522**	**34,342**	**26,337**	**33,760**	**32,278**	**34,915**	**989,705**
Disbursements																	
General Expenses	6	1,818	1,467	1,881	1,881	1,881	1,881	1,505	1,881	1,881	1,881	1,667	1,219	1,524	1,524	1,594	52,232
Payroll and Benefits	7	955	2,245	455	1,855	955	2,025	455	1,855	955	1,855	625	1,855	455	2,355	625	40,341
Pension	8	-	160	-	912	-	160	-	160	752	160	-	160	752	160	-	7,662
Promotions and Marketing	9	2,578	2,274	3,635	3,635	3,635	3,635	1,245	1,556	1,556	1,556	2,635	2,684	3,355	3,355	3,402	77,985
Leaf	10	-	-	-	87	-	-	-	-	251	-	-	-	334	-	-	1,086
Capital Expenditures	11	2,720	2,720	448	448	448	448	274	274	274	274	637	637	637	637	637	20,574
Professional Fees	12	24	24	31	31	31	31	31	31	31	31	24	24	24	24	24	833
Restructuring Costs	13	269	269	284	284	284	284	296	296	296	296	222	222	222	222	222	8,348
Domestic and Import Duty	14	-	41,035	-	-	-	43,734	-	-	-	200	29,767	-	-	-	31,699	276,962
GST and HST	15	-	7,498	-	-	-	7,973	-	-	-	-	7,116	-	-	-	6,344	50,234
Intercompany Disbursements	16	7,542	5,890	7,647	9,282	7,783	7,573	6,568	8,126	9,718	8,335	6,373	4,236	6,672	5,414	5,362	227,672
Intercompany Royalties	17	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Intercompany Interest	18	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Intercompany Principal	18	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Income Tax Instalments and PTT	19	-	7,600	2,900	-	-	7,600	-	3,500	-	-	7,600	3,200	-	-	-	66,100
Total Disbursements		**15,907**	**71,182**	**17,279**	**18,413**	**15,015**	**75,343**	**10,373**	**17,678**	**15,713**	**14,588**	**56,666**	**14,237**	**13,974**	**13,690**	**49,909**	**830,027**
Cashflow Surplus/Deficit (-)		**18,412**	**(42,219)**	**18,836**	**20,194**	**21,308**	**(39,264)**	**19,945**	**14,627**	**16,298**	**17,934**	**(22,324)**	**12,100**	**19,786**	**18,588**	**(14,995)**	**159,678**
Opening Cash Balance	1	662,312	680,724	638,505	657,341	677,535	698,843	659,579	679,525	694,152	710,450	728,384	706,060	718,160	737,946	756,534	581,861
Closing Cash Balance		**680,724**	**638,505**	**657,341**	**677,535**	**698,843**	**659,579**	**679,525**	**694,152**	**710,450**	**728,384**	**706,060**	**718,160**	**737,946**	**756,534**	**741,539**	**741,539**
Cash Collateral pledged to Citibank	20																
Opening Balance		11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900
Cash Collateral Deposit / (Withdrawal)		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Closing Balance		**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**
Closing Cash net of Cash Collateral		**668,824**	**626,605**	**645,441**	**665,635**	**686,943**	**647,679**	**667,625**	**682,252**	**698,550**	**716,484**	**694,160**	**706,260**	**726,046**	**744,634**	**729,639**	**729,639**

The projected tax refunds relate to the collection of QST refunds in Quebec, excise tax refunds for product that require rework or destruction and customs duty refunds for imported product that require destruction.

5. Other Receipts

Other receipts relate to interest income earned from short-term investments and high interest savings accounts.

DISBURSEMENTS

6. General Expenses

These projected disbursements include payments related to non-tobacco materials, travel, service related activities, utilities and rent. Additional expenditures are forecast for regional sales office leases, vehicles used by marketing representatives and miscellaneous information technology requirements.

7. Payroll and Benefits

These projected disbursements include payroll and benefit costs for all salaried and hourly plant employees. The forecast amounts are based on historic run rates. Hourly plant employees are paid weekly and salaried employees are paid bi-weekly. Payroll disbursements include all employee source deductions, employee and employer portions of CPP/QPP and EI, and other payroll-related taxes. Payroll and benefit costs also include retention bonuses and severance costs related to the global transformation project.

8. Pension

These projected disbursements represent payments to JTIM's registered employees plan, registered executive employees plan and the executive supplemental benefit plan. The pension amounts forecast in the cash flow include all current and special obligation amounts.

9. Promotions and Marketing

These projected disbursements relate to the various marketing and promotional initiatives, such as inventory support programs and brand support programs. Initiatives are generally paid 30 days in arrears or via quarterly installments.

10. Leaf

These projected disbursements represent payments to third party suppliers of tobacco leaf. Third party purchases are used in circumstances where JTI-SA does not have a specific grade of tobacco available at the time required to meet the plant's tobacco blend requirements to reduce disruptions in the production process.

11. Capital Expenditures

These projected disbursements relate to capital expenditures for plant and equipment purchases at the Montreal production facility. These capital expenditures include investments in new plain packaging machinery for statutory compliance, machine upgrades, new product flow control systems and environmental health and safety.

12. Professional Fees

These projected disbursements include payments to JTIM's legal advisors for corporate matters.

Court File No. CV-19-615862-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c.C-36 AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO JTI-MACDONALD CORP.

TENTH REPORT OF THE MONITOR
September 20, 2021

JTI-Macdonald Corp.
30-week Revised Cash Flow Statement
$CAD '000, unaudited

For the week beginning	Notes	6-Sep-21	13-Sep-21	20-Sep-21	27-Sep-21	4-Oct-21	11-Oct-21	18-Oct-21	25-Oct-21	1-Nov-21	8-Nov-21	15-Nov-21	22-Nov-21	29-Nov-21
Receipts														
Sales	2	25,410	26,147	28,307	29,690	33,551	25,962	26,041	25,300	27,839	25,669	24,970	24,310	24,909
Intercompany Receipts	3	1,716	2,159	2,223	3,178	6,881	5,505	7,783	6,908	6,020	6,020	6,020	6,897	5,127
Tax Refunds	4	-	1,028	-	-	1,200	325	-	-	1,200	325	-	-	-
Other Receipts	5	-	50	-	55	-	70	-	-	55	-	50	-	55
Total Receipts		**27,126**	**29,384**	**30,530**	**32,923**	**41,632**	**31,862**	**33,824**	**32,208**	**35,114**	**32,014**	**31,040**	**31,207**	**30,091**
Disbursement														
General Expenses	6	1,810	2,262	2,262	2,435	3,125	2,500	2,500	2,500	1,875	1,875	1,875	1,875	2,607
Payroll and Benefits	7	1,855	455	2,355	630	1,855	455	2,355	630	1,855	455	1,855	955	2,030
Pension	8	160	752	160	-	160	513	160	-	160	-	673	-	160
Promotions and Marketing	9	2,703	3,378	3,378	3,515	4,061	4,061	3,249	4,061	3,654	3,654	3,654	3,654	3,976
Leaf	10	-	-	-	-	25	-	-	-	-	-	-	-	-
Capital Expenditures	11	516	516	516	516	486	486	486	486	885	885	885	885	164
Professional Fees	12	14	14	14	14	17	17	17	17	17	17	17	17	14
Restructuring Costs	13	140	140	140	140	140	140	140	140	140	140	140	140	140
Domestic and Import Duty	14	-	-	-	14,800	-	-	-	53,720	-	-	-	200	47,459
GST and HST	15	-	-	-	8,400	-	-	-	7,384	-	-	-	-	6,505
Intercompany Disbursements	16	8,081	8,081	8,081	7,855	3,262	2,268	2,835	3,661	9,064	9,673	9,064	10,165	6,445
Intercompany Royalties	17	-	-	-	-	-	-	-	-	-	-	-	-	-
Intercompany Interest	18	-	-	-	-	-	-	-	-	-	-	-	-	-
Intercompany Principal	18	-	-	-	-	-	-	-	-	-	-	-	-	-
Income Tax Instalments and PTT	19	2,600	500	-	920	2,500	500	-	920	-	2,500	500	-	920
Total Disbursements		**17,878**	**16,098**	**16,906**	**39,224**	**15,632**	**10,941**	**11,743**	**73,520**	**17,651**	**19,200**	**18,664**	**17,892**	**70,420**
Cashflow Surplus/Deficit (-)		**9,248**	**13,286**	**13,624**	**(6,300)**	**26,000**	**20,921**	**22,081**	**(41,312)**	**17,463**	**12,814**	**12,376**	**13,315**	**(40,329)**
Opening Cash Balance	1	705,936	715,184	728,470	742,094	735,794	761,794	782,715	804,797	763,485	780,947	793,761	806,137	819,452
Closing Cash Balance		**715,184**	**728,470**	**742,094**	**735,794**	**761,794**	**782,715**	**804,797**	**763,485**	**780,947**	**793,761**	**806,137**	**819,452**	**779,123**
Cash Collateral pledged to Citibank	20													
Opening Balance		11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900
Cash Collateral Deposit / (Withdrawal)		-	-	-	-	-	-	-	-	-	-	-	-	-
Closing Balance		**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**
Closing Cash net of Cash Collateral		**703,284**	**716,570**	**730,194**	**723,894**	**749,894**	**770,815**	**792,897**	**751,585**	**769,047**	**781,861**	**794,237**	**807,552**	**767,223**

JTI-Macdonald Corp.
30-week Revised Cash Flow Statement
$CAD '000, unaudited

For the week beginning	Notes	6-Dec-21	13-Dec-21	20-Dec-21	27-Dec-21	3-Jan-22	10-Jan-22	17-Jan-22	24-Jan-22	31-Jan-22	7-Feb-22	14-Feb-22	21-Feb-22
Receipts													
Sales	2	26,049	36,875	7,869	34,050	30,265	27,438	23,236	36,635	18,875	20,845	21,383	21,951
Intercompany Receipts	3	6,798	7,088	6,798	4,079	2,200	2,750	2,750	3,208	6,150	7,000	7,000	7,153
Tax Refunds	4	1,200	325	-	-	1,200	325	-	-	1,200	325	-	-
Other Receipts	5	-	50	-	-	55	70	-	-	55	-	50	-
Total Receipts		**34,047**	**44,337**	**14,668**	**38,129**	**33,720**	**30,583**	**25,986**	**39,843**	**26,280**	**28,170**	**28,433**	**29,104**
Disbursement													
General Expenses	6	3,095	3,095	2,476	2,476	1,340	1,675	1,675	1,675	1,895	1,950	1,950	1,950
Payroll and Benefits	7	455	1,855	955	2,030	455	1,855	955	1,855	630	1,855	455	11,855
Pension	8	-	672	-	160	-	160	579	160	-	160	579	2,100
Promotions and Marketing	9	4,190	4,190	3,352	3,352	2,200	2,750	2,750	2,750	2,850	2,875	2,875	2,875
Leaf	10	-	-	-	-	25	-	-	-	-	7,388	-	-
Capital Expenditures	11	164	164	164	164	162	162	162	162	21	21	21	21
Professional Fees	12	14	14	14	14	24	24	24	24	13	13	13	13
Restructuring Costs	13	140	140	140	140	140	140	140	140	140	140	140	140
Domestic and Import Duty	14	-	-	-	56,750	-	-	-	44,628	-	-	-	41,643
GST and HST	15	-	-	-	7,488	-	-	-	6,487	-	-	-	7,487
Intercompany Disbursements	16	7,657	7,048	8,364	5,638	9,560	11,250	11,250	12,188	7,050	6,536	6,000	6,958
Intercompany Royalties	17	-	-	-	-	-	-	-	-	-	-	-	-
Intercompany Interest	18	-	-	-	-	-	-	-	-	-	-	-	-
Intercompany Principal	18	-	-	-	-	-	-	-	-	-	-	-	-
Income Tax Instalments and PTT	19	2,500	500	-	920	-	3,000	-	5,000	-	2,500	500	14,500
Total Disbursements		**18,216**	**17,679**	**15,466**	**79,133**	**13,905**	**21,015**	**17,534**	**75,067**	**12,600**	**23,438**	**12,534**	**89,543**
Cashflow Surplus/Deficit (-)		**15,831**	**26,659**	**(798)**	**(41,004)**	**19,816**	**9,568**	**8,452**	**(35,224)**	**13,680**	**4,732**	**15,899**	**(60,439)**
Opening Cash Balance	1	779,123	794,954	821,613	820,814	779,810	799,626	809,194	817,646	782,422	796,102	800,834	816,733
Closing Cash Balance		**794,954**	**821,613**	**820,814**	**779,810**	**799,626**	**809,194**	**817,646**	**782,422**	**796,102**	**800,834**	**816,733**	**756,294**
Cash Collateral pledged to Citibank	20												
Opening Balance		11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900
Cash Collateral Deposit / (Withdrawal)		-	-	-	-	-	-	-	-	-	-	-	-
Closing Balance		**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**
Closing Cash net of Cash Collateral		**783,054**	**809,713**	**808,914**	**767,910**	**787,726**	**797,294**	**805,746**	**770,522**	**784,202**	**788,934**	**804,833**	**744,394**

JTI-Macdonald Corp.
30-week Revised Cash Flow Statement
$CAD '000, unaudited

For the week beginning	Notes	28-Feb-22	7-Mar-22	14-Mar-22	21-Mar-22	28-Mar-22	30-week Total to April 1, 2022
Receipts							
Sales	2	21,826	22,193	22,786	23,383	24,158	767,920
Intercompany Receipts	3	5,800	5,500	5,500	6,068	7,650	159,931
Tax Refunds	4	-	1,200	325	-	-	10,178
Other Receipts	5	55	-	50	-	55	775
Total Receipts		**27,681**	**28,893**	**28,661**	**29,450**	**31,863**	**938,804**
Disbursement							
General Expenses	6	2,230	1,840	1,840	1,840	2,173	64,676
Payroll and Benefits	7	630	1,855	455	2,355	630	48,875
Pension	8	-	160	579	160	-	8,367
Promotions and Marketing	9	2,275	2,125	2,125	2,125	2,129	94,787
Leaf	10	-	-	-	-	-	7,438
Capital Expenditures	11	39	39	39	39	39	9,298
Professional Fees	12	11	11	11	11	11	467
Restructuring Costs	13	140	140	140	140	140	4,200
Domestic and Import Duty	14	-	-	-	-	50,745	309,945
GST and HST	15	-	-	-	-	4,761	48,512
Intercompany Disbursements	16	8,400	9,460	7,200	7,200	8,521	228,816
Intercompany Royalties	17	-	-	-	-	-	-
Intercompany Interest	18	-	-	-	-	-	-
Intercompany Principal	18	-	-	-	-	-	-
Income Tax Instalments and PTT	19	-	2,500	500	-	5,000	49,280
Total Disbursements		**13,725**	**18,130**	**12,889**	**13,870**	**74,150**	**874,661**
Cashflow Surplus/Deficit (-)		**13,957**	**10,763**	**15,772**	**15,581**	**(42,287)**	**64,143**
Opening Cash Balance	1	756,294	770,251	781,013	796,785	812,366	705,936
Closing Cash Balance		**770,251**	**781,013**	**796,785**	**812,366**	**770,079**	**770,079**
Cash Collateral pledged to Citibank	20						
Opening Balance		11,900	11,900	11,900	11,900	11,900	11,900
Cash Collateral Deposit / (Withdrawal)		-	-	-	-	-	-
Closing Balance		**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**
Closing Cash net of Cash Collateral		**758,351**	**769,113**	**784,885**	**800,466**	**758,179**	**758,179**

9. Promotions and Marketing

These projected disbursements relate to the various marketing and promotional initiatives, such as inventory support programs and brand support programs. Initiatives are generally paid 30 days in arrears or via quarterly installments.

10. Leaf

These projected disbursements represent payments to third party suppliers of tobacco leaf. Third party purchases are used in circumstances where JTI-SA does not have a specific grade of tobacco available at the time required to meet the plant's tobacco blend requirements to reduce disruptions in the production process.

11. Capital Expenditures

These projected disbursements relate to capital expenditures for plant and equipment purchases at the Montreal production facility. These capital expenditures include investments in new plain packaging machinery for statutory compliance, roof refurbishment at JTIM's Quebec manufacturing facilities, machine upgrades, new product flow control systems, renovation of JTIM headquarters and regional locations and environmental health and safety.

12. Professional Fees

These projected disbursements include payments to JTIM's legal advisors for corporate matters.

13. Restructuring Costs

These projected disbursements include payments to JTIM's legal advisors for specialist restructuring advice, the fees and costs of the Monitor and its counsel, the fees and costs of the Chief Restructuring Officer, the fees and costs of the Court-Appointed Mediator and his advisors, and the fees and costs of the Representative Counsel and its advisors.

14. Domestic and Import Duty

These projected disbursements relate to payments to the Canada Revenue Agency **("CRA")** with respect to tobacco products produced under the *Excise Act*, 2001 and customs duty and GST on

Court File No. CV-19-615862-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c.C-36 AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO JTI-MACDONALD CORP.

ELEVENTH REPORT OF THE MONITOR
March 10, 2022

JTI-Macdonald Corp.
31-week Revised Cash Flow Statement
$CAD '000, unaudited

For the week beginning	Notes	27-Feb-22	6-Mar-22	13-Mar-22	20-Mar-22	27-Mar-22	3-Apr-22	10-Apr-22	17-Apr-22	24-Apr-22	1-May-22	8-May-22
Receipts												
Sales	1	23,310	26,747	27,456	28,170	28,881	31,941	30,523	29,862	27,868	24,619	25,179
Intercompany Receipts	2	8,217	4,244	8,233	4,903	6,833	8,060	8,060	8,060	9,904	6,076	6,076
Tax Refunds	3	-	1,750	315	-	-	1,750	315	-	-	1,750	315
Other Receipts	4	56	-	-	-	419	-	61	-	-	139	-
Total Receipts		**31,583**	**32,741**	**36,004**	**33,073**	**36,132**	**41,751**	**38,959**	**37,922**	**37,771**	**32,584**	**31,570**
Disbursement												
General Expenses	5	2,077	1,950	1,950	1,950	1,950	1,750	1,750	1,750	1,750	1,825	1,825
Payroll and Benefits	6	427	1,855	455	2,355	630	1,855	455	2,355	630	1,855	455
Pension	7	-	160	-	821	-	160	-	821	-	160	-
Promotions, Marketing and Distribution Support	8	1,880	1,174	1,174	1,174	1,174	3,852	3,852	3,852	3,852	1,877	1,877
Leaf	9	-	1,480	-	-	-	3,326	-	-	-	-	1,997
Capital Expenditures	10	111	118	118	118	118	275	275	275	275	203	203
Professional Fees	11	-	13	13	13	13	16	16	16	16	16	16
Restructuring Costs	12	34	125	125	125	125	125	125	125	125	125	125
Domestic and Import Duty	13	252	-	-	-	48,116	-	-	-	60,047	-	-
GST and HST	14	-	-	-	-	4,855	-	-	-	6,848	-	-
Intercompany Disbursements	15	2,179	3,651	7,902	11,881	10,594	11,396	12,844	10,559	6,696	3,737	11,393
Intercompany Royalties	16	-	-	-	-	-	-	-	-	-	-	-
Intercompany Interest	17	-	-	-	-	-	-	-	-	-	-	-
Intercompany Principal	17	-	-	-	-	-	-	-	-	-	-	-
Income Tax Instalments and PTT	18	-	2,500	500	-	4,135	2,500	500	-	4,135	2,500	500
Total Disbursements		**6,960**	**13,026**	**12,237**	**18,437**	**71,710**	**25,255**	**19,817**	**19,754**	**84,374**	**12,297**	**18,390**
Cashflow Surplus/Deficit (-)		**24,623**	**19,715**	**23,767**	**14,636**	**(35,578)**	**16,496**	**19,142**	**18,168**	**(46,603)**	**20,287**	**13,180**
Opening Cash Balance		818,900	843,492	863,207	886,974	901,610	866,032	882,528	901,670	919,838	873,235	893,522
FX adjustment		(31)	-	-	-	-	-	-	-	-	-	-
Closing Cash Balance		**843,492**	**863,207**	**886,974**	**901,610**	**866,032**	**882,528**	**901,670**	**919,838**	**873,235**	**893,522**	**906,702**
Cash Collateral pledged to Citibank	19											
Closing Balance		**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**
Closing Cash net of Cash Collateral		**831,592**	**851,307**	**875,074**	**889,710**	**854,132**	**870,628**	**889,770**	**907,938**	**861,335**	**881,622**	**894,802**

JTI-Macdonald Corp.
31-week Revised Cash Flow Statement
$CAD '000, unaudited

For the week beginning	Notes	15-May-22	22-May-22	29-May-22	5-Jun-22	12-Jun-22	19-Jun-22	26-Jun-22	3-Jul-22	10-Jul-22	17-Jul-22	24-Jul-22
Receipts												
Sales	1	28,628	25,909	26,061	33,990	34,256	39,718	40,001	28,823	31,250	33,606	33,457
Intercompany Receipts	2	6,076	6,076	5,839	5,679	5,679	5,679	5,839	6,839	6,839	6,839	9,795
Tax Refunds	3	-	-	1,750	315	-	-	-	1,750	315	-	-
Other Receipts	4	-	-	139	-	400	-	139	-	-	-	-
Total Receipts		**34,704**	**31,985**	**33,788**	**39,983**	**40,335**	**45,397**	**45,978**	**37,412**	**38,404**	**40,445**	**43,252**
Disbursement												
General Expenses	5	1,825	1,825	1,540	1,540	1,540	1,540	1,540	2,025	2,025	2,025	2,025
Payroll and Benefits	6	2,355	455	2,030	455	1,855	955	2,030	455	1,855	955	2,030
Pension	7	821	-	160	-	821	-	160	-	160	661	160
Promotions, Marketing and Distribution Support	8	1,877	1,877	1,782	1,782	1,782	1,782	1,782	4,085	4,085	4,085	4,085
Leaf	9	-	-	-	-	-	-	-	25	-	-	-
Capital Expenditures	10	203	203	400	400	400	400	400	303	303	303	303
Professional Fees	11	16	16	14	14	14	14	14	17	17	17	17
Restructuring Costs	12	125	125	125	125	125	125	125	125	125	125	125
Domestic and Import Duty	13	-	-	51,864	-	-	-	54,481	-	-	-	54,478
GST and HST	14	-	-	7,022	-	-	-	8,520	-	-	-	9,191
Intercompany Disbursements	15	11,336	11,336	7,767	6,946	6,790	6,790	7,766	10,034	9,780	9,780	10,807
Intercompany Royalties	16	-	-	-	-	-	-	-	-	-	-	-
Intercompany Interest	17	-	-	-	-	-	-	-	-	-	-	-
Intercompany Principal	17	-	-	-	-	-	-	-	-	-	-	-
Income Tax Instalments and PTT	18	-	-	4,135	2,500	500	-	4,135	2,500	500	-	4,135
Total Disbursements		**18,558**	**15,836**	**76,839**	**13,761**	**13,827**	**11,606**	**80,952**	**19,569**	**18,850**	**17,951**	**87,356**
Cashflow Surplus/Deficit (-)		**16,146**	**16,149**	**(43,050)**	**26,222**	**26,508**	**33,791**	**(34,974)**	**17,843**	**19,554**	**22,493**	**(44,104)**
Opening Cash Balance		906,702	922,848	938,996	895,946	922,168	948,676	982,467	947,494	965,337	984,891	1,007,384
FX adjustment		-	-	-	-	-	-	-	-	-	-	-
Closing Cash Balance		**922,848**	**938,996**	**895,946**	**922,168**	**948,676**	**982,467**	**947,494**	**965,337**	**984,891**	**1,007,384**	**963,281**
Cash Collateral pledged to Citibank	19											
Closing Balance		**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**
Closing Cash net of Cash Collateral		**910,948**	**927,096**	**884,046**	**910,268**	**936,776**	**970,567**	**935,594**	**953,437**	**972,991**	**995,484**	**951,381**

JTI-Macdonald Corp.
31-week Revised Cash Flow Statement
$CAD '000, unaudited

For the week beginning	Notes	31-Jul-22	7-Aug-22	14-Aug-22	21-Aug-22	28-Aug-22	4-Sep-22	11-Sep-22	18-Sep-22	25-Sep-22	31-week Total to October 1, 2022
Receipts											
Sales	1	27,261	27,034	26,759	26,439	29,880	30,507	34,105	33,485	39,156	934,880
Intercompany Receipts	2	5,297	5,297	5,297	5,436	5,297	2,486	2,486	2,486	2,636	186,560
Tax Refunds	3	1,750	315	-	-	-	1,750	315	-	-	14,455
Other Receipts	4	139	-	-	-	139	-	503	-	-	2,134
Total Receipts		**34,447**	**32,647**	**32,056**	**31,875**	**35,316**	**34,742**	**37,408**	**35,971**	**41,792**	**1,138,029**
Disbursement											
General Expenses	5	1,580	1,580	1,580	1,580	1,580	1,838	1,838	1,838	1,838	55,227
Payroll and Benefits	6	455	1,855	955	1,855	630	1,855	455	2,355	630	39,802
Pension	7	-	160	661	160	-	160	-	821	-	7,030
Promotions, Marketing and Distribution Support	8	2,247	2,247	2,247	2,247	2,247	4,374	4,374	4,374	4,374	83,472
Leaf	9	-	-	-	-	-	25	-	-	-	6,853
Capital Expenditures	10	305	305	305	305	305	471	471	471	471	9,118
Professional Fees	11	14	14	14	14	14	17	17	17	17	452
Restructuring Costs	12	125	125	125	125	125	125	125	125	125	3,784
Domestic and Import Duty	13	-	-	-	-	51,415	-	-	-	23,387	344,039
GST and HST	14	-	-	-	-	7,387	-	-	-	8,910	52,733
Intercompany Disbursements	15	7,608	8,071	7,608	7,608	8,584	9,634	9,380	9,380	10,360	270,197
Intercompany Royalties	16	-	-	-	-	-	-	-	-	-	-
Intercompany Interest	17	-	-	-	-	-	-	-	-	-	-
Intercompany Principal	17	-	-	-	-	-	-	-	-	-	-
Income Tax Instalments and PTT	18	-	2,500	500	-	4,135	2,500	500	-	4,135	49,945
Total Disbursements		**12,334**	**16,858**	**13,996**	**13,894**	**76,422**	**20,999**	**17,160**	**19,381**	**54,247**	**922,652**
Cashflow Surplus/Deficit (-)		**22,113**	**15,789**	**18,061**	**17,981**	**(41,106)**	**13,744**	**20,249**	**16,590**	**(12,454)**	**215,377**
Opening Cash Balance		963,281	985,394	1,001,183	1,019,243	1,037,224	996,118	1,009,862	1,030,110	1,046,700	818,900
FX adjustment		-	-	-	-	-	-	-	-	-	(31)
Closing Cash Balance		**985,394**	**1,001,183**	**1,019,243**	**1,037,224**	**996,118**	**1,009,862**	**1,030,110**	**1,046,700**	**1,034,246**	**1,034,246**
Cash Collateral pledged to Citibank	19										
Closing Balance		**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**
Closing Cash net of Cash Collateral		**973,494**	**989,283**	**1,007,343**	**1,025,324**	**984,218**	**997,962**	**1,018,210**	**1,034,800**	**1,022,346**	**1,022,346**

4. Other Receipts

Other receipts relate to interest income earned from short-term investments and high interest savings accounts.

DISBURSEMENTS

5. General Expenses

These projected disbursements include payments related to non-tobacco materials, service related activities, utilities, rent, and travel. Additional expenditures are forecast for regional sales office leases, vehicles used by sales representatives and miscellaneous information technology requirements.

6. Payroll and Benefits

These projected disbursements include payroll and benefit costs for all salaried and hourly plant employees. The forecast amounts are based on historic run rates. Hourly plant employees are paid weekly and salaried employees are paid bi-weekly. Payroll disbursements include all employee source deductions, employee and employer portions of CPP/QPP and EI and other payroll-related taxes, and reflect the terms of the collective bargaining agreement signed in July 2021. Payroll and benefit costs also include severance costs related to the global transformation project.

7. Pension

These projected disbursements represent payments to JTIM's registered employees plan, registered executive employees plan and the executive supplemental benefit plan. The pension amounts forecast in the cash flow include all current and special obligation amounts.

8. Promotions, Marketing and Distribution Support

These projected disbursements relate to the various marketing and promotional initiatives, such as inventory support programs and brand support programs. Initiatives are generally paid 30 days in arrears or via quarterly installments.

Court File No. CV-19-615862-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c.C-36 AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO JTI-MACDONALD CORP.

TWELFTH REPORT OF THE MONITOR
September 21, 2022

JTI-Macdonald Corp.
30-week Revised Cash Flow Statement
$CAD '000, unaudited

For the week beginning	Notes	5-Sep-22	12-Sep-22	19-Sep-22	26-Sep-22	3-Oct-22	10-Oct-22	17-Oct-22	24-Oct-22	31-Oct-22	7-Nov-22	14-Nov-22	21-Nov-22
Receipts													
Sales	1	25,724	30,793	28,435	35,483	22,300	21,964	21,566	21,157	23,827	28,873	28,716	28,041
Intercompany Receipts	2	2,702	2,702	2,724	4,915	6,564	6,564	6,564	6,926	5,059	5,059	5,059	5,081
Tax Refunds	3	1,750	315	-	-	1,750	315	-	-	1,750	315	-	-
Other Receipts	4	-	2,610	-	-	959	-	-	-	985	-	-	-
Total Receipts		**30,176**	**36,420**	**31,160**	**40,398**	**31,574**	**28,843**	**28,130**	**28,083**	**31,621**	**34,247**	**33,775**	**33,122**
Disbursement													
General Expenses	5	(1,750)	(1,750)	(1,750)	(1,750)	(1,800)	(1,800)	(1,800)	(1,800)	(2,350)	(2,350)	(2,350)	(2,350)
Payroll and Benefits	6	(1,855)	(455)	(2,255)	(630)	(1,855)	(455)	(2,255)	(455)	(2,030)	(455)	(1,855)	(855)
Pension	7	(165)	-	(1,078)	-	(165)	-	(1,078)	-	(165)	-	(412)	-
Promotions and Marketing	8	(2,944)	(2,944)	(2,944)	(2,944)	(2,986)	(2,986)	(2,986)	(2,986)	(2,262)	(2,262)	(2,262)	(2,262)
Leaf	9	(43)	-	-	-	-	-	-	-	-	(1,213)	-	-
Capital Expenditures	10	(211)	(211)	(211)	(211)	(419)	(419)	(419)	(419)	(300)	(300)	(300)	(300)
Professional Fees	11	(14)	(14)	(14)	(14)	(16)	(16)	(16)	(16)	(14)	(14)	(14)	(14)
Restructuring Costs	12	(125)	(125)	(125)	(125)	(125)	(125)	(125)	(125)	(125)	(125)	(125)	(125)
Domestic and Import Duty	13	-	-	-	(24,602)	-	-	-	(53,325)	-	-	-	-
GST and HST	14	-	-	-	(8,324)	-	-	-	(7,054)	-	-	-	-
Intercompany Disbursements	15	(10,572)	(9,459)	(9,459)	(10,482)	(4,735)	(3,783)	(3,783)	(4,751)	(7,661)	(8,435)	(7,661)	(7,661)
Intercompany Royalties	16	-	-	-	-	-	-	-	-	-	-	-	-
Intercompany Interest	17	-	-	-	-	-	-	-	-	-	-	-	-
Intercompany Principal	17	-	-	-	-	-	-	-	-	-	-	-	-
Income Tax Instalments and PTT	18	(2,500)	(700)	-	(3,689)	(2,500)	(700)	-	(3,689)	(2,500)	(700)	-	-
Total Disbursements		**(20,179)**	**(15,658)**	**(17,836)**	**(52,771)**	**(14,600)**	**(10,284)**	**(12,462)**	**(74,619)**	**(17,407)**	**(15,855)**	**(14,979)**	**(13,567)**
Cashflow Surplus/Deficit (-)		**9,996**	**20,761**	**13,323**	**(12,373)**	**16,974**	**18,559**	**15,668**	**(46,536)**	**14,213**	**18,392**	**18,795**	**19,554**
Opening Cash Balance		969,808	979,805	1,000,566	1,013,889	1,001,517	1,018,490	1,037,050	1,052,718	1,006,183	1,020,396	1,038,788	1,057,583
FX adjustment		-	-	-	-	-	-	-	-	-	-	-	-
Closing Cash Balance		**979,805**	**1,000,566**	**1,013,889**	**1,001,517**	**1,018,490**	**1,037,050**	**1,052,718**	**1,006,183**	**1,020,396**	**1,038,788**	**1,057,583**	**1,077,137**
Cash Collateral pledged to Citibank	19												
Opening Balance		11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900
Cash Collateral Deposit / (Withdrawal)		-	-	-	-	-	-	-	-	-	-	-	-
Closing Balance		**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**
Closing Cash net of Cash Collateral		**967,905**	**988,666**	**1,001,989**	**989,617**	**1,006,590**	**1,025,150**	**1,040,818**	**994,283**	**1,008,496**	**1,026,888**	**1,045,683**	**1,065,237**

JTI-Macdonald Corp.
30-week Revised Cash Flow Statement
$CAD '000, unaudited

For the week beginning	Notes	28-Nov-22	5-Dec-22	12-Dec-22	19-Dec-22	26-Dec-22	2-Jan-23	9-Jan-23	16-Jan-23	23-Jan-23	30-Jan-23	6-Feb-23	13-Feb-23
Receipts													
Sales	1	29,162	29,788	33,874	44,535	19,438	22,291	23,479	31,816	12,605	12,722	20,718	25,920
Intercompany Receipts	2	5,224	7,488	7,488	7,495	8,522	5,729	5,729	5,729	6,121	5,109	5,109	5,109
Tax Refunds	3	-	1,750	315	-	-	1,750	315	-	-	1,750	315	-
Other Receipts	4	1,008	-	2,666	-	-	1,014	-	-	-	1,048	-	-
Total Receipts		**35,393**	**39,026**	**44,343**	**52,029**	**27,961**	**30,784**	**29,524**	**37,545**	**18,727**	**20,628**	**26,142**	**31,028**
Disbursement													
General Expenses	5	(2,350)	(3,050)	(3,050)	(3,050)	(3,050)	(1,850)	(1,850)	(1,850)	(1,850)	(1,800)	(1,800)	(1,800)
Payroll and Benefits	6	(2,030)	(455)	(1,855)	(855)	(2,030)	(455)	(1,855)	(455)	(2,255)	(630)	(1,855)	(455)
Pension	7	(165)	-	(412)	-	(165)	-	(165)	(594)	(165)	-	(165)	-
Promotions and Marketing	8	(2,262)	(2,798)	(2,798)	(2,798)	(2,798)	(2,263)	(2,263)	(2,263)	(2,263)	(1,767)	(1,767)	(1,767)
Leaf	9	-	(2,751)	-	-	-	-	-	-	-	-	(247)	-
Capital Expenditures	10	(300)	(245)	(245)	(245)	(245)	(120)	(120)	(120)	(120)	(4)	(4)	(4)
Professional Fees	11	(14)	(17)	(17)	(17)	(17)	(15)	(15)	(15)	(15)	(15)	(15)	(15)
Restructuring Costs	12	(125)	(125)	(125)	(125)	(125)	(125)	(125)	(125)	(125)	(125)	(125)	(125)
Domestic and Import Duty	13	(53,463)	-	-	-	(59,906)	-	-	-	-	(43,682)	-	-
GST and HST	14	(6,975)	-	-	-	(7,033)	-	-	-	-	(7,501)	-	-
Intercompany Disbursements	15	(8,621)	(9,670)	(8,805)	(8,805)	(9,781)	(9,722)	(8,361)	(8,361)	(9,815)	(5,415)	(6,127)	(5,415)
Intercompany Royalties	16	-	-	-	-	-	-	-	-	-	-	-	-
Intercompany Interest	17	-	-	-	-	-	-	-	-	-	-	-	-
Intercompany Principal	17	-	-	-	-	-	-	-	-	-	-	-	-
Income Tax Instalments and PTT	18	(3,689)	(2,500)	(700)	-	(3,689)	(2,500)	(700)	-	-	(6,750)	(700)	-
Total Disbursements		**(79,994)**	**(21,610)**	**(18,008)**	**(15,896)**	**(88,839)**	**(17,049)**	**(15,454)**	**(13,783)**	**(16,607)**	**(67,689)**	**(12,803)**	**(9,580)**
Cashflow Surplus/Deficit (-)		**(44,600)**	**17,415**	**26,335**	**36,134**	**(60,878)**	**13,735**	**14,070**	**23,763**	**2,119**	**(47,061)**	**13,339**	**21,448**
Opening Cash Balance		1,077,137	1,032,537	1,049,952	1,076,287	1,112,421	1,051,543	1,065,278	1,079,348	1,103,111	1,105,230	1,058,169	1,071,507
FX adjustment		-	-	-	-	-	-	-	-	-	-	-	-
Closing Cash Balance		**1,032,537**	**1,049,952**	**1,076,287**	**1,112,421**	**1,051,543**	**1,065,278**	**1,079,348**	**1,103,111**	**1,105,230**	**1,058,169**	**1,071,507**	**1,092,956**
Cash Collateral pledged to Citibank	19												
Opening Balance		11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900
Cash Collateral Deposit / (Withdrawal)		-	-	-	-	-	-	-	-	-	-	-	-
Closing Balance		**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**
Closing Cash net of Cash Collateral		**1,020,637**	**1,038,052**	**1,064,387**	**1,100,521**	**1,039,643**	**1,053,378**	**1,067,448**	**1,091,211**	**1,093,330**	**1,046,269**	**1,059,607**	**1,081,056**

JTI-Macdonald Corp.
30-week Revised Cash Flow Statement
$CAD '000, unaudited

For the week beginning	Notes	20-Feb-23	27-Feb-23	6-Mar-23	13-Mar-23	20-Mar-23	27-Mar-23	30-week Total to March 31, 2023
Receipts								
Sales	1	25,239	23,122	30,968	29,936	27,474	31,330	791,296
Intercompany Receipts	2	6,709	5,944	5,944	5,944	5,944	9,316	174,570
Tax Refunds	3	-	1,750	315	-	-	-	14,455
Other Receipts	4	-	1,066	-	2,653	-	-	14,008
Total Receipts		**31,948**	**31,881**	**37,227**	**38,533**	**33,417**	**40,646**	**994,329**
Disbursement								
General Expenses	5	(1,800)	(1,600)	(1,600)	(1,600)	(1,600)	(1,600)	(60,750)
Payroll and Benefits	6	(9,951)	(630)	(1,855)	(455)	(2,555)	(630)	(46,671)
Pension	7	(2,794)	-	(165)	-	(759)	-	(8,612)
Promotions and Marketing	8	(1,767)	(1,940)	(1,940)	(1,940)	(1,940)	(1,940)	(72,040)
Leaf	9	-	-	(43)	-	-	-	(4,296)
Capital Expenditures	10	(4)	(31)	(31)	(31)	(31)	(31)	(5,652)
Professional Fees	11	(15)	(12)	(12)	(12)	(12)	(12)	(434)
Restructuring Costs	12	(125)	(125)	(125)	(125)	(125)	(125)	(3,750)
Domestic and Import Duty	13	-	(43,576)	-	-	-	(49,752)	(328,306)
GST and HST	14	-	(6,598)	-	-	-	(5,636)	(49,120)
Intercompany Disbursements	15	(5,415)	(7,437)	(6,426)	(5,600)	(5,600)	(6,635)	(224,454)
Intercompany Royalties	16	-	-	-	-	-	-	-
Intercompany Interest	17	-	-	-	-	-	-	-
Intercompany Principal	17	-	-	-	-	-	-	-
Income Tax Instalments and PTT	18	-	(9,650)	(2,500)	(700)	-	(4,250)	(55,306)
Total Disbursements		**(21,871)**	**(71,599)**	**(14,697)**	**(10,463)**	**(12,622)**	**(70,610)**	**(859,391)**
Cashflow Surplus/Deficit (-)		**10,077**	**(39,718)**	**22,530**	**28,070**	**20,795**	**(29,964)**	**134,938**
Opening Cash Balance		1,092,956	1,103,033	1,063,315	1,085,845	1,113,915	1,134,710	969,808
FX adjustment		-	-	-	-	-	-	-
Closing Cash Balance		**1,103,033**	**1,063,315**	**1,085,845**	**1,113,915**	**1,134,710**	**1,104,746**	**1,104,746**
Cash Collateral pledged to Citibank	19							
Opening Balance		11,900	11,900	11,900	11,900	11,900	11,900	11,900
Cash Collateral Deposit / (Withdrawal)		-	-	-	-	-	-	- -
Closing Balance		**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**
Closing Cash net of Cash Collateral		**1,091,133**	**1,051,415**	**1,073,945**	**1,102,015**	**1,122,810**	**1,092,846**	**1,092,846**

8. Promotions, Marketing and Distribution Support

These projected disbursements relate to the various marketing and promotional initiatives, such as inventory support programs and brand support programs, some of which were deferred from 2021 and the first half of 2022 due to Covid-19. Initiatives are generally paid 30 days in arrears or via quarterly installments.

9. Leaf

These projected disbursements represent payments to third party suppliers of tobacco leaf. Third party purchases are used in circumstances where JTI-SA does not have a specific grade of tobacco available at the time required to meet the plant's tobacco blend requirements to reduce disruptions in the production process.

10. Capital Expenditures

These capital expenditures include investments in building, equipment, and process improvements at JTIM's Quebec manufacturing facility, IT software and hardware purchases, and renovation and reconfiguration of JTIM's headquarters in Mississauga deferred from 2021 and the first half of 2022 to respond to new working arrangements for its Head Office staff and with a focus on supporting more productive employee work collaborations.

11. Professional Fees

These projected disbursements include payments to JTIM's legal advisors for corporate matters.

12. Restructuring Costs

These projected disbursements include payments to JTIM's legal advisors for specialist restructuring advice, the fees and costs of the Monitor and its counsel, the fees and costs of the Chief Restructuring Officer, the fees and costs of the Court-Appointed Mediator and his advisors, and the fees and costs of the Representative Counsel and its advisors.

13. Domestic and Import Duty

These projected disbursements relate to payments to the Canada Revenue Agency **("CRA")** with respect to tobacco products produced under the *Excise Act*, 2001 and customs duty and GST on

Court File No. CV-19-615862-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c.C-36 AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO JTI-MACDONALD CORP.

FOURTEENTH REPORT OF THE MONITOR
March 22, 2023

JTI-Macdonald Corp.
30-week Revised Cash Flow Statement
$CAD '000, unaudited

For the week beginning	Notes	6-Mar-23	13-Mar-23	20-Mar-23	27-Mar-23	3-Apr-23	10-Apr-23	17-Apr-23	24-Apr-23	1-May-23	8-May-23	15-May-23	22-May-23
Receipts													
Sales	1	26,308	28,351	30,271	34,261	26,098	25,051	20,338	18,902	23,595	27,792	33,396	25,726
Intercompany Receipts	2	8,386	8,386	8,860	8,781	8,915	6,755	6,995	7,878	4,739	4,696	4,779	4,696
Tax Refunds	3	328	-	-	-	992	328	-	-	992	328	-	-
Other Receipts	4	-	-	-	-	1,977	5,765	-	-	2,073	-	-	-
Total Receipts		**35,022**	**36,738**	**39,132**	**43,042**	**37,983**	**37,899**	**27,333**	**26,780**	**31,399**	**32,816**	**38,174**	**30,423**
Disbursements													
General Expenses	5	(1,700)	(1,700)	(1,700)	(1,700)	(1,700)	(1,700)	(1,700)	(1,700)	(1,700)	(1,700)	(1,700)	(1,700)
Payroll and Benefits	6	(1,855)	(455)	(2,679)	(630)	(1,855)	(455)	(2,217)	(630)	(1,855)	(455)	(1,855)	(915)
Pension	7	-	(165)	(517)	(165)	(50)	(165)	(467)	(165)	(50)	(165)	(467)	(165)
Promotions and Marketing	8	(1,592)	(1,592)	(1,592)	(1,592)	(2,303)	(2,303)	(2,303)	(2,303)	(2,240)	(2,240)	(2,240)	(2,240)
Leaf	9	(40)	-	-	-	(6,558)	-	-	-	-	-	-	-
Capital Expenditures	10	(32)	(32)	(32)	(32)	(157)	(157)	(157)	(157)	(169)	(169)	(169)	(169)
Professional Fees	11	(4)	(4)	(4)	(4)	(5)	(5)	(5)	(5)	(4)	(4)	(4)	(4)
Restructuring Costs	12	(100)	(100)	(100)	(100)	(100)	(100)	(100)	(100)	(100)	(100)	(100)	(100)
Domestic and Import Duty	13	-	-	-	(48,973)	-	-	-	(54,861)	-	-	-	-
GST and HST	14	-	-	-	(6,640)	-	-	-	(6,873)	-	-	-	-
Intercompany Disbursements	15	(6,645)	(6,077)	(6,077)	(7,204)	(9,984)	(9,257)	(9,257)	(10,384)	(8,376)	(7,458)	(7,458)	(7,458)
Intercompany Royalties	16	-	-	-	-	-	-	-	-	-	-	-	-
Intercompany Interest	17	-	-	-	-	-	-	-	-	-	-	-	-
Intercompany Principal	17	-	-	-	-	-	-	-	-	-	-	-	-
Income Tax Instalments and PTT	18	(2,328)	(1,372)	-	(4,750)	(2,328)	(1,372)	-	(4,750)	-	(2,328)	(1,372)	-
Total Disbursements		**(14,296)**	**(11,497)**	**(12,701)**	**(71,790)**	**(25,039)**	**(15,513)**	**(16,204)**	**(81,927)**	**(14,493)**	**(14,619)**	**(15,364)**	**(12,751)**
Cashflow Surplus/Deficit (-)		**20,726**	**25,241**	**26,431**	**(28,749)**	**12,944**	**22,386**	**11,129**	**(55,147)**	**16,906**	**18,198**	**22,810**	**17,672**
Opening Cash Balance		1,057,458	1,078,184	1,103,425	1,129,856	1,101,107	1,114,051	1,136,437	1,147,565	1,092,418	1,109,324	1,127,522	1,150,332
FX adjustment		-	-	-	-	-	-	-	-	-	-	-	-
Closing Cash Balance		**1,078,184**	**1,103,425**	**1,129,856**	**1,101,107**	**1,114,051**	**1,136,437**	**1,147,565**	**1,092,418**	**1,109,324**	**1,127,522**	**1,150,332**	**1,168,004**
Cash Collateral pledged to Citibank	19												
Opening Balance		11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900
Cash Collateral Deposit / (Withdrawal)		-	-	-	-	-	-	-	-	-	-	-	-
Closing Balance		**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**
Closing Cash net of Cash Collateral		**1,066,284**	**1,091,525**	**1,117,956**	**1,089,207**	**1,102,151**	**1,124,537**	**1,135,665**	**1,080,518**	**1,097,424**	**1,115,622**	**1,138,432**	**1,156,104**

JTI-Macdonald Corp.
30-week Revised Cash Flow Statement
$CAD '000, unaudited

For the week beginning	Notes	29-May-23	5-Jun-23	12-Jun-23	19-Jun-23	26-Jun-23	3-Jul-23	10-Jul-23	17-Jul-23	24-Jul-23	31-Jul-23	7-Aug-23	14-Aug-23
Receipts													
Sales	1	26,982	36,238	31,838	40,903	32,924	24,485	25,060	24,983	25,474	28,333	33,861	34,882
Intercompany Receipts	2	4,696	6,866	6,863	6,866	6,823	6,523	7,680	6,523	6,740	4,882	4,793	4,835
Tax Refunds	3	-	992	328	-	-	992	328	-	-	992	328	-
Other Receipts	4	2,130	-	-	-	-	2,231	6,216	-	-	2,330	-	-
Total Receipts		**33,808**	**44,097**	**39,030**	**47,769**	**39,747**	**34,231**	**39,285**	**31,506**	**32,214**	**36,536**	**38,982**	**39,717**
Disbursements													
General Expenses	5	(1,700)	(1,700)	(1,700)	(1,700)	(1,700)	(1,700)	(1,700)	(1,700)	(1,700)	(1,700)	(1,700)	(1,700)
Payroll and Benefits	6	(2,030)	(455)	(1,855)	(926)	(3,230)	(455)	(1,855)	(1,166)	(1,855)	(630)	(1,855)	(455)
Pension	7	-	(215)	-	(632)	-	(215)	-	(632)	-	(215)	-	(632)
Promotions and Marketing	8	(2,240)	(3,144)	(3,144)	(3,144)	(3,144)	(3,253)	(3,253)	(3,253)	(3,253)	(2,220)	(2,220)	(2,220)
Leaf	9	-	(40)	-	-	-	-	-	-	-	-	-	-
Capital Expenditures	10	(169)	(652)	(652)	(652)	(652)	(275)	(275)	(275)	(275)	(394)	(394)	(394)
Professional Fees	11	(4)	(5)	(5)	(5)	(5)	(5)	(5)	(5)	(5)	(5)	(5)	(5)
Restructuring Costs	12	(100)	(100)	(100)	(100)	(100)	(100)	(100)	(100)	(100)	(100)	(100)	(100)
Domestic and Import Duty	13	(55,583)	-	-	-	(56,190)	-	-	-	(52,327)	-	-	-
GST and HST	14	(5,134)	-	-	-	(9,027)	-	-	-	(8,507)	-	-	-
Intercompany Disbursements	15	(8,585)	(9,078)	(8,527)	(8,527)	(9,654)	(10,439)	(9,902)	(9,902)	(11,029)	(7,528)	(8,351)	(7,528)
Intercompany Royalties	16	-	-	-	-	-	-	-	-	-	-	-	-
Intercompany Interest	17	-	-	-	-	-	-	-	-	-	-	-	-
Intercompany Principal	17	-	-	-	-	-	-	-	-	-	-	-	-
Income Tax Instalments and PTT	18	(4,750)	(2,328)	(1,372)	-	(4,750)	(2,328)	(1,372)	-	(4,750)	-	(2,328)	(1,372)
Total Disbursements		**(80,295)**	**(17,718)**	**(17,355)**	**(15,686)**	**(88,453)**	**(18,770)**	**(18,462)**	**(17,033)**	**(83,801)**	**(12,793)**	**(16,954)**	**(14,406)**
Cashflow Surplus/Deficit (-)		**(46,487)**	**26,379**	**21,674**	**32,083**	**(48,706)**	**15,461**	**20,822**	**14,473**	**(51,587)**	**23,743**	**22,028**	**25,311**
Opening Cash Balance		1,168,004	1,121,517	1,147,896	1,169,570	1,201,654	1,152,948	1,168,409	1,189,231	1,203,704	1,152,117	1,175,860	1,197,889
FX adjustment		-	-	-	-	-	-	-	-	-	-	-	-
Closing Cash Balance		**1,121,517**	**1,147,896**	**1,169,570**	**1,201,654**	**1,152,948**	**1,168,409**	**1,189,231**	**1,203,704**	**1,152,117**	**1,175,860**	**1,197,889**	**1,223,200**
Cash Collateral pledged to Citibank	19												
Opening Balance		11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900
Cash Collateral Deposit / (Withdrawal)		-	-	-	-	-	-	-	-	-	-	-	-
Closing Balance		**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**
Closing Cash net of Cash Collateral		**1,109,617**	**1,135,996**	**1,157,670**	**1,189,754**	**1,141,048**	**1,156,509**	**1,177,331**	**1,191,804**	**1,140,217**	**1,163,960**	**1,185,989**	**1,211,300**

JTI-Macdonald Corp.
30-week Revised Cash Flow Statement
$CAD '000, unaudited

For the week beginning	Notes	21-Aug-23	28-Aug-23	4-Sep-23	11-Sep-23	18-Sep-23	25-Sep-23	30-week Total to September 29, 2023
Receipts								
Sales	1	33,633	39,310	29,011	30,956	30,514	30,436	879,910
Intercompany Receipts	2	4,793	4,836	2,642	2,642	2,684	2,642	178,199
Tax Refunds	3	-	-	992	328	-	-	8,248
Other Receipts	4	-	1,498	921	-	-	-	25,141
Total Receipts		**38,426**	**45,644**	**33,565**	**33,926**	**33,198**	**33,077**	**1,091,498**
Disbursements								
General Expenses	5	(1,700)	(1,700)	(1,700)	(1,700)	(1,700)	(1,700)	(51,000)
Payroll and Benefits	6	(2,294)	(630)	(1,855)	(455)	(2,297)	(630)	(40,785)
Pension	7	-	(165)	(50)	(165)	(467)	(165)	(6,090)
Promotions and Marketing	8	(2,220)	(2,220)	(2,435)	(2,435)	(2,435)	(2,435)	(73,206)
Leaf	9	-	-	(1,334)	-	-	-	(7,972)
Capital Expenditures	10	(394)	(394)	(580)	(580)	(580)	(580)	(9,602)
Professional Fees	11	(5)	(5)	(3)	(3)	(3)	(3)	(135)
Restructuring Costs	12	(100)	(100)	(100)	(100)	(100)	(100)	(3,000)
Domestic and Import Duty	13	-	(51,368)	-	-	-	(24,955)	(344,258)
GST and HST	14	-	(8,204)	-	-	-	(8,903)	(53,288)
Intercompany Disbursements	15	(7,528)	(8,655)	(9,882)	(8,706)	(8,706)	(9,834)	(257,995)
Intercompany Royalties	16	-	-	-	-	-	-	-
Intercompany Interest	17	-	-	-	-	-	-	-
Intercompany Principal	17	-	-	-	-	-	-	-
Income Tax Instalments and PTT	18	-	(4,750)	(2,328)	(1,372)	-	(4,750)	(59,150)
Total Disbursements		**(14,242)**	**(78,192)**	**(20,267)**	**(15,516)**	**(16,288)**	**(54,055)**	**(906,481)**
Cashflow Surplus/Deficit (-)		**24,184**	**(32,548)**	**13,298**	**18,409**	**16,910**	**(20,977)**	**185,017**
Opening Cash Balance		1,223,200	1,247,383	1,214,835	1,228,133	1,246,543	1,263,453	1,057,458
FX adjustment		-	-	-	-	-	-	-
Closing Cash Balance		**1,247,383**	**1,214,835**	**1,228,133**	**1,246,543**	**1,263,453**	**1,242,475**	**1,242,475**
Cash Collateral pledged to Citibank	19							
Opening Balance		11,900	11,900	11,900	11,900	11,900	11,900	11,900
Cash Collateral Deposit / (Withdrawal)		-	-	-	-	-	-	-
Closing Balance		**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**
Closing Cash net of Cash Collateral		**1,235,483**	**1,202,935**	**1,216,233**	**1,234,643**	**1,251,553**	**1,230,575**	**1,230,575**

8. Promotions, Marketing and Distribution Support

These projected disbursements relate to the various marketing and promotional initiatives, such as inventory support programs and brand support programs, some of which were deferred from 2021 and 2022 due to Covid-19. JTIM also plans to conduct more trade marketing activities to drive sales in the forecast period given the easing of Covid-19 restrictions across Canada.

9. Leaf

These projected disbursements represent payments to third party suppliers of tobacco leaf. Third party purchases are used in circumstances where JTI-SA does not have a specific grade of tobacco available at the time required to meet the plant's tobacco blend requirements to reduce disruptions in the production process.

10. Capital Expenditures

These capital expenditures include investments in building, equipment and process improvements at JTIM's Quebec manufacturing facility, and IT software and hardware purchases.

11. Professional Fees

These projected disbursements include payments to JTIM's legal advisors for corporate matters.

12. Restructuring Costs

These projected disbursements include payments to JTIM's legal advisors for specialist restructuring advice, the fees and costs of the Monitor and its counsel, the fees and costs of the Chief Restructuring Officer, the fees and costs of the Court-Appointed Mediator and his advisors, and the fees and costs of representative counsel appointed by the Court on December 9, 2019.

13. Domestic and Import Duty

These projected disbursements relate to payments to Canada Revenue Agency **("CRA")** with respect to tobacco products produced under the *Excise Act*, 2001 and customs duty and GST on imported leaf and other raw materials, spare parts and machinery. Excise duty returns and

Court File No. CV-19-615862-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c.C-36 AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO JTI-MACDONALD CORP.

FIFTEENTH REPORT OF THE MONITOR
September 20, 2023

JTI-Macdonald Corp.
30-week Revised Cash Flow Statement
$CAD '000, unaudited

For the week beginning	Notes	4-Sep-23	11-Sep-23	18-Sep-23	25-Sep-23	2-Oct-23	9-Oct-23	16-Oct-23	23-Oct-23	30-Oct-23	6-Nov-23	13-Nov-23	20-Nov-23
Receipts													
Sales	1	27,529	29,307	28,885	28,757	30,930	22,659	32,259	20,429	22,887	30,026	28,720	27,926
Intercompany Receipts	2	2,704	2,642	2,674	2,642	5,955	5,882	5,914	6,142	5,008	5,016	4,976	5,008
Tax Refunds	3	1,000	347	-	-	1,000	347	-	-	1,000	347	-	-
Other Receipts	4	-	-	-	-	2,485	-	7,549	900	2,594	-	-	-
Total Receipts		**31,233**	**32,295**	**31,559**	**31,399**	**40,370**	**28,888**	**45,722**	**27,471**	**31,489**	**35,389**	**33,696**	**32,934**
Disbursement													
General Expenses	5	(2,100)	(2,100)	(2,100)	(2,100)	(2,100)	(2,100)	(2,100)	(2,100)	(1,700)	(1,700)	(1,700)	(1,700)
Payroll and Benefits	6	(1,858)	(458)	(2,300)	(633)	(1,858)	(458)	(1,858)	(1,017)	(2,033)	(458)	(1,858)	(1,329)
Pension	7	(230)	-	(637)	-	(230)	-	(637)	-	(230)	-	(170)	(467)
Promotions and Marketing	8	(2,871)	(2,871)	(2,871)	(2,871)	(3,677)	(3,677)	(3,677)	(3,677)	(2,171)	(2,171)	(2,171)	(2,171)
Leaf	9	(630)	-	-	-	-	-	-	-	-	(306)	-	-
Capital Expenditures	10	(284)	(284)	(284)	(284)	(358)	(358)	(358)	(358)	(139)	(139)	(139)	(139)
Professional Fees	11	(30)	(30)	(30)	(30)	(30)	(30)	(30)	(30)	(30)	(30)	(30)	(30)
Restructuring Costs	12	(130)	(130)	(130)	(130)	(130)	(130)	(130)	(130)	(130)	(130)	(130)	(130)
Domestic and Import Duty	13	-	-	-	(19,549)	-	-	-	-	(42,938)	-	-	-
GST and HST	14	-	-	-	(8,134)	-	-	-	-	(6,273)	-	-	-
Intercompany Disbursements	15	(9,721)	(8,409)	(8,409)	(9,485)	(4,272)	(3,858)	(3,858)	(4,934)	(6,375)	(7,163)	(6,375)	(6,375)
Intercompany Royalties	16	-	-	-	-	-	-	-	-	-	-	-	-
Intercompany Interest	17	-	-	-	-	-	-	-	-	-	-	-	-
Intercompany Principal	17	-	-	-	-	-	-	-	-	-	-	-	-
Income Tax Instalments and PTT	18	(2,000)	(1,700)	-	(4,860)	-	(2,000)	(1,700)	-	(4,860)	(2,000)	(1,700)	-
Total Disbursements		**(19,855)**	**(15,982)**	**(16,761)**	**(48,075)**	**(12,655)**	**(12,611)**	**(14,347)**	**(12,245)**	**(66,879)**	**(14,098)**	**(14,273)**	**(12,340)**
Cashflow Surplus/Deficit (-)		**11,378**	**16,313**	**14,797**	**(16,676)**	**27,715**	**16,277**	**31,374**	**15,226**	**(35,390)**	**21,291**	**19,422**	**20,594**
Opening Cash Balance		1,243,740	1,255,118	1,271,431	1,286,228	1,269,552	1,297,267	1,313,544	1,344,919	1,360,144	1,324,754	1,346,045	1,365,468
FX adjustment		-	-	-	-	-	-	-	-	-	-	-	-
Closing Cash Balance		**1,255,118**	**1,271,431**	**1,286,228**	**1,269,552**	**1,297,267**	**1,313,544**	**1,344,919**	**1,360,144**	**1,324,754**	**1,346,045**	**1,365,468**	**1,386,061**
Cash Collateral pledged to Citibank	19												
Opening Balance		11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900
Cash Collateral Deposit / (Withdrawal)		-	-	-	-	-	-	-	-	-	-	-	(900)
Closing Balance		**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,000**
Closing Cash net of Cash Collateral		**1,243,218**	**1,259,531**	**1,274,328**	**1,257,652**	**1,285,367**	**1,301,644**	**1,333,019**	**1,348,244**	**1,312,854**	**1,334,145**	**1,353,568**	**1,375,061**

JTI-Macdonald Corp.
30-week Revised Cash Flow Statement
$CAD '000, unaudited

For the week beginning	Notes	27-Nov-23	4-Dec-23	11-Dec-23	18-Dec-23	25-Dec-23	1-Jan-24	8-Jan-24	15-Jan-24	22-Jan-24	29-Jan-24	5-Feb-24	12-Feb-24
Receipts													
Sales	1	28,239	30,429	36,585	65,659	-	24,706	18,373	36,517	13,387	13,350	21,243	24,418
Intercompany Receipts	2	4,976	6,688	6,616	6,648	6,616	7,256	7,184	7,184	7,216	7,476	5,538	5,498
Tax Refunds	3	-	1,000	347	-	-	1,000	347	-	-	-	1,000	347
Other Receipts	4	1,672	1,031	-	-	-	2,812	-	7,525	828	2,921	-	-
Total Receipts		**34,887**	**39,149**	**43,548**	**72,307**	**6,616**	**35,774**	**25,904**	**51,225**	**21,431**	**23,747**	**27,781**	**30,263**
Disbursement													
General Expenses	5	(1,700)	(2,100)	(2,100)	(2,100)	(2,100)	(1,500)	(1,500)	(1,500)	(1,500)	(1,500)	(1,900)	(1,900)
Payroll and Benefits	6	(2,033)	(458)	(1,858)	(1,444)	(2,033)	(458)	(1,858)	(458)	(2,435)	(633)	(1,858)	(458)
Pension	7	(170)	(60)	(170)	(467)	(170)	(60)	(170)	(567)	(170)	(60)	(170)	-
Promotions and Marketing	8	(2,171)	(7,940)	(7,940)	(7,940)	(7,940)	(92)	(92)	(92)	(92)	(92)	(1,433)	(1,433)
Leaf	9	-	(2,777)	-	-	-	-	-	-	-	-	-	-
Capital Expenditures	10	(139)	(258)	(258)	(258)	(258)	(255)	(255)	(255)	(255)	(255)	(171)	(171)
Professional Fees	11	(30)	(30)	(30)	(30)	(30)	(30)	(30)	(30)	(30)	(30)	(30)	(30)
Restructuring Costs	12	(130)	(130)	(130)	(130)	(130)	(130)	(130)	(130)	(130)	(130)	(130)	(130)
Domestic and Import Duty	13	(48,400)	-	-	-	(65,341)	-	-	-	-	(43,972)	-	-
GST and HST	14	(7,247)	-	-	-	(6,330)	-	-	-	-	(6,994)	-	-
Intercompany Disbursements	15	(7,450)	(11,880)	(11,369)	(11,369)	(12,458)	(8,099)	(7,571)	(7,571)	(9,330)	(7,571)	(8,121)	(7,374)
Intercompany Royalties	16	-	-	-	-	-	-	-	-	-	-	-	-
Intercompany Interest	17	-	-	-	-	-	-	-	-	-	-	-	-
Intercompany Principal	17	-	-	-	-	-	-	-	-	-	-	-	-
Income Tax Instalments and PTT	18	(4,860)	(2,000)	(1,700)	-	(4,860)	-	(2,000)	(1,700)	-	(6,100)	(2,000)	(1,700)
Total Disbursements		**(74,331)**	**(27,632)**	**(25,554)**	**(23,737)**	**(101,649)**	**(10,623)**	**(13,606)**	**(12,302)**	**(13,942)**	**(67,336)**	**(15,813)**	**(13,196)**
Cashflow Surplus/Deficit (-)		**(39,444)**	**11,517**	**17,994**	**48,571**	**(95,033)**	**25,150**	**12,298**	**38,923**	**7,489**	**(43,590)**	**11,968**	**17,067**
Opening Cash Balance		1,386,061	1,346,617	1,358,134	1,376,128	1,424,699	1,329,666	1,354,816	1,367,114	1,406,037	1,413,526	1,369,936	1,381,904
FX adjustment		-	-	-	-	-	-	-	-	-	-	-	-
Closing Cash Balance		**1,346,617**	**1,358,134**	**1,376,128**	**1,424,699**	**1,329,666**	**1,354,816**	**1,367,114**	**1,406,037**	**1,413,526**	**1,369,936**	**1,381,904**	**1,398,971**
Cash Collateral pledged to Citibank	19												
Opening Balance		11,000	11,000	11,000	11,000	11,000	11,000	11,000	11,000	11,000	11,000	11,000	11,000
Cash Collateral Deposit / (Withdrawal)		-	-	-	-	-	-	-	-	-	-	-	-
Closing Balance		**11,000**	**11,000**	**11,000**	**11,000**	**11,000**	**11,000**	**11,000**	**11,000**	**11,000**	**11,000**	**11,000**	**11,000**
Closing Cash net of Cash Collateral		**1,335,617**	**1,347,134**	**1,365,128**	**1,413,699**	**1,318,666**	**1,343,816**	**1,356,114**	**1,395,037**	**1,402,526**	**1,358,936**	**1,370,904**	**1,387,971**

JTI-Macdonald Corp.
30-week Revised Cash Flow Statement
$CAD '000, unaudited

For the week beginning	Notes	19-Feb-24	26-Feb-24	4-Mar-24	11-Mar-24	18-Mar-24	25-Mar-24	30-week Total to March 29, 2024
Receipts								
Sales	1	26,811	25,748	25,795	24,373	28,720	34,245	808,914
Intercompany Receipts	2	5,530	5,498	6,805	6,733	6,993	6,733	171,748
Tax Refunds	3	-	-	1,000	347	-	-	9,429
Other Receipts	4	-	1,933	1,045	-	-	-	33,293
Total Receipts		**32,341**	**33,179**	**34,645**	**31,453**	**35,713**	**40,978**	**1,023,384**
Disbursement								
General Expenses	5	(1,900)	(1,900)	(1,900)	(1,900)	(1,900)	(1,900)	(56,400)
Payroll and Benefits	6	(11,875)	(633)	(1,858)	(458)	(2,759)	(458)	(50,142)
Pension	7	(2,567)	-	(230)	-	(737)	-	(8,366)
Promotions and Marketing	8	(1,433)	(1,433)	(1,741)	(1,741)	(1,741)	(1,741)	(81,956)
Leaf	9	-	-	(3,530)	-	-	-	(7,244)
Capital Expenditures	10	(171)	(171)	(90)	(90)	(90)	(90)	(6,618)
Professional Fees	11	(30)	(30)	(30)	(30)	(30)	(30)	(900)
Restructuring Costs	12	(130)	(130)	(130)	(130)	(130)	(130)	(3,900)
Domestic and Import Duty	13	-	(41,942)	-	-	-	(47,299)	(309,439)
GST and HST	14	-	(6,289)	-	-	-	(5,259)	(46,526)
Intercompany Disbursements	15	(7,374)	(9,328)	(7,990)	(7,596)	(7,596)	(9,240)	(238,522)
Intercompany Royalties	16	-	-	-	-	-	-	-
Intercompany Interest	17	-	-	-	-	-	-	-
Intercompany Principal	17	-	-	-	-	-	-	-
Income Tax Instalments and PTT	18	-	(22,700)	(2,000)	(1,700)	-	(6,100)	(80,240)
Total Disbursements		**(25,479)**	**(84,555)**	**(19,499)**	**(13,646)**	**(14,983)**	**(72,247)**	**(890,253)**
Cashflow Surplus/Deficit (-)		**6,862**	**(51,376)**	**15,145**	**17,807**	**20,730**	**(31,269)**	**133,131**
Opening Cash Balance		1,398,971	1,405,833	1,354,457	1,369,603	1,387,410	1,408,140	1,243,740
FX adjustment		-	-	-	-	-	-	-
Closing Cash Balance		**1,405,833**	**1,354,457**	**1,369,603**	**1,387,410**	**1,408,140**	**1,376,871**	**1,376,871**
Cash Collateral pledged to Citibank	19							
Opening Balance		11,000	11,000	11,000	11,000	11,000	11,000	11,900
Cash Collateral Deposit / (Withdrawal)		-	-	-	-	-	-	(900)
Closing Balance		**11,000**	**11,000**	**11,000**	**11,000**	**11,000**	**11,000**	**11,000**
Closing Cash net of Cash Collateral		**1,394,833**	**1,343,457**	**1,358,603**	**1,376,410**	**1,397,140**	**1,365,871**	**1,365,871**

8. Promotions, Marketing and Distribution Support

These projected disbursements relate to the various marketing and promotional initiatives, such as inventory support programs and brand support programs, some of which were deferred from 2021 and 2022 due to Covid-19. JTIM also plans to conduct more trade marketing activities to drive sales in the forecast period.

9. Leaf

These projected disbursements represent payments to third party suppliers of tobacco leaf. Third party purchases are used in circumstances where JTI-SA does not have a specific grade of tobacco available at the time required to meet the plant's tobacco blend requirements to reduce disruptions in the production process.

10. Capital Expenditures

These capital expenditures include investments in building, equipment, and process improvements at JTIM's Quebec manufacturing facility, and IT software and hardware purchases.

11. Professional Fees

These projected disbursements include payments to JTIM's legal advisors for corporate matters.

12. Restructuring Costs

These projected disbursements include payments to JTIM's legal advisors for specialist restructuring advice, the fees and costs of the Monitor and its counsel, the fees and costs of the Chief Restructuring Officer, the fees and costs of the Court-Appointed Mediator and his advisors, and the fees and costs of representative counsel appointed by the Court on December 9, 2019.

13. Domestic and Import Duty

These projected disbursements relate to payments to the Canada Revenue Agency **("CRA")** with respect to tobacco products produced under the *Excise Act*, 2001 and customs duty and GST on imported leaf and other raw materials, spare parts or machinery. Excise duty returns and payments

Court File No. 19-CV-615862-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c.C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JTI-MACDONALD CORP.

SIXTEENTH REPORT OF THE MONITOR
March 18, 2024

INTRODUCTION

1. On March 8, 2019, JTI-Macdonald Corp. ("**JTIM**" or the "**Applicant**") filed for and obtained protection under the *Companies' Creditors Arrangement Act* (the "**CCAA**"). Pursuant to the Order of this Court granted on the same date (the "**Original Initial Order**"), Deloitte Restructuring Inc. was appointed as the Monitor in these proceedings (in such capacity, the "**Monitor**"). The proceedings commenced by the Applicant under the CCAA are referred to herein as the "**CCAA Proceedings**".

2. The CCAA Proceedings are being conducted in parallel with the CCAA proceedings of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited (collectively, "**ITL**"), and Rothmans, Benson & Hedges Inc. ("**RBH**", together with JTIM and ITL, the "**CCAA Applicants**"). The stated objective of these parallel, unconsolidated CCAA proceedings is to provide the CCAA Applicants with an opportunity to settle the multi billion dollars of claims alleged against each of them through a structured process.

JTI-Macdonald Corp.
31-week Revised Cash Flow Statement
$CAD '000, unaudited

For the week beginning	Notes	4-Mar-24	11-Mar-24	18-Mar-24	25-Mar-24	1-Apr-24	8-Apr-24	15-Apr-24	22-Apr-24	29-Apr-24	6-May-24	13-May-24	20-May-24
Receipts													
Sales	1	24,894	25,410	26,525	32,790	18,717	19,578	20,724	75,683	15,116	22,257	27,719	29,288
Intercompany Receipts	2	6,761	5,886	5,886	5,886	6,024	5,455	5,455	5,455	5,170	4,829	4,829	4,972
Tax Refunds	3	1,100	347	-	-	1,100	347	-	-	1,100	347	-	-
Other Receipts	4	2,478	-	-	-	2,542	795	8,733	-	1,573	1,050	-	-
Total Receipts		**35,232**	**31,643**	**32,411**	**38,676**	**28,382**	**26,175**	**34,913**	**81,138**	**22,959**	**28,482**	**32,548**	**34,260**
Disbursement													
General Expenses	5	(1,600)	(1,600)	(1,600)	(1,600)	(1,600)	(1,600)	(1,600)	(1,600)	(1,600)	(1,600)	(1,600)	(1,600)
Payroll and Benefits	6	(2,209)	(791)	(2,011)	(1,362)	(2,209)	(1,162)	(2,011)	(892)	(2,209)	(461)	(2,011)	(892)
Pension	7	(171)	-	(515)	-	(171)	-	(515)	-	(171)	-	-	(515)
Promotions and Marketing	8	(1,443)	(1,443)	(1,443)	(1,443)	(3,454)	(3,454)	(3,454)	(3,454)	(1,519)	(1,519)	(1,519)	(1,519)
Leaf	9	(3,530)	-	-	-	(2,307)	-	-	-	-	-	-	-
Capital Expenditures	10	(90)	(90)	(90)	(90)	(82)	(82)	(82)	(82)	(101)	(101)	(101)	(101)
Professional Fees	11	(25)	(25)	(25)	(25)	(25)	(25)	(25)	(25)	(25)	(25)	(25)	(25)
Restructuring Costs	12	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)
Domestic and Import Duty	13	-	-	-	(46,137)	-	-	-	-	(44,217)	-	-	-
GST and HST	14	-	-	-	(5,074)	-	-	-	-	(5,675)	-	-	-
Intercompany Disbursements	15	(6,473)	(6,127)	(6,079)	(7,811)	(8,724)	(8,372)	(8,372)	(9,535)	(6,750)	(6,085)	(6,085)	(6,085)
Intercompany Royalties	16	-	-	-	-	-	-	-	-	-	-	-	-
Intercompany Interest	17	-	-	-	-	-	-	-	-	-	-	-	-
Intercompany Principal	17	-	-	-	-	-	-	-	-	-	-	-	-
Income Tax Instalments and PTT	18	(1,661)	(826)	(2,285)	(5,500)	-	(2,000)	(3,900)	-	(5,500)	(2,000)	(900)	(3,000)
Total Disbursements		**(17,402)**	**(11,103)**	**(14,248)**	**(69,243)**	**(18,772)**	**(16,894)**	**(20,159)**	**(15,787)**	**(67,968)**	**(11,991)**	**(12,441)**	**(13,937)**
Cashflow Surplus/Deficit (-)		**17,830**	**20,540**	**18,163**	**(30,567)**	**9,610**	**9,281**	**14,755**	**65,351**	**(45,008)**	**16,491**	**20,106**	**20,323**
Opening Cash Balance		1,367,454	1,385,284	1,405,824	1,423,987	1,393,420	1,403,031	1,412,312	1,427,066	1,492,418	1,447,409	1,463,900	1,484,006
FX adjustment		-	-	-	-	-	-	-	-	-	-	-	-
Closing Cash Balance		**1,385,284**	**1,405,824**	**1,423,987**	**1,393,420**	**1,403,031**	**1,412,312**	**1,427,066**	**1,492,418**	**1,447,409**	**1,463,900**	**1,484,006**	**1,504,330**
Cash Collateral pledged to Citibank	19												
Opening Balance		11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900	11,900
Cash Collateral Deposit / (Withdrawal)		-	-	-	-	-	-	-	-	-	-	-	(900)
Closing Balance		**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,900**	**11,000**
Closing Cash net of Cash Collateral		**1,373,384**	**1,393,924**	**1,412,087**	**1,381,520**	**1,391,131**	**1,400,412**	**1,415,166**	**1,480,518**	**1,435,509**	**1,452,000**	**1,472,106**	**1,493,330**

JTI-Macdonald Corp.
31-week Revised Cash Flow Statement
$CAD '000, unaudited

For the week beginning	Notes	27-May-24	3-Jun-24	10-Jun-24	17-Jun-24	24-Jun-24	1-Jul-24	8-Jul-24	15-Jul-24	22-Jul-24	29-Jul-24	5-Aug-24	12-Aug-24
Receipts													
Sales	1	20,632	18,997	26,210	28,063	34,323	29,394	25,329	26,219	26,105	28,812	37,213	29,019
Intercompany Receipts	2	4,829	6,480	6,435	6,435	6,435	4,350	4,306	4,306	7,367	4,610	5,882	5,882
Tax Refunds	3	-	1,100	347	-	-	1,100	347	-	-	-	1,100	347
Other Receipts	4	-	2,704	-	-	-	3,589	-	8,653	-	1,064	1,803	-
Total Receipts		**25,460**	**29,281**	**32,993**	**34,499**	**40,758**	**38,433**	**29,981**	**39,177**	**33,472**	**34,485**	**45,998**	**35,248**
Disbursement													
General Expenses	5	(1,600)	(1,600)	(1,600)	(1,600)	(1,600)	(1,600)	(1,600)	(1,600)	(1,600)	(1,600)	(1,600)	(1,600)
Payroll and Benefits	6	(2,011)	(659)	(2,106)	(461)	(2,442)	(659)	(2,146)	(461)	(2,561)	(659)	(2,011)	(461)
Pension	7	-	(171)	-	(515)	-	(171)	-	(970)	-	(171)	-	-
Promotions and Marketing	8	(1,519)	(2,365)	(2,365)	(2,365)	(2,365)	(2,603)	(2,603)	(2,603)	(2,603)	(2,603)	(2,480)	(2,480)
Leaf	9	-	(47)	-	-	-	-	-	-	-	-	-	-
Capital Expenditures	10	(101)	(192)	(192)	(192)	(192)	(108)	(108)	(108)	(108)	(108)	(1,211)	(1,211)
Professional Fees	11	(25)	(25)	(25)	(25)	(25)	(25)	(25)	(25)	(25)	(25)	(25)	(25)
Restructuring Costs	12	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)
Domestic and Import Duty	13	(55,302)	-	-	-	(49,033)	-	-	-	-	(43,192)	-	-
GST and HST	14	(9,059)	-	-	-	(4,629)	-	-	-	-	(5,772)	-	-
Intercompany Disbursements	15	(7,248)	(9,101)	(8,188)	(8,188)	(9,351)	(8,263)	(7,096)	(7,096)	(8,259)	(7,096)	(8,346)	(7,291)
Intercompany Royalties	16	-	-	-	-	-	-	-	-	-	-	-	-
Intercompany Interest	17	-	-	-	-	-	-	-	-	-	-	-	-
Intercompany Principal	17	-	-	-	-	-	-	-	-	-	-	-	-
Income Tax Instalments and PTT	18	(5,500)	-	(2,900)	(3,000)	(5,500)	-	(2,000)	(3,900)	-	(5,500)	(2,000)	(900)
Total Disbursements		**(82,565)**	**(14,360)**	**(17,576)**	**(16,546)**	**(75,336)**	**(13,629)**	**(15,778)**	**(16,963)**	**(15,355)**	**(66,926)**	**(17,873)**	**(14,169)**
Cashflow Surplus/Deficit (-)		**(57,105)**	**14,920**	**15,417**	**17,953**	**(34,578)**	**24,805**	**14,204**	**22,215**	**18,117**	**(32,441)**	**28,125**	**21,079**
Opening Cash Balance		1,504,330	1,447,225	1,462,145	1,477,562	1,495,515	1,460,937	1,485,742	1,499,945	1,522,160	1,540,277	1,507,836	1,535,961
FX adjustment		-	-	-	-	-	-	-	-	-	-	-	-
Closing Cash Balance		**1,447,225**	**1,462,145**	**1,477,562**	**1,495,515**	**1,460,937**	**1,485,742**	**1,499,945**	**1,522,160**	**1,540,277**	**1,507,836**	**1,535,961**	**1,557,040**
Cash Collateral pledged to Citibank	19												
Opening Balance		11,000	11,000	11,000	11,000	11,000	11,000	11,000	11,000	11,000	11,000	11,000	11,000
Cash Collateral Deposit / (Withdrawal)		-	-	-	-	-	-	-	-	-	-	-	-
Closing Balance		**11,000**	**11,000**	**11,000**	**11,000**	**11,000**	**11,000**	**11,000**	**11,000**	**11,000**	**11,000**	**11,000**	**11,000**
Closing Cash net of Cash Collateral		**1,436,225**	**1,451,145**	**1,466,562**	**1,484,515**	**1,449,937**	**1,474,742**	**1,488,945**	**1,511,160**	**1,529,277**	**1,496,836**	**1,524,961**	**1,546,040**

JTI-Macdonald Corp.
31-week Revised Cash Flow Statement
$CAD '000, unaudited

For the week beginning	Notes	19-Aug-24	26-Aug-24	2-Sep-24	9-Sep-24	16-Sep-24	23-Sep-24	30-Sep-24	31-week Total to October 4, 2024
Receipts									
Sales	1	31,064	32,249	24,835	23,156	22,597	22,151	24,006	849,073
Intercompany Receipts	2	5,882	5,882	3,176	3,131	3,131	3,302	5,154	163,586
Tax Refunds	3	-	-	1,100	347	-	-	1,100	11,229
Other Receipts	4	-	-	2,947	-	-	813	3,028	41,772
Total Receipts		**36,947**	**38,132**	**32,058**	**26,634**	**25,729**	**26,266**	**33,288**	**1,065,660**
Disbursement									
General Expenses	5	(1,600)	(1,600)	(1,600)	(1,600)	(1,600)	(1,600)	(1,600)	(49,600)
Payroll and Benefits	6	(2,753)	(461)	(2,209)	(461)	(2,011)	(1,203)	(2,209)	(46,163)
Pension	7	(970)	-	(171)	-	(515)	-	-	(5,710)
Promotions and Marketing	8	(2,480)	(2,480)	(2,730)	(2,730)	(2,730)	(2,730)	(2,162)	(72,662)
Leaf	9	-	-	(47)	-	-	-	-	(5,932)
Capital Expenditures	10	(1,211)	(1,267)	(363)	(363)	(363)	(363)	(121)	(8,973)
Professional Fees	11	(25)	(25)	(25)	(25)	(25)	(25)	(25)	(775)
Restructuring Costs	12	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(6,200)
Domestic and Import Duty	13	-	(46,242)	-	-	-	-	(23,820)	(307,944)
GST and HST	14	-	(7,970)	-	-	-	-	(6,816)	(44,996)
Intercompany Disbursements	15	(7,291)	(8,453)	(9,417)	(7,970)	(7,970)	(7,970)	(6,278)	(237,374)
Intercompany Royalties	16	-	-	-	-	-	-	-	-
Intercompany Interest	17	-	-	-	-	-	-	-	-
Intercompany Principal	17	-	-	-	-	-	-	-	-
Income Tax Instalments and PTT	18	(3,000)	(5,500)	-	(2,900)	(3,000)	-	(5,500)	(78,672)
Total Disbursements		**(19,531)**	**(74,199)**	**(16,763)**	**(16,250)**	**(18,414)**	**(14,092)**	**(48,732)**	**(865,000)**
Cashflow Surplus/Deficit (-)		**17,416**	**(36,067)**	**15,295**	**10,385**	**7,314**	**12,174**	**(15,444)**	**200,660**
Opening Cash Balance		1,557,040	1,574,456	1,538,390	1,553,684	1,564,069	1,571,383	1,583,557	1,367,454
FX adjustment		-	-	-	-	-	-	-	-
Closing Cash Balance		**1,574,456**	**1,538,390**	**1,553,684**	**1,564,069**	**1,571,383**	**1,583,557**	**1,568,114**	**1,568,114**
Cash Collateral pledged to Citibank	19								
Opening Balance		11,000	11,000	11,000	11,000	11,000	11,000	11,000	11,900
Cash Collateral Deposit / (Withdrawal)		-	-	-	-	-	-	-	(900)
Closing Balance		**11,000**	**11,000**	**11,000**	**11,000**	**11,000**	**11,000**	**11,000**	**11,000**
Closing Cash net of Cash Collateral		**1,563,456**	**1,527,390**	**1,542,684**	**1,553,069**	**1,560,383**	**1,572,557**	**1,557,114**	**1,557,114**

8. Promotions, Marketing and Distribution Support

These projected disbursements relate to the various marketing and promotional initiatives, such as inventory support programs and brand support programs.

9. Leaf

These projected disbursements represent payments to third party suppliers of tobacco leaf. Third party purchases are used in circumstances where JTI-SA does not have a specific grade of tobacco available at the time required to meet the plant's tobacco blend requirements to reduce disruptions in the production process.

10. Capital Expenditures

These capital expenditures include investments in building, equipment, and process improvements at JTIM's Quebec manufacturing facility, and IT software and hardware purchases.

11. Professional Fees

These projected disbursements include payments to JTIM's legal advisors for corporate matters.

12. Restructuring Costs

These projected disbursements include payments to JTIM's legal advisors for specialist restructuring advice, the fees and costs of the Monitor and its counsel, the fees and costs of the Chief Restructuring Officer, the fees and costs of the Court-Appointed Mediator and his advisors, and the fees and costs of representative counsel appointed by the Court on December 9, 2019.

13. Domestic and Import Duty

These projected disbursements relate to payments to the Canada Revenue Agency **("CRA")** with respect to tobacco products produced under the *Excise Act*, 2001 and customs duty and GST on imported leaf and other raw materials, spare parts or machinery. Excise duty returns and payments are due on the last day of the month following the reporting period. Import duty payments are paid once a month on a rolling basis with the 21st being the end of the month.

Court File No. CV-19-615862-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c.C-36 AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JTI-MACDONALD CORP.

SEVENTEENTH REPORT OF THE MONITOR
September 27, 2024

JTI-Macdonald Corp.
8-week Revised Cash Flow Statement
$CAD '000, unaudited

For the week beginning	9-Sep-24	16-Sep-24	23-Sep-24	30-Sep-24	7-Oct-24	14-Oct-24	21-Oct-24	28-Oct-24	8-week Total to November 1, 2024
Receipts									
Sales	24,187	27,991	28,573	23,230	22,815	27,246	23,963	24,230	202,236
Intercompany Receipts	1,442	2,470	1,454	5,250	5,242	5,289	5,242	5,544	31,931
Tax Refunds	-	-	-	6,600	-	-	-	-	6,600
Other Receipts	-	-	746	2,619	-	7,692	-	1,728	12,784
Total Receipts	**25,628**	**30,461**	**30,772**	**37,698**	**28,057**	**40,227**	**29,205**	**31,502**	**253,551**
Disbursement									
General Expenses	(1,583)	(1,583)	(1,583)	(1,583)	(1,583)	(1,583)	(1,583)	(1,583)	(12,668)
Payroll and Benefits	(350)	(2,463)	(1,562)	(1,900)	(500)	(1,900)	(1,042)	(2,420)	(12,138)
Pension	-	(484)	-	(185)	(60)	(484)	-	(185)	(1,397)
Promotions and Marketing	(2,243)	(2,243)	(2,243)	(2,855)	(2,855)	(2,855)	(2,855)	(2,855)	(21,003)
Leaf	-	-	-	-	-	-	-	-	-
Capital Expenditures	(322)	(322)	(3,141)	(311)	(311)	(311)	(311)	(311)	(5,340)
Professional Fees	(25)	(25)	(25)	(25)	(25)	(25)	(25)	(25)	(200)
Restructuring Costs	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(1,600)
Domestic and Import Duty	-	-	(13,151)	-	-	-	-	(52,622)	(65,773)
GST and HST	-	-	(6,681)	-	-	-	-	(5,012)	(11,692)
Intercompany Disbursements	(12,034)	(11,985)	(13,087)	(3,200)	(1,613)	(1,565)	(1,565)	(2,667)	(47,716)
Intercompany Royalties	-	-	-	-	-	-	-	-	-
Intercompany Interest	-	-	-	-	-	-	-	-	-
Intercompany Principal	-	-	-	-	-	-	-	-	-
Income Tax Instalments and PTT	(3,300)	(3,300)	(5,850)	-	-	(3,300)	(3,300)	(5,450)	(24,500)
Total Disbursements	**(20,057)**	**(22,605)**	**(47,523)**	**(10,259)**	**(7,148)**	**(12,223)**	**(10,882)**	**(73,330)**	**(204,027)**
Cashflow Surplus/Deficit (-)	**5,571**	**7,856**	**(16,750)**	**27,439**	**20,909**	**28,004**	**18,323**	**(41,828)**	**49,524**
Opening Cash Balance	1,521,587	1,527,158	1,535,014	1,518,263	1,545,702	1,566,611	1,594,615	1,612,939	1,521,587
FX adjustment	-	-	-	-	-	-	-	-	-
Closing Cash Balance	**1,527,158**	**1,535,014**	**1,518,263**	**1,545,702**	**1,566,611**	**1,594,615**	**1,612,939**	**1,571,111**	**1,571,111**
Cash Collateral pledged to Citibank									
Opening Balance	11,000	11,000	11,000	11,000	11,000	11,000	11,000	11,000	11,000
Cash Collateral Deposit / (Withdrawal)	-	-	-	-	-	-	-	-	-
Closing Balance	**11,000**	**11,000**	**11,000**	**11,000**	**11,000**	**11,000**	**11,000**	**11,000**	**11,000**
Closing Cash net of Cash Collateral	**1,516,158**	**1,524,014**	**1,507,263**	**1,534,702**	**1,555,611**	**1,583,615**	**1,601,939**	**1,560,111**	**1,560,111**

8. Promotions, Marketing and Distribution Support

These projected disbursements relate to the various marketing and promotional initiatives, such as inventory support programs and brand support programs.

9. Leaf

These projected disbursements represent payments to third party suppliers of tobacco leaf. Third party purchases are used in circumstances where JTI-SA does not have a specific grade of tobacco available at the time required to meet the plant's tobacco blend requirements to reduce disruptions in the production process.

10. Capital Expenditures

These capital expenditures include investments in building, equipment, and process improvements at JTIM's Quebec manufacturing facility, and IT software and hardware purchases.

11. Professional Fees

These projected disbursements include payments to JTIM's legal advisors for corporate matters.

12. Restructuring Costs

These projected disbursements include payments to JTIM's legal advisors for specialist restructuring advice, the fees and costs of the Monitor and its counsel, the fees and costs of the Chief Restructuring Officer, the fees and costs of the Court-Appointed Mediator and his advisors, and the fees and costs of representative counsel appointed by the Court on December 9, 2019.

13. Domestic and Import Duty

These projected disbursements relate to payments to the Canada Revenue Agency **("CRA")** with respect to tobacco products produced under the *Excise Act*, 2001 and customs duty and GST on imported leaf and other raw materials, spare parts or machinery. Excise duty returns and payments are due on the last day of the month following the reporting period. Import duty payments are paid once a month on a rolling basis with the 21st being the end of the month.

Court File No. CV-19-615862-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c.C-36 AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JTI-MACDONALD CORP.

SUPPLEMENT TO THE SEVENTEENTH REPORT OF THE MONITOR
October 25, 2024

JTI-Macdonald Corp.
26-week Revised Cash Flow Statement
$CAD '000, unaudited

For the week beginning	Notes	7-Oct-24	14-Oct-24	21-Oct-24	28-Oct-24	4-Nov-24	11-Nov-24	18-Nov-24	25-Nov-24	2-Dec-24	9-Dec-24	16-Dec-24	23-Dec-24
Receipts													
Sales	1	22,815	27,246	23,963	24,230	24,731	25,497	22,370	24,344	23,092	27,342	48,217	-
Intercompany Receipts	2	7,776	5,289	5,242	5,544	8,116	8,108	8,155	8,128	6,565	6,557	6,604	6,569
Tax Refunds	3	4,350	-	-	-	-	1,445	-	-	-	-	-	-
Other Receipts	4	-	7,692	-	1,728	929	-	-	-	2,695	-	-	-
Total Receipts		**34,942**	**40,227**	**29,205**	**31,502**	**33,775**	**35,051**	**30,525**	**32,472**	**32,352**	**33,899**	**54,821**	**6,569**
Disbursement													
General Expenses	5	(1,583)	(1,583)	(1,583)	(1,583)	(1,583)	(1,583)	(1,583)	(1,583)	(1,583)	(1,583)	(1,583)	(1,583)
Payroll and Benefits	6	(500)	(2,420)	(1,042)	(2,420)	(500)	(1,900)	(1,753)	(2,420)	(658)	(1,900)	(518)	(3,081)
Pension	7	(60)	(484)	-	(185)	(60)	(185)	(299)	(185)	(60)	(185)	(299)	(185)
Promotions and Marketing	8	(2,855)	(2,855)	(2,855)	(2,855)	(2,583)	(2,583)	(2,583)	(2,583)	(2,456)	(2,456)	(2,456)	(2,456)
Leaf	9	-	-	-	-	(54)	-	-	-	-	-	-	-
Capital Expenditures	10	(427)	(427)	(427)	(1,477)	(419)	(419)	(852)	(419)	(188)	(188)	(188)	(188)
Professional Fees	11	(25)	(25)	(25)	(25)	(25)	(25)	(25)	(25)	(25)	(25)	(25)	(25)
Restructuring Costs	12	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)
Domestic and Import Duty	13	-	-	-	(50,382)	-	-	-	(58,715)	-	-	-	-
GST and HST	14	-	-	-	(4,998)	-	-	-	(6,397)	-	-	-	-
Intercompany Disbursements	15	(49)	(1,565)	(1,565)	(2,667)	(11,010)	(9,043)	(9,043)	(10,145)	(11,598)	(11,170)	(11,121)	(12,718)
Intercompany Royalties	16	-	-	-	-	-	-	-	-	-	-	-	-
Intercompany Interest	17	-	-	-	-	-	-	-	-	-	-	-	-
Intercompany Principal	17	-	-	-	-	-	-	-	-	-	-	-	-
Income Tax Instalments and PTT	18	-	(1,521)	(3,060)	(5,450)	-	(3,300)	(3,300)	(5,450)	-	(3,300)	(3,300)	-
Total Disbursements		**(5,699)**	**(11,080)**	**(10,757)**	**(72,242)**	**(16,433)**	**(19,238)**	**(19,638)**	**(88,122)**	**(16,769)**	**(21,007)**	**(19,690)**	**(20,437)**
Cashflow Surplus/Deficit (-)		**29,243**	**29,147**	**18,448**	**(40,740)**	**17,342**	**15,813**	**10,888**	**(55,650)**	**15,583**	**12,892**	**35,131**	**(13,867)**
Opening Cash Balance		1,533,150	1,562,393	1,591,540	1,609,988	1,569,248	1,586,590	1,602,403	1,613,291	1,557,641	1,573,224	1,586,116	1,621,247
FX adjustment		-	-	-	-	-	-	-	-	-	-	-	-
Closing Cash Balance		**1,562,393**	**1,591,540**	**1,609,988**	**1,569,248**	**1,586,590**	**1,602,403**	**1,613,291**	**1,557,641**	**1,573,224**	**1,586,116**	**1,621,247**	**1,607,380**
Cash Collateral pledged to Citibank	19												
Opening Balance		11,000	11,000	11,000	11,000	11,000	11,000	11,000	11,000	11,000	11,000	11,000	11,000
Cash Collateral Deposit / (Withdrawal)		-	-	-	-	-	-	-	-	-	-	-	-
Closing Balance		**11,000**	**11,000**	**11,000**	**11,000**	**11,000**	**11,000**	**11,000**	**11,000**	**11,000**	**11,000**	**11,000**	**11,000**
Closing Cash net of Cash Collateral		**1,551,393**	**1,580,540**	**1,598,988**	**1,558,248**	**1,575,590**	**1,591,403**	**1,602,291**	**1,546,641**	**1,562,224**	**1,575,116**	**1,610,247**	**1,596,380**

JTI-Macdonald Corp.
26-week Revised Cash Flow Statement
$CAD '000, unaudited

For the week beginning	Notes	30-Dec-24	6-Jan-25	13-Jan-25	20-Jan-25	27-Jan-25	3-Feb-25	10-Feb-25	17-Feb-25	24-Feb-25	3-Mar-25	10-Mar-25	17-Mar-25
Receipts													
Sales	1	10,417	20,957	25,334	22,250	22,075	22,822	23,289	24,197	31,323	21,145	25,448	25,759
Intercompany Receipts	2	4,101	4,093	4,140	4,093	4,795	6,722	6,414	6,461	6,426	9,845	7,562	7,954
Tax Refunds	3	-	6,600	-	-	-	-	1,486	-	-	-	-	-
Other Receipts	4	2,733	-	8,129	-	-	2,772	-	-	-	2,810	-	-
Total Receipts		**17,251**	**31,650**	**37,603**	**26,342**	**26,870**	**32,315**	**31,188**	**30,657**	**37,749**	**33,800**	**33,010**	**33,713**
Disbursement													
General Expenses	5	(1,583)	(1,583)	(1,583)	(1,583)	(1,583)	(1,583)	(1,583)	(1,583)	(1,583)	(1,583)	(1,583)	(1,583)
Payroll and Benefits	6	(350)	(2,050)	(518)	(2,432)	(870)	(2,050)	(350)	(9,146)	(870)	(2,050)	(350)	(2,544)
Pension	7	-	(245)	-	(517)	-	(235)	-	(2,167)	-	(235)	-	(517)
Promotions and Marketing	8	(1,144)	(1,144)	(1,144)	(1,144)	(1,144)	(2,721)	(2,721)	(2,721)	(2,721)	(2,670)	(2,670)	(2,670)
Leaf	9	-	-	-	-	-	-	-	-	-	(2,331)	-	-
Capital Expenditures	10	(81)	(81)	(81)	(81)	(81)	(54)	(54)	(54)	(54)	(106)	(106)	(106)
Professional Fees	11	(25)	(25)	(25)	(25)	(25)	(25)	(25)	(25)	(25)	(25)	(25)	(25)
Restructuring Costs	12	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)
Domestic and Import Duty	13	(52,602)	-	-	-	(40,326)	-	-	-	(47,937)	-	-	-
GST and HST	14	(5,185)	-	-	-	(5,062)	-	-	-	(5,151)	-	-	-
Intercompany Disbursements	15	(7,732)	(7,149)	(7,100)	(7,100)	(8,855)	(7,479)	(6,973)	(6,925)	(8,850)	(9,347)	(8,658)	(8,609)
Intercompany Royalties	16	-	-	-	-	-	-	-	-	-	-	-	-
Intercompany Interest	17	-	-	-	-	-	-	-	-	-	-	-	-
Intercompany Principal	17	-	-	-	-	-	-	-	-	-	-	-	-
Income Tax Instalments and PTT	18	(5,450)	-	(3,300)	(3,300)	(6,100)	-	(3,300)	(3,300)	(14,100)	-	(3,300)	(3,300)
Total Disbursements		**(74,352)**	**(12,477)**	**(13,951)**	**(16,382)**	**(64,247)**	**(14,348)**	**(15,207)**	**(26,121)**	**(81,492)**	**(18,547)**	**(16,892)**	**(19,554)**
Cashflow Surplus/Deficit (-)		**(57,101)**	**19,173**	**23,652**	**9,960**	**(37,377)**	**17,968**	**15,981**	**4,536**	**(43,743)**	**15,253**	**16,118**	**14,159**
Opening Cash Balance		1,607,380	1,550,279	1,569,452	1,593,104	1,603,064	1,565,687	1,583,655	1,599,636	1,604,173	1,560,430	1,575,682	1,591,800
FX adjustment		-	-	-	-	-	-	-	-	-	-	-	-
Closing Cash Balance		**1,550,279**	**1,569,452**	**1,593,104**	**1,603,064**	**1,565,687**	**1,583,655**	**1,599,636**	**1,604,173**	**1,560,430**	**1,575,682**	**1,591,800**	**1,605,959**
Cash Collateral pledged to Citibank	19												
Opening Balance		11,000	11,000	11,000	11,000	11,000	11,000	11,000	11,000	11,000	11,000	11,000	11,000
Cash Collateral Deposit / (Withdrawal)		-	-	-	-	-	-	-	-	-	-	-	-
Closing Balance		**11,000**	**11,000**	**11,000**	**11,000**	**11,000**	**11,000**	**11,000**	**11,000**	**11,000**	**11,000**	**11,000**	**11,000**
Closing Cash net of Cash Collateral		**1,539,279**	**1,558,452**	**1,582,104**	**1,592,064**	**1,554,687**	**1,572,655**	**1,588,636**	**1,593,173**	**1,549,430**	**1,564,682**	**1,580,800**	**1,594,959**

JTI-Macdonald Corp.
26-week Revised Cash Flow Statement
$CAD '000, unaudited

For the week beginning	Notes	24-Mar-25	31-Mar-25	26-week Total to April 4, 2025
Receipts				
Sales	1	31,683	18,872	619,420
Intercompany Receipts	2	35,654	6,492	197,402
Tax Refunds	3	-	-	13,881
Other Receipts	4	-	2,849	32,337
Total Receipts		**67,337**	**28,212**	**863,040**
Disbursement				
General Expenses	5	(1,583)	(1,583)	(41,171)
Payroll and Benefits	6	(870)	(2,050)	(45,611)
Pension	7	-	(235)	(6,337)
Promotions and Marketing	8	(2,670)	(1,213)	(60,073)
Leaf	9	-	(1,517)	(3,903)
Capital Expenditures	10	(106)	(97)	(6,756)
Professional Fees	11	(25)	(25)	(650)
Restructuring Costs	12	(200)	(200)	(5,200)
Domestic and Import Duty	13	(44,107)	-	(294,069)
GST and HST	14	(5,193)	-	(31,987)
Intercompany Disbursements	15	(10,274)	(8,687)	(205,430)
Intercompany Royalties	16	-	-	-
Intercompany Interest	17	-	-	-
Intercompany Principal	17	-	-	-
Income Tax Instalments and PTT	18	(6,100)	-	(80,231)
Total Disbursements		**(71,129)**	**(15,607)**	**(781,418)**
Cashflow Surplus/Deficit (-)		**(3,792)**	**12,605**	**81,622**
Opening Cash Balance		1,605,959	1,602,167	1,533,150
FX adjustment		-	-	-
Closing Cash Balance		**1,602,167**	**1,614,772**	**1,614,772**
Cash Collateral pledged to Citibank	19			
Opening Balance		11,000	11,000	11,000
Cash Collateral Deposit / (Withdrawal)		-	-	-
Closing Balance		**11,000**	**11,000**	**11,000**
Closing Cash net of Cash Collateral		**1,591,167**	**1,603,772**	**1,603,772**

8. Promotions, Marketing and Distribution Support

These projected disbursements relate to the various marketing and promotional initiatives, such as inventory support programs and brand support programs.

9. Leaf

These projected disbursements represent payments to third party suppliers of tobacco leaf. Third party purchases are used in circumstances where JTI-SA does not have a specific grade of tobacco available at the time required to meet the plant's tobacco blend requirements to reduce disruptions in the production process.

10. Capital Expenditures

These capital expenditures include investments in building, equipment, and process improvements at JTIM's Quebec manufacturing facility, and IT software and hardware purchases.

11. Professional Fees

These projected disbursements include payments to JTIM's legal advisors for corporate matters.

12. Restructuring Costs

These projected disbursements include payments to JTIM's legal advisors for specialist restructuring advice, the fees and costs of the Monitor and its counsel, the fees and costs of the Chief Restructuring Officer, the fees and costs of the Court-Appointed Mediator and his advisors, and the fees and costs of representative counsel appointed by the Court on December 9, 2019.

13. Domestic and Import Duty

These projected disbursements relate to payments to the Canada Revenue Agency **("CRA")** with respect to tobacco products produced under the *Excise Act*, 2001 and customs duty and GST on imported leaf and other raw materials, spare parts or machinery. Excise duty returns and payments are due on the last day of the month following the reporting period. Import duty payments are paid once a month on a rolling basis with the 21st being the end of the month.

This is Exhibit "D" referred to in the Affidavit of Robert Schwartz sworn by Robert Schwartz of the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on January 17, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (or as may be)

Katelin Zoe Parker, a Commissioner, etc.,
Province of Ontario, for Fogler, Rubinoff LLP,
Barristers and Solicitors. Expires April 23, 2026.

https://ccentral.ca/2024-star-women-convenience-winner-laura-kong

2024 Star Women in Convenience winner: Laura Kong

SHINING STAR

Convenience Store News, June 26, 2024

Trade loyalty, engagement and communications manager

JTI-Macdonald Corp.

What do you like most about your job?

Collaborating with colleagues cross-functionally and globally, and witnessing a concept transform into a real program that garners positive feedback. Seeing growth.

What are you most proud of during the last 12-18 months?

I am responsible for managing our trade loyalty website. I had to get this off the ground, starting from scratch. It's running strong and there has been tremendous growth.

What was the biggest challenge of your career?

Managing the trade loyalty website. This program was initiation by fire. It was a challenge to ensure we adhered to our vision and got retailers behind this program. We had to create processes, generate new ideas and build engaging content.

What's the best advice you have ever received?

Be yourself and work hard.

What excites you most about the future of this channel?

The ability to leverage digital technologies to improve the whole ecosystem of our business.

What will shape the business in the next 5 years?

I have a feeling that artificial intelligence will shape the business in the years to come.

https://ccentral.ca/2024-star-women-convenience-winner-helene-leonard

2024 Star Women in Convenience winner: Helene Leonard

SHINING STAR

Convenience Store News, June 26, 2024

Customer service manager

JTI-Macdonald Corp.

How did you get into this business?

I started as a summer student, helping the trade marketers on the road. At the end of the term, they offered me the receptionist position. I accepted and told them I was going to stay only for one year: 35 years have passed since that first summer.

What work-related accomplishment are you most proud of during the last 12-18 months?

Integrating Zendesk, a complete customer service solution, in the department.

What do you like most about your job?

I truly enjoy daily interactions with my team, brainstorming, discussions and feedback.

There is so much diversity and every day is different. I am in contact with just about every department in the business.

What was the biggest challenge of your career?

Expanding the team to incorporate two other markets (consumer and retail), along with the existing wholesale customers. This required doubling the number of employees and restructuring the entire department.

What's the best advice you ever received?

Be yourself.

What excites you most about the future of this channel?

It keeps evolving even though we have so many restrictions. JTI turns those into opportunities. I can’t wait to see how they will use artificial intelligence to their advantage.

What trends or innovations are keeping an eye on right now. Is there anything you think will shape the business in the next 5 years?

Without a doubt artificial intelligence.

How do you define yourself as a leader?

I lead by example, and I was told I am a good listener.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **JTI-MACDONALD CORP.**
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **IMPERIAL TOBACCO CANADA LIMITED** AND **IMPERIAL TOBACCO COMPANY LIMITED**
AND IN THE MATTER OF A PLAN OF COMPROMISEOR ARRANGEMENT OF **ROTHMANS, BENSON & HEDGES INC.**

Applicants

Court File No. CV-19-615862-00CL
Court File No. CV-19-616077-00CL
Court File No. CV-19-616779-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

AFFIDAVIT OF ROBERT SCHWARTZ

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Lawyers for Canadian Cancer Society

TAB 3

Court File No. CV-19-615862-00CL
Court File No. CV-19-616077-00CL
Court File No. CV-19-616779-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **JTI-MACDONALD CORP.**

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **IMPERIAL TOBACCO CANADA LIMITED** AND **IMPERIAL TOBACCO COMPANY LIMITED**

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **ROTHMANS, BENSON & HEDGES INC.**

Applicants

AFFIDAVIT OF MONIQUE E. MUGGLI (SWORN JANUARY 20, 2025)

I, Monique E. Muggli, of the City of Minneapolis, in the State of Minnesota, United States of America, MAKE OATH AND SAY:

1. I am the Vice President, International Legal Consortium at the Campaign for Tobacco-Free Kids/Tobacco-Free Kids Action Fund, headquartered in Washington, D.C., U.S.A. As such, I have personal knowledge of the matters contained in this Affidavit. To the extent that I refer to information that is not within my personal knowledge, I have stated the source of that information and believe it to be true.

2. This Affidavit is sworn in support of the response by the Canadian Cancer Society ("**CCS**") on the Motion for Plan Sanction Orders for plans for tobacco companies under the Canadian *Companies' Creditors Arrangement Act* ("**CCAA**"). In particular this Affidavit supports the CCS position that the CCAA Plans should be amended to require that the documents provided on pre-trial discovery by tobacco companies to Ontario and New Brunswick be publicly

disclosed by providing the documents to the Industry Documents Library at the University of California at San Francisco. This Affidavit outlines the U.S. experience with respect to public disclosure of tobacco industry documents, including the high public importance of this experience. This Affidavit also outlines recent provisions for public disclosure of documents in plans under Chapter 11 of the U.S. Bankruptcy Code for opioid companies, and state government settlements with e-cigarette company Juul.

3. My curriculum vitae is included as Exhibit A. I have a Masters in Public Health from the University of Minnesota (1999) and I received my Juris Doctorate from Mitchell Hamline School of Law in St. Paul, Minnesota in 2009. I am a licensed attorney in good standing in the State of Minnesota (Attorney ID:0391675).

4. In my position at the Campaign for Tobacco-Free Kids/Tobacco-Free Kids Action Fund, I lead our global tobacco control legal program in providing legal assistance in the form of legislative, litigation and advocacy support to lawyers, civil society, and governments worldwide in an effort to promote strong, evidenced-based tobacco control policies aligned with the WHO Framework Convention on Tobacco Control and its treaty instruments.

5. Prior to joining the Campaign for Tobacco-Free Kids, I worked as a research and litigation consultant to global and U.S. entities on matters relating to the internal tobacco company documents made public by two U.S. tobacco settlements (Minnesota and Master Settlement Agreement) and the federal civil racketeering case brought by the United States against the tobacco industry.

6. I have extensive experience in researching and publishing findings from internal tobacco industry documents available online and those housed at the document depositories (located in Minnesota and Guildford, England), which were established in 1995 during the Minnesota litigation against the tobacco industry and were later opened to the public as part of the litigation settlement.

7. I have authored or co-authored over 30 peer-reviewed articles on the tobacco industry, and the vast majority of them relied on documents housed at the document depositories and online tobacco document collections. The following are examples of my research conducted from the internal tobacco industry documents made public through U.S. litigation that have led to

peer-reviewed publications exposing, what I view as, the tobacco industry's decades-long efforts to defraud and mislead consumers and manipulate public health policy to sustain profits:

(a) Muggli ME, Pollay RW, Lew R, et al. Targeting of Asian Americans and Pacific Islanders by the tobacco industry: results from the Minnesota Tobacco Document Depository. *Tobacco Control* 2002; 11:201-9.

(b) Muggli ME, Forster JL, Hurt RD, Repace JL. The smoke you don't see: uncovering tobacco industry scientific strategies aimed against environmental tobacco smoke. *American Journal of Public Health* 91(9):1419-1423, 2001.

(c) Muggli ME, Hurt RD. Tobacco industry strategies to undermine the 8th World Conference on Tobacco or Health. *Tobacco Control* 12(2):195-202, 2003.

(d) Muggli ME, Hurt RD, Blanke DD. Science for hire: a tobacco industry strategy to influence public opinion on secondhand smoke. *Nicotine Tobacco & Research* 5:303-314, 2003.

(e) Muggli ME, Hurt RD. A cigarette manufacturer and a managed care company collaborate to censor health information for employees. *American Journal of Public Health* 94(8):1307-1311, 2004.

(f) Muggli ME, Hurt RD, Becker LB. Turning free speech into corporate speech: Philip Morris' efforts to influence U.S. and European journalists regarding the U.S. EPA report on secondhand smoke. *Preventive Medicine* 39(3):568-580, 2004.

(g) Muggli ME, Hurt RD, Repace J. The tobacco industry's political efforts to derail the EPA report on ETS. *American Journal Preventive Medicine* 26:167-177, 2004.

(h) Muggli ME, LeGresley EM, Hurt RD. Big tobacco is watching: British American Tobacco's surveillance and information concealment at the Guildford depository. *The Lancet* 363:1812-1819, 2004.

(i) Joseph AM, Muggli ME, Pearson KP, Lando H. The cigarette manufacturers' efforts to promote tobacco to the U.S. military. *Military Medicine* 170:874, 2005.

(j) LeGresley EM, Muggli ME, Hurt RD. Playing hide-and-seek with the tobacco industry. *Nicotine Tobacco & Research* 7(1):27-40, 2005.

(k) Leavell NR, Muggli ME, Hurt RD, Repace J. Blowing smoke: British American Tobacco's air filtration scheme. *British Medical Journal* 332(7535):227-9, 2006.

(l) Otanez MG, Muggli ME, Hurt RD, Glantz SA. Eliminating child labour in Malawi: a British American Tobacco corporate responsibility project to sidestep tobacco labour exploitation. *Tobacco Control* 15(3):224-30; 2006.

(m) LeGresley EM, Muggli ME, Hurt RD. Movie moguls: British American Tobacco's covert strategy to promote cigarettes in Eastern Europe. *European Journal of Public Health* 16(5):505-8; 2006.

(n) LeGresley E, Lee K, Muggli ME, Patel P, Collin J, Hurt RD. British American Tobacco and the "insidious impact of illicit trade" in cigarettes across Africa. *Tobacco Control* 2008, Oct; 17(5):339-346.

(o) Muggli ME, Lee K, Gan Q, Ebbert JO, Hurt RD. "Efforts to reprioritise the agenda" in China: British American Tobacco's efforts to influence public policy on secondhand smoke in China. *PLoS Medicine* 2008, Dec 23; 5(12):1729-069.

(p) Hurt RD, Ebbert JO, Muggli ME, Lockhart NJ, Robertson CR. Open doorway to truth: Legacy of the Minnesota Tobacco Trial. *Mayo Clinic Proceedings*; 2009; 84(5):446-456.

(q) Muggli ME, Ebbert JO, Robertson C, Hurt RD. Waking a sleeping giant: the tobacco industry's response to the polonium-210 issue. *American Journal of Public Health* 2008; 98(9):1643-50.

(r) Bialous SA; Presman S; Gigliotti A; Muggli ME; Hurt R. Response of the tobacco industry to the creation of smoke-free environments in Brazil. *Rev.Panam.Salud Publica*; 27, 4, 283-290, 2010.

(s) Muggli ME; Lockhart NJ; Ebbert JO, et. al. Legislating tolerance: Spain's national public smoking law. *Tobacco Control* 19; 1, 24-30, 2010.

(t) Croghan I; Muggli ME; Zaga V, et. al. Lessons learned on the road to a smoke-free Italy. *Annali di Igiene*; 23, 2, 125-136, Italy, 2011.

Document Disclosure Provisions in U.S. Tobacco Settlements (Minnesota Settlement and Master Settlement Agreement)

8. The extensive collection of previously secret internal tobacco industry documents now available to the public is the result of transparency measures mandated by legal actions in the U.S. These include the Minnesota settlement and the Master Settlement Agreement ("**MSA**"), as well as federal court orders in the racketeering case brought by the United States against the tobacco industry. These transparency measures required the largest tobacco companies to release specific litigation documents into the public domain between 1998 and 2021.

9. On August 17, 1994, the Attorney General of Minnesota and a private insurer in Minnesota (Blue Cross Blue Shield of Minnesota) filed a lawsuit against the major U.S. and U.K. tobacco companies (Philip Morris Incorporated, R.J. Reynolds Tobacco Company, Brown & Williamson Tobacco Corporation, BAT Industries PLC, BAT (UK & Export) Limited, Lorillard Tobacco Company, The American Tobacco Company, and the Liggett Group, Inc.) and their associations (Tobacco Institute, Council for Tobacco Research USA) alleging that the companies' violated several consumer protection statutes by engaging in a 50-year conspiracy to conceal evidence that cigarettes caused cancer; manipulated nicotine levels to ensure cigarettes would addict their users; deliberately advertised and promoted cigarettes to addict teenagers; and suppressed research on the harms of smoking. After nearly four years

of document discovery and a four-month trial, the Parties settled the litigation on May 8, 1998.[1]

10. Under the Minnesota settlement, the document depositories set up during the litigation for discovery were opened to the public in May 1998 (Minneapolis, Minnesota) and February 1999 (British American Tobacco's ("**BAT**") Guildford depository in England) and were required to be maintained and operated for a 10-year period with the costs paid for by Defendants. The collection of the internal tobacco industry files released to the public at that time included over 26 million pages of documents in Minnesota (including document indices and privilege logs) and an estimated 6-8 million pages of documents in the Guildford Depository. Thousands of hours of audio and video and other media files were also available in both Depositories.

11. The Minnesota depository was managed and operated by a neutral, independent paralegal firm whereas BAT's Guildford depository was managed and operated by BAT, which is described further in paragraphs 27-32 below.

12. The Minnesota settlement also required the tobacco Defendants to place documents into the Minnesota Depository that they produced in other U.S. smoking and health litigation within 30 days of production in the other litigation on an ongoing basis for 10 years – until 2008 – provided the documents had not been previously produced in Minnesota, were not subject to any protective order or claims of privilege by defendants.

13. The Minnesota plaintiffs successfully argued for the application of a crime-fraud exception to Defendants' privilege claims, which resulted in the production of tens of thousands of the most damaging documents to Defendants. When these documents became public, they provided the global public health community with unprecedented insight into the extensive efforts the tobacco companies undertook to conceal their knowledge of the health risks and harms caused by their products. The Minnesota plaintiffs' efforts to obtain documents withheld by tobacco Defendants is documented in a 1999 law review article in a special issue

[1] *Consent Judgment, State ex rel. Humphrey v. Philip Morris Inc., No. C1-94-8565, 1998 WL 394336, at VII, pages 36-38 of PDF (Minn. Dist. Ct. May 8, 1998*. https://www.publichealthlawcenter.org/sites/default/files/resources/mn-settlement-agreement.pdf.

dedicated to the Minnesota case published by the plaintiffs' lawyers entitled, *Decades of Deceit: Document Discovery in the Minnesota Tobacco Litigation* (1999, Exhibit B).

14. Prior to the Minnesota trial and subsequent settlement, the U.S. States of Mississippi (1997), Florida (1997), and Texas (1998) entered into individual settlements with the tobacco industry. The favorable settlement terms in Minnesota were adopted by 46 States, the District of Columbia, Puerto Rico, and four other U.S. territories in the November 1998 MSA with many of the same tobacco companies, except that U.K.-based British American Tobacco was and is not a Party to the MSA. In addition to billions of dollars in monetary relief, in perpetuity, the individual State settlements and the MSA provided for injunctive or equitable relief. These included marketing restrictions, the dissolution of tobacco industry trade groups, and requirements for certain lobbying disclosures, among other public health benefits. A summary of the U.S. tobacco settlements is included in my paper written with my coauthors entitled, *Open doorway to truth: Legacy of the Minnesota Tobacco Trial* (2009, Exhibit C).

15. With respect to document disclosure requirements, the MSA obligated its Original Participating Manufacturers (including Brown & Williamson Tobacco Corporation, Lorillard Tobacco Company, Philip Morris Incorporated, R.J. Reynolds Tobacco Company) to make documents disclosed in the Minnesota case, as well as other relevant internal documents produced during U.S.-based litigation, publicly accessible on websites for a period of 10 years - until June 30, 2010 - at their own expense. The MSA also required these tobacco companies to send oversized and multimedia files into the Minnesota Depository for the10-year period.[2]

16. Tobacco document websites from Philip Morris and R.J. Reynolds, created under their MSA obligations remain publicly available at the following websites (accessed January 7, 2025):

(http://www.pmdocs.com/#Home)l; (https://www.rjrtdocs.com/SitePages).

17. The MSA also established and provided initial funding to the Tobacco Master Settlement Agreement Foundation, later renamed American Legacy Foundation and then later renamed the Truth Initiative. According to the Truth Initiative website, the organization is focused on

[2] Master Settlement Agreement, November 1998. See Para IV, (pages 43-48 of PDF) for document disclosure provisions. https://www.naag.org/wp-content/uploads/2020/09/2019-01-MSA-and-Exhibits-Final.pdf

"behavior change and policy change that prevents addiction, supports quitting, expands cessation access, and addresses systemic inequities." The Truth Initiative also created and funded what is now known as the Truth Tobacco Industry Documents Library (Exhibit D), which is the permanent repository of tobacco industry documents and is further described in paragraphs 22-25 below.

Continued Document Disclosure Requirements in *United States, et. al. v. Philip Morris et. al.* brought by the United States federal government under the *Racketeer-Influenced and Corrupt Organizations Act*

18. In 1999, litigation filed by the United States federal government against major tobacco manufacturers and related trade organizations (Tobacco Industry Research Committee/Council for Tobacco Research USA and Tobacco Institute) for violating civil provisions of the *Racketeer-Influenced and Corrupt Organizations Act* (RICO) extended the document disclosure obligations of the tobacco industry set up under the Minnesota settlement and the MSA until September 2021.[3] As I published with my coauthors in *Transparency as a remedy against racketeering: preventing and restraining fraud by exposing Big Tobacco's dirty secrets* (2014, Exhibit E, p.514*)*:

> *"*In 1999, the USA sued the major US-based and UK-based cigarette manufacturers for deliberately deceiving the American public about the risks and dangers of cigarette smoking, including exposure to tobacco smoke, in violation of RICO. After many years of litigation, in 2006, the Honourable Gladys Kessler of the US District Court for the District of Columbia released her ground-breaking decision, finding that the cigarette companies had engaged in a decades-long conspiracy, in violation of RICO, to defraud the public about: (1) the adverse health effects of smoking and exposure to secondhand tobacco smoke; (2) the addictiveness of nicotine and their manipulation of nicotine levels and (3) the health benefits of their 'low tar' brands. Judge Kessler further found that the major tobacco companies were likely to continue their unlawful behaviour, and crafted equitable relief designed to 'prevent and restrain' those future

[3] *United States v. Philip Morris USA Inc*., 449 F. Supp. 2d 1 (D.D.C. 2006), aff'd in part & vacated in part, 566 F.3d 1095 (D.C. Cir. 2009) (per curiam), cert. denied, 561 U.S. 1025, 130 S. Ct. 3501 (2010).
District Court Final Opinion, August 17, 2006, see Section XI.3 (pages 1666-1677 of PDF) regarding document disclosure:
https://www.justice.gov/sites/default/files/civil/legacy/2014/09/11/amended%20opinion_0.pdf.
District Court Final Order, August 17, 2006, see Section II.C (pages 10-17 of PDF) for document disclosure provisions: https://www.justice.gov/sites/default/files/civil/legacy/2014/09/11/ORDER_FINAL_0.pdf;
Court of Appeals Opinion:
https://assets.tobaccofreekids.org/content/what_we_do/industry_watch/doj/cadcopinion.pdf
SCOTUS Journal, June 28, 2010, p.975 https://www.supremecourt.gov/orders/journal/jnl09.pdf.

> violations, as authorised under RICO. These remedies include a requirement to continue to publicly disclose (nonprivileged and non-confidential) internal documents produced in US-based smoking and health litigation for 15 years until 1 September 2021."

19. Specifically, the Court observed that the ongoing public disclosure of documents was an appropriate remedy to prevent and restrain the tobacco Defendants[4] from future conduct that would violate RICO and would provide the public with the means to monitor their activities and products:

> "[I]n order to prevent and restrain such RICO violations in the future, Defendants must create and maintain document depositories and websites which provide the Government and the public with access to all industry documents disclosed in litigation from this date forward. Disclosing such information will allow the public to monitor what Defendants are doing internally and to assess the accuracy of future information they may make available about their activities and their products. Imposing such disclosure requirements will act as a powerful restraint on Defendants' future fraudulent conduct. Indeed, this remedy is exactly what Judge Williams, in his concurrence in the disgorgement opinion, recommends that the District Court do under § 1964(a): 'impose transparency requirements so that future violations will be quickly and easily identified.' "[5]

20. The Court's Final Order set out the Defendants' 15-year obligation to disclose (non-privileged and non-confidential) internal documents produced in any court or administrative action in the U.S. concerning "smoking and health, marketing, addiction, low-tar or low-nicotine cigarettes, or less hazardous cigarette research" as well as certain trial and deposition transcripts into the Minnesota and Guildford depositories and on Defendants' websites. Under the Final Order, Defendants were also required to include on their document websites

[4] In a 2011 ruling, the Court determined that British American Tobacco (BAT) was not subject to its jurisdiction under the RICO Act, and therefore, the Court's Final Order does not apply to BAT. However, prior to 2011, BAT had produced documents into the Minnesota Depository under its obligations in the Minnesota settlement, including (non- nonprivileged and non-confidential) documents produced to the United States in the RICO litigation.

[5] U.S. District Court. *U.S. vs. Philip Morris USA, Inc., et. al*., 99-CV-02396GK, Final Opinion (2006). Pages 1637-38; Paragraph X(B)(3)(a). https://www.justice.gov/sites/default/files/civil/legacy/2014/09/11/amended%20opinion_0.pdf.

certain searchable bibliographic fields for all covered documents, a privilege log, a confidential document index, and monthly update files.[6]

21. As I published with my coauthors[7] in *Transparency as a remedy against racketeering: preventing and restraining fraud by exposing Big Tobacco's dirty secrets* (2015, Exhibit E), "[T]here was only one issue that Judge Kessler ruled should be further considered under her Final Order: coding or indexing obligations for material uploaded to the Defendants' document websites….[and] the subsequent mediation on this issue led to several additional disclosure-related obligations." As a result of the Court-ordered mediation, in 2011, consent orders between Defendants Philip Morris USA Inc, Altria Group, Inc, R.J. Reynolds Tobacco Company (Exhibit F), and Lorillard Tobacco Company (Exhibit G) and the Government required payment to the Court to improve accessibility and functionality of online documents housed at the Truth Tobacco Industry Documents Library website, set out specific document coding requirements, and provided a new timeline for document disclosure to the public.

Public Access to Internal Tobacco Industry Documents

22. In my experience, the most-used and permanent public source of internal tobacco industry documents is the Truth Tobacco Industry Documents Library website, which is managed and operated by the University of California - San Francisco Library and is a sub-collection of the UCSF Industry Documents Library. The "Truth" in the name of the Truth Industry Documents Library comes from the Truth Initiative, the Foundation created by the MSA.

23. Over the two decades from 1998 to 2021, during which major tobacco companies were required to disclose certain documents as part of U.S. smoking and health litigation, the volume of internal tobacco documents available to the public grew substantially, far exceeding the initial estimate of 35 million pages released under the Minnesota settlement. These documents have been permanently archived at the Truth Tobacco Industry Documents Library.

[6] U.S. District Court. *U.S. vs. Philip Morris USA, Inc., et. al*., 99-CV-02396GK, Final Order (2006). Section III(C). https://www.justice.gov/sites/default/files/civil/legacy/2014/09/11/ORDER_FINAL_0.pdf

[7] Note that the Tobacco-Free Kids Action Fund is one of six public health intervenors in *United States et. al., v. Philip Morris et. al.*

24. One of the required fields coded in the internal tobacco documents is "case name," which serves as an identifier of the litigation for which a document was produced. A list of all cases coded with a "case name" where documents have been produced for public access is maintained at the Truth Tobacco Industry Documents Library.

25. The Truth Tobacco Industry Documents Library website indicates that as of December 19, 2024, the online repository contained 104,669,793 pages in 18,011,368 documents (Exhibit H). In addition to the MSA-produced document collections, the library contains 18 topical collections ranging from a plain packaging document collection to a cigarette advertising collection from Richard W. Pollay, Professor Emeritus, University of British Columbia. Another 20 additional tobacco document collections are available from the library including internal documents from a "RICO Privilege Downgrades Collection," which according to the Truth Tobacco Industry Documents Library website contains:

> "[D]ocuments that defendants in United States v. Philip Morris, et al…initially withheld from production to the United States on grounds of privilege or other protection. Over the course of numerous privilege challenges by the United States, the defendants withdrew their privilege assertions for many documents and voluntarily produced them in response to the United States' discovery requests. Separately, the court held that a number of documents were not to be protected by attorney-client privilege and the defendants were ordered to produce these documents. This collection includes both voluntarily-produced documents and documents produced subject to court compulsion."

26. As published in my paper with my coauthor, *Transparency as a remedy against racketeering: preventing and restraining fraud by exposing Big Tobacco's dirty secrets* (2015, Exhibit E, p.516), the two 2011 Consent Orders in the RICO case required Defendants Philip Morris USA Inc, Altria Group, Inc, R.J. Reynolds Tobacco Company, and Lorillard Tobacco Company to pay a total combined US$6.9 million to the Court, which then disbursed the funds to University of California - San Francisco to improve public access to the documents at its Truth Tobacco Industry Documents Library. The two Consent Orders also required the tobacco company Defendants to consult with Truth Tobacco Industry Documents Library staff, at the Library's request, in an effort to resolve technical issues. As published in our paper,

> "This is the first time that the tobacco companies are required to designate a person with sufficient authority to whom issues about document access could be brought. In the past 2 years, consultations were held on missing documents, incorrect metadata and index formatting problems and were generally resolved to the satisfaction of [the Library] staff."

27. As I have published with my coauthors, independent maintenance of the tobacco industry's publicly released documents is critical to maintain the integrity of the collections and ensure adequate public access. For example, the administrative and oversight function provided by a court-ordered neutral management firm of the Minnesota Depository was crucial for maintaining adequate public access to the then growing universe of internal tobacco company documents and to protect public health researchers and members of the public from tobacco defendants' surveillance of their work for advantage in smoking and health-related litigation. (Hurt RD, Ebbert JO, Muggli ME, Lockhart NJ, Robertson CR. *Open doorway to truth: Legacy of the Minnesota Tobacco Trial*. Mayo Clinic Proceedings; 84(5):446-456 (2009, Exhibit C); and Muggli ME, Crystal HM, Klausner K. *Transparency as a remedy against racketeering: preventing and restraining fraud by exposing Big Tobacco's dirty secrets*. Tobacco Control. doi:10.1136/tobaccocontrol-2014-051749.) (2015, Exhibit E).

28. In my experience, the Minnesota Depository independent staff verified the contents of each box after a user reviewed it, to ensure that documents were not taken out of the boxes and there were no video surveillance cameras in the public document review rooms. However, during my research at the Guildford Depository, which BAT owned, operated, and controlled, I had seen video surveillance cameras in the document review rooms, and a two-way mirror for staff to view visitors.

29. With my co-authors, I have published findings in *The Lancet* on the topic of surveillance at the Guildford Depository (Exhibit I). BAT's document productions into the Minnesota Depository around 2001-2004, as required under the 1998 Minnesota settlement agreement, suggested that BAT monitored and tracked visitors' database searches on computerized indexes at the Guildford Depository, tracked the physical movement of one visitor outside and in front of the Depository, and observed and noted personal mobile phone use within the building (although outside of the document review rooms). (Muggli ME, LeGresley EM, Hurt RD. *Big Tobacco Is Watching: British American Tobacco's Surveillance and*

Information Concealment at the Guildford depository. Lancet 363:1812-1819 (2004)) (Exhibit I).

30. Also published with my coauthors in *Big Tobacco Is Watching: British American Tobacco's Surveillance and Information Concealment at the Guildford depository* (2004, Exhibit I, p.1814), was specific findings on how BAT and its law firm (Lovells) was surveilling the work of visitors, including the following example:

> "Lovells' Depository Reports also include a section entitled, "Hot Docs" where solicitors tracked and described in detail visitors' requested documents that Lovells had classified as "hot", appearing to mean very significant. In a depository visit from solicitors representing Guardian Insurance Company of Canada, "Hot Docs" included previously selected documents relating to BAT's 1976 corporate position on smoking, meeting notes from a 1976 scientific conference, and a 1985 document referencing lawyer involvement in research."

31. In another example from *The Lancet* publication (Exhibit I, 1815-1816), we highlighted the vulnerability of the materials housed in BAT's Guildford Depository where there was not a third-party neutral required to manage the contents of the facility:

> "Also exemplifying the vulnerability of the depository contents is an audio-tape recording of a BAT marketing conference requested by the authors in December 2001. The taped discussion highlights a proposal to sell single cigarettes in developing countries. When the authors requested the audio tape again in January, 2004, the entire side of the tape containing the […] discussion was gone. We are not asserting that this was intentionally deleted. In fact, after bringing this to the depository staff's attention, the tape was replaced. This example does, however, demonstrate the vulnerability of the collection and that if it had not been requested again other users of the depository would not know of its existence."

32. With my coauthors, I have published information in the international peer-reviewed journal *Tobacco Control* on the critical role the Truth Tobacco Industry Documents Library has played in maintaining the online public access to tobacco company documents that should have been online on RICO tobacco defendants' websites but were not. In our paper, we describe the RICO tobacco defendants' failed attempt to close the Minnesota Depository in 2011 and, as part of that legal dispute, the Truth Tobacco Industry Documents Library staff compared the 4(b) Index at the Minnesota Depository, which is the electronic catalogue of documents housed at the Minnesota Depository, with the indices from the RICO defendants' websites, and in doing so, the Library staff discovered that over 100,000 documents that were

housed at the Minnesota Depository and were not available on the defendants' websites. (Muggli ME, Crystal HM, Klausner K. *Transparency as a remedy against racketeering: preventing and restraining fraud by exposing Big Tobacco's dirty secrets*. Tobacco Control. doi:10.1136/tobaccocontrol-2014-051749.) (Exhibit E).

33. The UCSF Industry Documents Library continues to add collections to its online repository. For example, the UCSF Industry Documents Library also includes documents provided as a result of provisions in plans under Chapter 11 of the U.S. Bankruptcy Code. Chapter 11 Plans for the following opioid companies included provisions for public disclosure of company documents: Mallinckrodt plc;[8] Insys Therapeutics Inc.;[9] and Purdue.[10] In addition, there are opioid settlements, that include requirements for public disclosure of documents, with opioid companies Allergan[11] and Teva[12] and with consulting firm McKinsey & Company.[13]

34. Further, documents and information produced and recently released in the course of U.S. State litigation against e-cigarette manufacturer JUUL Labs, Inc., are available on the Truth

[8] *In re: Mallinckrodt, plc et al, Fourth Amended Joint Plan of Reorganization (With Technical Modifications) of Mallinckrodt plc and Its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code*, February 18, 2022, see Article IV.AA (pages 111-113 of PDF) for document disclosure provisions: https://restructuring.ra.kroll.com/mallinckrodt/Home-DocketInfo?DockRelatedSearchValue=4628-6510
Docket: http://restructuring.primeclerk.com/Mallinckrodt

[9] *In re: Insys Therapeutics Inc., et al., Second Amended Joint Chapter 11 Plan of Liquidation of Insys Therapeutics, Inc. and Its Affiliated Debtors*, January 14, 2020, see Section 5.6(g)(vii) (pages 47-48 of PDF), for document disclosure provisions:
https://document.epiq11.com/document/getdocumentbycode?docId=3816717&projectCode=INS&source=DM
Docket: https://dm.epiq11.com/case/insys/info

[10] *In re: Purdue Pharma L.P., et al., Twelfth Amended Joint Chapter 11 Plan of Reorganization of Purdue Pharma L.P. and its Affiliated Debtors*, September 2, 2021.
https://restructuring.ra.kroll.com/purduepharma/Home-DocketInfo?DockRelatedSearchValue=4050-3726 See Section 5.12 (pages 97-108 of PDF) for document disclosure provisions. The settlement plan was struck down by the US Supreme Court struck down in June 2024 and is now under renegotiation.
Docket: https://restructuring.ra.kroll.com/purduepharma/Home-DocketInfo

[11] *Final Allergan Global Opioid Settlement Agreement*. July 24, 2023. Retrieved from https://nationalopioidsettlement.com/wp-content/uploads/2023/08/Final-Allergan-Settlement-Agreement-8-29-23.pdf. See Section III (pages 513-515 of PDF) for document disclosure provisions.

[12] *Final Teva Global Opioid Settlement Agreement*. February 8, 2023. Retrieved from https://nationalopioidsettlement.com/wp-content/uploads/2023/08/Final-Teva-Global-Settlement-Agreement-and-Exhibits-8.29.23.pdf. See Section V (pages 480-483 of PDF) for document disclosure provisions.

[13] *Commonwealth of Massachusetts v. McKinsey & Company*. Consent Judgment. February 4, 2021. Retrieved from https://www.mass.gov/doc/massachusetts-mckinsey-consent-judgment/download. See Section IV (pages 11-16 of PDF) for document disclosure provisions.

Tobacco Industry Documents website. Examples of state settlements with JUUL include California[14] and North Carolina.[15]

35. A compilation of extracts regarding public disclosure of company documents, from tobacco, opioid and e-cigarette settlements and Chapter 11 plans is found in Exhibit J.

36. The UCSF Industry Documents Library maintains a contact and procurement process for anyone wanting to contribute documents to the collection, with information included in Exhibit K.

37. Exhibit L contains a January 14, 2025, letter from Kate Tasker, Director of the UCSF Industry Documents Library, confirming that the library would "be in a position to receive the documents arising from Canadian tobacco litigation, and specifically arising from provincial government health care cost recovery lawsuits". Enclosed with the letter, and also included in Exhibit L, is the UCSF Industry Documents Library document "Technical Recommendations for Preserving Industry Documents Disclosed in Litigation" dated July 26, 2021.

Voluminous Research Relying on Information Found in the Tobacco Industry Documents

38. In July 1998, former U.S. President William Clinton issued an Executive Memorandum mandating that the U.S. Department of Health and Human Services address the issue of how to make the documents more accessible and how to expose the decades-long findings within the materials evidencing the tobacco industry's wrongdoing (Exhibit M). Accordingly, in June 1999, the U.S. National Cancer Institute issued a Request for Proposals to comprehensively study the information hidden within the tobacco industry's files. (NCI, June 17, 1999, Review and Analysis of Tobacco Industry Documents Program Announcement.) In response to the specialized national funding to study the newly released tobacco industry

[14] *People of the State of California v. Juul Labs, Inc.* Consent Judgment. April 11, 2023. Retrieved from https://www.oag.ca.gov/system/files/attachments/press-docs/2023-04-11%20Consent%20Judgment%2C%20signed.pdf. See Section III (pages 21-26 of PDF) for document disclosure provisions.

[15] *State of North Carolina v. Juul Labs, Inc*. Consent Judgment. June 28, 2021. Retrieved from https://ncdoj.gov/wp-content/uploads/2021/06/2021-06-28-JUUL-Consent-Judgment.pdf. See Section IV (pages 23-27 of PDF) for document disclosure provisions.

documents, the global public health community began reviewing the documents and publishing their findings.

39. The Truth Tobacco Industry Documents website indicates that as of December 19, 2024, at least 1,096 publications, including journal articles (852), books (32) and reports (107) relating to the tobacco documents have been published globally. These publications have been across diverse disciplines in science, medicine, economics, history, criminal activity, policy and politics, and marketing. Citations to this body of literature are easily accessible to the public on the Truth Tobacco Industry Documents Library website (Exhibit N).[16]

40. These publications, in my view, have exposed the tobacco companies' undeniable internal workings showing that they have targeted young people to replace their dying consumers, and act to dilute, delay and defeat meaningful tobacco regulations worldwide, among other findings. Moreover, the tobacco industry's research on nicotine has proved to be invaluable in understanding nicotine addiction. The industry's internal knowledge has often been well ahead of the public health community.

41. As I published in the paper with my co-authors entitled, *Open doorway to truth: Legacy of the Minnesota Tobacco Trial* (Exhibit C, pp.447-448), the public health legacy of the Minnesota settlement and the MSA is the transparency measures included in those settlements and specifically, the:

> "[P]ublic disclosure of millions of pages of previously secret internal documents from the tobacco industry and the continued disclosure of such documents produced during discovery in U.S. smoking and health litigation from 1998 to 2008. For the first time in history, the Minnesota settlement also allowed public access to the files of UK tobacco giant British American Tobacco (BAT). The MSA also required large tobacco companies to maintain their letter-sized records on the Internet and to deposit any oversized or electronic media in Minnesota until June 2010…[T]hese legal settlements have resulted in the release of approximately 70 million pages of documents, thousands of audiovisual files, and hundreds of other electronic media files. No other comparable dynamic, voluminous, and contemporaneous document archive exists."

[16] Accessed January 12, 2025. The information regarding the number of publications, including categories of publications, is available on the left-hand side of this exhibit.

42. I have also documented with my coauthors in *Open doorway to truth: Legacy of the Minnesota Tobacco Trial* (Exhibit C) numerous instances where the impact of the internal tobacco company documents released to the public in the U.S. tobacco litigation have reached across borders to impact global tobacco control efforts, from exposing tobacco industry ties with researchers in Switzerland to supporting litigation in Nigeria. We also observed that the internal tobacco company documents released in Minnesota and later online via the MSA played a critical role in the development of an international treaty specifically crafted to reduce tobacco use, nicotine addiction and exposure to tobacco smoke: the WHO Framework Convention on Tobacco Control (WHO FCTC). Specifically, with my coauthors, we cited the following statement from the WHO about the industry documents released in Minnesota:

> "The tobacco industry made a big strategic mistake in Minnesota that is reverberating around the world.…[The Minnesota plaintiffs'] plan was to bury the industry in its own documents by forcing disclosure of the truth about what the industry knew, when they knew it, and what they did to hide the truth from the public. The Minnesota team doggedly pursued the industry documents (including several trips to the US Supreme Court) and eventually forced the industry to turn over the material Minnesota needed to make its case.…*Today, the WHO Tobacco Free Initiative is using these documents to help develop the Framework Convention on Tobacco Control as well as national tobacco control efforts around the world.* They are an invaluable resource and probably the most important and lasting result of the tobacco litigation in the United States. The truth will set us all free." [Emphasis added] (Exhibit C, page 452)

43. The information made public through the access to the internal tobacco company documents would likely have never been discovered without the transparency measures included in tobacco U.S. state settlement agreements and through federal litigation orders placing document disclosure obligations on the major tobacco companies.

SWORN by Monique E. Muggli of the City of Minneapolis, in the State of Minnesota, on January 20, 2025 in accordance with O. Reg. 431/20, by Administering Oath or Declaration Remotely

Monique Muggli

Commissioner for Taking Affidavits

MONIQUE E. MUGGLI

KATELIN Z. PARKER

Katelin Zoe Parker, a Commissioner, etc.,
Province of Ontario, for Fogler, Rubinoff LLP,
Barristers and Solicitors. Expires April 23, 2026.

List of Exhibits to Affidavit

Exhibit A – Curriculum Vitae, Monique E. Muggli, J.D., M.P.H.

Exhibit B – Ciresi, Michael V.; Walburn, Roberta B.; and Sutton, Tara D. Decades of Deceit: Document Discovery in the Minnesota Tobacco Litigation. (1999) *William Mitchell Law Review*;Vol. 25: Iss. 2, Article 10.

Exhibit C – Hurt RD, Ebbert JO, Muggli ME, Lockhart NJ, Robertson CR. Open doorway to truth: Legacy of the Minnesota Tobacco Trial. (2009) *Mayo Clinic Proceedings*; 84(5):446-456.

Exhibit D – UCSF – Truth Tobacco Industry Documents Library. *History*.(downloaded December 20, 2024).

Exhibit E – Muggli ME, Crystal HM, Klausner K. Transparency as a remedy against racketeering: preventing and restraining fraud by exposing Big Tobacco's dirty secrets. (2015) *Tobacco Control* Sep;24(5):514-8.

Exhibit F – *United States, et. al. v. Philip Morris USA, Inc., et. al.* Document 5953. December 13, 2011. CONSENT ORDER BETWEEN THE UNITED STATES, THE PUBLIC HEALTH INTERVENORS, PHILIP MORRIS USA INC., ALTRIA GROUP, INC., AND R.J. REYNOLDS TOBACCO COMPANY CONCERNING DOCUMENT DISCLOSURE OBLIGATIONS UNDER ORDER #1015.

Exhibit G – *United States, et. al. v. Philip Morris USA, Inc., et. al.* Document 5961. December 21, 2011. CONSENT ORDER BETWEEN THE UNITED STATES, THE PUBLIC HEALTH INTERVENORS, AND LORILLARD TOBACCO COMPANY CONCERNING DOCUMENT DISCLOSURE OBLIGATIONS UNDER ORDER #1015.

Exhibit H – UCSF – Truth Tobacco Industry Documents Library. *Overview*. (downloaded December 20, 2024).

Exhibit I – Muggli ME, LeGresley EM, Hurt, RD. Big tobacco is watching: British American Tobacco's surveillance and information concealment at the Guildford depository. (2004) *Lancet* 363:1812-1819.

Exhibit J – Compilation of extracts regarding public disclosure of documents from U.S. tobacco, opioid and e-cigarette settlements, January 19, 2025

Exhibit K - UCSF – Industry Documents Library. *Contribute Documents*. (downloaded January 7, 2025).

Exhibit L –Letter from Kate Tasker, Director of the UCSF Industry Documents Library dated January 14, 2025 and UCSF Industry Documents Library document "Technical Recommendations for Preserving Industry Documents Disclosed in Litigation" dated July 26, 2021.

Exhibit M – White House statement on President Clinton Executive Memorandum on tobacco

documents, “President Clinton: Protecting America’s Youth from Tobacco” July 17, 1998 (downloaded January 18, 2025).

Exhibit N – UCSF – Truth Tobacco Industry Documents Library. Bibliography. (downloaded January 12, 2025).

This is Exhibit "A" referred to in the Affidavit of Monique E. Muggli sworn by Monique E. Muggli of the City of Minneapolis, in the State of Minnesota, United States of America, before me at the City of Toronto, in the Province of Ontario , on January 20, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (or as may be)

Katelin Zoe Parker, a Commissioner, etc.,
Province of Ontario, for Fogler, Rubinoff LLP,
Barristers and Solicitors. Expires April 23, 2026.

MONIQUE E. MUGGLI, J.D., M.P.H.
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SUMMARY OF PROFESSIONAL EXPERIENCE

Monique Muggli leads the specialist team of lawyers at the International Legal Consortium (ILC) for the Campaign for Tobacco Free Kids' global tobacco control program. Monique oversees legislative, litigation, and advocacy support to civil society and government attorneys and advocates in low and middle- income countries to further the effective implementation of the WHO Framework Convention on Tobacco Control (WHO FCTC). To date, the ILC has provided legal support in nearly 100 countries and legal or policy education to over 5000 lawyers or advocates from 108 countries.

Monique has worked in global tobacco control policy for 25 years. Prior to joining the Campaign for Tobacco-Free Kids, Monique was a research and litigation consultant for numerous U.S. and international public health organizations, as well as for government and private party plaintiffs suing the tobacco industry. Her work has substantially contributed to the evidentiary foundation exposing the multinational tobacco companies' efforts to subvert tobacco control measures. Monique has authored over 30 peer-reviewed articles and has prepared several seminal reports for the World Health Organization and its regional offices.

Monique is the 2016 recipient of the Alumni Award of Merit from the University of Minnesota, School of Public Health. Currently, Monique serves as a Board Member of the Global Tobacco Alliance for Tobacco Control (GATC) and The Association for Nonsmokers' Rights – Minnesota (ANSR-MN).

EDUCATION

Juris Doctorate	William Mitchell College of Law, St. Paul, MN	May 2009
Masters in Public Health	University of Minnesota, Minneapolis, MN	1996-1999
Bachelor of Arts	College of Saint Catherine, Saint Paul, MN	1988-1993

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This is Exhibit "B" referred to in the Affidavit of Monique E. Muggli sworn by Monique E. Muggli of the City of Minneapolis, in the State of Minnesota, United States of America, before me at the City of Toronto, in the Province of Ontario , on January 20, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (or as may be)

Katelin Zoe Parker, a Commissioner, etc.,
Province of Ontario, for Fogler, Rubinoff LLP,
Barristers and Solicitors. Expires April 23, 2026.

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Decades of Deceit: Document Discovery in the Minnesota Tobacco Litigation

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DECADES OF DECEIT: DOCUMENT DISCOVERY IN THE MINNESOTA TOBACCO LITIGATION

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I. INTRODUCTION

When the State of Minnesota and Blue Cross and Blue Shield of Minnesota (collectively "Minnesota") filed their complaint against the tobacco industry[1] in August, 1994, the industry had been profiting enormously for decades from a product that exacted a huge toll on public health, yet the industry had enjoyed a virtually

1. The defendants were Philip Morris Incorporated ("Philip Morris"), R.J. Reynolds Tobacco Company ("RJR"), Brown & Williamson Tobacco Corporation ("Brown & Williamson"), B.A.T. Industries P.L.C. ("B.A.T. Industries"), Lorillard Tobacco Company ("Lorillard"), The American Tobacco Company ("American"), Liggett Group, Inc. ("Liggett"), the Council for Tobacco Research ("CTR"), and the Tobacco Institute ("TI").

perfect record in the courtroom.[2] Nearly four years later, on May 8, 1998, when the industry agreed to a settlement—unprecedented in terms of monetary relief, injunctive requirements, and disclosure of internal tobacco company documents—Minnesota had achieved what former U.S. Surgeon General C. Everett Koop characterized as "one of the most significant public health achievements of the second half of the 20th century."[3]

The key to the industry's defense strategy—which had been successful for decades—was the concealment of the industry's internal documents, including documents disclosing the industry's secret acknowledgment of the health hazards and addictiveness of smoking, documents disclosing the industry's manipulation of nicotine, and documents disclosing the industry's dependence upon new generations of American youth to preserve the viability of the cigarette market. From the outset of the case, Minnesota knew that the only way to hold the cigarette industry accountable was to single-mindedly pursue documents which had not been produced in four decades of litigation against the industry. The ensuing discovery battles—which resulted in the production of approximately thirty-five million pages of internal industry documents—lasted several years and continued well into trial, when the United States Supreme Court refused the industry's request to stay an order requiring the production of tens of thousands of documents which the industry had withheld on claims of privilege.[4] A month later, on the eve of the case being submitted to the jury, the case settled.[5]

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2. As top public health officials have pointed out, the industry's substantial profits are due, in part, to its ability to shift the "tobacco-related health, social, and environmental costs onto the public's shoulders." C. Everett Koop et al., *Reinventing American Tobacco Policy*, 279 JAMA 550, 550 (1998).

3. Henry Weinstein, *Big Tobacco Settles Minnesota Lawsuit for $6.6 Billion*, L.A. TIMES, May 9, 1998, at A1.

4. *See* Philip Morris Inc. v. Minnesota *ex rel.* Humphrey, 118 S. Ct. 1384 (1998) (mem.).

5. *See* Settlement Agreement and Stipulation For Entry of Consent Judgment, State *ex rel.* Humphrey v. Philip Morris Inc., No. C1-94-8565, 1998 WL 394331 (Minn. Dist. Ct. May 8, 1998) [hereinafter Settlement Agreement]; Consent Judgment, State *ex rel.* Humphrey v. Philip Morris Inc., No. C1-94-8565, 1998 WL 394336 (Minn. Dist. Ct. May 8, 1998). Under the settlement, the State of Minnesota will receive an estimated $6.1 billion over a 25-year period. *See* Settlement Agreement, *Philip Morris*, 1998 WL 394331, at *4, *6. Blue Cross and Blue Shield of Minnesota will receive $469 million over a five-year period. *See id.* In addition, the cigarette industry is bound by unprecedented injunctive restrictions, including injunctions against making material misrepresentations and against tar-

II. DECADES OF CONCEALMENT: THE TOBACCO INDUSTRY'S SUCCESSFUL BATTLES BEFORE 1994

There are many reasons why the tobacco industry has been so difficult to defeat in so many forums—legal and legislative—for so many decades. One principal reason has been the tobacco industry's ability to keep hidden millions of pages of internal documents which contain damning admissions.

A. The Industry's "General Patton" Strategy of Litigation

The surgeon general has called cigarette smoking "the most important public health issue of our time."[6] Cigarettes kill when used as intended, and there is no known level of safe consumption.[7] One-fourth or more of all regular cigarette smokers die of smoking-related diseases.[8] The number of deaths caused by smoking surpasses the combined totals for alcohol, suicide, homicide, AIDS, cocaine, heroine, and motor vehicles.[9]

Notwithstanding these deadly statistics, the tobacco industry maintained an unparalleled record in the courtroom from the 1950s into the 1990s.[10] The industry's strategy was based upon scorched-earth tactics.[11] As one tobacco industry lawyer candidly

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geting children in the advertising, promotion, or marketing of cigarettes. *See* Consent Judgment, *Philip Morris*, 1998 WL 394336, at *2. The cigarette industry also must remove advertising billboards in Minnesota, fund smoking cessation programs, and dissolve one of its trade groups. *See* Settlement Agreement, *Philip Morris*, 1998 WL 394331, at *10. *See also* Consent Judgment, *Philip Morris*, 1998 WL 394336, at *2, *4.

6. SURGEON GENERAL, U.S. DEP'T OF HEALTH AND HUMAN SERVICES, THE HEALTH CONSEQUENCES OF SMOKING: CANCER xi (1982).

7. *See* SURGEON GENERAL, U.S. DEP'T OF HEALTH AND HUMAN SERVICES, REDUCING THE HEALTH CONSEQUENCES OF SMOKING: 25 YEARS OF PROGRESS 490 (1989).

8. *See id.* at v.

9. *See* MINNESOTA DEP'T OF HEALTH, SECTION FOR NONSMOKING AND HEALTH, THE MINNESOTA TOBACCO-USE PREVENTION INITIATIVE, A REPORT TO THE 1991 LEGISLATURE, 22-23 (Jan., 1989-Dec., 1990).

10. *See* Christine Hatfield, *The Privilege Doctrines—Are They Just Another Discovery Tool Utilized by the Tobacco Industry to Conceal Damaging Information?*, 16 PACE L. REV. 525, 558 (1996). "The tobacco industry has enjoyed a record of success in civil litigation unique to almost any industry, never paying one cent in settlements or awards for any injuries claimed by cigarette smokers in their civil lawsuits." *Id.*

11. *See id.* at 558-59. "The industry's strategy was simple: 'Never retreat on any position and attack whenever possible . . . .'" *Id.* (citing Mark Curriden, *The Heat Is On*, 80 A.B.A. J. 58, 59 (1994). "The key to this strategy was to remain on the offensive at all times by denying every claim on the health hazards of smoking and concealing all damaging research results from the public." *Id.* at 559; *see also*

wrote:

> [T]he aggressive posture we have taken regarding depositions and discovery in general continues to make these cases extremely burdensome and expensive for plaintiffs' lawyers, particularly sole practitioners. To paraphrase General Patton, the way we won these cases was not by spending all of [RJR]'s money, but by making all of his.[12]

Part of the industry's "General Patton"-style litigation has been a concerted national strategy of discovery abuse:

> [T]he tobacco industry has developed several evasion strategies of choice, including, but not limited to, delay, inundating an opponent with reams of useless information, use of the court system to wage a war of motions and protective orders against an adverse party, as well as filing patently false and misleading responses to discovery requests. Every strategy is designed to force the massive expenditure of frequently scarce plaintiff's resources in order to sort out the data provided or fight for the enforcement of discovery orders.[13]

The industry's lawyers ensured that it would be prohibitively expensive for plaintiffs' counsel to represent injured smokers:

> They have done this by resisting all discovery aimed at them, thus requiring a court hearing and order before plaintiffs can obtain even the most rudimentary discovery. They have done it by getting confidentiality orders attached to the discovery materials they finally produce, thus preventing plaintiffs' counsel from sharing the fruits of discovery and forcing each plaintiff to reinvent the wheel. They have done it by taking exceedingly lengthy oral depositions of plaintiffs and by gathering, through written deposition, every scrap of paper ever generated about a plaintiff, from cradle to grave. And they have done it by taking endless depositions of plaintiffs, expert

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id. at 530-34 (summarizing the industry's discovery abuse tactics).

12. Haines v. Liggett Group, Inc., 814 F. Supp. 414, 421 (D.N.J. 1993) (quoting Apr. 29, 1988, Memorandum from J. Michael Jordan, counsel for RJR).

13. Hatfield, *supra* note 10, at 527.

> witnesses, and by naming multiple experts of their own for each specialty, such as pathology, thereby putting plaintiffs' counsel in the dilemma of taking numerous expensive depositions or else not knowing what the witness intends to testify to at trial. And they have done it by taking dozens and dozens of oral depositions, all across the country of trivial fact witnesses, particularly in the final days before trial.[14]

Until recently, this litigation strategy of delay and obfuscation paid enormous dividends for the tobacco industry.

B. The History of Tobacco Litigation

1. The First Wave of Tobacco Litigation

The history of tobacco litigation is usually summarized in three waves.[15] The first wave, consisting of personal injury suits by individual smokers, surfaced in the 1950s in the wake of the publication of several scientific studies, which sounded grave warnings on the health hazards of smoking.[16] "The tobacco companies prevailed in these early cases because plaintiffs were unable to prove a causative link between smoking and cancer . . . ."[17] In this first wave of litigation, the industry "hotly contested the causal linkage between smoking and lung cancer."[18] Indeed, to this day, the tobacco companies deny that it is scientifically proven that smoking causes any disease. A central theme in these early cases was "foreseeability"—that is, whether the tobacco industry could foresee the potential health risks of smoking and whether the industry had sufficient information about the risks to research those risks and warn consumers.[19]

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14. William E. Townsley & Dale K. Hanks, *The Trial Court's Responsibility to Make Cigarette Disease Litigation Affordable and Fair*, 25 CAL. W. L. REV. 275, 277 (1989).

15. *See* Hatfield, *supra* note 10, at 561-88.

16. *See* E.L. Wynder & E.A. Graham, *Experimental Production of Carcinoma with Cigarette Tar*, 13 CANCER RES. 855 (1953); R. Doll & A.B. Hill, *A Study of Aetiology of Carcinoma of the Lung*, 2 BRIT. MED. J. 1271 (1952).

17. Hatfield, *supra* note 10, at 561.

18. Robert L. Rabin, *A Sociolegal History of the Tobacco Tort Litigation*, 44 STAN. L. REV. 853, 858 (1992).

19. *See id.* at 859-61. This, of course, was before the surgeon general's landmark report in 1964, which concluded that smoking caused lung cancer in men, and before the surgeon general's warnings were placed on cigarette packages in

In one first-wave tobacco case that went to trial, *Lartigue v. R.J. Reynolds Tobacco Co.*,[20] the tobacco companies "made a convincing case for the lack of any causal connection" between smoking and Mr. Lartigue's cancer.[21] In fact, although the jury did not state the basis for its verdict for the industry, the trial judge wrote:

> I regret now I did not propound the interrogatory with respect to the connection between the smoking and his lung cancer because I'm satisfied the jury never got beyond that question and I know—*I'm sure at least that they simply decided the plaintiff had failed to prove the causal connection between his smoking and his lung cancer* but that is water under the bridge now.[22]

The court of appeals affirmed the jury's finding, noting that the jury was properly instructed that a risk had to be "reasonably foreseeable" before a manufacturer could be held liable.[23] The court concluded: "Today, the manufacturer is not an insurer against the unknowable."[24]

Yet at the time of the *Lartigue* trial in 1960, the industry had in its files documents that surely would have changed the verdict had they been disclosed. For example, as early as 1953, an RJR scientist, Dr. Claude Teague, in a document entitled "Survey of Cancer Research with Emphasis upon Possible Carcinogens from Tobacco," examined literature with an emphasis on studies actually or potentially related to carcinogens from tobacco.[25] Dr. Teague concluded:

> The increased incidence of cancer of the lung in man which has occurred during the last half century is probably due to new or increased contact with carcinogenic stimuli. The closely parallel increase in cigarette smoking

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1966. *See* SURGEON GENERAL, U.S. DEP'T OF HEALTH, EDUC. AND WELFARE, SMOKING AND HEALTH, REPORT OF THE ADVISORY COMMITTEE 1333 (Comm. print 1964).

20. 317 F.2d 19 (5th Cir. 1963).
21. *Id.* at 23.
22. *Id.* (emphasis added).
23. *Id.* at 24.
24. *Id.* at 40.
25. *See* RJR 501932947-68. All industry documents discovered in the course of *State ex rel. Humphrey v. Philip Morris Inc.* and cited in this article will be referenced by Bates number in order to facilitate their location in the two document depositories and Internet sites.

> has led to the suspicion that tobacco smoking is an important etiologic factor in the induction of primary cancer of the lung. *Studies of clinical data tend to confirm the relationship between heavy and prolonged tobacco smoking and incidence of cancer of the lung.*[26]

By 1958, most U.S. tobacco companies secretly believed that smoking caused lung cancer. In April and May of 1958, three British scientists (including at least one from British-American Tobacco, D.G. Felton) visited top officials and scientists in the U.S. tobacco industry.[27] One object of the visit was to find out "the extent in which it is accepted that cigarette smoke 'causes' lung cancer."[28] The British scientists reported widespread acceptance of causation:

> With one exception (H.S.N. Greene) [not formally affiliated with any tobacco company], the individuals whom we met believed that smoking causes lung cancer if by "causation" we mean any chain of events which leads finally to lung cancer and which involves smoking as an indispensable link. In the U.S.A. only Berkson, apparently, is now prepared to doubt the statistical evidence and his reasoning is nowhere thought to be sound.[29]

The authors concluded that there was no serious dispute that the statistical associations constituted a "cause and effect" phenomenon: "Although there remains some doubt as to the proportion of the total lung cancer mortality which can be fairly attributed to smoking, scientific opinion in the U.S.A. does not now seriously doubt that the statistical correlation is real and reflects a cause and effect relationship."[30]

Industry lawyers recognized that the industry's own documents, if plaintiffs ever obtained access to them, would change the result in the courtroom. In 1970, David R. Hardy, of the law firm of Shook, Hardy & Bacon, longtime outside counsel to the indus-

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26. *See* RJR 501932963 (emphasis added).

27. *See* BAT 105408491. The BAT scientists met with, among others, representatives from American, Liggett & Meyers, Philip Morris, and the Tobacco Industry Research Committee, a predecessor to CTR. *See id.*

28. BAT 105408492.

29. *Id.*

30. BAT 105408498.

try, outlined his fears to general counsel at Brown & Williamson:

> Fundamental to my concern is the advantage which would accrue to a plaintiff able to offer damaging statements or admissions by persons employed by or whose work was done in whole or in part on behalf of the [tobacco] company defending the action. A plaintiff would be greatly benefited by evidence which tended to establish actual knowledge on the part of the defendant that smoking is generally dangerous to health, that certain ingredients are dangerous and should be removed, or that smoking causes a particular disease. This would not only be evidence that would substantially prove a case against the defendant company for compensatory damages, but could be considered as evidence of willfulness or recklessness sufficient to support a claim for punitive damages. The psychological effect on judge and jury would undoubtedly be devastating to the defendant.[31]

2. The Second Wave of Tobacco Litigation

The second wave of cigarette litigation, also composed of individual personal injury suits, began in the 1980s.[32] In the wake of the 1964 and subsequent surgeon general's reports and the federally-mandated warning label on cigarettes, the tobacco industry began arguing that the hazards of smoking were "common knowledge" and, therefore, smokers who continued to smoke were merely exercising their "freedom of choice."[33] Thus the tobacco companies, not without a certain audacity, seamlessly shifted their battle cry from the first wave of litigation—"smoking doesn't cause cancer"—to their battle cry in the second wave of litigation—"everybody knows" that smoking causes cancer.[34]

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31. Peter Hanauer et al., *Lawyer Control of Internal Scientific Research to Protect Against Products Liability Lawsuits*, 274 JAMA 234, 235 (1995) (quoting a confidential letter to DeBaun Bryant).

32. *See* Rabin, *supra* note 18, at 854.

33. *See id.* at 870.

34. Yet while arguing that it was "common knowledge" and "everybody knows" smoking causes disease, the tobacco companies themselves continued to maintain that it was not proven that cigarettes cause disease. Even in 1998, Geoffrey C. Bible, chief executive officer of Philip Morris, testified in the Minnesota trial, as follows:

> Q. Did you go to your fellow CEOs and say, "Let us join together and

This "freedom of choice" argument is eviscerated by, among other things, the fact that smokers are addicted to nicotine. As with medical causation, the tobacco companies have long been aware of (and accepted) addiction, but have hidden their internal documents evidencing this awareness for decades. For example, in 1963, Brown & Williamson's vice president and general counsel recognized nicotine's true pharmacological reality: "Moreover, *nicotine is addictive. We are, then, in the business of selling nicotine, an addictive drug* effective in the release of stress mechanisms."[35] Likewise, in 1980, a Tobacco Institute employee—in a document disclosed for the first time in Minnesota—wrote: "Shook, Hardy reminds us, I'm told, that the entire matter of addiction is the most potent weapon a prosecuting attorney can have in a lung cancer/cigarette case. We can't defend continued smoking as free choice if the person was 'addicted'."[36]

These documents, however, remained secreted in the files of the tobacco companies throughout the second wave of litigation. Nevertheless, the second wave of litigation differed from the first in that it yielded the first significant discovery successes against the industry. The first meaningful disclosure of tobacco industry documents occurred in *Cipollone v. Liggett Group Inc.*,[37] the most notable second wave case: "For the first time, a pretrial ruling compelled the tobacco industry to release thousands of pages of confidential internal documents sought by the plaintiffs to prove that a conspiracy existed among the tobacco companies to prevent the release of damaging information on the health hazards of cigarette

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get a blue ribbon panel of scientists to tell us does smoking cause disease?" Did you do that?
A. No, I did not do that, because I really felt that everybody in the world believes smoking causes disease.
Q. You don't; do you, sir?
A. I don't know.
. . . .
Q. Do you know how many have died as a result of smoking?
A. How many people have died?
Q. Died.
A. I don't know if anybody has died. I just don't know, no.

Transcript of Proceedings at 5734-46, State *ex rel.* Humphrey v. Philip Morris Inc., No. C1-94-8565 (Minn. Dist. Ct. Mar. 2, 1998).

35. B&W 689033415 (emphasis added).
36. TIMN 0107823.
37. 683 F. Supp. 1487 (D.N.J. 1988).

smoking."[38] These documents offered the first glimpse of the treasures that would be found in the industry's files.

Cipollone and its companion case, *Haines v. Liggett Group, Inc.*,[39] provided the first indications of the extent of the role of tobacco company lawyers in shielding documents from discovery on improper claims of privilege.[40] In *Haines*, U.S. District Judge H. Lee Sarokin wrote that the tobacco industry, "may be the king of concealment and disinformation."[41] Judge Sarokin found a prima facie showing of crime-fraud against the industry, rejecting the industry's claims of privilege on its documents.[42] The industry, however, appealed, and Judge Sarokin's decision was vacated and remanded, for violations of the Federal Magistrate's Act.[43] In addition, the court of appeals granted the industry's request to remove Judge Sarokin from the case.[44]

Thus, the tobacco companies continued to stonewall. Many—in fact, most—of the critical documents remained hidden in tobacco companies' files. In 1993, after ten years of litigation, the plaintiffs' law firm in *Cipollone* (and related cases filed in New Jersey) requested to withdraw from tobacco litigation, citing the General Patton tactics of the industry and the financial drain on the firm.[45]

3. The Third Wave of Tobacco Litigation

The third wave of tobacco litigation began in 1994. In this wave, the fundamental nature of the claims against the tobacco industry changed. No longer was the litigation limited to individual claims by individual smokers. For the first time, states sued the tobacco industry seeking wide-scale injunctive relief and to recover the costs to the states for medical care for injured smokers. In 1994, the States of Mississippi and Minnesota were the first to file

38. Hatfield, *supra* note 10, at 565.

39. 140 F.R.D. 681 (D.N.J. 1992). *See generally,* Hatfield, *supra* note 10, at 566-72 (discussing *Haines* opinions in greater detail).

40. The plaintiffs in *Cipollone* and *Haines* were represented by the same group of law firms. *See Cipollone,* 683 F. Supp. at 1489; *Haines,* 140 F.R.D. at 683.

41. *Haines,* 140 F.R.D. at 683.

42. *See id.* at 684.

43. *See* Haines v. Liggett Group, Inc., 975 F.2d 81, 91-94 (3d Cir. 1992), *vacating* 140 F.R.D. 681 (D.N.J. 1992) (finding the district court's characterization of the Federal Magistrate's Act erroneous).

44. *See id.* at 98.

45. *See* Haines v. Liggett Group, Inc., 814 F. Supp. 414, 418 (D.N.J. 1993).

complaints against the industry. In addition to states, other third-party payors of medical costs sued the tobacco industry. In 1994, Blue Cross and Blue Shield of Minnesota was the first private payor of health care costs to sue the industry. The Minnesota litigation was venued in Ramsey County District Court before then-Chief Judge Kenneth J. Fitzpatrick. Large class action suits on behalf of smokers also were filed against the industry in this wave of litigation.[46]

The third wave of litigation was ignited by new revelations in 1994 about the tobacco industry's conduct. These included hearings chaired by U.S. Representative Henry Waxman and disclosures from Dr. David Kessler, then head of the U.S. Food and Drug Administration ("FDA"). In 1994, the "Merrell Williams documents" also were disclosed. Merrell Williams was a paralegal working for a law firm representing Brown & Williamson. Mr. Williams went public with about 4,000 pages of internal company documents from Brown & Williamson and its British corporate affiliates, the BAT Group,[47] detailing "a sophisticated legal and public relations strategy to avoid liability for the diseases induced by tobacco use."[48] The *Journal of the American Medical Association* ("JAMA") devoted an issue to the analyses of these documents, and stated:

> We think that these documents and the analyses merit the careful attention of our readership because they provide massive, detailed, and damning evidence of the tactics of the tobacco industry. They show us how this industry has managed to spread confusion by suppressing, manipulating, and distorting the scientific record. They also make clear how the tobacco industry has been able to avoid paying a penny in damages and how it has managed to remain hugely profitable from the sale of a substance long known by scientists and physicians to be lethal.[49]

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46. *See, e.g.*, Castano v. American Tobacco Co., No. 94-1044 (E.D. La. June 1, 1994).

47. The term BAT Group refers to the British entities that, over time, have been either affiliates or the corporate parent of Brown & Williamson. These entities include B.A.T. Industries and/or British-American Tobacco Company Limited (collectively referred to herein as "BAT").

48. Stanton A. Glantz et al., *Looking Through a Keyhole at the Tobacco Industry*, 274 JAMA 219, 219 (1995); *see generally* Hatfield, *supra* note 10, at 575-85 (arguing that the tobacco industry lawyers abuse the attorney-client privilege as a means of evading disclosure during discovery).

49. James S. Todd et al., *The Brown and Williamson Documents: Where Do We Go*

The Merrell Williams documents also contained disclosures on the role of industry counsel in fostering research that perpetuated a "controversy" as to whether smoking caused disease and in suppressing research that established the causal link.[50]

III. MINNESOTA'S DOCUMENT-INTENSIVE STRATEGY

With this historical backdrop, Minnesota set out on a determined discovery quest. Many observers believed that virtually no new discovery was needed, given the prior productions in New Jersey and the new disclosures in 1994.[51] The tobacco industry first offered to comply with its discovery obligations by producing in Minnesota only those documents they had previously disclosed in litigation elsewhere. Minnesota's refusal to accept this offer—contrary to conventional wisdom—proved correct.

Whereas Brown & Williamson, for example, had produced only 1,350 pages of documents before 1994, it would eventually produce more than four million pages in Minnesota. Philip Morris had produced only about 140,000 pages of documents in prior litigation, but in Minnesota would produce more than six million pages. And while the BAT Group in England had produced no documents prior to Minnesota filing suit, they too would turn over several millions of pages of documents to Minnesota. In sum, prior to the Minnesota litigation, the tobacco companies had produced only several million pages of documents, virtually all after 1981. Minnesota would eventually compel the production of approximately thirty-five million pages of documents from all defendants. These documents are now in two document depositories, one in Minneapolis (for the domestic defendants) and the other in Guildford, England (for the BAT Group defendants).[52]

Minnesota would have to engage in an unprecedented effort to obtain these documents. From the beginning, the industry

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From Here?, 274 JAMA 256, 256 (1995).

50. *See* Hanauer et al., *supra* note 31, at 236-37; Lisa Bero et al., *Lawyer Control of the Tobacco Industry's External Research Program*, 274 JAMA 241, 244-45 (1995).

51. In 1992, one commentator stated that "[w]hile it is possible that a new wave of lawsuits would unearth egregious evidence of a cover-up, it seems unlikely." Rabin, *supra* note 18, at 875.

52. *See generally* State *ex rel.* Humphrey v. Philip Morris Inc., No. C1-94-8565, slip op. at 2 (Minn. Dist. Ct. July 14, 1995). The depositories will remain open pursuant to the terms of the settlement. *See* Consent Judgment, *Philip Morris*, 1998 WL 394336, at *3.

fought disclosure at every turn. Minnesota was forced to bring countless motions to compel. Industry lawyers played endless word games, claiming they did not know what documents were at issue. The lawyers claimed, for example, that they did not know what the following terms meant in Minnesota's document requests: (1) "smoking and health"; (2) "the properties and effects . . . of nicotine"; (3) "addictive"; (4) "target levels of nicotine in cigarettes"; (5) "minimum dose levels of nicotine"; (6) "safer cigarettes"; (7) "advertising, marketing or promotion of cigarettes"; (8) "the effects of cigarette advertising"; (9) "the effectiveness of warning labels"; (10) "sociology or psychology of smokers"; (11) "antitrust issues in the tobacco industry"; and (12) "document destruction policies."

Another example of the word games comes from this classic response by Brown & Williamson to plaintiffs' request for documents:

> Brown & Williamson objects to plaintiffs' definition of the term "smoking and health" on the grounds that it is overly broad, unduly burdensome, vague and ambiguous, and is not reasonably calculated to lead to the discovery of admissible evidence. For example, it purports to include all effects which are "potentially or possibly related to smoking" and "potential or possible effects of nicotine." The definition is further objectionable on the grounds that it is overly broad as it includes any alleged "property or effect" of nicotine, regardless of whether related to health.[53]

Several examples of the documents wars—prior to the ultimate battle over privilege—follow.

A. *The Industry's Existing Document Indices*

A key, early battle in the Minnesota discovery focused on document indices that the tobacco industry lawyers had created to manage the millions of documents relating to smoking and health. As Minnesota learned, the industry's lawyers began to index all smoking and health documents in the wake of the *Cipollone* litigation in the 1980s. If Minnesota could obtain these indices, they

53. Responses and Objections of Brown & Williamson Tobacco Corporation to Plaintiffs' First Set of Requests for Production of Documents at 3-4, State *ex rel.* Humphrey v. Philip Morris Inc., No. C1-94-8565 (Minn. Dist. Ct. Aug. 3, 1995).

would provide vital information regarding the massive universe of tobacco industry documents. As President Clinton later remarked, the indices were "the industry's road map to its own documents and could improve significantly the ability of public health experts, scientists, state and federal officials, and the public to search through industry documents."[54] The litigation over these indices lasted for sixteen months, through eight orders of the trial court, and unsuccessful appeals by the industry to the Minnesota Court of Appeals, the Minnesota Supreme Court and the U.S. Supreme Court.

The trial court first addressed the issue of indices in its first case management order, in which the court stated: "Each party shall produce an index of documents along with the production of its documents, to the extent that each party has an existing index of documents."[55] At first, the tobacco industry claimed that it had no indices responsive to this order. In a subsequent order, the trial court ordered each side to produce any "previously prepared or produced" index of documents relative to the subject matter of this action, "provided, however, that if the producing party claims an existing index contains subjective information protected by the attorney-client or work product privileges, it shall submit such index to the court for in camera inspection and determination."[56]

The industry lawyers claimed that any such indices were shielded from discovery as attorney work product because the indices were prepared by outside counsel beginning in the mid-1980s during the second wave of tobacco litigation.[57] Attorney work product—"documents and tangible things . . . prepared in anticipation of litigation"[58]—is subject to different degrees of protection

54. President's Memorandum to the Secretary of Health and Human Services (July 17, 1998).

55. Case Management Order, State *ex rel.* Humphrey v. Philip Morris Inc., No. C1-94-8565, slip op. at 9 (Minn. Dist. Ct. Mar. 29, 1995).

56. State *ex rel.* Humphrey v. Philip Morris Inc., No. C1-94-8565, slip op. at 6 (Minn. Dist. Ct. July 14, 1995). These indices are generally referred to as the "4A indices" due to the enumeration of the paragraphs in the order. The industry also compiled and produced a different index—known as the "4B indices"—that list the millions of documents produced to the document depositories in Minneapolis and England. These indices are located at the Minneapolis document depository and available to the public in searchable format.

57. *See* Transcript of Hearing at 45-46, State *ex rel.* Humphrey v. Philip Morris Inc., No. C1-94-8565 (Minn. Dist. Ct. Sept. 12, 1995). RJR claimed that it had spent $90 million in compiling the indices to respond to "litigation demands." *Id.* at 45.

58. MINN. R. CIV. P. 26.02(c).

depending on its nature. Opinion work product—the "opinions, conclusions, legal theories, or mental impressions of counsel"—is generally not discoverable.[59] In contrast, the ordinary work product of attorneys, often referred to as "fact work product," is discoverable where the party seeking it shows substantial need and undue burden.[60]

An attorney's selection of large numbers of documents for inclusion on an index does not constitute opinion work product.[61] In such a situation, the documents are "sufficiently voluminous to minimize disclosure of the attorney's identification of some occasional wheat among the chaff."[62] As one court noted in similar context:

> Because of the astronomical number of documents involved in this case, it is highly unlikely that [the defendant's] mental impressions would be exposed by production of such an index or database. The sheer amount of documents involved is what led the plaintiff to seek the index and database in the first place.[63]

The heightened protection accorded opinion work product is not triggered "unless disclosure creates a real, nonspeculative danger of revealing the lawyer's thoughts."[64]

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59. Dennie v. Metropolitan Med. Ctr., 387 N.W.2d 401, 406 (Minn. 1986).

60. Materials prepared by a party's attorney in anticipation of litigation or for trial are discoverable where the party seeking discovery has "substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means." MINN. R. CIV. P. 26.02(c); *see also Dennie*, 387 N.W.2d at 406.

61. *See* Washington Bancorp. v. Said, 145 F.R.D. 274, 278 (D.D.C. 1992) (requiring that document indices compiled by counsel be produced because "[t]he extreme number of documents indexed here virtually eliminates the possibility that defendants could glean from this index . . . litigation strategy."); *see also In re* Shell Oil Refinery, 125 F.R.D. 132, 134 (E.D. La. 1989) (ordering lists of documents selected by plaintiffs for copying discoverable because "it is highly unlikely that Shell will be able to discern the [plaintiffs'] 'theory of the case'. . . simply by knowing which 65,000 documents out of 660,000 documents have been selected for copying."); Scovish v. Upjohn Co., No. 526520, 1995 WL 731755, at *4 (Conn. Super. Ct. 1995) ("[M]ere identification of a document or files selected by [the defendant] (i.e. by title, date sent, author, recipient, etc.), to be included in the index or database constitutes ordinary work product.").

62. United States v. Doe, 959 F.2d 1158, 1167 (2d Cir. 1992).

63. *Scovish*, 1995 WL 731755, at *3.

64. *In re* San Juan DuPont Plaza Hotel Fire Litig., 859 F.2d 1007, 1015 (1st Cir. 1988).

After reviewing samples of the indices in camera, the trial court found that certain portions of the indices were discoverable, notwithstanding the fact that they were prepared in anticipation of litigation.[65] The trial court carefully segregated those portions of the indices containing "opinion work product," from the indices' "objective information."[66] The trial court ordered produced only the most basic, identifying information: for example, document numbers, document dates, document authors, document recipients, verbatim titles, and document types.[67] The court found that "parties can produce indices of objective information on the millions of documents on their databases without revealing attorney opinion, mental impressions, strategies, or theories."[68]

The trial court concluded that plaintiffs had demonstrated "substantial need and inability to obtain the equivalent without undue hardship."[69] At that time, it was estimated that the tobacco industry might produce nine million pages of documents. As the court recognized:

> If five attorneys were to devote twelve hours each per day, five days per week, to the task of reviewing those nine million pages—and limit their review to one minute per page—it would take nine years to review those documents alone. Creation of a new and separate database identifying the nine million documents would be duplicative, time-consuming, and costly.[70]

When finally produced,[71] the indices proved invaluable to

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65. *See* State *ex rel.* Humphrey v. Philip Morris Inc., No. C1-94-8565, slip op. at 12 (Minn. Dist. Ct. Nov. 1, 1995).

66. *See id.*

67. *See id.* (listing fields ordered produced). All subjective information was ordered redacted, even "inferred" titles and authors and certain information regarding the "subject matter" of a document. *See id.*

68. *Id.* at 16.

69. *Id.* at 13.

70. *Id.* The fact that the industry eventually produced some 35 million page of documents only served to underscore the correctness of the court's determination.

71. The district court stayed production of the 4A indices until defendants exhausted their appellate remedies. Defendants sought a writ of prohibition from the Minnesota Court of Appeals. The court of appeals denied the writ. *See* State *ex rel.* Humphrey v. Philip Morris Inc., No. CX-95-2536 (Minn. Ct. App. Dec. 26, 1995) (citing Mampel v. Eastern Heights State Bank, 254 N.W.2d 375, 377 (Minn. 1977)). The defendants then sought discretionary review in the Minnesota Su-

plaintiffs in analyzing documents and targeting further discovery, including discovery of documents withheld on claims of privilege. Moreover, given that the plaintiff's now had knowledge of the universe of industry documents, the tobacco industry was forced to forego its past strategy of evading meaningful document discovery.

B. Corporate Shell Games

In addition to fighting a war of attrition, the industry also employed a strategy of international concealment, conducting research offshore—often at affiliated corporations. There also was evidence of shipping documents overseas, or destroying them.

1. Philip Morris International

Philip Morris took advantage of the formalities of its intricate corporate structure to claim that it had no obligation to produce certain documents in the possession of non-party corporate affiliates, particularly those located abroad. Some of the most critical smoking and health research conducted by Philip Morris has been conducted through its foreign corporate subsidiaries and affiliates, including entities known as Institute fuer Biologische Forschung ("INBIFO"), Contract Research Center ("CRC"), and Fabrique de Tabac Reunis ("FTR").

Cologne, Germany, where INBIFO is located, was once described by a senior Philip Morris officer as "a locale where we might do some of the things which we are reluctant to do in this country."[72] One of the reasons given for having INBIFO was "*[c]ontrol*. . . experiments can be terminated at will as required without delay."[73]

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preme Court. The Minnesota Supreme Court denied review without comment. *See* State *ex rel.* Humphrey v. Philip Morris Inc., No. CX-95-2536 (Minn. Feb. 27, 1996). The industry finally produced the indices after the United States Supreme Court denied their petition for writ of certiorari. *See* R.J. Reynolds Tobacco Co. v. Minnesota, 517 U.S. 1222 (1996).

72. PM 2022244451.

73. *Id.* Internally, Philip Morris treated INBIFO and CRC as an integral part of its research and development activities. For example, in a document describing INBIFO's importance to Philip Morris, Philip Morris states that "INBIFO/CRC is PM's center of excellence for biological research . . . INBIFO/CRC perform comprehensive biological testing as an integral part of PM's research and development network." PM 2050975128. Another document further states that "INBIFO/CRC is embedded in PM's R&D organization," with a chart demonstrating that R&D at Richmond, Virginia is responsible for 80% of INBIFO's budget and 100% of

Other documents demonstrate the use of Philip Morris International subsidiaries for the routing and storage of sensitive documents. For example, a handwritten document from the files of Thomas S. Osdene, the former director of Philip Morris research, states, among other things:

1. Ship all documents to Cologne. . .
2. Keep in Cologne.
3. Okay to phone & telex (these will be destroyed).

. . . .

5. We will monitor in person every two to three months.
6. If *important* letters or *documents* have to be sent, please send to home - I will act on them and destroy.[74]

Osdene pled the Fifth Amendment when asked about this document in his deposition.[75] As late as 1993, Philip Morris still appeared to be using INBIFO as an offshore repository for documents.[76]

Another document, authored by Robert Seligman, Philip Morris vice president for research and development, stated that Philip Morris has "gone to great pains to eliminate any written contact with INBIFO . . . [t]he written analytical data will still have to be routed through FTR if we are to avoid direct contact with INBIFO and Philip Morris U.S.A."[77]

Well into discovery, plaintiffs learned that Philip Morris was not producing all relevant documents from its foreign affiliates. Under well-established law, however, a corporation cannot refuse to produce documents simply because they are in the possession of an affiliate.[78] Depending upon the facts of the case, documents in the possession, custody or control of a corporate affiliate may be

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CRC's budget, with R&D Neuchatel responsible for the remaining 20% of INBIFO's budget. PM 2050975136.

74. PM 1000130803 (emphasis in original).

75. *See* Transcript of Deposition of Thomas Osdene, vol. 2 at 140-143, State *ex rel.* Humphrey v. Philip Morris Inc., C1-94-8565 (Minn. Dist. Ct. June 17, 1997).

76. *See* PM 2043725390. "[F]inal reports on PM USA product research are sent to Richmond for review and are then returned to INBIFO. Supporting data and documents are kept at INBIFO." *Id.*

77. PM 2000512794.

78. *See* Mall of Am. Co. v. County of Hennepin, Nos. TC-16076, TC-21195, TC-16772, TC-22440, TC-18309, 1995 WL 461069, at *3 (Minn. Tax Ct. Aug. 2, 1995).

subject to discovery through a document request on the corporate entity which is a party in the litigation.[79] This is a fact-specific inquiry.[80] Thus, the specific corporate form or organization will not necessarily be a roadblock to discovery:

> A corporation is required to produce documents held by its subsidiaries, even if the subsidiary is a foreign corporation and documents are located in a foreign country. This rule applies to both foreign and domestic subsidiaries and to predecessor corporations and subsidiaries. It does not apply, however, to successor corporations that are now separately owned. The rule also applies to documents in possession of a so-called sister corporation, another subsidiary of the non-party parent corporation of the party to the action.[81]

Likewise, as the Massachusetts Supreme Court recently recognized, the party defendant need not have "legal control" to be obligated to produce relevant documents:

> We reject, as does the clear trend in the Federal cases, "legal right to control" as the test for determining whether, under Rule 34(a), a party may be made responsible for producing materials not in its actual "possession [or] custody." . . . At least in cases such as this, where the nonlitigating corporations from whom information is sought are related to the defendant through a single line of wholly common ownership, the issue of control readily resolves in favor of the party seeking that information.[82]

The Massachusetts court fashioned the following rule:

> The rule we adopt today attributes sufficient control for purposes of requiring discovery whenever the claimant has met his burden of showing that the information sought is in the possession or custody of a wholly owning

79. *See id.*

80. *See id.*

81. ROGER S. HAYDOCK & DAVID F. HERR, DISCOVERY PRACTICE § 5.6, at 5:8 (3d ed. Supp. 1997) (citations omitted).

82. Strom v. American Honda Motor Co., Inc., 667 N.E.2d 1137, 1144 (Mass. 1996).

> parent (or virtually wholly owning) or wholly owned (or virtually wholly owned) subsidiary corporation, or of a corporation affiliated through such a parent or subsidiary.[83]

Any other rule would permit corporate defendants to hide documents amongst its corporate affiliates:

> To rule otherwise would be to reward corporations that disperse potentially useful information among related entities. When it suits their purposes they will share that information, but when adverse parties seek it out, they would be able to throw up serious and perhaps impenetrable barriers to effective discovery. That is not what the rule contemplates.[84]

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83. *Id.*

84. *Id.* at 1145. The Massachusetts decision is consonant with well-settled law from throughout the United States. *See* Japan Halon Co. v. Great Lakes Chem. Corp., 155 F.R.D. 626, 628 (N.D. Ind. 1993) (requiring production from party's parent corporations as there was "close coordination" between them); Camden Iron & Metal, Inc. v. Marubeni Am. Corp., 138 F.R.D. 438, 441-42 (D.N.J. 1991) ("Federal courts construe 'control' very broadly under Rule 34" and that Rule 34 does not require an alter ego relationship) (citations omitted); Afros S.P.A. v. Krauss-Maffei Corp., 113 F.R.D. 127, 131 (D. Del. 1986) ("It is obvious that the particular *form* of the corporate relationship does not govern whether a party controls documents.") (emphasis added); M.L.C., Inc. v. North Am. Philips Corp., 109 F.R.D. 134, 136 (S.D.N.Y. 1986) ("The term 'control' is broadly construed" and requiring production from non-party corporate parent"); Cooper Indus., Inc. v. British Aerospace, Inc., 102 F.R.D. 918, 920 (S.D.N.Y. 1984) ("[A party] cannot be allowed to shield crucial documents from discovery by parties with whom it has dealt in the United States merely by storing them with its affiliate abroad. . . . If defendant could so easily evade discovery, every United States company would have a foreign affiliate for storing sensitive documents."); Brunswick Corp. v. Suzuki Motor Co., 96 F.R.D. 684, 686 (E.D. Wis. 1983) (upholding interrogatories requesting information from subsidiaries of parties because information "is available" to parties); *In re* Uranium Antitrust Litig., 480 F. Supp. 1138, 1153 (N.D. Ill. 1979). The *Uranium* court stated:

> It is sufficient [to order production from U.S. party] that [the party] has, or once had, control over its directors, officers and employees who managed the . . . activities of [the party] alone or of both corporations. [The party] must produce all responsive documents held by those employees or former employees, *even if those documents have found their way into [a foreign affiliate's] files.* The formalities separating the two corporations cannot be used as a screen to disguise the coordinated nature of their . . . enterprise.

Id. (emphasis added). *See also* Hubbard v. Rubbermaid, Inc., 78 F.R.D. 631, 637

The trial court agreed with Minnesota's argument that Philip Morris' failure to search the files of its affiliates and subsidiaries and produce all documents was "an egregious attempt to hide information relevant to this action."[85] The court stated that it would not tolerate Philip Morris' "attempts at hiding documents in the morass of interlocking related organizations."[86]

2. American Tobacco

American attempted similar corporate shell games. The litigation over American documents involved documents in the possession of its predecessor corporation, former corporate affiliates (including one foreign affiliate), and its national law firm. The trial court granted Minnesota's motion to compel production.[87] American failed to comply with the order. The court then ordered that it would hold a sanctions hearing if American persisted in noncompliance.[88] After America's attempts to obtain appellate review of that second order proved unsuccessful,[89] Minnesota then moved for sanctions. The trial court granted that request, striking any claims of privilege over certain documents and ordering their produc-

(D. Md. 1978) ("The fact that we are dealing with separate corporate entities here is irrelevant . . . . [T]he nonparty status of the wholly owned subsidiaries does not shield their documents from production."); Sol S. Turnoff Drug Distribs. Inc. v. N.V. Nederlandsche Combinatie Voor Chemische Industrie, 55 F.R.D. 347, 349 (E.D. Pa. 1972) (upholding interrogatories regarding information in possession of subsidiaries and predecessors in name of party); American Honda Motor Co. v. Votour, 435 So. 2d 368, 369 (Fla. Dist. Ct. App. 1983) (ordering production from subsidiaries of party is not unreasonable).

85. Order Granting Plaintiffs' Motion to Compel Regarding Philip Morris International and Denying Defendants' Motion for Protective Order, State *ex rel.* Humphrey v. Philip Morris Inc., No. C1-94-8565, slip op. at 9, 15 (Minn. Dist. Ct. Mar. 25, 1997) (citing Strom v. American Honda Motor Co., 667 N.E.2d 1137, 1141-45 (Mass. 1996)).

86. *Id.* at 16.

87. *See* Order Unsealing Certain Documents of Liggett Group, Inc., State *ex rel.* Humphrey v. Philip Morris Inc., No. C1-94-8565 (Minn. Dist. Ct. May 8, 1997).

88. *See* Order Granting Plaintiffs' Motion for Enforcement of Court's Order of May 8, 1997 and Notice of Hearing Motion for Sanctions, State *ex rel.* Humphrey v. Philip Morris Inc., No. C1-94-8565, slip op. at 2 (Minn. Dist. Ct. June 18, 1997).

89. *See* State *ex rel.* Humphrey v. Philip Morris Inc., Nos. C2-97-1109, C9-97-1110, CO-97-1111 (Minn. Ct. App. July 22, 1997) (dismissing appeal and denying petitions for extraordinary review); State *ex rel.* Humphrey v. Philip Morris Inc., No. C2-97-1109 (Minn. Nov. 13, 1997) (denying petition for review).

tion.[90] In the end, however, American never fully complied with the discovery orders. At the close of trial, the trial court instructed the jury that they could draw a negative inference from American's failure to produce the documents.[91] Upon settlement, the court imposed an additional $400,000 sanction upon American and B&W.[92]

IV. DISCLOSURE OF THE TOBACCO INDUSTRY'S "PRIVILEGED" DOCUMENTS AND THE BATTLE IN MINNESOTA OVER APPLICATION OF THE CRIME-FRAUD EXCEPTION

Prior to the Minnesota litigation, the tobacco industry had successfully executed a strategy—directed by lawyers—of withholding important information on the health hazards of smoking under improper claims of attorney-client privilege and work product protection. In the Minnesota litigation, the tactics of the industry and their lawyers were exposed. After extended and intense litigation, more than twenty trial court orders, and more than five appeals, the industry's carefully-built wall of secrecy crumbled and more

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90. *See* Order Imposing Sanctions Upon the American Tobacco Company and Brown & Williamson Tobacco Corporation as Successor by Merger to the American Tobacco Company, State *ex rel.* Humphrey v. Philip Morris Inc., No. C1-94-8565, slip op. at 8 (Minn. Dist. Ct. Dec. 30, 1997). B&W and American were also ordered to pay the Clerk of the Court the sum of $100,000 as a sanction. *See id.* at 9.

91. The jury was instructed:

> Prior to trial plaintiffs requested certain documents and answers to certain questions regarding research on smoking and health from American Tobacco and Brown & Williamson, as successor by merger to American Tobacco. After American Tobacco and Brown & Williamson failed to produce the information, they were ordered to do so by this court. American Tobacco and Brown & Williamson then violated that order which required them to produce the documents and answer the questions in an unevasive answer. I now instruct you that you may draw a negative inference from American Tobacco's and Brown & Williamson's failures to provide the information ordered produced. You may assume that if the information about American Tobacco's and Brown & Williamson's smoking-and-health research had been produced, it would have been unfavorable to the positions taken by American Tobacco and Brown & Williamson.

Transcript of Proceedings at 15661-62, State *ex rel.* Humphrey v. Philip Morris Inc., No. C1-94-8565 (Minn. Dist. Ct. May 6, 1998).

92. *See* State *ex rel.* Humphrey v. Philip Morris Inc., No. C1-94-8565, slip op. at 2 (Minn. Dist. Ct. May 8, 1998).

than 39,000 documents withheld on claims of privilege were produced.[93]

Because the "privileged" documents disclosed in Minnesota contain important scientific facts about the health consequences of smoking and the industry's knowledge of these consequences, the 39,000 documents will have significance for the public health community, governmental authorities and other litigants for decades to come.[94] The documents will also have lasting implications for the industry, particularly for its lawyers.

Leading experts on ethics and privilege have been shocked and dismayed by the abuses of privilege uncovered in Minnesota. Ethics expert Geoffrey Hazard noted that the documents disclosed in Minnesota "will haunt the legal profession for a long time" because they "show perversion of the lawyer's role in counseling business clients and exploitation of the attorney-client privilege to conceal deception."[95] The director of the Minnesota Office of Lawyer Professional Responsibility recently summed up the "misuse" of privilege that occurred in the tobacco litigation as follows:

> The solution adopted by the tobacco companies was to have their "scientific" research conducted under the close consultation, and sometimes under the management, of their lawyers. The idea was that bad findings could be held back as lawyer-client confidences, whereas good findings could be described as the product of scientific inquiry.[96]

The director also suggested that the attorney behavior dis-

93. With limited exceptions, copies of the "privileged" documents ordered produced in Minnesota can be found at the following Internet address: <http://www.house.gov/commerce/TobaccoDocs/documents.html>. The documents were placed on the Internet after the industry turned them over to Congress in response to a congressional subpoena issued as a result of the decisions in the Minnesota tobacco litigation.

94. *See* Richard D. Hurt & Channing R. Robertson, *Prying Open the Door to the Tobacco Industry's Secrets About Nicotine. The Minnesota Tobacco Trial*, 280 JAMA 1173, 1173 (1998). "The recent release of previously protected attorney-client-privileged documents, ordered to be produced [in Minnesota] on the basis of crime or fraud, shed even more light on the industry's secrets." *Id.*

95. Geoffrey C. Hazard, *Tobacco Lawyers Shame the Entire Profession*, NAT'L L.J., May 18, 1998, at A22.

96. Edward J. Cleary, *The Use and Abuse of the Attorney-Client Privilege*, BENCH & B. MINN., Sept. 1998, at 18.

closed in the Minnesota litigation was "far more than an ethical violation; such conduct may well constitute obstruction of justice in violation of the criminal code."[97] Legal ethics experts from California agree.[98] After reviewing the documents in Minnesota, they concluded that:

> [I]t is impossible, in our view, to argue credibly that lawyers are acting ethically when they *affirmatively* advise their tobacco clients to *avoid* taking steps that would substantially reduce the number of people killed by tobacco. We leave others to debate whether such advice should be termed "criminal" or "fraudulent," but it is surely bereft of any moral or legal justification.[99]

The following section of this article describes the legal doctrines employed by Minnesota's counsel to pry open the industry's secret "privileged" files. Particular focus is placed on the theory of crime-fraud offered by plaintiffs and ultimately adopted by the special master[100] and trial court. Finally, insight is provided into some of the "new" facts revealed in the 39,000 documents produced, for the first time to any litigant, on April 7, 1998.

A. *Prologue to Disclosure*

From very early on in the litigation, the industry was placed on notice that its claims of privilege would be closely scrutinized and,

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97. *Id.* at 19. Similar conclusions with respect to the documents disclosed in Minnesota were reached by the author of leading treatises on attorney-client privilege:

> Further proceedings against the attorneys would be appropriate. The law cannot give such a broad, absolute, and unlimited privilege to communications between clients and officers of the court and then tolerate any knowing abuse of it by those officers.

Paul R. Rice, *We Haven't Got a Secret Anymore: How the Tobacco Industry Lost Its Attorney Client Privilege*, LEGAL TIMES, Apr. 13, 1998, at 28.

98. *See* Richard A. Zitrin & Carol M. Langford, *Ethics in Ashes: Big Tobacco's Lawyers Hide Behind the Cloak of Privilege*, CAL. LAW., Nov. 1998, at 46.

99. *Id.* at 49.

100. On March 25, 1997, Judge Fitzpatrick, pursuant to Minn. R. Civ. P. 53, appointed Mark W. Gehan, Jr., as special master for the purpose of rendering reports regarding documents withheld from production on the grounds of privilege. *See* Order Referring Certain Matters to a Special Master, State *ex rel.* Humphrey v. Philip Morris Inc., No. C1-94-8565, slip op. at 2 (Minn. Dist. Ct. Mar. 25, 1997).

if necessary, challenged by the Minnesota plaintiffs. The message to the industry from the outset was clear: the Minnesota plaintiffs would seek to hold the industry accountable for any abuse of the legal system. This issue was raised early because, even at that time, the tobacco industry and its lawyers had gained a reputation for abuse of privilege. The first court to closely examine the industry's penchant for withholding scientific information under claims of privilege was Judge Sarokin in *Haines v. Liggett Group, Inc.*[101] In *Haines*, the district court judge found that the documents he reviewed in camera:

> [S]peak for themselves in a voice filled with disdain for the consuming public and its health. Despite the industry's promise to engage independent researchers to explore the dangers of cigarette smoking and to publicize their findings, the evidence clearly suggests that the research was not independent; that potentially adverse results were shielded under the caption of "special projects;" that the attorney-client privilege was intentionally employed to guard against such unwanted disclosure; and that the promise of full disclosure was never meant to be honored and never was.[102]

During the most recent wave of litigation, other courts found that the tobacco companies have made invalid claims of privilege. Indeed, virtually every court which reviewed the industry's allegedly privileged documents in camera has found that at least some of the documents are not privileged or are subject to disclosure under the crime-fraud exception.[103] Compared to Minnesota, however, only a

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101. 140 F.R.D. 681, 695-96 (D.N.J. 1992).

102. *Id.* at 684. The Third Circuit reversed Judge Sarokin's decision on the grounds that the judge had violated the Federal Magistrate Act. *See* Haines v. Liggett Group, Inc., 975 F.2d 81, 98 (3d Cir. 1992). The Third Circuit also ordered the case reassigned to another judge on remand in view of statements made in the district court's prologue to its opinion. *See id.* at 98. In this prologue, the district court stated, inter alia, "[T]he tobacco industry may be the king of concealment and disinformation." *Id.* at 97. On remand, however, the plaintiffs' law firm, exhausted by the industry's dilatory tactics, sought permission to withdraw, before the claims of privilege were ever resolved. *See* Haines v. Liggett Group, Inc., 814 F. Supp. 414, 416 (D.N.J. 1993).

103. *See, e.g.*, Florida v. American Tobacco Co., CL 95-1466 AX, slip op. at 4 (Fla. Cir. Ct. Apr. 9, 1997) ("[The tobacco companies] utilized attorneys in carrying out and planning fraudulent activities and undertook to misuse the attorney/client relationship to keep secret research and other activities related to the

handful of documents were ultimately ordered produced to the plaintiffs in those cases.

Despite the clear warnings in Minnesota, the industry's lawyers engaged in an indiscriminate dumping of thousands upon thousands of documents on privilege logs. Before it was all over, the industry lawyers claimed privilege over more than 230,000 documents, including critical scientific documents on the health hazards of smoking. Pursuant to the case management order entered in the case during 1995, the parties were ordered to create privilege logs providing information about documents withheld from discovery on grounds of privilege.[104] Information required included the author, recipients, date, subject matter description and the basis for the privilege claim.[105]

In most instances, the tobacco industry privilege logs were vague and redundant. For example, RJR cursorily described the subject matter of more than 6,800 allegedly privilege documents as

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true health dangers of smoking."); Texas v. American Tobacco Co., No. 5:96-CV-091, slip op. at 2 (E.D. Tex. Nov. 12, 1997) ("There is prima facie evidence that the services of the tobacco industry lawyers were sought and/or obtained to enable or aid one or more Defendants in committing or planning to commit the crimes, frauds or other misconduct."); Washington v. American Tobacco Co., No. 96-2-15056-8 SEA, 1997 WL 728262, at *9 n.5 (Wash. Super. Ct. Nov. 21, 1997) ("[The] chance that the public would be misled [by CTR Special Projects] and would be unable to identify which research projects were directed by [tobacco companies] to promote their legal, business, or public relations interests was so great as to give rise to the inference of fraud."); Sackman v. Liggett Group, Inc., 173 F.R.D. 358, 363 (E.D.N.Y. 1997) (finding that 305 Liggett documents were not subject to an underlying claim of privilege); Burton v. R.J. Reynolds Tobacco Co., 177 F.R.D. 491, 494 (D. Kan. 1997) (ordering production of several of RJR's documents, concluding that the legal arguments proffered by RJR's counsel were clearly contrary to any reasonable application of the attorney-client privilege or work product doctrine).

104. *See* Case Management Order, State *ex rel.* Humphrey v. Philip Morris Inc., No. C1-94-8565, slip op. at 10 (Minn. Dist. Ct. Mar. 29, 1995).

105. *See id.* Specifically, the case management order provided that the following information was to be listed for each document withheld from production on a claim of privilege:

(a) Document production number;
(b) Date;
(c) Author;
(d) Addressees and recipients of copies;
(e) Type of document;
(f) Subject matter of document;
(g) Nature of claimed privilege (e.g. attorney-client; work product)

Id.

only "scientific research," "smoking and health issues," or "scientists and scientific research." Brown & Williamson provided the following worthless subject matter description for hundreds of documents: "Confidential communication reflecting legal advice/request for legal advice."

As a result of this industry tactic, it was very difficult for Minnesota's counsel to document all of the privilege abuses. Though privilege issues had been addressed since literally the first case management order, litigation of the issue intensified in the fall of 1996, when Minnesota brought a motion arguing that when a party asserting privilege provides an inadequate log, the claimed privilege is waived.[106] The trial court denied Minnesota's motion, but issued a warning to defendants: "[T]he Court is concerned and cautions the parties to provide sufficient information in their privilege logs so that a reasoned decision can be made without in camera review of an unreasonable percentage of documents . . . ."[107] The industry and its counsel, however, failed to heed the trial court's warning and refused to describe the nature of their "privileged" documents with any more detail.

Privilege was addressed again, in the spring of 1997, when the State of Minnesota entered into a settlement agreement with the smallest (by far) of the cigarette manufacturers, Liggett. A condition of the settlement included Liggett waiving all of its claims of privilege. The non-Liggett industry defendants, however, objected to production of approximately 2,400 of the Liggett privileged documents, claiming that they were subject to a joint defense privilege which could not unilaterally be waived by Liggett.[108]

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106. Some courts have found that inadequate privilege logs result in waiver of privilege. *See, e.g.*, Bowne of New York City, Inc. v. AmBase Corp., 150 F.R.D. 465, 474-75 (S.D.N.Y. 1993) (finding that there "simply [was] not enough information supplied to support the privilege claims," where a privilege log provided only "very skeletal descriptions of 'subject'"); Willemijn Houdstermaatschaapij B.V. v. Apollo Computer Inc., 707 F. Supp. 1429, 1443-44 (D. Del. 1989) (finding plaintiff originally supplied "facially insufficient" descriptions of withheld documents to provoke protection and that plaintiff would not be allowed to "embellish" the descriptions later to avoid complying with defendant's discovery requests).

107. Order Denying Plaintiffs' Motion to Waive Privilege, State *ex rel.* Humphrey v. Philip Morris Inc., No. C1-94-8565, slip op. at 3 (Minn. Dist. Ct. Nov. 8, 1996). While denying plaintiffs' motion for waiver, the trial court agreed that "the description of certain documents . . . is arguably insufficient for Plaintiffs to reasonably determine whether or not to challenge the claim . . . ." *Id.* at 2-3.

108. "[T]he joint defense privilege cannot be waived without the consent of all parties to the defense." *See* John Morrell & Co. v. Local Union 304A of United Food & Comm'l Workers, 913 F.2d 544, 556 (8th Cir. 1990) (quoting Ohio-Sealy

By order of March 28, 1997, the trial court directed the parties to file memoranda of law in support of or in opposition to claims of privilege and joint defense.[109] The trial court also directed the industry to submit "such motions and affidavits as may be necessary to support any claims of privilege" over the Liggett documents.[110] Extensive briefs, affidavits, and exhibits (literally box-loads by the industry) were filed by both sides, and two days of hearings on privilege and application of the crime-fraud exception were conducted before the trial court on April 8 and 15, 1997. A discussion of the theories advanced by Minnesota's counsel (and ultimately adopted by the trial court) follow.

B. Legal Doctrines Employed by Minnesota to Expose Privilege

1. Purpose and Scope of Attorney-Client Privilege

The attorney-client privilege protects confidential communications between an attorney and a client where legal advice is sought.[111] Withholding documents under a claim of privilege is, as the term reflects, a privilege which must be used with prudence to ensure that there is no abuse. The purpose of the privilege is to encourage communication between a client and attorney to "promote broader public interests in the observance of law and administration of justice."[112] The elements of the attorney-client privilege are well established:

> (1) Where legal advice of any kind is sought (2) from a professional legal adviser in his capacity as such, (3) the communications relating to that purpose, (4) made in

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Mattress Mfg. Co v. Kaplan, 90 F.R.D. 21, 29 (N.D. Ill. 1980).

109. *See* Order Relating to Privilege Claims, State *ex rel.* Humphrey v. Philip Morris Inc., No. C1-94-8565, slip op. at 2 (Minn. Dist. Ct. Mar. 28, 1997).

110. *Id.*

111. *See, e.g.*, EDNA SELAN EPSTEIN, THE ATTORNEY-CLIENT PRIVILEGE AND THE WORK-PRODUCT DOCTRINE 6-7 (3d ed. 1997). The attorney-client privilege is codified at Minnesota Statutes section 595.02, subd. 1(b), which states that privilege can apply only to a "communication by the client to the attorney or the attorney's advice given thereon in the course of professional duty." Minn. Stat. § 595.02 subd. 1(b) (1998).

112. Upjohn Co. v. United States, 449 U.S. 383, 389 (1981); *see also* EPSTEIN, *supra* note 111, at 2. "[T]he protection from compelled disclosure accorded to the attorney-client relationship is predicated upon the tacit assumption that lawyers are consulted for the purpose of abiding by, rather than devising means to break, the law." *Id.*

> confidence (5) by the client, (6) are at his instance permanently protected (7) from disclosure by himself or the legal adviser, (8) except the protection be waived.[113]

The industry took a very expansive view of privilege in the Minnesota litigation, arguing that privilege protects any "confidential communication" between client and counsel, between counsel, or even between client representatives. Properly viewed, however, the privilege protects only one narrow category of confidential communications, those that constitute "legal advice" from a legal adviser acting "in his capacity as such."[114]

In Minnesota, privileges are narrowly construed because their assertion results in the "suppression of relevant and essential evidence."[115] Thus, the burden rests upon the party claiming privilege to present facts demonstrating privilege.[116] Litigants are not excused from this burden merely because of the magnitude of their privilege claims:

> Although it may be time-consuming to specifically assert the attorney-client or work product privilege in document intensive litigation, the courts nonetheless clearly require such specific identification . . . . [T]he assertion of a privilege . . . is strictly construed. If the privilege is worth protecting, a litigant must be prepared to expend some time to justify the assertion of the privilege.[117]

Whether this burden is met is a question vested in the discretion of the trial court.[118]

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113. Brown v. St. Paul City Ry. Co., 241 Minn. 15, 33, 62 N.W.2d 688, 700 (1954).

114. *Id.*; *see also* United States v. American Tel. & Tel., Co., 86 F.R.D. 603, 615 n.3 (D.D.C. 1979) (noting that, before any communication is privileged, it must "involve application of law to facts or the rendering of an opinion of law in response to the client's legal inquiries").

115. Baskerville v. Baskerville, 246 Minn. 496, 510, 75 N.W.2d 762, 771 (1956).

116. *See In re* Parkway Manor Healthcare Ctr., 448 N.W.2d 116, 118 (Minn. Ct. App. 1989).

117. Eureka Fin. Corp. v. Hartford Accident & Indemn. Co., 136 F.R.D. 179, 183 (E.D. Cal. 1991) (citations omitted).

118. *See* Erickson v. MacArthur, 414 N.W.2d 406, 407 (Minn. 1987).

2. Only Legal Advice, Not Scientific Information, Can Be Subject to the Attorney-Client Privilege

Based on industry conduct in prior litigation, Minnesota was aware that the industry would attempt to hide its secrets regarding the health hazards of cigarettes behind improper claims of privilege. Even though Minnesota's counsel placed the industry on notice early-on that such claims would be vigorously attacked, the industry took the imprudent path of claiming privilege over thousands upon thousands of scientific research documents. Through a meticulous review of the industry's privilege logs, plaintiffs were able to present the trial court with a litany of compelling facts regarding the industry's improper behavior. For example, plaintiffs' counsel determined that RJR had claimed privilege for more than nineteen thousand documents regarding scientific research into smoking and health, which represented approximately forty percent of its privilege claims. Philip Morris listed on its log more than five thousand documents either authored by or received by its top-ranking scientists. Similarly, American Tobacco listed on its privilege logs documents prepared by American researchers (and sent to outside counsel) on the following smoking and health topics:

- causes of lung disease
- research on chronic obstructive lung disease
- research on the alleged effect of smoking on cardiovascular disease
- research on alleged effect of smoking on carbon dioxide in the bloodstream
- research on arteriosclerosis
- ischemic heart disease and cigarette smoking[119]

Minnesota argued that scientific information should not be hidden from disclosure under claims of privilege. Such information, Minnesota argued, would establish, among other things, the knowledge the industry possessed about the hazards of cigarettes.

119. These descriptions appear in American Tobacco Company's privilege log which is available to the public in a computer-searchable format at the Minnesota Depository. The Minnesota Depository holds seven privilege logs, one for each defendant in the Minnesota litigation.

The attorney-client privilege extends solely to legal advice from a legal advisor acting in a legal capacity.[120] Similarly, the work product doctrine protects only information "primarily concerned with legal assistance."[121] Thus, an attorney making or receiving the allegedly privileged communication must do so in the capacity of a lawyer. Before any communication is privileged, it must "involve application of law to facts or the rendering of an opinion of law in response to the client's legal inquiries."[122]

Neither the attorney-client nor work product protection applies to communications made in the ordinary course of business.[123] When lawyers direct factual investigations, they are often acting in a business, not a legal, capacity.[124] Thus, "the attorney-client privilege does not protect client communications that relate only to business or technical data."[125] This information is discoverable because a "litigant cannot shield from discovery the knowledge it possessed by claiming it had been communicated to a lawyer; nor can a litigant refuse to disclose facts simply because that information came from a lawyer."[126] Indeed, there are "few, if any, conceivable circumstances where a scientist or engineer employed to gather data" should be viewed as falling within the privilege.[127]

120. *See* Brown v. St. Paul City Ry. Co., 241 Minn. 15, 33, 62 N.W.2d 688, 700 (1954).

121. *In re* Air Crash Disaster at Sioux City, Iowa, 133 F.R.D. 515, 520 (N.D. Ill. 1990).

122. United States v. American Tel. & Tel. Co., 86 F.R.D. 603, 615 n.3 (D.D.C. 1980).

123. *See* Schmitt v. Emery, 211 Minn. 547, 552-53, 2 N.W.2d 413, 416 (1942), *overruled in part on other grounds by* Leer v. Chicago, St. Paul & Pac. Ry., 308 N.W.2d 305 (Minn. 1981).

124. *See* Mission Nat'l Ins. Co. v. Lilly, 112 F.R.D. 160, 163-64 (D. Minn. 1986) (noting that, where the investigation by in-house counsel included non-legal opinions and thoughts about the facts, as opposed to legal or trial matters, it was "ordinary business . . . outside the scope of . . . privileges").

125. Simon v. G.D. Searle & Co., 816 F.2d 397, 403 (8th Cir. 1987).

126. Rhone-Poulenc Rorer Inc. v. Home Indemn. Co., 32 F.3d 851, 864 (3d Cir. 1994); *see also* Crowe v. Lederle Lab., 510 N.Y.S.2d 228, 229 (N.Y. App. 1986) (scientific reports conducted to "monitor complaints," even if also used in litigation, are discoverable).

127. United States Postal Serv. v. Phelps Dodge Ref. Corp., 852 F. Supp. 156, 162 (E.D.N.Y. 1994).

3. *Scientific Information Simply Transferred to Attorneys Is Not Privileged*

Time and again, the industry claimed privilege over research documents that were prepared by scientists and sent to other scientists, but were also received by in-house counsel. For example, Brown & Williamson claimed privilege for approximately 6,000 documents containing underlying factual information that was simply transferred to counsel, purportedly to "facilitate the rendition of" legal advice.

Minnesota argued that the industry was abusing privilege by funneling otherwise discoverable scientific information through its lawyers. Courts have concluded that "counsel cannot suppress evidence by taking possession of it."[128] The attorney-client and work product protections are "never available to allow a corporation to funnel its papers and documents into the hands of its lawyers for custodial purposes and thereby avoid disclosure."[129] Information, including scientific research, does not become privileged by virtue of being filtered through attorneys.[130] Nor does scientific information become privileged merely because it is incorporated into a communication between an attorney and client.[131] Legal departments "are not citadels in which public, business or technical information may be placed to defeat discovery . . . ."[132]

4. *Limitations upon Work Product Protection over Scientific Research*

Minnesota's review of the privilege logs also revealed that the industry was over-designating scientific research as work product. Under the work product doctrine, documents or tangible things prepared in anticipation of litigation are subject to a *qualified immunity.*[133] The United States Supreme Court in *Hickman v. Taylor*[134]

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128. PAUL RICE, THE ATTORNEY-CLIENT PRIVILEGE IN THE UNITED STATES § 7.11, at 525 (1993).

129. Radiant Burners, Inc. v. American Gas Ass'n, 320 F.2d 314, 324 (7th Cir. 1963).

130. *See id.*

131. *See* Upjohn Co. v. United States, 449 U.S. 383, 395-96 (1981).

132. Simon v. G.D. Searle & Co., 816 F.2d 397, 403 (8th Cir. 1987).

133. Minnesota Rules of Civil Procedure Rule 26.02(c), like its federal counterpart, allows discovery of work product in some circumstances:

> [A] party may obtain discovery of documents and tangible things . . .

described the limited nature of this protection: "We do not mean to say that all written materials obtained or prepared by an adversary's counsel with an eye toward litigation are necessarily free from discovery in all cases."[135]

Thus, like the attorney-client privilege, the work product doctrine protects only information primarily concerned with legal advice.[136] Moreover, work product protection does not extend to investigations conducted in the ordinary course of business.[137] Nor do pre-existing documents become "work product" just because they were reviewed by an attorney in preparation for litigation.[138] There are two species of work product. First, fact work product (often referred to as "ordinary" work product) is discoverable if the party seeking production can show "substantial need" and "undue hardship" in obtaining the materials or their equivalent by other means.[139] The second type of work product consists of "mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation."[140] This opinion work product is given heightened protection.

Whether particular information is protected, or whether quali-

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> prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including the other party's attorney, . .) only upon a showing that the party seeking discovery has *substantial need of the materials* . . . and that the party is *unable without undue hardship to obtain the substantial equivalent* of the materials by other means.

Id. (emphasis added).

134. 329 U.S. 495 (1947).

135. *Id.* at 511.

136. *See In re* Air Crash Disaster at Sioux City, Iowa, 133 F.R.D. 515, 519 (N.D. Ill. 1990); *see also* United States v. Construction Prods. Research Inc, 73 F.3d 464, 473 (2d Cir. 1996) (party claiming work product must show documents "were prepared principally or exclusively to assist" in litigation).

137. *See* Janicker v. George Washington Univ., 94 F.R.D. 648, 650 (D.D.C. 1982).

138. *See, e.g.*, EDNA SELAN EPSTEIN & MICHAEL M. MARTIN, THE ATTORNEY-CLIENT PRIVILEGE AND THE WORK-PRODUCT DOCTRINE 124 (2d ed. 1989). Other courts have also found that the mere fact that an attorney has gathered or selected documents from pre-existing documents does not convey work product protection to that activity. In *Compagnie Francaise,* the district court questioned whether documents obtained from third parties by a party's counsel were protected by the work product doctrine. *See* Compagnie Francaise D'Assurance v. Phillips Petroleum Co., 105 F.R.D. 16, 40-41 (S.D.N.Y. 1984). Surveying the cases on this issue, the court found that pre-existing documents, even when selectively assembled by counsel in preparation for trial, are not protected. *See id.* at 41-42.

139. Dennie v. Metropolitan Med. Ctr., 387 N.W.2d 401, 406 (Minn. 1986).

140. *Id.*

fied protection has been overcome, lies within the trial court's discretion.[141] This discretion must be exercised with the function of work product protection in mind. The boundaries of the doctrine are mapped by balancing the interest in providing lawyers with "a certain degree of privacy, free from unnecessary intrusion by opposing parties and their counsel," against the societal interest in ensuring that the parties obtain "[m]utual knowledge of all the relevant facts . . . gathered."[142] The policy behind the rule is not to give the attorney special protections, but rather to protect the adversary trial process.[143] The work product privilege exists "to promote the adversary process, not to pervert it."[144]

In other words, the protection cannot be used as a sword rather than a shield. In *Boldt v. Sanders*,[145] the Minnesota Supreme Court found that overbroad protection will encourage "the 'poker hand' concept of litigation, rewarding artifice and camouflage."[146] The Minnesota Rules of Civil Procedure were promulgated to reduce exactly those types of tactics.[147]

5. Scientific Inquiry into Health Hazards of a Product Is Not Work Product

Scientific inquiry concerning a product is seldom predominantly for the purposes of litigation. Merely involving an attorney in non-legal matters does not transform such information into work product.[148] Moreover, some courts have recognized that a manufacturer has a special duty, apart from litigation, to keep abreast of the hazards posed by its products.[149] Accordingly, Minnesota argued

141. *See In re* Indenture of Trust, 437 N.W.2d 430, 437 (Minn. Ct. App. 1989) (asserting that it is the trial court "familiar with the case" who is "in the best position" to determine the substantial need/undue hardship calculus of Rule 26.02).

142. Hickman v. Taylor, 329 U.S. 495, 507, 510-11 (1947).

143. *See* Coastal States Gas Corp. v. Department of Energy, 617 F.2d 854, 864 (D.C. Cir. 1980).

144. EPSTEIN & MARTIN, *supra* note 138, at 151.

145. 261 Minn. 160, 111 N.W.2d 225 (1961).

146. *Id.* at 164, 111 N.W.2d at 227-28.

147. *See id.* at 164, 111 N.W.2d at 227.

148. *See* Union Carbide Corp. v. Dow Chem. Co., 619 F. Supp. 1036, 1051 (D. Del. 1985) ("[F]actual recitations of technical data and research experiments conducted by Carbide's employees" is not work product even if "the documents were prepared by or forwarded to Carbide's in-house counsel").

149. *See* Jenkins v. Raymark Indus. Inc., 109 F.R.D. 269, 278 (E.D. Tex. 1985), *aff'd*, 782 F.2d 468 (5th Cir. 1986). The Minnesota Civil Jury Instruction Guides provide that "You are instructed that the manufacturer is obligated to keep informed of scientific knowledge and discoveries in its field." MINNESOTA DIST.

that research that resulted from this duty—the scientific information establishing the knowledge possessed by a manufacturer about its products—should be discoverable.[150]

6. *The Use of "Litigation Consultants" Cannot Shield Scientific Research as Work Product*

The tobacco industry attempted to justify its claims of work product over some internal scientific documents by arguing that the company scientists who authored the documents were acting as "consultants" to their attorneys. Minnesota presented law demonstrating that the predicate of this claim—that in-house scientists or employees are somehow experts or consultants for the purposes of litigation—has disturbed many courts.[151] "There is a legitimate concern that a party may try to immunize its employees who are actors or viewers [in or of the events giving rise to a cause of action] against proper discovery by designating them experts retained for

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JUDGES ASS'N COMM. ON JURY INSTRUCTION GUIDES, MINNESOTA JURY INSTRUCTION GUIDES (CIVIL) JIG 117 (Michael K. Steenson, rep.) in 4 MINN. PRACTICE 1, 83 (3d ed. 1986). In addition to the caselaw, Minnesota also relied on documents produced in discovery where the industry itself had recognized this duty. For instance, one Philip Morris document produced in the Minnesota litigation stated that "[t]he industry should abandon its past reticence with respect to medical research," because "failure to do such research could give rise to negligence charges." PM 1000335622.

150. In a similar circumstance in the asbestos litigation, a court required the defendant to produce information—including information in the hands of experts—concerning the manufacturer's knowledge of the health hazards of asbestos. *See* Roesberg v. Johns-Manville Corp., 85 F.R.D 292, 299 (E.D. Pa. 1980) ("If [defendant] has knowledge of the matters requested . . . and has employed experts whom [defendant] does *not* expect to call at trial, the interrogatory should be answered anyway, for this information is directed at learning the extent of [defendant's] knowledge of asbestos and asbestos-related diseases . . . ."); *see also* Soeder v. General Dynamics Corp., 90 F.R.D. 253, 255 (D. Nev. 1980) (holding that product investigations motivated by a desire to improve the product, guard against adverse publicity, or protect a company's economic interests are not protected); Hensel Phelps Constr. Co. v. Southwestern Roofing & Sheeting Co., 29 Fed. R. Serv. 2d 1095, 1097 (D. Colo. 1980) (holding that documents regarding defective roof were not work product because their purpose was to identify roofing problems).

151. *See, e.g.*, Virginia Elec. Power Co. v. Sun Shipbuilding & Dry Dock Co., 68 F.R.D. 397, 405 (E.D. Va. 1975) ("[W]ork performed and the reports made by in-house experts was not the work product of lawyers."); *Union Carbide*, 619 F. Supp. at 1051 ("[F]actual recitations of technical data and research experiments conducted by Carbide's employees is not work product even if the documents were prepared by or forwarded to Carbide's in-house counsel.").

work on the case."[152] Thus, "courts should be exceedingly skeptical when employees who have otherwise discoverable information are designated 'experts' and efforts must be made to preserve the opportunity for the opposing party to discover that information."[153] The industry also tried to shield scientific information by arguing that it was generated or used by defendants' consulting experts. A litigant is not permitted, however, to hide facts given to a consultant or expert under a claim of work product.[154]

C. *The Crime-Fraud Exception to Attorney-Client Privilege and Work Product Doctrine*

Even if a document is properly privileged, the crime-fraud exception to privilege may require its production. The guiding principle of the crime-fraud exception is that communications that facilitate the commission of crimes or frauds are not worthy of protection. As the United States Supreme Court stated in the seminal case of *Clark v. United States*:[155] "The privilege takes flight if the relation is abused. A client who consults an attorney for advice that will serve him in the commission of a fraud will have no help from the law. He must let the truth be told."[156]

The crime-fraud exception applies to ongoing or future crimes or fraud, the assumption being that the advice is being sought in order to achieve the illegal act.[157] In contrast, legal advice sought to determine how to deal with a past fraud or crime may be privileged.[158]

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152. 8 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2033, at 466 (2d ed. 1994); *see also* 2 DAVID F. HERR & ROGER S. HAYDOCK, MINN. PRACTICE § 26.02, at 28 (2d ed. 1985) (information obtained from regular employee "experts," as opposed to specially retained experts, is available through routine discovery processes).

153. WRIGHT ET AL., *supra* note 152, § 2033, at 466.

154. *See* Marine Petroleum Co. v. Champlin Petroleum Co., 641 F.2d 984, 994 (D.C. Cir. 1980). "[F]acts given by the party to the expert can no more be protected by that fact than facts given to counsel by a party can be brought within the attorney client privilege." *Id.* (citing 4 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 26.66[2] (2d ed. 1976)).

155. 289 U.S. 1 (1933).

156. *Id.* at 15.

157. *See, e.g.*, Duplan Corp. v. Deering Milliken, Inc., 397 F. Supp. 1146, 1172 (D.S.C. 1974), *aff'd*, 540 F.2d 1215 (4th Cir. 1976).

158. *See* United States v. Zolin, 491 U.S. 554, 572 (1989) (attorney-client privilege "ceas[es] to operate at a certain point, namely, where the desired advice refers *not to prior wrongdoing*, but to *future wrongdoing*") (citations omitted) (emphasis in original).

Prior to the tobacco litigation, there were few Minnesota decisions on the crime-fraud exception. In 1979, the Minnesota Supreme Court stated, without mentioning the doctrine by name, that "privilege is not permitted to prevent disclosure of communications relating to commission of future crime or fraud."[159] More recently, in *Levin v. C.O.M.B. Co.*,[160] the Minnesota Court of Appeals adopted the "prima facie" standard of proof and the common two-part test for application of the exception: "To invoke the crime-fraud exception to the attorney-client privilege, Levin must establish a prima facie showing that the communication was (1) in furtherance of a crime or fraud and (2) was closely related to the fraud."[161]

The "crime-fraud" exception is a flexible concept that courts throughout the country have applied beyond those circumstances where the technical definition of "crime" or "fraud" is met.[162] For instance, other conduct such as torts or bad faith breach of duty may suffice.[163] In the Minnesota litigation, the industry strenuously argued that plaintiffs were required to prove all elements of common law fraud, including reliance, before the crime-fraud excep-

159. Kahl v. Minnesota Wood Specialty, Inc., 277 N.W.2d 395, 399 (Minn. 1979).

160. 469 N.W.2d 512, 515 (Minn. Ct. App. 1991).

161. *Id.* Other courts have also adopted the "prima facie" standard for application of the crime-fraud exception to privilege. *See In re* Berkley & Co., 629 F.2d 548, 553 (8th Cir. 1980) (ruling that party "is not required to prove the existence of crime or fraud" as a prima facie showing is sufficient); *In re* Feldberg, 862 F.2d 622, 625-26 (7th Cir. 1988) ("The question here is not whether the evidence supports a verdict but whether it calls for inquiry."); *Duplan*, 540 F.2d at 1220 ("[W]hile a prima facie showing need not be such as to actually prove the disputed fact, it must be such as to subject the opposing party to the risk of non-persuasion if the evidence as to the disputed fact is left unrebutted.").

162. *See In re* Sealed Case, 124 F.3d 230, 232 n.1 (D.C. Cir. 1997) ("[T]he exception applies not only to crimes and fraud, but to other intentional torts."); *In re* Sealed Case, 754 F.2d 395, 399 (D.C. Cir. 1985) (applying the exception to "crime, fraud, or other misconduct"); United States v. American Tel. & Tel., 86 F.R.D. 603, 624-25 (D.D.C. 1979) (any "wrongful purpose," including "crime, fraud or tort" or antitrust violation); Cooksey v. Hilton Int'l Co., 863 F. Supp. 150, 151 (S.D.N.Y. 1994) (exception applies to "intentional torts moored in fraud"); Volcanic Gardens Management Co. v. Paxson, 847 S.W.2d 343, 347 (Tex. App. 1993) (stating that, for purposes of the exception, "fraud" is "much broader" than common law and criminal fraud); Central Constr. Co. v. Home Indem. Co., 794 P.2d 595, 598 (Ala. 1990) (holding that public policy demands a broader interpretation of fraud as it relates to the exception to the attorney-client privilege).

163. *See In re* A.H. Robins Co., 107 F.R.D. 2, 14-15 (D. Kan. 1985) (finding that the crime-fraud exception applies to ongoing concealment and misrepresentation of the hazards of a product).

tion to privilege would apply.[164] This requirement, however, cannot be reconciled with the long line of authority holding that the crime-fraud exception does not require a completed crime or fraud, but rather can be applied where an attorney's communications enable or assist a party in planning a crime or fraud.[165]

Typically, the party seeking discovery under the crime-fraud exception need make only a "prima facie" showing of one of these categories of wrongdoing that constitutes "crime-fraud."[166] Recent cases have interpreted this standard to mean that only a "foundation in fact" sufficient to support the allegation of fraud and that the communication was made in furtherance of that fraud is necessary.[167] This showing is less than is required to substantively prove a crime or a cause of action for fraud.[168] Requiring a stricter showing "may not be possible at the discovery stage, and would result in an overzealous protection of the attorney-client privilege in a context where the rationale for that privilege may be inapplicable."[169] Thus, a finding that the crime-fraud exception applies in the discovery context does not constitute a substantive finding that a party

164. A minority of courts have held that, to prove the crime-fraud exception in discovery, a party has to prove every element of a substantive cause of action for fraud. *See, e.g.,* Laser Indus., Ltd. v. Reliant Tech. Inc., 167 F.R.D. 417, 423 (N.D. Cal. 1996).

165. *See In re* Grand Jury Proceedings, 87 F.3d 377, 381 (9th Cir. 1996) (holding that the proponent of the crime-fraud exception does not have to establish the essential elements of a crime or fraud "beyond a reasonable doubt, since the crime-fraud exception does not require a *completed* crime or fraud but only that the client ha[s] consulted the attorney in an *effort* to complete one") (emphasis in original) (citations omitted); *see also In re* Andrews, 186 B.R. 219, 222 (Bankr. E.D. Va. 1995) (explaining that the opponent "does not have to conclusively prove the elements of the purported crime or fraud" but only show client intended crime or fraud).

166. *See* Levin v. C.O.M.B. Co., 469 N.W. 2d 512, 515 (Minn. Ct. App. 1991). Other courts have phrased the "prima facie" requirement differently. *See* Haines v. Liggett Group, Inc., 140 F.R.D. 681, 692 (D.N.J. 1992) (noting that courts recognize the phrases "probable cause" or "prima facie showing" are interchangeable because both "require a person have a reasonable basis to suspect the perpetration or attempted perpetration of a crime or fraud, and that the communications were in furtherance thereof." Essentially, "all of these proposed standards amount to the same basic proposition—has the party seeking discovery presented evidence which, if believed by the fact-finder, supports plaintiff's theory of fraud?").

167. *See* Caldwell v. District Court, 644 P.2d 26, 32-33 (Colo. 1982).

168. *See In re* Berkley & Co., 629 F.2d 548, 553 (8th Cir. 1980) (party "is not required to prove existence of crime or fraud" as a prima facie showing is sufficient); *see also In re* Feldberg, 862 F.2d 622, 625-26 (7th Cir. 1988); Duplan Corp. v. Deering Milliken, 540 F.2d 1215, 1220 (4th Cir. 1976).

169. *Caldwell,* 644 P.2d at 32-33.

is guilty of a crime or liable for fraud.[170]

Cases analogous to the tobacco litigation—involving the safety of a product—have established that the crime-fraud exception applies to documents related to a manufacturer's knowledge and misrepresentations regarding health hazards. In *In re A.H. Robins*,[171] a case involving the Dalkon Shield IUD, the court found that the crime-fraud exception applied to documents relating to the following categories of behavior by the defendant:

> [Robins] failed to adequately test the Dalkon Shield before marketing it; attempted to develop hard evidence that misrepresented the nature, quality, safety and efficacy of the Dalkon Shield; ignored the mounting evidence against the Dalkon Shield, with knowledge of the potential harm caused by the product; relied upon invalid studies in an effort to refute or ignore the dangers potentially caused by the Dalkon Shield; and attempted, with the assistance of counsel, to devise strategies to cover up Robins' responsibilities and lessen its liability with respect to the Dalkon Shield.[172]

Additionally, attempts by Robins to "neutralize adverse publicity and comment" were found to constitute "crime-fraud."[173]

Dilatory discovery tactics also was a factor considered by the court in the *A.H. Robins* decision. The court surveyed various Dalkon Shield personal injury cases, finding a pattern by the defendant of delaying discovery "with stalling tactics, such as motions for reconsideration, requests for stays or attempted appeals of discovery orders."[174] Finding that the ultimate goal of this pretrial posturing was to avoid producing documents, the court held that "the repeated delays and instances of nonproduction provide support for the application of the crime or fraud exception."[175] This portion of the *A.H. Robins* decision held great significance for the Minnesota plaintiffs, since the tobacco industry had dragged its feet and stone-

170. *See In re* A.H. Robins Co., 107 F.R.D. 2, 15-16 (D. Kan. 1985).
171. 107 F.R.D. 2 (D. Kan. 1985).
172. *Id.* at 14-15.
173. *Id.* at 15.
174. *Id.* at 14.
175. *Id.* at 14; *See also* Geoffrey C. Hazard, Jr., *An Historical Perspective on the Attorney-Client Privilege*, 66 CAL. L. REV. 1061, 1064 (1978) (asserting that illegitimate litigation tactics may constitute crime-fraud).

walled in nearly every aspect of discovery—including withholding more than 230,000 documents as privileged.[176]

In another case involving the Dalkon Shield IUD, a federal court of appeals similarly found "a pervasive picture of covering up a defective product and continuing to merchandise it by misrepresenting both its efficacy and its safety," and stated that "this kind of continuing fraudulent misrepresentation and cover-up vitiates not only any attorney-client privilege but also any work product immunity."[177]

The process for adjudicating the crime-fraud exception is fairly well established. Before a court may order that allegedly privileged documents be submitted for in camera review to determine crime-fraud, the party challenging privilege usually demonstrates "'a factual basis adequate to support a good faith belief by a reasonable person' . . . that in camera review of the materials may reveal evidence to establish the claim that the crime-fraud exception applies."[178] Whether a showing sufficient to trigger an in camera inspection has been made rests in the discretion of the trial court.[179]

Next, the court must determine whether there is a "prima facie" showing that the allegedly privileged communications were made in furtherance of a crime or fraud.[180] This determination may be made based on a review of the evidence in camera.[181] As part of the determination of a prime facie case of crime-fraud, the party asserting the privilege is afforded an opportunity to be heard.[182] An opportunity to be heard does not necessarily mean mini-trials for each and every document challenged.[183] For example, in *In re A.H.*

176. *See supra* notes 6-45 and accompanying text (detailing the industry's abusive discovery behavior).

177. Craig v. A.H. Robins Co., 790 F.2d 1, 2-4 (1st Cir. 1986).

178. United States v. Zolin, 491 U.S. 554, 572 (1989) (citing Caldwell v. District Court, 644 P.2d 26, 33 (Colo. 1982)).

179. *See id.* "Once that showing is made, the decision whether to engage in in camera review rests in the sound discretion of the district court." *Id.*

180. *See In re* Grand Jury Investigation, 842 F.2d 1223, 1226 (11th Cir. 1987); Levin v. C.O.M.B. Co., 469 N.W.2d 512, 515 (Minn. Ct. App. 1991).

181. In *Zolin,* the United States Supreme Court ruled that an in camera review of the documents can be used to substantiate the allegations of crime or fraud sufficient to pierce privilege. *Zolin,* 491 U.S. at 572.

182. *See* Haines v. Liggett Group, Inc., 975 F.2d 81, 97 (3d Cir. 1992).

183. *See* EPSTEIN, *supra* note 111, at 265. "Must an adversary hearing be held to determine whether there is a prima facie case? Apparently not. At least one court has said it is not necessary to hold a mini-trial." *Id.* (citing *In re* Grand Jury Investigation (Schroeder), 842 F.2d 1223, 1226 (11th Cir. 1987)).

Robins,[184] the court found that the compelling interest of efficient administration of the courts justified the court's reliance on legal memoranda—as opposed to an evidentiary hearing—to find that allegedly privileged documents were discoverable under the crime-fraud exception.[185]

Once the court determines that the required prima facie case has been demonstrated, the question becomes the extent to which privilege has been lost. Any document "closely related" to the crime or fraud loses its privilege.[186] Whether documents are "in furtherance of" or "closely related to" the crime-fraud is vested in the discretion of the court.[187] The Minnesota Court of Appeals, in *Levin*, found that "[a]pplication of the crime-fraud exception should not be based on a rigid analysis."[188] Other courts also have found that the standard is flexible.[189] In *In re Sealed Case*,[190] Judge Skelly Wright stated:

> The point is not to convict anyone of a crime or to anticipate the grand jury, but only to determine whether the possibility that a privileged relationship has been abused is sufficient to alter the balance of costs and benefits that supports the privilege. In making this determination courts will not be able to receive a complete adversary presentation of the issues, since one of the parties will not be privy to the information at issue. Any system that requires courts to make highly refined judgments—perhaps concerning volumes of documents—will most likely collapse under its own weight.[191]

The crime-fraud exception, once established, applies not only to the attorney-client privilege but also to the work product doctrine, including opinion work product.[192] Similarly, it vitiates any

184. 107 F.R.D. 2 (D. Kan. 1986).
185. *See id.* at 15.
186. *See* Levin v. C.O.M.B. Co., 469 N.W. 2d 512, 515 (Minn. Ct. App. 1991).
187. *See id.*
188. *Id.*
189. *In re* Grand Jury Investigation, 842 F.2d 1223, 1227 (11th Cir. 1987) (stating that the "requirement that legal advice must be related to the client's criminal or fraudulent conduct should not be interpreted restrictively.").
190. 676 F.2d 793 (D.C. Cir. 1982).
191. *Id.* at 814.
192. *See In re* Doe, 662 F.2d 1073, 1079 (4th Cir. 1981) ("[T]here is a fraud exception to the opinion work product doctrine."); *In re* Antitrust Grand Jury, 805

claim of joint-defense or common-interest privilege.[193]

D. *The Evidence of Crime-Fraud Presented in Minnesota*

In the spring of 1997, after it became clear that the industry was improperly hiding thousands of documents regarding smoking and health behind claims of privilege, Minnesota's counsel set about establishing the crime-fraud exception to privilege. Using documents produced in discovery[194] and the privilege logs, Minnesota presented evidence that the industry had engaged in a decades-long campaign to suppress scientific knowledge about the dangers of smoking, manipulated evidence of its knowledge of those dangers to conceal it from the public and the courts, and intentionally breached its duties to the public to truthfully research and report those dangers.[195] This evidence, Minnesota argued, established a prima facie case of crime-fraud that defeated privilege.

1. *What the Tobacco Industry Promised*

The heart of the crime-fraud case was the tobacco industry's long-standing denial and minimization of the health risks of smoking. The illegal conduct and conspiracy began in the 1950s, when the industry was confronted with several scientific studies which sounded grave warnings on the health hazards of cigarettes. On January 4, 1954, the industry jointly announced the formation of the Tobacco Industry Research Committee (later known as the Council for Tobacco Research, or "CTR") in an advertisement titled "A Frank Statement to Cigarette Smokers."[196] This advertisement appeared in newspapers throughout the country, including Minneapolis, St. Paul, and Duluth, MN. The advertisement stated:

F.2d 155, 164 (6th Cir. 1986).

193. *See* Haines v. Liggett Group, Inc., 975 F.2d 81, 94-95 (3d Cir. 1992).

194. Even though the industry had been in litigation for more than forty years, many of the documents used by Minnesota had never been produced in prior litigation.

195. Prior to the Minnesota litigation, privilege battles in other tobacco cases had focused on the Council for Tobacco Research ("CTR") and its Special Projects division. In Minnesota, however, fewer than 10% of the documents claimed as privileged directly involved these topics. It was clear from an examination of the privilege logs that the industry and its counsel were hiding thousands of documents regarding smoking and health behind a wall privilege. As a result, Minnesota advanced a much broader theory of crime-fraud.

196. *See* CTR MN 11309817.

> 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.
>
> . . . .
>
> Many people have asked us what we are doing 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.
>
> 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 . . . .[197]

Over the years, the industry continued to renew the pledge set forth in the Frank Statement:

> • In 1962: "*We in the tobacco industry recognize a special responsibility to help science determine the facts.* And we believe we are fulfilling this responsibility through the Tobacco Industry Research Committee."[198]
>
> • In 1970: "In the interest of absolute objectivity, the tobacco industry has supported totally independent research efforts with completely non-restrictive funding . . . .

197. *Id.* The Frank Statement was signed by every leading U.S. manufacturer of cigarettes, except Liggett. *See id.* Liggett did not join the rest of the industry in CTR until 1964, and resigned in the late 1960s.

198. PM 1005136955 (Tobacco Institute press release) (emphasis added).

The findings are not secret."[199]

• In 1971: "Any organization in a position to apply resources in the search for those keys—and which fails to do so—will continue to be guilty of cruel neglect of those whom it pretends to serve."[200]

• In 1972: "If our product is harmful, we'll stop making it."[201]

• In 1982: "Since the first questions were raised about smoking as a possible health factor, *the tobacco industry has believed that the American people deserve objective, scientific answers.* The industry has committed itself to this task."[202]

One way in which the industry publicly stated that it would fulfill the promises in the Frank Statement was through the auspices of the CTR.[203] A litany of secret internal documents produced in Minnesota demonstrated, however, that top officials from the tobacco industry privately acknowledged that CTR was meant to serve primarily a public relations function and that CTR scientific research was of little value in addressing smoking and health issues:

• In 1958, the British equivalent of CTR, the Tobacco Research Council ("TRC"), concluded after a visit to the United States that "CTR supports only fundamental research of little relevance to present day problems."[204] Moreover, TRC reported that the U.S. Tobacco industry scientists viewed the research sponsored by CTR with cynicism: "[B]oth L&M [Liggett] and Lorillard scientists told us quite bluntly that they considered TRC research was on the correct basis and CTR's largely without value. It is unlikely that company scientists would speak so frankly unless they were pretty sure their principals held views not greatly dissimilar."[205]

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199. TIMN 0081352 (Tobacco Institute advertisement) (emphasis added).
200. LG 0069279 (Tobacco Institute press release).
201. RJR 500324163 (quoting James Bowling, a vice president of Philip Morris).
202. B&W 670500618 (Tobacco Institute pamphlet) (emphasis added).
203. *See* CTR MN 11309817. CTR stands for Council for Tobacco Research – U.S.A., Inc., an industry trade group that the industry publicly proclaimed was established to conduct independent scientific research and report the findings to the public.
204. BAT 105407190.
205. BAT 105407189.

• In 1967, a senior Liggett scientist criticized CTR research as only "peripheral" to the problem of smoking and health:

> [T]he tobacco industry has a very serious problem. . . . Although this problem has public relations, business, legal and political components, it is basically a scientific one. *So far, however, the major efforts of the industry to cope with this problem have been other than scientific. Most of the CTR and AMA programs have only a peripheral connection to tobacco use.*[206]

• In 1970, a senior scientist of Philip Morris, in a memorandum to the president of that company, set forth the real purpose of CTR—to create doubt about the smoking and health charge:

> 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 allegations that cigaret[te] smoking causes disease.[207]

• A 1970 document discloses that another top Philip Morris scientist also questioned the worth of CTR research: "Osdene's view (Philip Morris' view?) was that C.T.R. did virtually no useful work and cost a vast amount of money."[208]

• In 1973, a BAT report on a visit to the United States called CTR a "backwater of little significance in the world of smoking and health."[209]

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206. Liggett 208294-95 (emphasis added).
207. PM 2022200161.
208. BAT 110316204. Dr. Thomas Osdene was a senior research and development scientist at Philip Morris. During his deposition in the Minnesota litigation, Dr. Osdene declined to answer more than 100 questions on Fifth Amendment grounds. *See generally* Transcript of Deposition of Thomas S. Osdene, vols. 1 & 2, State *ex rel.* Humphrey v. Philip Morris Inc., No. C1-94-8565 (Minn. Dist. Ct. June 16 & 17, 1997).
209. BAT 100227022.

> • In 1975, Addison Yeaman, the director of CTR, referred cynically to CTR as "the best and cheapest insurance the tobacco industry can buy and without it the industry would have to invent CTR or would be dead."[210]

Minnesota presented extensive evidence that, rather than conducting objective research and reporting the results to the public as promised, the industry carried on a public relations effort aimed at creating doubt about the connection between smoking and disease. This strategy is described in a 1972 Tobacco Institute memorandum:

> For nearly twenty years, this industry has employed a single strategy to defend itself on three major fronts—litigation, politics and public opinion. While the strategy was brilliantly conceived and executed, . . . it is not—nor was it intended to be—a vehicle for victory. *On the contrary, it has always been a holding strategy, consisting of: creating doubt about the health charge without actually denying it . . . .*[211]

Thus, the tobacco industry issued public statements—year after year—aimed at "creating doubt about the health charge":[212]

> • In 1969: "*[T]here is no demonstrated causal relationship between smoking and any disease.* If anything, the pure biological evidence is pointing away from, not toward, the causal hypothesis."[213]
>
> • In 1970: "*The deficiencies of the tobacco causation hypothesis* and the need of much more research *are becoming clearer to increasing numbers of research scientists.*"[214]
>
> • In 1972: "After millions of dollars and over twenty years of research: *The question about smoking and health is still a question.*"[215]
>
> • In 1972: "[T]he 1972 report of the Surgeon General . . . 'insults the scientific community'. . . . *[T]he num-*

210. Lorillard 03539541-42.
211. Lorillard 87657703 (emphasis added).
212. *Id.*
213. B&W 670307882 (CTR press release) (emphasis added).
214. RJR 500015902 (CTR press release) (emphasis added).
215. TIMN 81352 (Tobacco Institute advertisement) (emphasis added).

ber one health problem is not cigarette smoking, but is the extent to which public health officials may knowingly mislead the American public."[216]

- In 1978: "Are we on the brink of paranoia?. . . *The flat assertion that smoking causes lung cancer and heart disease and that the case is proved is not supported by many of the world's leading scientists."*[217]
- In 1983:

> It has been stated so often that smoking causes cancer, it's no wonder most people believe this is an established fact. But, in fact, it is nothing of the kind. The truth is that almost three decades of research have failed to produce scientific proof for this claim .... *In our opinion, the issue of smoking and lung cancer is not a closed case. It's an open controversy.*[218]

- In 1984: "*[S]cience has failed to establish a causal link.*[219]
- In 1995: "It has not been scientifically established that smoking causes any type of cancer."[220]

2. What the Industry Had Discovered

In striking contrast to the tobacco industry's public statements, Minnesota presented evidence—from newly-disclosed internal memos—that industry scientists had secretly recognized the health hazards and addictiveness of cigarettes. In fact, as early as 1958,[221] most of the industry believed that smoking causes lung cancer:

- In 1958, three British scientists visited top officials and scientists in the U.S. tobacco industry, including those at

216. TIMN 120602 (Tobacco Institute press release) (emphasis added).
217. RJR 500184776 (Tobacco Institute pamphlet) (emphasis added).
218. RJR 504638051 (RJR advertisement) (emphasis added).
219. RJR 502371215 (RJR's statement on ABC *Nightline*) (emphasis added).
220. Responses of Defendant R.J. Reynolds Tobacco Company to Plaintiffs' First Set of Requests for Admission at 2, State *ex rel.* Humphrey v. Philip Morris Inc., No. C1-94-8565 (Minn. Dist. Ct. undated). Similar denials were provided by all other defendants.
221. The industry knew that cigarette smoking may be hazardous to the health of the smoker even prior to the publication of the Frank Statement in 1954. *See supra* notes 25-26 accompanying text (describing 1953 Teague document).

TIRC, Liggett, Philip Morris and American Tobacco.[222] One object of this visit was to find out "the extent in which it is accepted that cigarette smoke 'causes' lung cancer."[223] These British scientists reported widespread acceptance of causation: "With one exception (H.S.N. Greene) [not formally affiliated with any tobacco company] the individuals whom we met believed that smoking causes lung cancer if by "causation" we mean any chain of events which leads finally to lung cancer and which involves smoking as an indispensable link."[224]

- Further confirmations that smoking caused disease were found in other industry documents. For example, in 1959, a top RJR scientist, Alan Rodgman, concluded that for the polycyclic hydrocarbons identified by RJR in cigarette smoke, "*there is a distinct possibility that these substances would have a carcinogenic effect on the human respiratory system*" and that "it would be better for the consumer if cigarette smoke were devoid of such compounds."[225]

- In 1962, Rodgman concluded that "the amount of evidence accumulated to indict cigarette smoke as a health hazard is overwhelming," while "[t]he evidence challenging the indictment is scant."[226]

- In 1962, BAT recognized at an internal smoking and health conference, attended by its subsidiary B&W, that cigarettes were addictive: "[S]moking is a habit of addiction that is pleasurable . . . ."[227]

These documents are of particular significance since they were written prior to the seminal 1964 surgeon general's report. Minnesota also presented extensive evidence of internal confirmations of causation that post-dated 1964:

- In 1964, after publication of the first surgeon general's report, the head of research at Philip Morris, Helmut Wakeham, noted the "professional approach" of the surgeon general and recommended that Philip Morris

222. BAT 105408490.
223. BAT 105408492.
224. *Id.*
225. RJR 500945942 (emphasis added).
226. RJR 504822850.
227. BAT 110070791.

"embrace the health area" and "severely reduce[] reliance on TIRC and TI . . . ."[228] Wakeham recommended that management "[a]dopt as internal policy for technical purposes the view that greater benefit will accrue from accepting the report's findings on face value and proceeding to cure the ills, real and alleged as they may be, than from engaging in disputation and refutation of these claims."[229] Indeed, Wakeham cautioned, failure by the industry to conduct such research "could give rise to negligence charges."[230]

• In 1967, the Tobacco Research Council ("TRC," the British counterpart to CTR), described the tension between industry scientists and industry executives on the issue of causation in a letter sent to the general counsel of B&W and copied to several other U.S. cigarette manufacturers as well as CTR and the Tobacco Institute:

> The only real difficulties that we encountered arose out of the unavoidable paradox at the centre of our operations—namely that, on the one hand the manufacturers control TRC's operations and do not accept that smoking has been proved to cause lung cancer while, on the other hand, *TRC's research programme is based on the working hypothesis that this has been sufficiently proved for research purposes. In addition, the Council senior scientists accept that causation theory*. . . . We have not yet found the best way of handling this paradox.[231]

• In 1969, a key scientist at Philip Morris, William L. Dunn ("the Nicotine Kid"), in an internal memorandum to Helmut Wakeham, acknowledged that nicotine was a drug: "I would be more cautious in using the pharmic-medical model—do we really want to tout cigarette smoke

228. PM 1000335619.

229. *Id.*

230. PM 1000335622. In contrast to Wakeham's internal notation of the "professional approach" of the surgeon general's report, the industry circulated to the public a pamphlet which disparaged and distorted the report's findings: "Has the Surgeon General's Report established that smoking causes cancer and other diseases? No. The report of the Advisory Committee to the Surgeon General in 1964 failed to establish a cause-and-effect relationship between cigarette smoking and lung cancer." TIMN 55130.

231. Liggett 298943 (emphasis added).

as a drug? *It is, of course, but there are dangerous F.D.A. implications to having such conceptualization go beyond these walls.*"[232]

• In 1979, a long-time scientific consultant to BAT praised the new surgeon general's report.[233] The BAT consultant called the 1979 report "an impressive document" that "was on the whole sound, scientific and unemotive."[234] In fact, the BAT consultant blasted as "misleading" a Tobacco Institute publication which attempted to discredit the surgeon general's report.[235] The consultant noted that the Tobacco Institute "does *not* appear to understand what causation is" and that the Tobacco Institute is "*so* highly selective in what material is presented that one almost gets the false impression there is hardly any case to answer at all."[236]

• In 1980, BAT also recognized the implausibility of the industry's position on causation:

> The company's position on causation is simply not believed by the overwhelming majority of independent observers, scientists and doctors . . . . The industry is unable to argue satisfactorily for its own continued existence because *all arguments eventually lead back to the primary issue of causation and on this point our posi-*

232. PM 1003289921 (emphasis added). In 1996, the Food & Drug Administrated asserted jurisdiction over tobacco products. *See* Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents, 61 Fed. Reg. 44,398 (1996) (codified at 21 CFR pt. 801, 803, 804, 807, 820 and 897). The industry filed a lawsuit in Federal Court in North Carolina challenging the FDA's authority to regulate cigarettes. The district court found that jurisdiction was proper; the Fourth Circuit recently reversed this decision and the FDA has petitioned the Supreme Court for a writ of certiorari. *See* Coyne Beahm, Inc. v. U.S. Food & Drug Admin., 966 F. Supp. 1374 (M.D.N.C. 1997), *rev'd sub nom.* Brown & Williamson Tobacco Corp. v. Food & Drug Admin., 153 F.3d 155 (4th Cir. 1998), *and petition for cert. filed,* 67 U.S.L.W. 3484 (U.S. Jan. 19, 1999) (No. 98-1152). *See also* Jill Schlick, Note, *Administrative Law—The Fourth Circuit Strikes Down the FDA's Tobacco Regulations*—Brown & Williamson Tobacco Corp. v. FDA, *153 F.3d 155 (4th Cir. 1998),* 25 WM. MITCHELL L. REV. 741 (1999).

233. BAT 100214030.

234. *Id.*

235. BAT 100214045.

236. *Id.* The "misleading" Tobacco Institute publication referenced by the BAT consultant was titled, SMOKING AND HEALTH 1964-1979 THE CONTINUING CONTROVERSY. *See* TIMN 84430. In this publication, the Tobacco Institute stated, *inter alia,* "It is time for all parties to this controversy to admit that there is much that is unknown." TIMN at 84432A.

tion is unacceptable.[237]

Thus, there was a recommendation circulated to the highest levels of the company to break the industry's conspiracy of silence and admit that cigarettes cause disease and are addictive:

> We now accept that the smoking of tobacco products, *combined with* other factors . . . can be a cause of lung cancer, emphysema, and other respiratory and coronary diseases, many of which are fatal.
>
> . . . .
>
> . . . [S]moking is addictive/habituative in addition to being an additional risk and many smokers would like to give up the habit if they could.[238]

This recommended approach, however, apparently lost out to "the severe constraint of the American legal position."[239]

> • In 1982, a long-time scientific consultant to BAT strongly criticized BAT's insistence on publicly maintaining a "controversy" on causation. Commenting on a draft BAT smoking and health position paper, the BAT consultant found the industry position on causation "short of credibility," noting that "*[i]t is not really true, as the American Tobacco Industry would like to believe, that there is a raging worldwide controversy about the causal link between smoking and certain diseases.*"[240]
>
> • In 1984, a BAT scientist expounded on the drug qualities of cigarettes:
>
> > A cigarette as a "drug" administration system for public use has very significant advantages . . . . Within 10 seconds of starting to smoke, nicotine is available *in*

237. BAT 109881323 (emphasis added).
238. BAT 109881335 (emphasis in the original).
239. BAT 109881322-31.
240. BAT 100432194 (emphasis added). The consultant went on to write that BAT's position paper "reads to me like a mixed marriage between traditional American lawyer exhaled gas and discretely coughed-up Anglo-Saxon phlegm." BAT 100432198.

> *the brain* . . . . Other "drugs" such as marijuana, amphetamines, and alcohol are slower and may be mood dependent . . . . Thus we have an emerging picture of a fast, highly pharmacologically effective and cheap "drug," tobacco, which also confers flavour and manual and oral satisfaction to the user.[241]

The scientist concluded that, "All we would want then is a larger bag to carry the money to the bank."[242]

To this day, with the exception of Liggett, the industry has refused to publicly acknowledge that smoking causes any disease and is addictive.

3. How Scientific Research Was Handled

To control the science and scientists within their companies, and to thwart discovery in smoking and health cases, industry lawyers early-on interjected themselves into the scientific process. Evidence of this activity came from the industry's privilege logs—which listed thousands of scientific research documents[243]—and from the internal documents of the companies.

Minnesota presented evidence that, although the industry advertised CTR as an independent and objective scientific research body which would investigate the health hazards of smoking and report those results to the public, legal—not scientific—considerations dominated. Lawyer control of CTR was so pervasive that the chairman of CTR's Scientific Advisory Board wrote that "*CTR should be renamed Council for Legally Permitted Tobacco Research*, CLIPT for short."[244] Similarly, a 1974 memo from Alexander Spears, a top Lorillard Tobacco Company scientist (and now chief executive officer) to the president of the company states:

> 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 are not likely to produce

241. BAT 100503496-97 (emphasis in the original).
242. BAT 100503505.
243. *See* discussion *supra* Part IV.A-B.
244. CTR SF 0800031 (emphasis added).

> high ratings. In general, these programs have provided some buffer to public and political attack of the industry, as well as background for litigious strategy.[245]

Moreover, Minnesota presented evidence that the industry lawyers impeded the objective scientific research function of CTR by creating a division within CTR known as Special Projects. Special Projects refers to scientific research proposals that were selected for funding, not by the independent board directing CTR, but by industry lawyers. Two types of Special Projects were funded. The first type was research designed to create results that were helpful to the industry's litigation and public relations interests. These special projects were designed to be published. A second layer of Special Projects consisted of research which might indict smoking as a cause of illness. These projects were referred to as lawyer special projects or special accounts; they were not intended to be published.[246] One of the Liggett documents over which a claim of privilege was waived by Liggett describes the method by which CTR Special Projects became Lawyers Special Projects: "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."[247] The industry claimed that the research resulting from the lawyers special projects was privileged, thus protecting the adverse information from disclosure during litigation.

The public was not informed that CTR Special Projects research was specifically targeted by tobacco industry lawyers to provide research favorable to the industry's interests (including the industry's "public relations" purposes, which included denying or minimizing a causal link between smoking and disease). Minnesota

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245. Lorillard 01421598.

246. *See* Transcript of Proceedings at 62-63, State *ex rel.* Humphrey v. Philip Morris Inc., No. C1-94-8565 (Minn. Dist. Ct. Apr. 15, 1997). Lawyers' Special Projects were described by defense counsel at the hearing before the trial court:

> And then you finally had a different kind of project, which were called the lawyer's special projects. And these are different again. They are not done through the grant program. They are not done through CTR's special projects. They don't have the approval of the scientific director. But the lawyers say we want to go ahead and do'em anyhow.

Id.

247. LG 2000745-46.

argued that the selective disclosure of certain Special Projects research presented but one more reason why claims of privilege over any remaining Special Projects documents should fail.

The extent of the takeover by lawyers of the science is remarkable. An April, 1978 memorandum from the chief executive office of Lorillard complained that lawyers maintained exclusive control over the scientific direction of the industry: "*We have again 'abdicated' the scientific research directional management of the Industry to the 'Lawyers'* with virtually *no* involvement on the part of the scientific or business management side of the business."[248]

Another document presented by Minnesota during the crime-fraud proceedings further describes the control exerted by lawyers over scientists and scientific research. This document is a 1964 report by two representatives from the TRC in England, written after discussions with representatives of the U.S. tobacco industry:

> In the U.S., by far the most important factor conditioning action . . . is the law suit situation and the danger of costly damages being awarded against the manufacturers in a flood of cases . . . . The leadership in the U.S. . . . 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.[249]

A 1976 internal memo by a top tobacco scientist at BAT, S.J. Green, also discusses the extent to which "legal considerations" dominated scientific research:

> The public position of tobacco companies with respect to causal explanations of the association of cigarette smoking and diseases is dominated by legal considerations . . . . By repudiation of a causal role for cigarette smoking in general they [the companies] hope to avoid liability in particular cases. This domination by legal consideration thus leads the industry into a public rejection in total of any

248. Lorillard 01346204 (emphasis added).
249. PM 1003119101.

> causal relationship between smoking and disease and puts the industry in a peculiar position with respect to product safety discussions, safety evaluations, collaborative research etc.[250]

Indeed, legal considerations were of such paramount importance that B&W recognized, in a 1983 report on smoking and health to one of its corporate affiliates, that "[t]he intense hostility of the environment places a high priority on the control of statements by the manufacturers on the issues. *An unfortunate statement could bring the house down.*"[251]

E. The Trial Court's Prima Facie Findings of Crime-Fraud and Adoption of the Category Review Procedure for Resolution of Privilege Claims

After consideration of the legal arguments and evidence regarding crime-fraud presented by both sides, the trial court issued a detailed thirty-one page order setting forth the boundaries of the attorney-client and work product doctrine.[252] The trial also set forth the parameters of the crime-fraud doctrine, properly noting that even privileged documents are discoverable upon a proper showing of crime-fraud:

> The purpose of the crime-fraud exception to documents otherwise protected by the attorney-client privilege is "to ensure that the 'seal of secrecy' between *lawyer* and client does not extend to communications from the *lawyer* to the client made by the lawyer for the purpose of giving advice for the commission of a fraud or crime." *Haines v. Liggett Group, Inc.*, 975 F.2d 81, 90 (3rd Cir. 1992) (emphasis in the original). "The advice must relate to future illicit conduct by the client . . . ." *Id.* This is exactly what the Plaintiffs argue—that counsel for the tobacco industry ad-

250. BAT 109938433.

251. B&W 51206960. Similar sentiments were expressed in a March, 1977 letter from a top official at B&W to a senior scientist at BAT: "I think you know that the position in the U.S. is still focused around the existence of high risk 'wipe out' liability; this leads to the continuing dominance of the legal attitude." BAT 110078077.

252. *See* Order Regarding Privilege and the Crime-Fraud Exception and Setting Forth Procedures to Determine Privilege Beginning with the Liggett Documents, State *ex rel.* Humphrey v. Philip Morris Inc., No. C1-94-8565 (Minn. Dist. Ct. May 9, 1997) [hereinafter Privilege and Crime-Fraud Exception Order].

vised the industry to conceal documents and research harmful to the industry by depositing the documents with counsel, by routing correspondence through the industry counsel, by naming damning research projects as "special projects" purportedly ordered by counsel, etc., to cover potentially dangerous materials under a blanket of attorney-client privilege protection, and Plaintiffs wish to tear this blanket away.[253]

The trial court also found that Minnesota had proved a prima facie case of crime-fraud against the industry. The court cited to extensive documentation in the record as support for its findings.[254] The scope of the crime-fraud findings included:

- The defendants' assurances that they "would not knowingly distribute a dangerous product" and promises "to solidify such an assurance . . . ."[255]
- The defendants' assurances "that the tobacco industry was committed to providing safe products."[256]
- Defendants' "intentionally den[ying] or minimiz[ing] known health risks . . . ."[257]
- Defendants' use of attorneys and/or claims of privilege to suppress information and documents "which appear to be scientific in nature and specifically related to health issues."[258]
- Defendants' attempts "to create doubt as to a connection between smoking and illness" and "to create doubt that cigarette smoking causes illness."[259]
- Defendants' "safety-related" or "health-related" research . . . ."[260]

The trial court also condemned the industry's penchant for using privilege, when it served their purposes, to withhold unfavor-

253. *Id.* at 27 (emphasis added).
254. *See id.* at 3-11.
255. *Id.* at 5.
256. *Id.*
257. *Id.* at 7.
258. *Id.* at 9.
259. *Id.* at 9, 10.
260. *Id.* at 28.

able scientific information from the public: "This Court does not believe that Defendants should be permitted to use in its advertising and public relations campaigns, health-related research which supports their economic interests, and to claim privilege for research which may lead to the opposite conclusion."[261]

Adopting plaintiffs' legal position that scientific research on smoking and health and the hazards of smoking cannot be withheld as privileged, the trial court stated:

> In considering whether the crime-fraud exception may be applied to the facts of this case, this Court has made several findings relating to statements made by the Defendants to the public. The Court also concludes that the Defendants had an independent obligation to conduct research into the safety of its product, and to warn the product's consumers if the research results supported negative conclusions. A manufacturer has a special duty, apart from litigation, to keep abreast of the hazards posed by its products. *See* Jenkins v. Raymark Indus. Inc., 109 F.R.D. 269, 278 (E.D. Tex.), *aff'd*, 782 F.2d 468 (5th Cir. 1986); *see also* Minnesota Civil Jury Instruction Guides, No. 117 ("You are instructed that the manufacturer is obligated to keep informed of scientific knowledge and discoveries in its field") and No. 119 (duty to warn). The cigarette industry itself has recognized this duty. PM 1000334622. Plaintiffs have presented evidence, and this Court has found, however, that the Defendants have claimed safety-related scientific research conducted by the Defendants has been the subject of claims of attorney-client privilege.[262]

Notwithstanding the extensive proceedings before the trial court, the order of May 9 also provided the industry with an additional opportunity, in proceedings before a special master, to rebut the prima facie findings of crime-fraud.[263] The trial court also set

261. *Id.*
262. *Id.*
263. *Id.* at 19. In addition to finding that plaintiffs had established a prima facie case to invoke the crime-fraud exception, the trial court also found that the Minnesota plaintiffs had met the *Zolin* threshold of establishing a "good faith belief by a reasonable person that the materials may reveal evidence of a crime or fraud" sufficient to warrant in camera review of the industry's documents. *Id.* at 30 (quoting Haines v. Liggett Group, Inc., 975 F.2d 81, 96 (3d Cir. 1992)).

forth the procedure for determination of the industry's privilege claims. The staggering number of documents claimed as privileged posed a predicament for the trial court: how do you adjudicate hundreds of thousands of privilege claims in an expeditious and efficient manner while not violating the due process rights of either side? The industry proposed that the special master first review in camera approximately twenty documents and make privilege determinations as to this number only.[264] The industry argued that it was entitled to in camera review of every document for which privilege was claimed and written findings of fact for each and every document found not to be privileged or subject to the crime-fraud exception.

The court adopted a different procedure whereby privilege determinations would be made on a category-basis, thus eliminating document-by-document in camera review. This ruling was made in light of the unparalleled number of privilege claims and the prima facie crime-fraud findings:

> The extraordinary number of documents which have been designated as privileged in this case makes it impossible to conduct an in camera inspection of each document individually to determine whether it is so closely related to plaintiffs' prima facie showing of crime-fraud that any claim of privilege is lost. If each document for which privilege were claimed were to be examined individually, the trial in this matter could not commence until the next millennium. Accordingly, this Court must fashion a process and procedure which will balance the need for judicial efficiency and timeliness with due process.

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264. *See* Transcript of Proceedings at 30-31, State *ex rel.* Humphrey v. Philip Morris Inc., No. C1-94-8565 (Minn. Dist. Ct. Apr. 15, 1997). Counsel for Brown & Williamson advocated the following procedure:

> So we would suggest, pick a number, twenty documents, let's get them selected. What then happens to those documents? I think we begin what's basically a process of in camera review . . . . The special master can, with the benefit of the documents that are selected and the arguments of counsel and principles and all these briefs and all these decisions, make a determination about whether these documents are privileged or not . . . . Now, what happens at the very end of the road? What do we do with the rest? As they say in the trade, we'll see.

Id.

> In order to accommodate the competing needs of the parties in this case, it is necessary to categorize the documents subject to the claims of privilege. Such categories would necessarily include, but not be limited to the type of privilege claims (e.g., opinion work product, fact work product, attorney-client, or joint defense), the subject matter of the document, the maker of the document, and the recipient of the document, if any.[265]

Before adopting the category procedure, the trial court performed the following calculation:

> Arbitrarily assuming that it would take only five minutes to retrieve a document, check it against the privilege log, read it quickly, and assign it to a 'privilege category' . . . , it would take the Special Master 750,000 minutes, or 12,500 hours, to review all the privileged documents. This is roughly 6.25 years of a lawyer's working career . . . . Thus, an in camera review of each and every individual document, not to mention briefing and arguments with respect to such documents, is not feasible. An efficient procedure by which groups of documents can be examined and dealt with, while preserving due process, must be created and implemented.[266]

The trial court also directed the parties to meet and confer to determine the categories into which the privileged documents should be placed. While the industry was obviously in the best position to propose subject-matter categories for their own documents, it refused to propose its own categories to the trial court.[267] As a result, the trial court adopted the following subject-matter categories proposed by plaintiffs:

> CATEGORY 1: Documents found not to be privileged by other courts.
>
> CATEGORY 2: Documents that, on their face, show no evidence that they were written or received by an attorney.

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265. Privilege and Crime-Fraud Exception Order, *supra* note 252, at 11.
266. *Id.* at 22-23.
267. *See* Order with Respect to Non-Liggett Defendants' Objections to the Special Master's Report Dated September 10, 1997, State *ex rel.* Humphrey v. Philip Morris Inc., No. C1-94-8565, slip op. at 9 n.2 (Minn. Dist. Ct. Dec. 16, 1997).

CATEGORY 3: Scientific research or information and memos relating to smoking and health.

CATEGORY 4: Attorney involvement in smoking and health, including:

(a) All documents written by, or discussing, the Committee of Counsel or the Scientific Liaison Committee or the Research Liaison Committee.

(b) All documents relating to Special Projects (including CTR Special Projects and Lawyers' Special Projects) or any Special Account (including Special Account No. 4).

(c) All documents relating to 3i, LRD and/or LS, Inc. (including documents within the current or past possession of LS, Inc.).

CATEGORY 5: Public statements and public positions taken by defendants relating to smoking and health.

CATEGORY 6: Documents concerning ingredients, formulas and design of cigarettes.

CATEGORY 7: Documents relating to persons under age 18 (or children, adolescents or young adults).

CATEGORY 8: Documents relating to advertising, marketing or promotion.

CATEGORY 9: Documents relating to document destruction and discovery.

CATEGORY 10: Governmental regulation, including warning labels.

CATEGORY 11: Documents relating to environmental compliance, EPA regulation or patent documents (excluding materials relating to safety-related scientific issues or nicotine).

CATEGORY 12: Documents not falling in any of the above categories.[268]

The industry protested that anything less than document-by-document adjudication of privilege violated its due process rights. There is, however, no absolute right to document-by-document adjudication of privilege. Rather, the proper procedure for deter-

268. *See* Order Setting Forth Document Categories for Determination of Privilege Claims, State *ex rel.* Humphrey v. Philip Morris Inc., No. C1-94-8565, slip op. at 2-3 (Minn. Dist. Ct. May 22, 1997).

mining privilege is left to the discretion of the trial court.[269] Moreover, due process is a flexible standard which does not guarantee any particular form of procedure.[270] The fundamental requisites of state and federal due process consist of notice and an opportunity to be heard.[271] With respect to attorney-client determinations, "the fundamental concepts of due process require that the party defending the privilege be given the opportunity to be heard, by evidence and argument, at the hearing seeking an exception to the privilege."[272]

The situation faced by the trial court in Minnesota was unique—there was no precedent for a litigant claiming thousands upon thousands of scientific research documents on the health hazards of its product as privileged. Under the trial court's category review process, the industry would be provided repeated notice and numerous opportunities to be heard, including ex parte and in camera, regarding its claims of privilege. Moreover, other courts had adopted similar procedures. In *A. H. Robins*, the federal district court in Kansas supervising the multi-district Dalkon Shield litigation set forth a procedure for the determination of privilege by categories or "batches" of documents.[273] In fact, in *A.H. Robins*, the court found that the compelling interest of efficient administration of the courts justified reliance on legal memoranda (apparently simultaneously submitted)—as opposed to an evidentiary hearing—in the crime-fraud determination.[274]

Since the Minnesota decision, several other courts have found

269. *See In re* Walsh, 623 F.2d 489, 494 n.5 (7th Cir. 1980). "The proper procedure by which to determine the existence of the privilege is left to the trial court." *Id.; see also* Thermorama, Inc. v. Shiller, 271 Minn. 79, 85, 135 N.W.2d 43, 47 (1965) (indicating that, with pre-trial matters, "[m]uch must be left to the exercise of a sound judicial discretion by the trial court").

270. *See* Baker v. Baker, 494 N.W.2d 282, 287 (Minn. 1992). "The requirements of due process are flexible and call for such procedural protections as the particular situation demands." *Id.; see also* Humenansky v. Minnesota Bd. of Med. Examiners, 525 N.W.2d 559, 566 (Minn. Ct. App. 1994) ("[D]ue process is a flexible concept and the form of procedural protection varies according to the particular situation."); *In re* A.H. Robins Co., Inc., 107 F.R.D. 2, 6 (D. Kan. 1985) ("The nature of the specific process due in a given instance . . . varies according to the factual circumstances of the case and the nature of the interests involved.").

271. *See* Omdahl v. Hadler, 459 N.W.2d 355, 360 (Minn. Ct. App. 1990); *A.H. Robins*, 107 F.R.D. at 6.

272. Haines v. Liggett Group, Inc., 975 F.2d 81, 97 (3d Cir. 1992).

273. *See A.H. Robins*, 107 F.R.D. at 15; *see also In re* Richardson-Merrell, Inc., 97 F.R.D. 481, 484-85 (S.D. Ohio 1983) (setting forth a procedure in which the court would "spot check" summaries of privileged documents submitted by defendant).

274. *See A.H. Robins*, 170 F.R.D. at 6, 15.

that a document-by-document adjudication is not always required. A Fourth Circuit judge in *In re American Honda Motor Co.*,[275] denied a motion for a stay from a district court order requiring the production, under the crime-fraud exception, of allegedly privileged documents. The judge rejected petitioners' contention that the district court was required to review each and every document: "Honda's assertion that the district court was required to review each allegedly privileged communication in camera before ordering disclosure is without merit."[276]

Similarly, in *Sealed Appellees v. Sealed Appellants*,[277] the Fifth Circuit defined the required process to determine the discoverability of allegedly opinion work product communications:

> The preferable practice in factual patterns, such as here, is for the court to examine *a sufficient number of the contested documents to ensure the informed protection of the privilege* . . . . That examination can be conducted by the court or a special master or magistrate judge as the district court may choose.[278]

In Minnesota, the industry waited until the eve of trial to seek its first appellate review of the category procedures set by the trial court for privilege determination. The Minnesota Court of Appeals, however, held that the challenge to the categorical review process was untimely[279] and that the industry could not establish that "the procedures they seek would have yielded any greater protection."[280] The Minnesota Supreme Court later denied the industry's petition for discretionary review of the court of appeal's decision.[281]

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275. *See In re* American Honda Motor Co., No. 98-1415 (4th Cir. Mar. 24, 1998).

276. *Id.* at 6.

277. 112 F.3d 173 (5th Cir. 1997).

278. *Id.* at 174 (emphasis added).

279. *See* State *ex rel.* Humphrey v. Philip Morris Inc., No. C5-97-2349 (Minn. Ct. App. Jan. 13, 1998). "To the extent that petitioners are challenging the employment of categories rather than a line-by-line review of every document, the petition is untimely." *Id.*

280. *Id.*

281. *See* State *ex rel.* Humphrey v. Philip Morris Inc., No. C5-97-2349 (Minn. Jan. 23, 1998).

F. Privilege Proceedings Related to the Liggett Documents

The first group of documents addressed by the special master were the approximately two thousand documents for which Liggett—as part of its settlement with the State of Minnesota—had waived any claim of privilege. In conjunction with the Liggett documents, the industry was also given an additional opportunity, before the special master, to rebut the prima facie crime-fraud findings of the trial court in the order of May 9, 1997.

The special master issued a series of orders further illuminating the category review procedure. For instance, the special master stated that "determination of privilege shall be based upon a thorough working knowledge of the documents and the characteristics therein that define privilege status within each classification."[282] The special master also stated his intention to "review a considerable number of documents from each classification,"[283] and granted the industry unlimited rights to present written submissions and live witnesses at an evidentiary hearing.[284]

In July, 1997, the special master conducted a three-day evidentiary hearing to determine whether: (1) the industry had successfully rebutted the crime-fraud findings, and (2) the privilege status of the Liggett documents. While the industry was given an unrestricted right to bring live witnesses to testify, including ex parte, only one witness was called to testify regarding only two Liggett documents. Counsel for the plaintiffs were also excluded from the courtroom for significant portions of time while the industry made arguments ex parte.[285]

On September 10, 1997, the special master issued a report and recommendation regarding the Liggett documents, finding numerous documents were either not privileged in the first instance or discoverable under the crime-fraud exception.[286] Holding plain-

282. First Order Establishing Procedures for the Review of Documents Subject to Privilege Claims, State *ex rel.* Humphrey v. Philip Morris Inc., No. C1-94-8565, slip op. at 4 (Minn. Dist. Ct. June 16, 1997).

283. *Id.*

284. *See id.* at 6-7.

285. The industry also submitted ninety exhibits to the special master ex parte during the course of the hearings. The industry was afforded virtually unlimited opportunity for ex parte submissions. Because it undermines the basic foundation of an adversary system of jurisprudence, the use of ex parte proceedings is disfavored. *See* RICE, *supra* note 128, § 11.15.

286. *See* Report of the Special Master: Findings of Fact, Conclusions of Law and Recommendations, State *ex rel.* Humphrey v. Philip Morris Inc., No. C1-94-8565

tiffs to a "preponderance of the evidence"[287] standard on crime-fraud, the special master concluded that the industry had failed to rebut (with one small exception) the crime-fraud findings as set forth in the trial court's order of May 9, 1997.[288] The special master rejected the industry's argument that Minnesota was required to prove every element of a cause of action for fraud.[289] The special master relied, in part, on the fact that under the consumer protection statutes plead by Minnesota in its complaint, no proof of reliance was required.[290]

The special master's report also included detailed factual findings. For example, the special master found that:

> • ". . . CTR was meant to serve primarily a public relations function and . . . CTR scientific research was of little value in addressing issues relating to the causal link between smoking and health."[291]
>
> • CTR Special Projects were selected by tobacco industry counsel "on the basis of utility in litigation, congressional testimony, administrative proceedings and for public relations purposes . . . . [T]he projects were selected for their favorable prospects."[292]

(Minn. Dist. Ct. Sept. 10, 1997) [hereinafter Special Master's Report].

287. *See id.* at 39. The special master set forth his inquiry in the crime-fraud determination as follows:

> Am I satisfied by a preponderance of the evidence offered by both plaintiffs and defendants that the defendants were engaged in criminal or fraudulent conduct? Included within "criminal or fraudulent conduct" are a failure to conduct appropriate research into the safety of their products and failure to warn their products' consumers if the research supported negative conclusions.
>
> Second, has it been demonstrated by a preponderance of the evidence that the involvement of defendants' attorneys was in furtherance of the conduct or was closely related to it?

Id. "Preponderance of the evidence" is a higher standard of proof than required by the majority of courts for discovery of documents pursuant to the crime-fraud exception. *See supra* notes 161 and 166 and accompanying text (citing cases that require only a "probable cause" or "prima facie" standard showing of crime or fraud).

288. *See id.* at 42.
289. *See id.* at 38.
290. *See id.*
291. *Id.* at 8.
292. *Id.* at 41.

- "Plaintiffs have presented substantial evidence showing involvement in scientific research and other scientific matters by *attorneys* for the tobacco industry, and that industry attorneys were a driving force behind the direction of and the suppression of scientific research."[293]
- "It appears that one method by which attorneys may have controlled research is through maneuvers intended to 'create' privileges."[294]
- "Notwithstanding these internal documents, the industry's public relations strategy has been to deny causation and to keep the controversy alive."[295]
- "Over the years, tobacco industry spokespersons made many comments clearly intended to create doubt as to a connection between smoking and illness."[296]
- "These types of repeated statements by the tobacco industry denying or diminishing the health effects of smoking also were published in Minnesota."[297]
- The industry did not acknowledge "that there was a statistical association between smoking and disease except as part of a denial of causation." Industry's public statements "are plainly intended to create doubt as to causation, rather than function as an 'admission.'"[298]
- "I also conclude that this attorney-directed control of an industry's research does, in fact, fall within the confines of the crime-fraud exception to the attorney-client privilege."[299]

The special master concluded that the industry had not sustained its burden of proving privilege with respect to the Liggett documents in four of the subject-matter categories.[300] In addition,

293. *Id.* at 11.
294. *Id.* at 13.
295. *Id.* at 16.
296. *Id.*
297. *Id.* at 18.
298. *Id.* at 34.
299. *Id.* at 42. The limited area which the special master carved out of the crime-fraud findings relates to one aspect of CTR: grant research approved by the CTR Scientific Advisory Board ("SAB"). *See id.* at 41.
300. The special master concluded that the industry had not sustained its burden of proving privilege for documents in categories 1, 3, 5 and 7. With respect to Category 1—documents found not privileged by other courts—the special master reviewed all 292 documents in this category, finding that they were not privileged

the special master found that the crime-fraud exception applied to three categories.[301] Thus, the special master recommended production of 834 documents—approximately thirty percent of the total Liggett documents claimed as privileged.

On December 16, 1997, the trial court adopted (with minor modification) the special master's recommendation that 834 out of approximately 2,000 Liggett documents were not privileged in the first instance or, even if privileged, were discoverable under the crime-fraud exception.[302] The court also concluded that industry lawyers had abused the privilege process and that "reckless or willful disregard" of court orders was evident.[303] The trial court also found that the industry's abuse of the ex parte process had "hampered Plaintiffs in their response to the Non-Liggett Defendants' arguments before the Special Master and interfered with Plaintiffs' due process rights."[304] The trial court asked rhetorically whether the industry had claimed privilege over clearly non-privileged material "simply to create more of a 'haystack' in which to hide their 'needles'."[305] Thus, under Rules 11, 16.02, 26.07 and 37.02 of the Minnesota Rules of Civil Procedure, the trial court found that an

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because they "reflect[ed] attorneys selecting and directing research projects" and "represent[ed] information as to the 'corporate knowledge' of the defendants at relevant times . . . ." *Id.* at 43. The special master noted that "[i]f corporate research directors had selected and directed research on safety issues, the documents generated during the decision-making process would have been discoverable." *Id.* Category 3—scientific research—was found not privileged because the documents "do not demonstrate a process of a client seeking advice or an attorney providing advice." *Id.* at 45. Category 5—public statements—was found not privileged on the same grounds. *See id.* at 48-49. The special master's review of documents in Category 7—youth—revealed that the industry was claiming privilege over mere transmittal letters, not attorney communications. *See id.* at 50.

301. The crime-fraud exception was found to apply to Categories 1, 3 and 4b. Documents in Category 1 were subject to disclosure under the crime-fraud exception because "they demonstrate the actual involvement of the attorneys for the defendant companies in the selection, funding, and funding continuation for CTR special projects and because these documents provide relevant evidence of the response by the defendants to allegations from external sources to the effect that the defendants' products were unsafe." *Id.* at 43. Documents in Category 3 "reflect[ed] the involvement of the Liggett attorneys in the monitoring of that company's research function." *Id.* at 45. A similar conclusion was reached with respect to category 4b—special projects documents. *See id.* at 47.

302. *See* Order With Respect to Non-Liggett Defendants' Objections to the Special Master's Report Dated September 10, 1997, State *ex rel.* Humphrey v. Philip Morris Inc., No. C1-94-8565, slip op. at 3 (Minn. Dist. Ct. Dec. 16, 1997).

303. *Id.* at 15.

304. *Id.* at 17.

305. *Id.* at 19.

appropriate sanction included striking the industry's claims of privilege on the 834 Liggett documents.[306]

Almost simultaneously with the trial court's December order, the cigarette companies, in response to a congressional subpoena, submitted the Liggett documents to United States Representative Thomas Bliley. Rep. Bliley then published most of the documents on the Internet for the whole world to see.[307]

G. Privilege Proceedings Related to the Non-Liggett Documents

Beginning in the fall of 1997, the special master shifted focus to the non-Liggett defendants' claims of privilege over more than 230,000 documents. The special master conducted four days of evidentiary hearings in October, 1997, to hear argument regarding the industry's claims of privilege over the 230,000 documents. During those hearings, the industry again was given an unrestricted right to present argument ex parte and call live witnesses to testify.[308] The special master provided the industry with advance notice of each document he had randomly selected for in camera review, thus affording the defendants an opportunity to present individualized argument and evidence for each of these documents.[309]

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306. There are a variety of sanctions available to a district court for discovery abuses, including the striking of claims. *See* Uselman v. Uselman, 464 N.W.2d 130, 145 (Minn. 1990) (citing "a variety of sanctions" available to a court, including "an order precluding the litigation of certain claims or defenses"); *see also* MINN. R. CIV. P. 37.02 (allowing the court to "make such orders . . . as are just", including "an order refusing to allow the disobedient party to support . . . designated claims or defenses"); EPSTEIN & MARTIN, *supra* note 138, at 60 (stating that waiver of the attorney-client privilege "follows from any conduct by the client that would make it unfair for him thereafter to assert the privilege"); Applied Sys., Inc. v. Northern Ins. Co., No. 97-C-1565, 1997 WL 639235, at 2 (N.D. Ill. Oct. 7, 1997) (stating that abuse of process for determining privilege justifies finding that privilege is waived).

307. The documents can be found at the following Internet site: <http://www.house.gov/commerce/TobaccoDocs/documents.html>.

308. *See* Fifth Order Establishing Procedures for the Review of Documents Subject to Privilege Claims ¶ 6, State *ex rel.* Humphrey v. Philip Morris Inc., No. C1-94-8565 (Minn. Dist. Ct. Sept. 12, 1997) [hereinafter Fifth Order]. The industry, however, failed to present a single witness during the four days of hearings to support its claims of privilege.. Instead, the industry relied on lengthy oral presentations by counsel.

309. *See id.* ¶¶ 3, 10. Once the industry learned of the documents randomly selected for in camera review by the special master, the industry lawyers promptly withdrew many of their claims of privilege over those documents. Minnesota's counsel argued that this action by industry counsel was intentionally designed to

The industry was also granted yet another opportunity to rebut the prima facie crime-fraud findings made earlier by Judge Fitzpatrick and during the Liggett proceedings. The industry submitted more than one thousand pages of briefs and fifty boxes of supporting material—much of it ex parte—to attempt to rebut these findings.

The primary thrust of Minnesota's position continued to be that the industry was improperly shielding scientific information on the hazards of smoking. For example, Minnesota had calculated that RJR was claiming privilege over more than 2,500 scientific research reports authored by its long-time scientist Dr. Frank Colby. At the privilege hearings, RJR maintained that these reports were authored by Dr. Colby in his capacity as a consultant to the legal department. Dr. Colby's deposition, however, contradicted RJR's position and confirmed Minnesota's suspicion that the reports were merely filtered through lawyers so that RJR could later claim privilege. Minnesota presented the special master with the following testimony from Dr. Colby's deposition:

> Q. And you would also agree with me, would you not, that when you conducted your analyses of this literature after 1964, that your analysis was really done for the entire company of R.J. Reynolds, not just for the lawyers; correct?
>
> A. *It was channeled through the lawyers. The smoking and health analysis was channeled through the lawyers mostly.*[310]

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skew the random selection process and that consideration of these documents in camera should proceed. The special master agreed, finding that if the documents were removed from consideration, "the integrity of the entire procedure could be undermined." Report of Special Master: Findings of Fact, Conclusions of Law and Recommendations Regarding Non-Liggett Privilege Claims ¶ 207, State *ex rel.* Humphrey v. Philip Morris Inc., C1-94-8565 (Minn. Dist. Ct. Feb. 10, 1998) [hereinafter Non-Liggett Report]. In addition, such behavior raised "concern[] that defendants have over-designated documents as privileged." *Id.* In addition to the documents randomly selected by the special master, the Fifth Order provided that Minnesota was allowed to select privileged documents for "particularized discussion" in the briefs or at the hearing. Fifth Order, *supra* note 308, ¶ 10. Pursuant to this provision, Minnesota's counsel hand-selected approximately 400 additional documents for review within subject-matter Category 1.

310. Transcript of Deposition of Dr. Frank Colby, vol. 2 at 243, State *ex rel.* Humphrey v. Philip Morris Inc., No. C1-94-8565 (Minn. Dist. Ct. Dec. 18, 1997) (emphasis added).

1. Additional Evidence of Crime-Fraud

Minnesota also presented more evidence of crime-fraud conduct in two particular areas: nicotine addiction/manipulation and suppression of in-house smoking and health research, including biological research.

a. Nicotine Addiction and Manipulation

The evidence offered regarding nicotine addiction and manipulation included the industry's public statements concerning addiction, as well as its internal knowledge of the properties of nicotine and its conduct with respect to the design of cigarettes.[311] To this day in its public statements, the industry has repeatedly denied that cigarettes and/or nicotine are addictive and has minimized the difficulties of quitting smoking. For example, in 1988 after the surgeon general declared nicotine was addictive,[312] the Tobacco Institute issued the following press release:

> Claims that cigarettes are addictive contradict common sense . . . . The claim that cigarette smoking causes physical dependence is simply an unproven attempt to find some way to differentiate smoking from other behaviors . . . . The claims that smokers are "addicts" defy common sense and contradict the fact that people quit smok-

311. The industry claimed before the special master that Minnesota's submission of additional evidence of crime-fraud was unfair. Counsel for Philip Morris stated: "I submit not General Giap and Ho Chi Minh could have conceived a better guerilla strategy for attacking us on other fronts and confounding their enemy . . . ." Transcript of Hearing at 26, State *ex rel.* Humphrey v. Philip Morris Inc., C1-94-8565 (Minn. Dist. Ct. Oct. 15, 1997). The special master rejected defendants' characterization, finding that "[p]ursuant to the Fifth Order Establishing Procedures, plaintiffs were permitted to introduce additional evidence of crime-fraud." Non-Liggett Report, *supra* note 309, ¶ 171 (citing Fifth Order, *supra* note 308, at ¶ 4).

312. The 1988 surgeon general's report states that:

> 1. Cigarettes and other forms of tobacco are addicting.
> 2. Nicotine is the drug in tobacco that causes addiction.
> 3. The pharmacologic and behavioral processes that determine tobacco addiction are similar to those that determine addiction to drugs such as heroin and cocaine.

SURGEON GENERAL, U.S. DEP'T OF HEALTH AND HUMAN SERVICES, THE HEALTH CONSEQUENCES OF SMOKING: NICOTINE ADDICTION 9 (1988).

ing every day.[313]

Notwithstanding the public denials, Minnesota presented evidence that the industry has long recognized internally that nicotine is an addictive drug and that cigarettes are drug delivery or nicotine delivery devices:

- A report of discussions with industry research directors in the 1950s—as the industry prepared to publish the Frank Statement—recorded among their conclusions "[I]t's fortunate for us that cigarettes are a habit they can't break."[314]
- A 1961 document by Sir Charles Ellis, a top BAT scientist, stated, "smokers are nicotine addicts."[315]
- A 1972 document by Philip Morris' Dunn stated that the majority of conferees at a recent CTR conference "accept the proposition that nicotine is the active constituent of cigarette smoke. Without nicotine, the argument goes, there would be no smoking."[316] Dunn continued: "The cigarette should be conceived not as a product but as a package. The product is nicotine . . . . Think of the cigarette pack as a storage container for a day's supply of nicotine . . . . Think of the cigarette as a dispenser for a dose unit of nicotine."[317]
- A 1972 document by Claude Teague, an RJR senior scientist, stated that "the tobacco industry may be thought of as being a specialized, highly ritualized and stylized segment of the pharmaceutical industry. Tobacco products, uniquely, contain and deliver nicotine, a potent drug with a variety of physiological effects."[318]
- A 1978 B&W document stated "[v]ery few consumers are aware of the effects of nicotine, i.e., its addictive nature and that nicotine is a poison."[319]

313. TI 0019963. The Tobacco Institute criticized the surgeon general's declaration as "an escalation of antismoking rhetoric . . . without medical or scientific foundation." TI 0125189.
314. JH 000494.
315. BAT 301083863.
316. PM 2024273962.
317. PM 2024273963.
318. RJR 500915684.
319. B&W 665043966.

> • A 1979 document by BAT research executive L.C.F.B. Blackman considered the hypothesis that "high profits . . . associated with the tobacco industry are directly related to the fact that the customer is dependent upon the product."[320]
>
> • A 1980 BAT document stated that "B.A.T. should learn to look at itself as a drug company rather than as a tobacco company."[321]
>
> • A 1980 document by Philip Morris scientist Osdene stated, "the thing we sell most is nicotine."[322]
>
> • A 1983 document by RJR scientist Teague stated that "[i]n essence, a cigarette is a system for delivery of nicotine to the smoker in attractive, useful form."[323]
>
> • A 1991 RJR report stated, "We are basically in the nicotine business."[324]

There also was extensive evidence presented that the industry intentionally controls and manipulates the level and form of nicotine in the commercial cigarette to ensure continued addiction. One process for secretly manipulating nicotine highlighted in the privilege proceeding involved manipulating the form of nicotine in cigarettes by controlling the pH of cigarette smoke through the use of ammonia compounds. The introduction of ammonia or ammonia compounds into the cigarette manufacturing process raises the pH of tobacco.[325] As the pH rises, the tobacco smoke becomes more "basic" and results in an increase in the amount of "free" nicotine, also known as "free base" nicotine (as opposed to "bound" nicotine).[326] Free nicotine is more volatile and physiologically active than bound nicotine. As one RJR document explained:

> In essence, a cigarette is a system for delivery of nicotine to the smoker in attractive, useful form. At "normal" smoke pH, at or below about 6.0, essentially all of the smoke nicotine is chemically combined with acidic sub-

320. BAT 109872508.
321. BAT 109884190.
322. PM 1000125871.
323. RJR 511223466.
324. RJR 509479584.
325. *See* RJR 511223468; RJR 500606141.
326. *See* RJR 511223466; LOR 00776239.

> stances, hence is non-volatile and relatively slowly absorbed by the smoker. As the smoke pH increases above about 6.0, an increasing proportion of the total smoke nicotine occurs in "free" form, which is volatile, rapidly absorbed by the smoker, and believed to be instantly perceived as nicotine "kick."[327]

Minnesota presented evidence demonstrating that Philip Morris was the first tobacco manufacturer to use the ammonia process in the United States, beginning in 1964 or 1965, on the heels of the first surgeon general's report.[328] At the time, Philip Morris ranked far behind RJR in domestic cigarette sales. Simultaneously with the use of ammonia in its cigarettes, sales of Philip Morris products began to rise dramatically. While RJR and the rest of the tobacco industry soon learned the reasons behind the success of Marlboro,[329] the public—and smokers—were not informed. RJR soon moved its cigarette design in the same direction as Philip Morris. In 1973, RJR discussed using pH manipulation "to assure RJR a larger segment of the youth market."[330] Eventually, the use of ammonia was the norm of the industry. As B&W reported in a 1989 document, "[A]ll U.S. manufacturers except Liggett use some form of AT [ammonia technology] on some cigarettes products."[331]

Minnesota also presented evidence of lawyer involvement in nicotine addiction and manipulation. The industry had logged as privileged hundreds of documents written by scientists regarding nicotine and addiction. The industry recognized that the issues of nicotine addiction were potentially explosive in smoking and

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327. RJR 511223466. BAT scientists also understood that "free base nicotine is the most chemically and physiologically active form because it is most rapidly absorbed." BAT 500104408.

328. *See* RJR 500991002.

329. *See* RJR 511223463. In 1973, RJR conducted an extensive study of the design of Philip Morris Marlboro cigarettes in attempt to discover the reason for its competitor's sharp increase in sales. RJR 511223465. A "secret" RJR report disclosed that the pH of Marlboro was consistently and significantly higher than RJR's brands and, accordingly, Marlboro contained more free nicotine and "would be expected to show more instantaneous nicotine 'kick' than our brands." RJR 511223466. RJR also found that other well-selling brands—for example B&W's Kool—also had increased smoke pH and increased amounts of "free nicotine." *Id.* RJR concluded that the high smoke pH attained by Philip Morris and B&W was "deliberate and controlled." RJR 511223465.

330. RJR 501166152.

331. B&W 508104016. Minnesota presented evidence that Liggett later also began to use ammonia technology. *See* LG 2018563.

health litigation.[332]

Minnesota argued that the evidence concerning nicotine and addiction was closely-related to the trial court's earlier crime-fraud findings, since nicotine was clearly related to the health and safety issues in the case, i.e., nicotine in cigarettes makes it more difficult for people to quit smoking. The industry countered by arguing that Minnesota's counsel had "cherry-picked" industry documents, picking only incriminating evidence while ignoring exculpatory documents. Noting the breadth and quality of the evidence presented by Minnesota, the special master found that the industry did not "dispute[] the content of these documents," nor "present evidence from their own internal files to support their allegation that plaintiffs' selection is unrepresentative . . . ."[333]

b. Suppression of Research

During the Liggett round of privilege hearings, the special master found that there was no evidence that "the defendant companies conducted significant independent research, i.e., that which was not jointly sponsored through CTR."[334] The special master also concluded: "[T]he failure on the part of defendants individually to investigate the safety of their product, coupled with their ongoing assurances that causation of illnesses was unproved and speculative, necessarily implicates the holding of *Levin v. C.O.M.B. Co.*, 469 N.W.2d 512, 515 (Minn. Ct. App. 1991) . . . ."[335] This issue took on even greater significance during the non-Liggett privilege proceedings.

Minnesota presented documents and testimony showing that, for many years, the U.S. manufacturing defendants failed to perform in-house smoking and health research, including biological research.[336] There was also evidence that the failure of the domes-

332. *See supra* note 36 and accompanying text (recognizing that addiction is the "most potent weapon a prosecuting attorney can have in a lung cancer/cigarette case.").

333. Non-Liggett Report, *supra* note 309, ¶ 268.

334. Special Master's Report, *supra* note 286, ¶ 140.

335. *Id.* ¶ 146.

336. Biological research is the type of research a company would undertake to examine the safety of its products with respect to humans. WEBSTER'S NEW COLLEGIATE DICTIONARY 152 (1990). Minnesota presented evidence that Brown & Williamson and American *never* conducted any in-house biological research or research related to the health effects of tobacco. *See* Non-Liggett Report, *supra* note 309, ¶¶ 106-07, 146-47. RJR performed in-biological testing for only three years,

tic tobacco manufacturers to conduct in-house smoking and health research was, in part, the result of a conspiracy. For example, documents produced in Minnesota described how RJR's biological research division, also known as the "mouse house," was shut down because of this industry agreement. The mouse house, opened by RJR in 1967, was a sophisticated in-house lab for conducting biological research—including inhalation tests—on animals, including rats, rabbits, mice and gerbils. Preliminary results from mouse inhalation tests in the RJR mouse house demonstrated "[a] diffuse, marked emphysema throughout the lungs . . . ."[337] In 1970, RJR abruptly shut down the mouse house and fired twenty-six scientists.[338] RJR argued during the privilege proceedings that the mouse house was closed for business reasons. A contemporaneous memorandum from the files of BAT, however, explains that the shutdown was related to the industry's "tacit agreement between the heads of the US companies" not to conduct "in-house biological research."[339] After learning that RJR was conducting biological studies, Philip Morris president Cullman lodged a complaint with RJR president Galloway.[340] The result of this conversation was a "sudden reorganization at Reynolds, resulting in the closure of the biological section."[341]

Philip Morris scientists also complained about the restrictions imposed by the industry agreement not to conduct in-house biological research. In 1964, Helmut Wakeham—a senior Philip Morris scientist—wrote that the "[c]ompetitive pressures suggest a breakup of the common front approach of the industry through TI and TIRC."[342] Wakeham also recommended that "[t]he industry

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1967-1970. *See id.* ¶ 114. A "large proportion" of Lorillard's in-house research was related to product development, not the health effects of smoking or nicotine. *Id.* ¶ 144.

337. RJR 515596269. A 1969 Philip Morris document reveals that this information was shared by RJR with its competitor, Philip Morris: "I met Dr. Price from R.J. Reynolds at the CTR-USA meeting of December 11 and 12, 1969. He mentioned doing chronic cigarette smoke exposure studies with rats. *The animals received up to 500 cigarettes and emphysema was produced."* PM 1001882748 (emphasis added).

338. *See* RJR 503950747. RJR commissioned a third-party report on the closing of the mouse house, known as the Brubaker Report. *See* RJR 515597278-468. This report was withheld from the Minnesota plaintiffs under a claim of privilege.

339. BAT 110315969.

340. *See id.*

341. BAT 110315969-70.

342. PM 1000335616-17. Wakeham also confirmed in his deposition that there was an agreement not to conduct in-house smoking and health research:

should abandon its past reticence with respect to medical research," noting that "failure to do such research could give rise to negligence charges."[343]

2. Special Master's Findings

After nearly four months of consideration, the special master issued a 144-page report recommending that approximately 39,000 of the withheld documents were not privileged in the first instance or were discoverable under the crime-fraud exception to privilege.[344] The report was issued several weeks after trial had commenced in St. Paul, Minnesota. The categories of documents ordered produced related predominately to scientific research and the industry's public statements on the health hazards of cigarettes.[345]

Q. What's the type of research that you understood that there was an understanding that the cigarette companies would not be doing in-house?

A. Studying a relationship which might exist between smoking and diseases such as were tabulated in the Surgeon General's report.

Transcript of Deposition of Helmut R.R. Wakeham, vol. 1 at 91, State *ex rel.* Humphrey v. Philip Morris Inc., C1-94-8564 (Minn. Dist. Ct. May 29, 1997) [hereinafter Wakeham Deposition].

343. PM 1000335622. As of 1968, Philip Morris was still not conducting in-house biological research. *See* Wakeham Deposition, *supra* note 342, at 85. "We were—we were doing tests on some animals, again related to the irritation problem, not regarding—*not relating to cancer or anything else of that nature.* *Id.* at 86 (emphasis added). Minnesota presented evidence that Philip Morris turned to Europe, to a facility it purchased in Cologne known as INBIFO, for smoking and health research. *See supra* note 73 for discussion of INBIFO research.

344. *See* Non-Liggett Report, *supra* note 309.

345. The special master ordered production of four (out of fourteen) Categories of documents: Categories I, III, IVb and V. The special master found that documents in Category I—documents other courts had found discoverable and/or documents specifically selected by Minnesota's counsel—supported the inference that "attorneys manipulated or attempted to manipulate industry science," and that each of the documents "goes *directly* to the control or suppression of research, and the creation of privilege shields to conceal possession of dangerous information." *See id.* ¶¶ 315, 316. Documents in Category III—scientific research—were ordered produced because they demonstrated "what the Defendants knew and when they knew it." *Id.* ¶ 334. For Category 4b documents—special projects—the special master found that his earlier finding that the public was deceived by CTR Special Projects was unrebutted. *Id.* ¶¶ 339-342. Category V documents were discoverable because "they detail formulation of public statements aimed at minimizing or creating doubt about the risks of smoking." *Id.* ¶ 359.

Once again, the special master's report included detailed findings of fact. On the evidence of suppression of research presented by Minnesota, the special master concluded:

> • The inference of a "gentleman's agreement" has been fairly presented and not rebutted.[346]
>
> • This failure to conduct in-house biological research was not restricted to one tobacco company . . . . [T]his failure was industry-wide. I find this fact significant, as the members of this industry have portrayed the companies as being fiercely competitive.[347]
>
> • Plaintiffs have established to a degree of probability that Defendants collectively agreed not to conduct, or to eliminate or reduce, scientific research which related to issues of smoking and health. This evidence has not been rebutted.[348]

On nicotine and addiction, the special master concluded that "there are a large number of documents relating to addiction and nicotine manipulation for which the tobacco companies are asserting privilege."[349] Furthermore, the special master found evidence that the "tobacco industry intentionally maintains nicotine at certain levels because the defendants [tobacco companies] have long been aware that there is an optimum dose of nicotine needed for its pharmacological and addictive qualities to have their intended effect."[350] The special master found that the evidence presented "concerning nicotine and addiction" was closely related to the Court's May 9 crime-fraud findings relating to the industry's assurances that they "would not knowingly distribute a dangerous product," the industry's assurances "that the tobacco industry was committed to providing safe products" and the industry's "use of attorneys and/or claims of privilege to suppress information and documents 'which appear to be scientific in nature and specifically related to health issues.'"[351] Accordingly, the special master concluded that "further inquiry must be permitted and that plaintiffs

346. *See id.* ¶ 28.
347. *Id.* ¶ 150.
348. *Id.* ¶ 170.
349. *Id.* ¶ 262.
350. *Id.* ¶ 207.
351. *Id.* ¶ 302.

in this case must be permitted to inspect documents withheld on claims of privilege which relate [to] nicotine addiction and manipulation (even if such documents are privileged in the first instance)."[352]

On lawyer involvement in scientific research, the special master concluded:

> • Plaintiffs have presented substantial evidence showing involvement in scientific research and other scientific matters by attorneys for the tobacco industry, and that industry attorneys were a driving force behind the direction of and the suppression of scientific research.[353]
>
> • I find that defendants' claims of privilege are overly-broad. *Defendants have asserted privilege over thousands of communications that constitute or concern scientific research.* As Judge Fitzpatrick concluded, however, defendants had an independent obligation to conduct research into the safety of their products, and to warn consumers if the research results supported negative conclusions.[354]
>
> • I specifically find that defendants have asserted claims of privilege over information generated by counsel acting in scientific, administrative or public relations capacities, but not in a legal capacity. That information is not privileged.[355]

The special master also found that Minnesota had demonstrated "substantial need" for scientific research "designated by defendants as fact work product," because "defendants . . . contest that smoking causes disease and nicotine is addictive, yet seek to place certain research and/or scientific analysis that may provide otherwise beyond discovery."[356] The special master found that "selectively" claiming such research as privileged while producing other types of research, "strengthened" plaintiffs' showing of substantial need.[357]

The trial court, after reviewing documents itself and allowing

352. *Id.* ¶ 306.
353. *Id.* ¶ 36.
354. *Id.* ¶ 279 (emphasis added).
355. *Id.* ¶ 281.
356. *Id.* ¶ 282.
357. *Id.* ¶¶ 283-85.

the parties to be heard, adopted the special master's recommendations.[358] The trial court also described a "pattern of abuse" by the industry lawyers before the special master, including "in numerous instances claim[ing] privilege where none is due and blatantly abus[ing] the categorization process."[359] The trial court held that the "intentional and repeated misuse of claims of privilege is intolerable in a court of law, and an appropriate sanction for such abuse is release of all documents for which privilege is improperly claimed."[360] The trial court also found that the special master had properly applied the Minnesota law of privilege and the crime-fraud exception, and that the industry had been afforded full due process.[361] The trial court found that "a review less cautious and conservative than our Special Master" might have recommended even further disclosures.[362]

The industry sought appellate review—for the second time—of the categorical review process established by the trial court in its order of May 9. On March 17, 1998, the Minnesota Court of Appeals denied the industry's petitions for writs of prohibition and mandamus, finding that its challenge to the categorical review process employed by the trial court over the past ten months was untimely.[363] The court of appeals found that the trial court had not

358. *See* Order with Respect to Non-Liggett Defendants' Objections to the Special Master's Report Dated February 10, 1998, State *ex rel.* Humphrey v. Philip Morris Inc., No. C1-94-8565, slip op. at 3 (Minn. Dist. Ct. Mar. 7, 1998) [hereinafter Order Respecting Objection's to Special Master].

359. *Id.* at 5, 15. Other courts also have found that the industry has abused the judicial process. In *Burton v. R.J. Reynolds Tobacco Co., Inc.*, after examination of RJR's claims of privilege over a much smaller grouping of documents, the federal magistrate found that "[t]here are inconsistencies in the various submissions by RJR . . . ." 170 F.R.D. 481, 484 (D. Kan. 1997). On RJR's motion for reconsideration, the magistrate held that "the representations of counsel . . . were clearly contrary to any reasonable application of the attorney-client privilege or work product doctrine." *Burton, on reconsideration in part*, 175 F.R.D. 321, 328 (D. Kan. 1997). The special master in *Butler v. Philip Morris Inc.* found a few documents during in camera review "which might cause particular attorneys, not involved in the instant case, to face some ethic charges regarding candor with the Court" and which "may bring requests for sanctions for delay in production in accordance with the rules." Butler v. Philip Morris Inc., No. 94-5-53, at 14 (Miss. Dist. Ct. Apr. 21, 1997).

360. *See* Order Respecting Objection's to Special Master, *supra* note 358, at 15-16.

361. *See id.* at 3.

362. *Id.* at 16.

363. *See* State *ex rel.* Humphrey v. Philip Morris Inc., Nos. CX-98-414, CX-98-431, slip op. at 2 (Minn. Ct. App. Mar. 17, 1998).

exceeded its legitimate powers, and that the industry had failed to show that the documents ordered produced were *clearly* not discoverable.[364] Thus, the standard for extraordinary relief was not satisfied.[365] The court of appeals also found that the industry's opportunity to assert its claims was not "limited or abridged in any significant way," that the industry failed to show that the trial court had applied the wrong legal standard or that the detailed findings of the special master were inadequate support for the trial court's order.[366] The court of appeals delayed its order for two days to afford the industry an opportunity to seek further relief, including a stay, from the Minnesota Supreme Court.

On March 18, 1998, the industry filed a motion for an emergency stay in the Minnesota Supreme Court together with two petitions for review of the court of appeals' March 17, 1998 decision. On March 19, 1998, the Minnesota Supreme Court granted the temporary stay pending final disposition of the two petitions.[367] On March 27, 1998, the Minnesota Supreme Court denied both petitions, finding that the categorical review process adopted by the trial court "*recognized the virtually unprecedented dimension of discovery and assertion of privilege involved in this case.*"[368] The Minnesota Supreme Court also found that the "extraordinary relief" sought by the industry—line-by-line review of each document—was "an impossibility."[369] Moreover, the Minnesota Supreme Court noted that, by denying the request for discretionary review of a discovery order, they were not "address[ing] or decid[ing] the propriety of the process established by the trial court."[370] The court also stayed its order until 5:00 p.m. Wednesday, April 1, 1998.

The industry then sought a stay from Justice Thomas of the United States Supreme Court. This request was denied on April 2, 1998,[371] but a temporary stay was put in effect until April 6 so that the industry could seek relief from another Justice. The industry then petitioned Justice Scalia, who referred the matter to the entire

364. *See id.* (emphasis in original).
365. *See id.*
366. *Id.* at 3.
367. *See* State *ex rel.* Humphrey v. Philip Morris Inc., Nos. CX-98-414, CX-98-431, 1998 WL 154543 (Minn. Mar. 27, 1998).
368. *Id.* at *1 (emphasis added).
369. *Id.*
370. *Id.*
371. *See* Philip Morris Inc. v. Minnesota *ex rel.* Humphrey, No. A-722 (Apr. 2, 1998).

Court.[372] On the morning of April 6, the application for stay was denied by the Court and the documents were soon thereafter produced to Minnesota's counsel.[373]

V. REVELATIONS FROM THE "PRIVILEGED" DOCUMENTS PRODUCED IN MINNESOTA

When tens of thousands of the privileged documents were finally produced, the documents confirmed plaintiffs' counsels' long-standing belief that documents had been improperly withheld on claims of privilege. The documents also add significantly to our understanding of the tobacco industry and should be studied for years to come by legal scholars, historians, and ethicists. Many of the withheld documents were purely scientific, not legal, in nature. Many documents verified—and added new detail to the understanding of—the ubiquitous dominance of tobacco industry lawyers over smoking and health issues, including scientific research. Many documents contain extraordinary details about the concealment—and destruction—of evidence.

An example of withheld documents which were purely scientific in nature is a series of reports written by Alan Rodgman, a scientist at RJR. Beginning in the 1950s, Rodgman began to write reports on the health hazards of smoking. These reports are a detailed compendium on the health hazards of smoking. These reports do not contain legal analysis or legal advice. Yet these reports were concealed in the files of lawyers for more than forty years, shielded by claims of privilege. The title pages of the reports lists the topic—for example, "Lung Cancer"—and the author and date. There is no indication on the title pages that the reports were sent to or prepared for legal counsel. A typical privilege log entry for these reports, however, lists the legal department as the recipient of the reports and is a basic generic description which reveals virtually nothing about the nature of the document:

> Report prepared by an RJR scientist performing work at the request of the legal department transmitted to RJR in-house legal counsel for the purpose of providing confi-

372. *See* Philip Morris Inc. v. Minnesota *ex rel.* Humphrey, 118 S. Ct. 1384 (1998) (mem.).

373. *See id.* Simultaneous with production to Minnesota's counsel, the documents were turned over to Representative Bliley in response to a congressional subpoena.

dential information in order to assist in the rendering of legal advice concerning a smoking and health issue.[374]

The particular document described in this privilege log entry was written in 1955. The actual title of this document, as revealed when the document was produced forty-three years later, is: "Lung Cancer - Smoking Studies."[375]

The actual titles of other, withheld reports in the Rodgman series, also written in the 1950s, include:

- Animal-Lung Tumor Study[376]
- Arsenic and/or Arsenic Compounds - Carcinogenesis Studies[377]
- Tobacco-Arsenic Studies[378]
- Lip Cancer - Smoking Studies[379]

By today's standards, and by today's state of scientific knowledge on the health hazards of smoking, these Rodgman reports seem to be fairly innocuous descriptions of scientific evidence on smoking and health. But it is important to keep in mind that these reports were written years before the surgeon general declared, in his seminal 1964 report, that smoking caused lung cancer in men. At the time these reports were written, there was an active debate—fueled in large part by the tobacco industry—regarding the health hazards of smoking. If these reports had been disclosed by RJR at the time they were written, the consequences—for the tobacco companies and for the public health—would have been dramatic.

The documents withheld on claims of privilege provide insight not only into the routing of scientific information through lawyers, but also into lawyers' direction and control of the scientific research itself. One colorful illustration of the dominance of tobacco company lawyers was revealed in a document which described the

374. RJR 502815280 (privilege log).
375. *Id.* All privileged documents discussed in this section of article will be referenced by Bates Number. Presently, these documents are not available to the public at the Minnesota Depository. They can, however, be located on a congressional website, *supra* note 93.
376. RJR 502815408.
377. RJR 502815461.
378. RJR 502815457.
379. RJR 502815472.

following encounter with Willard Bright, a former top scientist at RJR: "[O]nce when Bright was introduced to someone as the "senior scientist at RJRT," Bright interrupted and said, "No, Ramm is."[380] "Ramm" is Henry Ramm, former general counsel at RJR.

The documents provide details concerning RJR's efforts to conceal unfavorable scientific research. The excerpts below are from a "fact memorandum"[381] prepared by RJR's outside counsel, Jones, Day, Reavis & Pogue, that describes RJR's research and development activities:

> • In some cases, the control exerted by the Law Department or R&D Management went beyond "wordsmithing" to efforts to prevent the distribution or production of certain reports. The following examples, which may be of some interest to Company critics, reflect these efforts:
>
> > (i) *1953 Teague literature survey.* In approximately 1953, Dr. Claude Teague reviewed the smoking and health literature and was surprised by the volume of material which 'indicted' cigarette smoking . . . . According to Dr. Teague, the Law Department advised that this report should not be circulated. Although copies of this report still exist, he believes that Henry Ramm advised that the report be collected and destroyed.[382]
> >
> > . . . .
> >
> > (iii) *Nitrosamine research (1965-67).* Jim Fredrickson, who was working on identifying nitrosamines[383] in smoke in approximately 1965-67, was told . . . not to prepare a final report on his research but merely to record the work in his laboratory notebooks.[384]
>
> • Through the years, there apparently has been a general informal policy at RJRT against publication of anything that bears on the smoking and health issue. For ex-

380. RJR 515873872, n.81.
381. RJR 515873805.
382. RJR 515873896-97.
383. Nitrosamines are carcinogens found in smoke.
384. RJR 515873898.

> ample, Dr. Laurene said that even though RJRT published frequently, nothing was published on the smoking and health issue while he was with the Company. According to Laurene, this practice reflected the view of top management.[385]

The documents also provide evidence of the extensive control of research into nicotine by lawyers for Philip Morris. One document withheld as privileged, written in 1980, highlights the long-standing tension between the Philip Morris scientists and the lawyers on what research could be conducted on nicotine and on smoking-caused disease. The document was written by William L. Dunn, a Philip Morris scientist also known as "the Nicotine Kid." The document is titled, "The Nicotine Receptor Program." The document states:

> The psychopharmacology of nicotine is a highly vexatious topic. It is where the action is for those doing fundamental research on smoking, and from where most likely will come significant scientific developments profoundly influencing the industry. *Yet it is where our attorneys least want us to be, for two reasons* . . . . The first reason is the oldest and is implicit in the legal strategy employed over the years in defending corporations within the industry from the claims of heirs and estates of deceased smokers: "We within the industry are ignorant of any relationship between smoking and disease. Within our laboratories no work is being conducted on biological systems." That posture has moderated considerably as our attorneys have come to acknowledge that the original carte blanche avoidance of all biological research is not required in order to plead ignorance about any pathological relationship between smoke and smoker.[386]

Dunn further described the second reason why the Philip Morris attorneys were concerned about research on the pharmacological activity of nicotine:

> This is a more recent concern arising from increasingly

385. RJR 515873908.
386. PM 1000127789 (emphasis added).

> favorable prospects for the success of a legislative effort to transfer authority for the regulation of tobacco manufacture to a Federal agency (F.D.A.) known to have interests and powers antithetical to the interests of the industry. Any action on our part, such as research on the psychopharmacology of nicotine, which implicitly or explicitly treats nicotine as a drug could well be viewed as a tacit acknowledgement that nicotine is a drug. *Such an acknowledgement, contend our attorneys, would be untimely.* Therefore, although permitted to continue the development of a three-pronged program to study the drug nicotine, *we must not be visible about it.*[387]

Dunn concluded by stressing the commercial necessity of research into nicotine; he believed, after all, "that specific action of nicotine . . . causes the smoker to repeatedly introduce nicotine into his body."[388] The concern of the attorneys, however, had to be accommodated. Thus, Dunn wrote: "Our attorneys . . . will likely continue to insist upon a clandestine effort in order to keep nicotine the drug in low profile."[389]

By 1984, however, as the nicotine research progressed at Philip Morris, the attorneys grew increasingly concerned. One internal document, authored by the law firm of Shook, Hardy & Bacon, describes the shutdown of the Philip Morris Nicotine Program in 1984. The scientist mentioned in the following excerpt is Dr. Victor J. DeNoble, who researched nicotine and nicotine analogues at Philip Morris. The document states:

> In July 1984, Patrick Sirridge of Shook, Hardy & Bacon wrote to Philip Morris' Assistant General Counsel Fredric Newman transmitting an analysis of DeNoble's published literature, unpublished manuscripts, and in-press manuscripts . . . . The analysis concluded that "[r]esearch engaged in, as well as some possibly under consideration, by Philip Morris has undesirable and dangerous implications for litigation positions the industry takes in regard to smoking behavior . . . . In the final analysis, the performing and publishing of nicotine related research seems ill-advised from a litigation point of view . . . ."

387. *Id.* (emphasis added).
388. *Id.*
389. PM 1000127790.

> In the spring 1984, DeNoble was terminated and the Nicotine Program was discontinued. Although there were no internal documents found stating the reasons why DeNoble and his program were terminated, *it could be easily concluded that the unfavorable analysis of the program submitted by Philip Morris' legal counsel prompted DeNoble's termination and the program's cancellation.*[390]

This document notwithstanding, it is doubtful that Philip Morris eliminated all nicotine research from 1984 onwards. The properties of nicotine—the addictiveness of nicotine—are the foundation of the cigarette market. Thus, there is evidence of continuing nicotine research conducted by Philip Morris—including, most significantly, at INBIFO, the Philip Morris research facility in Germany.[391] Another document withheld on claims of privilege but eventually produced to plaintiffs notes that the "largest research area" at INBIFO was "PM USA product research."[392] As with documents produced earlier in the litigation, this document notes the benefits of offshore research. The document states:

> According to Tony, final reports on PM USA product research are sent to Richmond for a review and are then *returned to INBIFO. Supporting data and documents are kept at INBIFO.*
>
> . . . .
>
> Tony said that *most documentation is maintained on computers and much of it is written in German.*[393]

A number of the withheld documents relate to CTR—and tobacco industry lawyers' control over the scientific research of this supposedly independent organization. One document, for example, describes in detail the routing of "dangerous" research proposals through the law firm of Jacob, Medinger & Finnegan, longtime counsel to the tobacco industry. The document describes the procedure used during the period when William Hoyt was CTR president, as follows: "During William Hoyt's presidency, cases were not automatically assigned a number. All potential cases . . . which

390. PM 2021423422 (emphasis added).
391. *See, e.g.*, PM 2025988909; PM 2025988395.
392. *See* PM 2043725390.
393. PM 2043725390-91 (emphasis added).

were considered 'dangerous' were sent to Jacob, Medinger & Finnegan for a 'legal' opinion."[394]

Thus, certain proposals for research were sent first to lawyers, before the research proposals could be evaluated for funding by CTR's Scientific Advisory Board ("SAB"). After receiving the advice of counsel, many of the research proposals were apparently "treated as a case" and forwarded to the SAB.[395] Other proposals, however, "were apparently held indefinitely, not treated as a case, or a letter discouraging formal application was sent."[396] Research proposals which were "of greatest concern"[397] included:

- Inhalation studies . . . [with] Syrian hamsters.
- Investigation of the effects of prenatal nicotine exposure . . . in the rat.
- [Study of] . . . the effects of maternal smoking on the human reproductive process, taking special account of the differences between brand and composition of the cigarettes that are smoked.
- Study of nicotine and the central nervous system.
- Study of factors associated with human bone loss. Preliminary data suggested a relationship between certain smoking habits, bone loss and age.[398]

Other documents withheld on claims of privilege provide additional examples of the manipulation of CTR research. One document ultimately produced to plaintiffs is an annotated summary of numerous documents relating to CTR, and includes some of the following examples of what the "anticipated plaintiff position" might be.[399]

- We [the tobacco industry] 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

394. B&W 681879411.
395. B&W 681879412.
396. *Id.*
397. *Id.*
398. B&W 681879412-15.
399. B&W 681879417-19.

maintained.[400]

• CTR staff discussed, "the possible merit of having the three of us [Little, Hockett & Hoyt] screen all new applications *before* circulating them." The screening process allowed them to weed out potentially harmful grant applications.

• Beginning in 1958 CTR staff heavily solicited grantees. This focus was on getting the "right" kind of grantee—i.e., someone whose research would not harm the industry's position regarding smoking and health.

• As a result of this selection process, CTR reported that, in 1969 only 12% of the unsolicited grants were funded.[401]

• In 1969 CTR established a Planning Committee. This committee wrote and designed CTR projects and told investigators what to do. Grantees were to be "given specific assignments that are part of the overall attack on the problem." CTR grantees were no longer free to conduct their research. Instead their projects were so rigidly controlled by CTR there was no possibility that adverse smoking and health results could come to light.

. . . .

• At the 1970 Annual Meeting Dr. Little admitted that it did not matter whether it was a grant or contract because "C.T.R. *wrote*, designed, did everything 'but diaper the animals.'"[402]

• [R]emember that the cigarette companies in the U.S. have given the prime responsibility in the health area to their lawyers.[403]

Finally, the withheld documents also provide evidence of discussions of the potential for extensive and systematic destruction or alteration of documents. One document produced by BAT describes a high-level meeting held in 1986 to discuss the collection of internal documents in a "document review" and "discovery exercise" to prepare for "BATCO being involved in direct or indirect

400. B&W 682632038.
401. B&W 682632076.
402. B&W 682632079 (emphasis in original).
403. B&W 682632179-80.

legal action in the smoking and health arena."[404] British counsel intended to meet with U.S. lawyers—from Shook, Hardy & Bacon—to learn how similar document reviews had been conducted in the United States.[405] There also was a "discussion about the destruction of documents" at the BAT research center.[406] The document states:

> [N.B. Cannar of the BAT legal department] said that Mr. [Patrick] Sheehy [chairman of British-American Tobacco and BAT Industries] did not wish it to be seen that BATCO had instituted a destruction policy only when the possibility of their being involved in litigation became real and after they had instructed solicitors. Thus, it was decided that no destruction policy should be adopted, rather that *R&DC [Research & Development Centre] would tidy up the loose papers held by individuals, which "spring clean" could involve the destruction of documents such as previous drafts* . . . .
>
> . . . .
>
> It was agreed that such a "spring clean" of all of the loose papers held outside the official filing systems is essential to enable L.W.&K.'s "task force" to carry out stages I and III (the listing and reviewing of the files).[407]

Similarly, documents from RJR describe systematic efforts to cleanse its files—or "invalidate"—documents. One document is titled "Invalidation of Some Reports in the Research Department," and states:

> We do not foresee any difficulty in the event a decision is reached to remove certain reports from Research files. Once it becomes clear that such action is necessary for the successful defense of our present and future suits, we will promptly remove all such reports from our files.
>
> . . . .
>
> As to the reports which you are recommending be invalidated, we can cite misinterpretation of data as reason for invalidation. A further reason is that many of these

404. BAT 107443680.
405. *See* BAT 107443681.
406. BAT 107443682.
407. *Id.* (emphasis added).

are needless repetitions and are being removed to alleviate overcrowding of our files.

As an alternative to invalidation, we can have the authors rewrite those sections of the reports which appear objectionable.[408]

VI. CONCLUSION: THE IMPLICATIONS OF DOCUMENT DISCOVERY IN STATE OF MINNESOTA V. PHILIP MORRIS INCORPORATED

The lessons learned in the Minnesota discovery battle should prove valuable in the ongoing efforts to control and regulate this deadly industry. The documents disclosed in the last few years—the words of the industry itself—are the best proof of its fraud regarding: (1) what the industry knew—that smoking causes cancer; (2) when the industry knew it—in the 1950s; and (3) what the industry did about it—systematic denial and cover-up.

These documents are now available, in the Minnesota depository and on the Internet, for future trials in the United States and abroad, and for future tobacco control efforts through regulation and legislation. Hopefully, these documents can help guide future policy debate and legislative action.[409]

These documents—and the decades-long history of the tobacco litigation—also should aid professionals from multiple disciplines to conduct a careful review and analysis of how a renegade industry was able to escape accountability under our system of jurisprudence—with such disastrous consequences for the public health.

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408. RJR 500284499.

409. *See* Hurt & Robertson, *supra* note 94, at 1180 (arguing that documents uncovered in Minnesota litigation should preclude any liability limitations for industry); Koop, *supra* note 2, at 550 (arguing in early 1998 against any concessions to industry as "recent and growing disclosure of past tobacco industry misconduct and mendacity" now allows "[p]olicies once thought undoable").

This is Exhibit "C" referred to in the Affidavit of Monique E. Muggli sworn by Monique E. Muggli of the City of Minneapolis, in the State of Minnesota, United States of America, before me at the City of Toronto, in the Province of Ontario , on January 20, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (or as may be)

Katelin Zoe Parker, a Commissioner, etc.,
Province of Ontario, for Fogler, Rubinoff LLP,
Barristers and Solicitors. Expires April 23, 2026.

REVIEW

Open Doorway to Truth: Legacy of the Minnesota Tobacco Trial

RICHARD D. HURT, MD; JON O. EBBERT, MD; MONIQUE E. MUGGLI, MPH; NIKKI J. LOCKHART, JD; AND CHANNING R. ROBERTSON, PHD

More than a decade has passed since the conclusion of the Minnesota tobacco trial and the signing of the Master Settlement Agreement (MSA) by 46 US State Attorneys General and the US tobacco industry. The Minnesota settlement exposed the tobacco industry's long history of deceptive marketing, advertising, and research and ultimately forced the industry to change its business practices. The provisions for public document disclosure that were included in the Minnesota settlement and the MSA have resulted in the release of approximately 70 million pages of documents and nearly 20,000 other media materials. No comparable dynamic, voluminous, and contemporaneous document archive exists. Only a few single events in the history of public health have had as dramatic an effect on tobacco control as the public release of the tobacco industry's previously secret internal documents. This review highlights the genesis of the release of these documents, the history of the document depositories created by the Minnesota settlement, the scientific and policy output based on the documents, and the use of the documents in furthering global public health strategies.

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BAT = British American Tobacco; FCTC = Framework Convention on Tobacco Control; JAMA = *Journal of the American Medical Association*; LTDL = Legacy Tobacco Documents Library; MSA = Master Settlement Agreement; NCI = National Cancer Institute; PMI = Philip Morris International; RICO = Racketeer Influenced and Corrupt Organizations; TobReg = Study Group on Tobacco Control Regulation; TTC = transnational tobacco company; UCSF = University of California, San Francisco; WHO = World Health Organization

More than a decade has passed since Minnesota settled its litigation against the tobacco industry. The Minnesota settlement has been recognized as one of the most important public health events of the second half of the 20th century because it exposed the tobacco industry's long history of deceptive marketing, advertising, and research.[1] It has also been more than 10 years since the tobacco industry's individual settlements with the states of Mississippi (1997), Florida (1997), and Texas (1998) and since the signing of the Master Settlement Agreement (MSA) between 46 US State Attorneys General and the tobacco companies (1998). These agreements are the 5 largest settlements in the history of litigation.[2]

Before the Minnesota tobacco case, filed in 1994 by the Minnesota Attorney General and Blue Cross Blue Shield of Minnesota, successful litigation against the cigarette manufacturers had been almost universally unsuccessful. The "first wave" of suits from the 1950s to the 1970s were met by an industry that had adopted a "scorched earth" litigation strategy, outspending individual litigants by orders of magnitude while vehemently denying any association between their product and diseases such as lung cancer.[2] Through hundreds of cases between 1950 and 1970, the tobacco industry disclosed only a few thousand internal documents, thereby maintaining an impregnable wall of silence.[3] The first crack in this wall occurred during the "second wave" of tobacco litigation; this wave was marked by the 1983 Cipollone case, in which plaintiffs aggressively sought and received a small cache of damning documents.[4]

Other events converged in the mid-1990s to expose the tobacco industry's wrongdoing. In 1994, copies of internal documents from the Brown & Williamson Tobacco Corporation were leaked and were ultimately published in the *Journal of the American Medical Association* (*JAMA*) in 1995.[5] Although these documents were not numerous (4000 pages), they were selected because of their damning content and were sent anonymously to Stanton A. Glantz, PhD, a widely recognized tobacco control researcher. These documents became the basis not only for the articles in *JAMA* but also for the book *The Cigarette Papers*.[6] The publication of this book was a historic event and provided the deepest look inside the tobacco industry before the Minnesota litigation. In 1994, the US Food and Drug Administration, under the leadership of then-director David A. Kessler, MD, sought to regulate tobacco products by claiming not only that these products were drug delivery devices but also that the industry controlled and manipulated the form and quantity of nicotine contained within their products.[7] In addition, Jeffrey Wigand, PhD, a former vice president at Brown & Williamson, began to cooperate with the Food and Drug Administration and ultimately told his story on the television program *60 Minutes*.[8] The industry was further exposed in Congressional hearings chaired by Representative Henry Waxman (Democrat, California),

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The content is solely the responsibility of the authors and does not necessarily represent the official views of the National Cancer Institute.

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TABLE 1. **Summary of the US Tobacco Settlements**

Type of relief	Multistate settlement agreement	Minnesota	Texas	Mississippi	Florida
Monetary	Payments made to settling states in perpetuity, totaling approximately $206 billion through 2025	Settlement payments totaling $1.3 billion for years 1998-2003; annual payments of approximately $200 million beginning in 1998	$15 billion over 25 y; additional $2.3 billion through 2003 for indigent health care costs	$3.4 billion over 25 y	$11.3 billion
Injunctive/equitable					
Prohibits marketing of tobacco to children and opposition to proposals/ rules/legislation intended to reduce tobacco use by children	Yes	Yes	Yes	No	Yes
Prohibits opposition to legislation or rules governing tobacco control	Yes	Yes	No	No	No
Prohibits the support of legislation that would preempt, override, abrogate, or diminish settlement beneficiaries' rights/recoveries under the settlement agreement	Yes	Yes	No	No	No
Requires disclosure of information about lobbying payments likely to affect public policy	Yes	Yes	No	No	No
Restricts tobacco companies' marketing practices (eg, ban of billboard and transit advertising of tobacco products)	Yes	Yes	Yes	No	Yes
Bans payment for inclusion of tobacco product placement in any motion picture made in the United States	Yes	Yes	No	No	No
Restricts merchandising of products with tobacco brand names or logos	Yes	Yes	No	No	No
Forbids material misrepresentations regarding the health consequences of using tobacco products	Yes	Yes	No	No	No
Prohibits anticompetitive practices	Yes	Yes	No	No	No
Halts operations of The Council for Tobacco Research–U.S.A., Inc	Yes	Yes	No	No	No
Dissolves The Tobacco Institute, Inc., and Center for Indoor Air Research	Yes	No	No	No	No
Most-favored-nation clause	Yes	Yes	Yes	Yes	Yes

during which chief executives were forever immortalized on videotape as they swore before Congress and the American people that nicotine was not addictive.[9] All of these events were damaging to the tobacco industry, but even collectively their legacy does not compare with that of the Minnesota tobacco trial, which changed the tobacco control landscape forever.

Although the terms of the massive tobacco settlements included large monetary awards and unprecedented public health relief (Table 1), the legacy of the Minnesota trial is

TABLE 2. **Overview of Tobacco Document Sources**[a]

	Guildford depository	Minnesota depository	Internet
Legal instrument	Minnesota settlement: one-time deposit of materials produced to Minnesota plaintiffs	Minnesota settlement: tobacco defendants required to deposit materials in Minnesota within 30 days of production to the plaintiffs, provided defendants do not claim privilege over the documents or the records are not subject to any protective order	MSA: Tobacco defendants required to place materials online within 45 days of production to the plaintiffs, provided defendants do not claim privilege over the documents or the records are not subject to any protective order
Contents	British American Tobacco materials (documents, videotapes, audiotapes) up to circa 1995	Materials of all US-based defendants[b] (documents, videotapes, audiotapes, slides, DVDs, CDs, oversized materials, hard drives, other electronic storage media) up to circa 2003	All documents of US-based defendants[b] up to circa 2003 *Industry Web site* Tobacco Archives: www.tobaccoarchives.com *Main nonindustry Web sites* LTDL: http://legacy.library.ucsf.edu/ TDO: http://tobaccodocuments.org/
Estimated volume of materials	6-7 million pages of documents, 500 videotapes and audiotapes	60 million pages of documents, 20,000 other media materials (documents, videotapes, audiotapes, slides, DVDs, CDs, oversized materials, hard drives, other electronic storage media)	We were unable to verify estimates for document collections online. However, the online collections should contain what is deposited in Minnesota with the exception of other media collections, which are available only in Minnesota
Closing date[c]	At least until end of February 2009	At least until end of December 2008	June 30, 2010

[a] LTDL = Legacy Tobacco Documents Library; MSA = Master Settlement Agreement; TDO = Tobacco Documents Online.
[b] US-based defendants include Philip Morris USA, Inc (now Altria Group, Inc); R.J. Reynolds Tobacco Company (now Reynolds American, Inc); Brown & Williamson (now Reynolds American, Inc); Lorillard Tobacco Company; The Tobacco Institute, Inc (disbanded by the MSA); and The Council for Tobacco Research–U.S.A., Inc (disbanded by the Minnesota settlement and the MSA).
[c] Pending the outcome of the tobacco defendants' appeal of the final order in the United States' Racketeer Influenced and Corrupt Organizations case, which (among other things) established additional obligations for public document disclosure on the part of the tobacco defendants until September 2021.[11,12]

the public disclosure of millions of pages of previously secret internal documents from the tobacco industry and the continued disclosure of such documents produced during discovery in US smoking and health litigation from 1998 to 2008. For the first time in history, the Minnesota settlement also allowed public access to the files of UK tobacco giant British American Tobacco (BAT). The MSA also required large tobacco companies to maintain their letter-sized records on the Internet and to deposit any oversized or electronic media in Minnesota until June 2010. To date, these legal settlements have resulted in the release of approximately 70 million pages of documents, thousands of audiovisual files, and hundreds of other electronic media files. No other comparable dynamic, voluminous, and contemporaneous document archive exists. We would argue that the use of these documents in furthering public health goals based in science, policy, and litigation—the 3 fronts on which the tobacco industry had successfully escaped accountability for decades—has been nothing short of astounding.

The first peer-reviewed article based on tobacco companies' internal documents introduced during the Minnesota trial by the plaintiffs' witnesses was published 10 years ago in *JAMA*.[10] The article and the authors' testimony focused on nicotine addiction, pH manipulation, and low-tar/low-nicotine cigarettes. Since then, several hundred peer-reviewed articles have been published. We summarize the multiple legacies of the Minnesota trial and the MSA by highlighting the effect that these internal documents from the tobacco industry have had on tobacco control around the world.

CREATING "SKELETONS" IN THE CLOSET: THE DOCUMENT DEPOSITORIES

The terms of the Minnesota settlement provided for the creation of 2 publicly accessible document depositories: one in Minneapolis, MN (Minnesota depository) and the other in Guildford, England, near London (Guildford depository) (Table 2). The Minnesota depository contains materials from all defendants, whereas the Guildford depository contains only materials produced to the Minnesota plaintiffs from the defendant BAT.[13] At their sole expense, the settling tobacco industry defendants were obligated by the Minnesota settlement to allow public access to the litigation depositories for 10 years.[13] After the Guildford depository had been open to the public for only a year, BAT's public relations firm reported to the company that its depository was a "skeleton" in the company's closet,[14] in part because of the public airing of its internal documents relating to cigarette smuggling, price fixing, control of scientific research by attorneys, and political attacks against the World Health Organization (WHO).[15]

When the depositories were opened to the public in May 1998 (Minnesota) and February 1999 (Guildford), approximately 35 million pages of once-secret internal documents were available for public review.[3] Since the settlement in

1998, the number of pages of tobacco industry documents available for public review has nearly doubled because (1) the Minnesota settlement mandated that all of defendants' previously unproduced documents in any US civil smoking and health litigation during the following 10 years be placed into the Minnesota depository[13] and (2) the MSA required the settling tobacco defendants to place oversized and electronic media into the Minnesota depository.[16] In one case alone, the US Racketeer Influenced and Corrupt Organizations (RICO) case against the tobacco industry, *United States v Philip Morris USA, Inc., et al*, the tobacco defendants were forced to produce an additional 26 million pages of documents.[17]

The Minnesota depository currently houses approximately 60 million pages, and the Guildford depository, approximately 6 to 7 million pages. The Minnesota settlement, in combination with the terms of the MSA, has also made publicly available approximately 20,000 other media materials (audiotapes, videotapes, CDs, DVDs, slides, maps, oversized paper materials, microfilm, and external storage devices such as hard drives). Before the Minnesota litigation, US tobacco companies had produced only a relatively small number of documents during several decades of litigation, and BAT had never produced a single document in a smoking and health action.[3]

For decades, the tobacco industry had engaged in "scorched earth" litigation tactics aimed at building a nearly impregnable wall around the industry. Included in the industry's litigation tactics were abuses of the attorney-client privilege doctrine as a means of keeping scientific documents secret.[3] In Minnesota, the industry faced a brilliant legal team representing the State and a wise, no-nonsense veteran judge who held both sides accountable. In fact, we think that the courageous rulings of the judge, the Honorable Kenneth J. Fitzpatrick, resulted in revelations about this industry that no one could have anticipated.[18] Viewed in this context, the sheer volume and breadth of the documents and electronic media available for public review as a result of the Minnesota settlement and the MSA are staggering.

Although the Minnesota litigation resulted in previously unimaginable access to millions of tobacco industry records, substantial barriers have prevented public access to the depositories' contents during the past 10 years. Although the Minnesota depository was administered by an independent third-party paralegal firm,[19] BAT was allowed to manage the daily operations of the Guildford depository.[20] In doing so, the company violated the spirit of the Minnesota settlement, a fact documented by both the legislative and judicial branches of government and by journalists and academicians.[15,17,21-24] Operations at the Minnesota depository were also affected by BAT's conduct with respect to its obligations to make certain litigation documents publicly available. In 2006, Mayo Clinic sought legal relief for its research team from BAT's interference with document research conducted at the Minnesota depository. Mayo sought to compel BAT to produce documents that Mayo thought BAT was obligated to produce into the depository in accordance with the Minnesota settlement and to order BAT to cease interfering with Mayo investigators' use of and access to documents.[25] The court did not address the merits of Mayo's claim because it held that Mayo, which was not a party to the Minnesota litigation, did not have legal standing to enforce the Minnesota settlement.[26] Although the 10-year public access provision of the Minnesota settlement was an ingenious instrument for furthering the discovery of revelations regarding the industry's behavior, users of the depositories have ultimately been unable to seek relief from disruptions to research and issues related to document access at the depositories.[27]

Now that 10 years have passed, whether the depositories will close as stated in the Minnesota settlement or will remain open with the addition of new documents is unclear. The Minnesota settlement provided that the Minnesota depository would be in operation for 10 years from May 8, 1998,[13] and that the Guildford depository would be maintained for a period of 10 years after its opening on February 22, 1999.[13] Accordingly, the Minnesota depository was set to close on May 8, 2008, and the Guildford depository, on February 22, 2009. However, the final order in the RICO case against the tobacco industry requires that the defendants maintain the Minnesota and Guildford Depositories until September 2021.[11] Were that decision to be upheld, it would enforce the disclosure of contemporary documents about the tobacco industry's activity, especially because the "light" cigarette case ruling by the Supreme Court of the United States will undoubtedly result in the filing of new litigation against the industry. The tobacco defendants have appealed the case; oral arguments were heard by the United States Court of Appeals for the District of Columbia in October 2008.[12] A decision is expected in early 2009.

DIGITIZING THE DOCUMENTS

Tobacco Defendants Based in the United States

Although the Minnesota settlement required the tobacco defendants to deposit their hard-copy documents in depositories, the MSA obligated the settling tobacco parties to make their documents available online until June 30, 2010.[28] In effect, most of the documents produced by US-based defendants and placed into the Minnesota depository have also been posted on industry-created Web sites, with the exception of oversized and electronic materials that the MSA requires to be deposited in Minnesota.[16]

The tobacco industry's Web sites, developed under the MSA,[29] were initially perhaps easier to search than were the hard-copy documents at the depositories[30]; however, these electronic files have proved to be difficult to use because of impaired search functions, inconsistencies between the tobacco entities' Web sites, and inaccessibility to images. Furthermore, tobacco industry Web sites allow their managers to track user searches.[27] In response to the limited search capability of tobacco industry sites, the research community sought to make tobacco document images more accessible and useable and to create permanent images on the Internet. After the MSA required the settling tobacco defendants to provide the National Association of Attorneys General with a "snapshot" of each of their Web sites in July 1999,[29] the images were available to the research community, which devised other means of enhancing document access.

Computer programs called *spiders* have been used to identify images and indexing information on the tobacco defendants' Web sites. These programs allow the ongoing collection of documents as defendants add new documents to their Web sites in response to litigation. Beginning in 1999, Tobacco Documents Online (http://tobaccodocuments.org/) standardized the available document descriptions to allow for uniform searching and offered previously unavailable and invaluable searching tools such as full-text searching (made possible by optical character recognition, or OCR, which converts images into text) and the ability to systematically collect and annotate documents.[31] Before the availability of Tobacco Documents Online's enhanced search tools, researchers could not conduct full-text searches and instead had to rely on the indexed fields that were coded for each document (eg, author, title, date).

Similarly, the University of California, San Francisco (UCSF) Library, which had already been posting internal documents from the tobacco industry on the Web,[32] began offering researchers more user-friendly options for searching the documents than those provided by the industry sites. In 2002, UCSF, supported by a $10-million grant from the American Legacy Foundation, launched the Legacy Tobacco Documents Library (LTDL), which allows comprehensive, user-friendly, full-text searching. In addition to offering enhanced searching tools, LTDL will remain a permanent online collection.[33] Additional collections of tobacco company documents are also available online.[34,35]

British American Tobacco

Because BAT was not a party to the MSA's requirement of online production of documents, digitizing the documents produced by BAT has been challenging.[15] After almost 8 years of efforts by researchers and staff from the London School of Hygiene and Tropical Medicine, Mayo Clinic, and UCSF, with expenditures of $3.6 million, 6 to 7 million pages of BAT documents from both depositories were digitized and made publicly accessible at LTDL.[36] Although the expenditures for document acquisition and accessibility by the public health community have been substantial, they pale in comparison to what the tobacco industry has probably spent on operations aimed at managing internal documents. For example, at the time of the Minnesota litigation, one of the tobacco defendants alone, R.J. Reynolds Tobacco Company, disclosed to the Minnesota plaintiffs' lawyers that it had spent $90 million to create its document index.[37]

INFLUENCE OF THE TOBACCO DOCUMENTS

The response of the tobacco control community to the release of the documents has been profound. However, comprehensive document research would not have occurred without the availability of mechanisms for researching and disseminating the findings from the documents on their public release in Minnesota.

Faced with a treasure trove of documents previously hidden from public view but in an inaccessible format, in 1998 US President Bill Clinton issued an executive memorandum mandating that the Department of Health and Human Services address the issue of how to make the documents more accessible and how to expose relevant content.[38,39] The Department turned to the National Cancer Institute (NCI), which issued a Request For Proposals from the scientific community.[40] Since 1999, NCI's initiative has resulted in 17 peer-reviewed research grants with a total expenditure of $23.2 million (Michele Bloch, MD, PhD, Medical Officer, Tobacco Control Research Branch, Behavioral Research Program, NCI, written communication, June 2008).

During the past 10 years, more than 500 publications (453 peer-reviewed journal articles, 32 books or book chapters, and 51 reports) relating to the tobacco documents[41] have been published across diverse disciplines. The topics of these publications can be categorized as follows: industry science and ethics, secondhand smoke, industry strategy and tactics, ingredients and product design, litigation, marketing, regional issues, economics, youth-related activities, and document research and commentary.[41] Examples from nearly every aspect of the tobacco industry's operations have been reported. Publicity surrounding these publications has undoubtedly influenced public opinion about the unscrupulous behavior of the tobacco industry and has furthered health policy goals, in part by denormalizing smoking as an acceptable behavior and discrediting the tobacco industry as a stakeholder in health policy.[42,43] In addition to academic publications, the release of the tobacco documents has generated several seminal public health reports from the WHO and its regional offices[2,44-46] and from civil society organizations.[47,48]

Although the impact of the Minnesota litigation has seemingly been centered in the United States, acknowledgment of its impact on tobacco control throughout the world is growing. There is general agreement that many of the advances in tobacco control during the past 10 years have their roots in Minnesota. Although public disclosure of tobacco documents is a creation of US litigation, many tobacco industry defendants are transnational companies. Consequently, the public release of the documents has had a global impact. The release of correspondence between parent companies and foreign subsidiaries has allowed a glimpse into the operations of transnational tobacco companies (TTCs). Accordingly, tobacco control advocates, researchers, and litigants working outside the United States have made extensive use of the documents to support their own health policy efforts.

Although the following is not a comprehensive accounting of the extraordinary efforts of the global tobacco control community, we offer a few examples of individuals and organizations that have used the documents to effect health policy change outside the United States. In 2007, Pascal A. Diethelm, president of the Swiss antismoking group OxyRomandie and vice president of the National Committee Against Smoking, France was given the 2007 International Tobacco Industry Document Research and Advocacy Award for using the documents to reveal the consulting relationship between Philip Morris International (PMI) and a researcher at the University of Geneva, Ragnar Rylander.[49] Rylander did not disclose his ties to the tobacco industry in his publications on secondhand smoke. Once this became known through the documents, the University rebuked him and also adopted a policy of no longer allowing its scientists to accept tobacco industry funding. In the statement announcing this policy, the University noted that "The huge mass of tobacco industry documents that has been made public as a result of judgements pronounced by American tribunals against this industry shows that these companies have attempted to manipulate public opinion for decades, and that the targeted recruitment of a large number of scientists has been a privileged instrument of this disinformation plot." In Nigeria, Akinbode Oluwafemi, on behalf of Environmental Rights Action/Friends of the Earth Nigeria, searched and used the documents to support the April 2007 lawsuit filed by the Lagos State Government in conjunction with Environmental Rights Action seeking legal relief from the industry's efforts to target young people.[50] In Finland, Heikki Hilamo has used the documents to produce extensive peer-reviewed publications and books in English and Finnish on topics such as product liability and industry interference with tobacco control.[41] In 2003, Professor Gérard Dubois[51] of France published a landmark document exposing the tobacco industry's playbook.

The use of documents by individuals and organizations working to effect policy in their own countries has also occurred in Brazil,[52] Indonesia,[53] and Austria.[54] Furthermore, civil society organizations have used the documents in advocacy efforts to combat the tobacco industry's influence across the globe.[47,55-57] Researchers from approximately 70 countries have published regional tobacco document analyses.[58] Efforts from the $500-million multipronged tobacco control campaign, which is funded by New York Mayor Michael Bloomberg[59] and the Bill and Melinda Gates Foundation[60] and which focuses on reducing the prevalence of smoking in low- and middle-income countries, have relied on revelations from tobacco documents. For example, the global tobacco control campaign funded by the Bloomberg Initiative (WHO's MPOWER package [**m**onitor tobacco use and prevention policies; **p**rotect people from tobacco smoke; **o**ffer help to quit tobacco use; **w**arn about the dangers of tobacco; **e**nforce bans on tobacco advertising, promotion and sponsorship; and **r**aise taxes on tobacco]) highlights documents produced to Minnesota plaintiffs and addresses the importance of revealing tobacco industry tactics.[61] Had it not been for the Minnesota litigation and the subsequent release of documents, only a small fraction of these events would have taken place in the past decade.

TOBACCO DOCUMENTS AND THE WHO

Document disclosures resulting from the Minnesota litigation have had an extraordinary influence on the global regulation of the TTCs under the leadership of the WHO. In the late 1990s, former WHO Director General Gro Harlem Brundtland launched a landmark inquiry into the tobacco industry's efforts to undermine global tobacco control, as evidenced by tobacco documents made public in Minnesota.[44] The 2000 WHO expert report concluded:

> At the most fundamental level, this inquiry confirms that tobacco use is unlike other threats to global health. Infectious diseases do not employ multinational public relations firms. There are no front groups to promote the spread of cholera. Mosquitoes have no lobbyists. The evidence presented here suggests that tobacco is a case unto itself, and that reversing its burden on global health will be not only about understanding addiction and curing disease, but, just as importantly, about overcoming a determined and powerful industry.[44]

The WHO's regional offices also directed substantial resources into mining the tobacco documents that were made public in Minnesota.[58]

In direct response to the WHO inquiry, the 54th World Health Assembly (WHA) passed resolution *WHA54.18 Transparency in Tobacco Control*[62] in 2001. This resolution urges WHO member states to monitor and to inform its membership about industry affiliations with its member-

ship, as well as to communicate information about identified efforts of the industry to subvert health policy.[62] As stated by the WHO, the documents were instrumental in developing the WHO Framework Convention on Tobacco Control (FCTC)[63]:

> The tobacco industry made a big strategic mistake in Minnesota that is reverberating around the world.…[The Minnesota plaintiffs'] plan was to bury the industry in its own documents by forcing disclosure of the truth about what the industry knew, when they knew it, and what they did to hide the truth from the public. The Minnesota team doggedly pursued the industry documents (including several trips to the US Supreme Court) and eventually forced the industry to turn over the material Minnesota needed to make its case.…*Today, the WHO Tobacco Free Initiative is using these documents to help develop the Framework Convention on Tobacco Control as well as national tobacco control efforts around the world.* They are an invaluable resource and probably the most important and lasting result of the tobacco litigation in the United States. The truth will set us all free.[64] [Emphasis added]

WHO's comprehensive findings, based on its inspection of the tobacco documents, have proved invaluable in FCTC treaty negotiations. The disclosed documents could be shared with policy makers to inform them of the tobacco industry's efforts to circumvent health policies and to assist them in removing the industry as a stakeholder in the ratification process. Furthermore, in spite of the interference of the tobacco industry in the development of the FCTC,[65] several FCTC articles (Article 5.3, 12.C, and 20.4C) are designed to protect tobacco control initiatives from the tobacco industry's decades-long mission of subverting and obfuscating public health measures.[63]

Finally, to date, 161 countries are Parties to the FCTC. Several guidelines, which are aimed at assisting Parties in meeting their obligations under the treaty, have thus far been developed. As of this writing, the Conference of the Parties has adopted strong guidelines in Article 5.3 (protection of public health policy with respect to tobacco control from the commercial and other vested interests of the tobacco industry), Article 8 (protection from exposure to tobacco smoke), Article 11 (packaging and labeling), and Article 13 (advertising, promotion, and sponsorship).

Former Director General Brundtland also made the regulation of tobacco production a high priority for WHO by appointing the Scientific Advisory Committee on Tobacco Product Regulation. This committee was subsequently elevated to the status of a standing committee and in 2003 was renamed the WHO Study Group on Tobacco Control Regulation (TobReg). With its prominent status as a standing committee, the WHO TobReg is positioned to develop meaningful standards for tobacco product regulation around the world well into the future. These standards will have a substantial impact in developing countries that lack the expertise and resources to develop their own standards. Many TobReg members have been associated with the tobacco documents, including Channing Robertson, PhD, who was the second witness in the Minnesota trial. The TobReg issued its report, *The Scientific Basis of Tobacco Product Regulation*, in 2007.[66]

TOBACCO DOCUMENTS IN LEGISLATIVE AND PARLIAMENTARY INVESTIGATIONS

The internal documents of the tobacco industry have also been used in parliamentary and legislative hearings. In July 1999, the UK House of Commons Health Select Committee[24] reviewed documents made public by the Minnesota settlement, set forth nearly 60 recommendations for reducing the health burden of tobacco use, and urged the government to act on its recommendations.[24] In the United States, tobacco documents have informed policy makers about the TTCs' internal strategies regarding "reduced-risk" products. In the 2003 congressional investigation of "reduced-risk" tobacco products, documents produced to the Minnesota depository disclosed correspondence from a senior tobacco company researcher who opined that the technology did not and will not exist to manufacture a "reduced-risk" product (a cigarette low in tobacco-specific *N*-nitrosamines), even while members of the tobacco industry were simultaneously touting the potential health benefit of such products.[67]

LITIGATION

The publicly available internal corporate records of tobacco companies are also a valuable resource for litigation efforts. In particular, Minnesota's document discovery allowed access by every litigant in cases brought after the Minnesota settlement to 35 million pages of internal records and thousands of documents stripped of privilege by the Minnesota court through its application of the crime-fraud exception to the doctrine of privilege.[37] The importance of the Minnesota settlement has been so great that a description of the landscape of global tobacco control has suggested that, "quite simply, 'when the history of tobacco . . . is written, there is going to be before the Minnesota case and after the Minnesota case.'"[68]

The US case against the tobacco industry was extremely document-intensive, as noted by the court,[62] and may be "the largest piece of civil litigation ever brought."[69] In *United States v Philip Morris*, the government proved its case.[70] However, a 2005 decision of a Scottish court, *McTear v Imperial Tobacco Ltd*, determined that the defendant tobacco company was not liable for the death of the plaintiff (who had smoked 2 packs per day) from lung

cancer and that "there was no scientific proof of causation between the plaintiff's smoking and his death from lung cancer."[71] The plaintiff in *McTear* was denied legal aid and, as a result, lacked the financial resources that may have allowed her access in court to the sort of documents available to the plaintiffs in the Minnesota and RICO cases.[71] This contemporaneous example makes apparent the importance of plaintiffs' access to documents such as those made public by the Minnesota settlement. However, it should be pointed out that disclosure laws differ from one country to the next; for example, these laws are more restrictive in the United Kingdom and less restrictive in the United States. This is one aspect of the US legal system that makes litigation a far more powerful regulatory tool for promoting product safety than it may be in other countries.[43] Furthermore, the cost of failed suits in the United Kingdom falls to the plaintiff; this regulation discourages plaintiffs who are less well financed, even when they have a strong case.

Nonetheless, the documents have had, and probably will continue to have, a great impact on tobacco-regulation litigation throughout the world, as predicted by commentators after the initial release of these documents.[72] Within 2 years after the 1998 US tobacco settlements, tobacco litigation of some type had been filed in Australia, Bangladesh, Brazil, Canada, China, Finland, France, Germany, India, Ireland, Israel, Japan, the Marshall Islands, Norway, Oman, Pakistan, Peru, Poland, South Korea, Spain, Sri Lanka, Switzerland, Uganda, and the United Kingdom.[2] Currently, many cases are pending in countries other than the United States. In Brazil, for example, a case filed against PMI in 1995, *The Smoker Health Defense Association (ADESF) v Souza Cruz, S.A. and Philip Morris Marketing, S.A.*, was decided for the plaintiffs, but the appeal was pending as of December 2008.[70] The government of British Columbia brought suit against PMI in 2001, seeking recovery of past and future costs associated with a "tobacco related wrong."[73] The trial in that case, *British Columbia v Imperial Tobacco Ltd., et al*, is set to begin in September 2010.[73] In 2007, the Nigerian government filed a lawsuit for recovery of health care costs against BAT, PMI, and others, seeking US $22.9 billion in damages for costs incurred by treating their citizens for tobacco-related illnesses.[74] According to media coverage of the case:

> A lot of their case is based on documents found at the British American Tobacco Documents Archives. BAT was required to make their internal documents public after a lawsuit won by the American state of Minnesota. Now many of these documents are for public use online, maintained by the University of California, San Francisco, Mayo Clinic and London School of Hygiene and Tropical Medicine. In this archive there are documents in which BAT reveals that they were aware of the fact that few Nigerians know the health risks of cigarette smoking and, in fact, many Nigerians believe that smoking may even be healthy.[50]

Litigation against tobacco manufacturers is also currently pending in Israel, Spain, Columbia, Nigeria, Argentina, and Turkey.[73]

A final example of the influence of the tobacco documents released under the Minnesota settlement on other litigation is the recent 5-to-4 ruling by the US Supreme Court in *Altria Group, Inc. v Good*, which allows filings against tobacco manufacturers of cases that allege deceptive marketing of "light" and "low-tar" cigarettes.[75] The topic of "low-tar" or "light" cigarettes was central to the testimony of 1 of the authors of the current review (R.D.H.), and the industry's knowledge of the false health claims made about these products had not been previously entered into the public record. Had most members of the US Supreme Court agreed with the industry, the case would have ended the approximately 40 pending "light" cigarette cases and could have barred future cases involving deceptive health-related claims of any kind. As noted by legal scholars, "even the state lawsuits that resulted in the $246 billion Master Settlement Agreement 10 years ago would arguably have been barred" if the industry had prevailed at the Supreme Court.[76]

UNANTICIPATED DOCUMENT FINDINGS

Although a primary goal of the Minnesota litigation was "to expose the industry's decades-long campaign of deception by revealing the industry's secret research in smoking and health, addiction and nicotine manipulation,"[77] the documents revealed much more than the industry anticipated. The tobacco defendants' plan to overwhelm the Minnesota plaintiffs with truckloads of documents backfired, as reported by the WHO:

> The idea—what lawyers call "papering"—was to simply bury the relevant material in a lot of trash. They forgot that winters are long in Minnesota and did not realize that the Minnesota team would look through all the paper.…And while 99.9% of the material that the industry produced in Minnesota was irrelevant to the Minnesota trial, it had great relevance to other tobacco control issues…. Indeed, the documents reveal industry subversion of not only the scientific but also the political process all over the world.[63,64]

Documents released in Minnesota expanded public knowledge of information that had not been previously available to the public in existing sources. First, the documents, through reports published by journalists, researchers, and civil society organizations, paved the way for holding the companies accountable for their role in the global illicit tobacco trade and provided information that has proved crucial to the development of effective counterstrategies against this trade.[48,78-88] In 2008, for ex-

ample, Canada's largest cigarette manufacturers pleaded guilty to aiding and abetting tobacco smuggling and agreed to pay CanD$1.15 billion for defrauding the Canadian government of unpaid taxes. Also, in a different case, without admitting guilt and in return for dropping smuggling-related litigation against Philip Morris, the company agreed to pay US $1.25 billion to the European Commission, the executive branch of the European Union.[89] Article 15 of the WHO FCTC, the world's first public health treaty, makes provisions for measures aimed at combating the illicit tobacco trade. Parties to the FCTC are currently negotiating a supplementary treaty aimed at ending this practice.[65]

A second area highlighted by the Minnesota settlement was the extent to which lawyers concealed and destroyed documents. Although before the Minnesota case went to trial there had been glimpses of what the tobacco industry had been hiding in its files,[5,6,90-96] after more than 20 trial court orders and more than 5 appeals Minnesota's successful application of the crime-fraud exception to the attorney-client privilege and work-product doctrine resulted in the release of an additional 39,000 explosive documents.[39] These most secret documents, previously protected by attorney-client privilege, provided evidence of the industry's systematic destruction and concealment of information, including abuses of the attorney-client privilege doctrine.[97,98] The judge in *United States v Philip Morris, et al*, the Honorable Gladys Kessler, who found the major tobacco companies guilty of violating certain provisions of the RICO statute in August 2006,[99] summarized the tobacco industry's conduct related to suppression of information:

> The evidence is clear that on a significant number of occasions, Defendants did in fact suppress research and destroy documents to protect themselves and the industry….By destroying evidence, Defendants make it virtually impossible to know what materials existed prior to their destruction.[100]

Finally, in September 2008, the UK's Royal College of Physicians called for an end to smoking in the United Kingdom in 20 years, a call that would have been unfathomable just 10 years earlier.[101]

CONCLUSION

Few single events in the history of public health have had as dramatic an effect on global tobacco control as the public release of the tobacco industry's internal documents in the Minnesota tobacco trial and through the MSA. The tobacco industry's own words have reverberated through court rooms, public hearings, and media outlets across the globe, and this decade of truth has forever affected health policy worldwide. In fact, one of the legacies of the tobacco documents may be the end of cigarettes as a prevalent and legal commodity.

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This is Exhibit "D" referred to in the Affidavit of Monique E. Muggli sworn by Monique E. Muggli of the City of Minneapolis, in the State of Minnesota, United States of America, before me at the City of Toronto, in the Province of Ontario , on January 20, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (or as may be)

Katelin Zoe Parker, a Commissioner, etc.,
Province of Ontario, for Fogler, Rubinoff LLP,
Barristers and Solicitors. Expires April 23, 2026.

History

The Truth Tobacco Industry Documents archive (formerly known as the Legacy Tobacco Documents Library) was created in 2002 by the UCSF Library. The archive was built to house and provide permanent access to tobacco industry internal corporate documents produced during litigation between US States and the seven major tobacco industry organizations and other sources. These internal documents give a view into the workings of one of the largest and most influential industries in the United States.

See Litigation Documents for more information on these lawsuits including links to legal documents.

The Truth Tobacco Industry Documents collection was established with funding from the American Legacy Foundation (now Truth Initiative).

Brown & Williamson Documents Leaked

The genesis of the project began in 1994 when a few thousand pages of confidential, internal documents from the Brown & Williamson Tobacco Corporation were copied and leaked by an anonymous whistleblower. One of these document sets, containing scientific studies on nicotine's addictive nature and other health effects of tobacco smoke, was sent to UCSF professor Dr. Stanton Glantz.

Dr. Glantz gave the documents to the UCSF Library so others could review them. Brown & Williamson tried to remove the material from the Library with a lawsuit, but the Court ruled in favor of the public's "right to know." Brown & Williamson appealed that decision but the California Supreme Court rejected their appeal which allowed UCSF to provide access to the documents. The documents were released, first in the Archives reading room, then on a DVD, and eventually became available on the UCSF Library website.

The Minnesota Case Against the Tobacco Companies

In 1994, the Attorneys General of four States -- Mississippi, Minnesota, Florida, and Texas -- separately filed lawsuits against the tobacco industry for reimbursement of health care expenditures arising from tobacco-related illnesses. During the course of this litigation, the rest of the States joined in similar legal actions. In 1998, the state of Minnesota settled with the five major US tobacco companies: Philip Morris, R. J. Reynolds, Lorillard, Brown & Williamson, and the American Tobacco Company; the British American Tobacco company; and the two tobacco industry associations – the Tobacco Institute and the Center for Tobacco Research. One of the provisions of the Minnesota settlement was the creation of two depositories into which the companies had to place the millions of documents produced in the case. British American Tobacco's depository in Guildford, England, and the US companies' Minneapolis, Minnesota depository were created and required to remain open to the public for ten years. See Litigation Documents for more information on this lawsuit including links to legal documents.

The Master Settlement Agreement (MSA)

In 1998, 46 attorneys general signed the MSA with the major tobacco companies in the US. Florida, Minnesota, Mississippi, and Texas had settled prior to the MSA and are not signatories to the MSA. The MSA settled the remaining lawsuits by requiring yearly payments by the tobacco companies to the States and placing restrictions on advertising, marketing, and promotion of cigarettes, including prohibiting the use of cartoons and other youth-targeting methods, advertising on billboards or in public transportation, and merchandise branding. As part of the MSA, the companies were ordered to publish their internal documents produced for the cases on their own document websites as well as place them in the Minnesota depository. The multi-national tobacco company, British American Tobacco, was not a party to the MSA and therefore was not required to create a document website but under the Minnesota settlement, has to maintain the Guildford depository, set to close in 2015. See Litigation Documents for more information on this lawsuit including links to legal documents.

British American Tobacco (BAT) Documents

British American Tobacco Company, BAT (U.K. & Export) Limited, and B.A.T. Industries P.L.C., collectively known as BAT, were among the seven tobacco manufacturers that Minnesota Attorney General Hubert Humphrey III, Minnesota Blue Cross and Blue Shield of Minnesota sued in 1994 to recover smoking-related medical costs. The Minnesota settlement forced BAT to put its documents in a depository located near Guildford, England, just outside of London. However, the settlement was vague on the precise terms of public access for the documents at the depository. As a result, unlike the U.S. tobacco companies, the responsibility for making the documents public was left entirely open to BAT's interpretation and BAT was allowed to directly manage and operate the depository.

In addition, the Master Settlement Agreement did not require BAT to post its documents on the Internet, leaving the Guildford Depository as the only point of access. Difficulties in searching, accessing, and copying the BAT documents were rampant, and tobacco control advocates around the world began posting small collections of the materials they had been able to obtain on the web, to enable others to use them. However, these small sets were widely scattered, not indexed in a consistent manner, and represented only a small proportion of the total Guildford Depository collection (around 5%), thus limiting the usefulness of this effort.

Recognizing the value of a centralized, consistently indexed archive, in late 1999 Celia White of the UCSF Library, working with Dr. Glantz, began to contact groups around the world who had procured documents from the Guildford Depository with the idea of creating an integrated and professionally indexed collection at the UCSF Library. The resultant database, previously known as BATCo, included Guildford Depository documents provided by Health Canada, the British Columbia Ministry of Health, and the American Heart Association. This collaboration grew to include key partners at the London School of Hygiene and Tropical Medicine (LSHTM), who obtained a £1 million grant from the Wellcome Trust, and leaders from The Mayo Clinic. $1 million in funding was also provided by the Flight Attendant Medical Research Institute (FAMRI) with further support from Cancer Research UK. This collective team, known as the Guildford Archiving Project (GAP), succeeded in collecting, digitizing, and preserving over 1.6 million BAT documents, which are now freely available through the UCSF Library. For more details about this complex project please see the British American Tobacco Records collection page.

Funding

The initial funding to digitize the tobacco documents came from the California Tobacco-Related Diseases Research Program, the National Cancer Institute, and the Centers for Disease Control and Prevention.

Later, the MSA provisions created and currently fund Truth Initiative (formerly known as the American Legacy Foundation), an organization dedicated to speaking, seeking and spreading the truth about tobacco through education, tobacco control research and policy studies, and community activism and engagement. Truth Initiative in turn funded the creation and maintenance of the Legacy Tobacco Documents Library, now known as the Truth Tobacco Industry Documents Library. Initially, 40 million pages of documents were provided by the tobacco companies to the National Association of Attorneys General which, in turn, gave them to the UCSF Library to seed the first version of the archive. Since that time, UCSF has collected documents directly from the industry document websites and has added collections of documents from other sources.

In 2002, the Flight Attendants Medical Research Institute gave the UCSF Library a grant to obtain copies of all British American Tobacco documents in the Guildford Depository and create a publicly available digital library. Working in collaboration with the London School of Hygiene and Tropical Medicine, who were funded by the Wellcome Trust for this project, the documents in the resulting resource, the British American Tobacco Document Archive, were added in 2008. More information about this effort can be found here.

The UCSF Academic Senate also provided funding to upgrade the servers.

The Racketeer Influenced Corrupt Organization (RICO) Case

In 2006, US District Judge Gladys Kessler ruled in a civil lawsuit brought by the Department of Justice (US vs. Philip Morris, et al.) that the nation's top tobacco companies violated the RICO Act, misleading the public for years about the health hazards of smoking. As a result of this case, the companies are now obliged to make publicly available any documents produced for litigation on smoking and health until 2021. The Truth Tobacco Industry Documents archive will continue to acquire documents directly from the industry websites, as well as other avenues, and make them available to the public in a permanent and stable environment. See Litigation Documents for more information on this lawsuit including links to legal documents.

This is Exhibit "E" referred to in the Affidavit of Monique E. Muggli sworn by Monique E. Muggli of the City of Minneapolis, in the State of Minnesota, United States of America, before me at the City of Toronto, in the Province of Ontario , on January 20, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (or as may be)

Katelin Zoe Parker, a Commissioner, etc.,
Province of Ontario, for Fogler, Rubinoff LLP,
Barristers and Solicitors. Expires April 23, 2026.

Transparency as a remedy against racketeering: preventing and restraining fraud by exposing Big Tobacco's dirty secrets

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ABSTRACT

The 1990s state litigation that resulted in the tobacco industry's initial document disclosure obligations fully expired in 2010. These obligations have been extended and enhanced until 2021 through a federal lawsuit against the tobacco industry over violations of the Racketeer Influenced Corrupt Organizations Act (RICO). In this special communication, we summarise and explain the new legal framework and enhanced document disclosure obligations of the major US tobacco companies. We describe the events leading up to these new requirements, including the tobacco companies' failed attempt to close the Minnesota Tobacco Document Depository, the release of 100 000 documents onto the companies' document websites discovered to have been publicly available at the Minnesota Tobacco Document Depository but not online, and the addition of over 2300 documents to those websites, which are also now publicly available at Minnesota after being secured for years in a separate, non-public storage room at the Minnesota Tobacco Document Depository. We also detail the document indexing enhancements and redesign of the University of California, San Francisco's Legacy Tobacco Documents Library website, made possible by the RICO litigation, and which is anticipated to be released in September 2014. Last, we highlight the public health community's continued opportunity to expose the US tobacco industry's efforts to undermine public health through these new search enhancements and improved document accessibility and due to the continuously growing document collection until at least 2021.

INTRODUCTION

One of the most important legacies of the decades-long litigation against the major US and UK tobacco companies is the millions of pages of internal corporate records primarily available at the Minnesota Tobacco Document Depository (Minnesota Depository) and at British American Tobacco's (BAT) document archive in England (Guildford Depository) as well as on the internet (table 1). Findings, commentary and research methodologies about these materials have been well documented.[1]

The 1990s state litigation that resulted in settlements in Minnesota[2] and nationally via the Master Settlement Agreement (MSA)[3] led to the tobacco companies' initial document disclosure obligations which began in 1998 and expired in 2008 and 2010, respectively.[4] However, these obligations have now been extended and enhanced with additional transparency measures until 1 September 2021 through a federal lawsuit, filed by the USA in 1999, over the tobacco companies' civil violations of the Racketeer Influenced Corrupt Organizations Act (RICO). We summarise and describe the RICO defendants' new and enhanced document disclosure obligations and the events in the litigation leading up to these new requirements.

METHODS

Public filings and judicial orders or opinions from the USA District Court for the District of Columbia were reviewed. University of California, San Francisco—Legacy Tobacco Documents Library's (LTDL) Tobacco Documents Bibliography[1] was consulted for recent tobacco document research scholarship.

RESULTS

US racketeering-based litigation against the tobacco industry

In 1999, the USA sued the major US-based and UK-based cigarette manufacturers for deliberately deceiving the American public about the risks and dangers of cigarette smoking, including exposure to tobacco smoke, in violation of RICO.[5] After many years of litigation, in 2006, the Honourable Gladys Kessler of the US District Court for the District of Columbia released her ground-breaking decision, finding that the cigarette companies had engaged in a decades-long conspiracy, in violation of RICO, to defraud the public about: (1) the adverse health effects of smoking and exposure to secondhand tobacco smoke; (2) the addictiveness of nicotine and their manipulation of nicotine levels and (3) the health benefits of their 'low tar' brands. Judge Kessler further found that the major tobacco companies were likely to continue their unlawful behaviour, and crafted equitable relief designed to 'prevent and restrain' those future violations, as authorised under RICO.[6] These remedies[7] include a requirement to *continue* to publicly disclose (non-privileged and non-confidential) internal documents produced in US-based smoking and health litigation for 15 years until 1 September 2021.[6 8] In a 2011 ruling, the Court held that BAT was not subject to the Court's jurisdiction under the RICO Act, so the Court's Final Order does not cover BAT.[9]

Implementation of the racketeering case Final Order

The Defendants sought to stop implementation of Judge Kessler's Final Order through the appeals process—including failed efforts to obtain a hearing before the US Supreme Court—that lasted almost 4 years. Ultimately, almost all of Judge Kessler's liability findings and remedies were

Table 1 Current information for accessing the tobacco company documents

Minnesota Tobacco Document Depository	Phone: (612) 378-5707 Address: 1045 Westgate Drive, Suite 40, Minneapolis, MN 55114, USA
British American Tobacco document depository	Phone: (44) 148-346-4300 Address: Unit 3A, Opus Business Park, Moorfield Road, Slyfield, Guildford GU1 1SZ, UK
University of California, San Francisco—Legacy Tobacco Documents Library	http://legacy.library.ucsf.edu
Court-ordered tobacco company document websites	
Philip Morris USA, Inc	http://www.pmdocs.com/
R.J. Reynolds Tobacco Company, American Tobacco and Brown & Williamson	http://www.rjrtdocs.com/rjrtdocs//index.wmt?tab=home
Lorillard Tobacco Company	http://www.lorillarddocs.com/public/index.wmt?tab=home
The Council for Tobacco Research USA, Inc	http://www.ctr-usa.org/ctr/index.wmt?tab=home&tab=home
The Tobacco Institute	http://www.tobaccoinstitute.com/

upheld, including all the document disclosure obligations.[10]

The Defendants' document disclosure obligations under the MSA and the Minnesota Settlement were set to expire during that appeal period, and because the Final Order was not being implemented during the appeal, the Defendants would have been free to stop complying. To avoid that outcome, the USA and Public Health Intervenors (Intervenors; table 2) obtained Defendants' commitment to *continue* these disclosures pending resolution of the appeals.[11]

There was only one issue that Judge Kessler ruled should be further considered under her Final Order: coding or indexing obligations for material uploaded to the Defendants' document websites. As discussed below, the subsequent mediation on this issue led to several additional disclosure-related obligations.

Minnesota Depository

Defendants' failed attempt to close the Minnesota Depository results in the online release of 100 000 documents

Judge Kessler asserted jurisdiction over the Minnesota Depository, which had been under the jurisdiction of a Minnesota court, on 15 September 2011.[12] In March 2011, the Defendants sought to close the Minnesota Depository.[13] The Defendants argued that they would upgrade their company document websites to make available non-standard media in digitised format, thereby, they asserted, making the separate depository in Minnesota—containing a hard copy of everything on the websites—unnecessary.[13] Electronic media and oversized documents, such as electronic data and larger than 8.5″×11″ standard paper size, have been historically made available to the public at the Minnesota Depository and not at the court-ordered tobacco company document websites created under the MSA. Additionally, the Defendants argued that the Depository was rarely used because it is inconveniently located (particularly as compared with the Defendants' websites, available to anyone with an internet connection) and costly to maintain—citing that the Defendants jointly pay US1 000 000 annually to maintain it.[14] Finally, while the Defendants recognised that there were some discrepancies between documents physically housed at the Minnesota Depository and those on their websites, they argued that those would soon be resolved entirely. In short, they argued that "[t]he Minnesota Depository ha[d] run its course."[15]

Table 2 The Public Health Intervenors in the USA's racketeering case against the tobacco industry

The Intervenors are the following six public health groups that obtained party status through a legal procedure allowing them to join the case after the USA dramatically lowered the level of funding it was seeking for certain remedies, such as smoker cessation and counter-marketing	
American Cancer Society	American Lung Association
Americans for Nonsmokers' Rights	National African American Tobacco Prevention Network
American Heart Association	Tobacco-Free Kids Action Fund

The USA explained that allowing the Minnesota Depository to close would remove "a valuable resource that has directly led to important discoveries about Defendants' past frauds and deceptions" and "the only check on the accuracy and completeness of the documents that Defendants post to their document websites…leaving Defendants wholly on their own to police… whatever documents they chose to post."[16]

In fact, after comparing the 4(b) Index at the Minnesota Depository, which is the electronic catalogue of documents housed at the Minnesota Depository, with the indices from the Defendants' websites, LTDL staff discovered that over 100 000 *documents housed at the Minnesota Depository were not available on the defendants' websites*.[17] The USA informed the Court that documents listed on the 4(b) Index and publicly available in hard copy at Minnesota were not on Defendants' document websites.[18] The USA also pointed out that if a document went missing from the Defendants' websites, it could only be obtained through the Minnesota Depository.[19] Last, despite the Defendants' claims that the Minnesota Depository is rarely used,[20 21] the USA noted that from May 2008, when the Minnesota Depository would have closed under the terms of the Minnesota settlement, to March 2011, over 350 unique requests for documents or other information were received by the Minnesota Depository staff.[22]

Both the USA and Intervenors[23] relied extensively on declarations made by long-time tobacco control researchers, lawyers and advocates who used the Minnesota Depository to find evidence detailing the tobacco industry's 'fraud, deception and subterfuge' in their publications[24–30] They explained that hard copy searches of documents were critical in researching their published works for many reasons, including the value of serendipitous findings in a box of documents that would be completely unrelated to any electronic search term inputted into a database and the increased ease of contextualising documents among related people, entities and subject matters, among other findings. These individuals also highlighted the types of materials housed *only* within the Minnesota Depository, such as three-dimensional trial exhibits, volumes of microfilm, slides, reel-to-reel tapes, audio and video recordings, and separate hard drives or databases. In addition to the unique resources and searching methodologies available at the Minnesota Depository, it is currently estimated to house over 25 000 boxes of documents or approximately 55–60 million pages (up from about 26 million pages in late 1998[31]; Minnesota Tobacco Document Depository, personal communication, April 2014).

In response to the Plaintiffs' arguments, the Defendants withdrew their request to close the Minnesota Depository, acknowledging that, among other things, over 100 000 documents discovered by LTDL staff were not on their own websites.[32]

Documents kept from public view for years at the Minnesota Depository are ordered to be released for public inspection

In December 2011, Judge Kessler stated that "there is some degree of confusion and uncertainty about the proper" handling of certain documents at the Minnesota Depository.[33] The Depository has a Secured Documents Room (SDR) on the premises, containing records not available for public review. Under the Minnesota Settlement, the Defendants had the authority to review documents available to the public and move them to the SDR for various reasons, including that, in the Defendants' view, they should not have been produced to the Minnesota Depository in the first place or were otherwise privileged or confidential.

Explaining that "[w]hen removals are not handled properly, the public suffers because the removed documents are no longer available for public inspection," Judge Kessler directed that "no Defendant shall remove any documents from the population available to the public at the Depository until further Order of the Court."[34] Subsequently, Judge Kessler directed the Defendants to correct all errors and discrepancies concerning their document and index productions, and that any future errors must be corrected within 30 days.[35] She further directed that by June 2012, each Defendant needed to file a Privilege Log identifying "each document that was at one time submitted to be part of the publicly available population but which has subsequently been removed by Defendants as privileged or for any other reason," and, for each such document, "whether proper removal procedures were followed…"[35]

In June 2012, and in compliance with Judge Kessler's Order, each Defendant filed information and Privilege Logs explaining which documents had been moved from public access to the SDR.[36–38] The information showed that more than 3000 documents had been moved.

The Parties subsequently developed a procedure to allow the USA or Intervenors to challenge whether these documents belonged in the public domain.[39] As of the end of 2013, Plaintiffs had completed this process with all Defendants but Lorillard.[40] Although the process is continuing, thus far, over 2300 documents have been returned to public access at the Minnesota Depository and at Defendants' tobacco document websites.

Tobacco company document websites

As previously noted, Judge Kessler decided there should be further consideration of the Defendants' document website coding obligations. After the nearly 4-year appeals process was over, she directed the Parties into mediation to seek to resolve that issue.

As a result, in December 2011 the Parties submitted two joint proposed Consent Orders, subsequently approved by the Court,[41 42] modifying the Defendants' document disclosure and website coding obligations. Under the Orders, the Defendants are required, among other things, to (1) pay US$6.9 million over 4 years to the Court, which then disburses the payments to University of California San Francisco (UCSF) to improve access to and functionality of LTDL; and (2) follow certain technical requirements for coding and posting documents to their existing tobacco document websites. In exchange for these commitments, the Consent Orders excuse the Defendants from coding the 'person mentioned', 'organisation mentioned' and 'brand mentioned' fields when posting documents on their websites.

Current document coding and posting obligations on the Defendants' document websites

Under the Consent Orders, the Defendants will continue to code many of the fields that they were required to under prior MSA obligations, as well as some new fields and are required to follow a new timeline for document disclosure to the public (table 3). Taken together, these measures allow the public to better track documents being produced in litigation and to determine whether the Defendants are meeting their transparency obligations.

Challenges to redactions on publicly available documents

Defendants are allowed to redact (remove information by covering it with a box or highlighting making the original text unreadable) personal confidential information such as personal email addresses and phone numbers of tobacco company employees, or families and names where the document also links the named person to certain kinds of information (eg, sexual orientation, medical information). However, under the Consent Orders, the USA and Intervenors may request that certain personal confidential redactions be lifted where they are broader than the limited list of allowable redactions. To facilitate that process, LTDL provides a link where users can get assistance in inquiring whether a redaction can be lifted.[43]

Court fund to improve public access to the documents

The Consent Orders require the Defendants to provide $6.9 million to the Court, which disburses the funds to UCSF to improve public access to the documents via LTDL. The funds will pay for enhancing the indexing of newly added documents, specifically by adding the names of people, organisations and brands mentioned in the documents. Additionally, they will be used to help redesign LTDL's infrastructure (search and retrieval software tools) and its interface, which is expected to be released in September 2014 (box 1).

Last, under the Consent Orders, the Defendants must consult with LTDL staff, at LTDL's request, in an effort to resolve technical issues. This is the first time that the tobacco companies are required to designate a person with sufficient authority to whom issues about document access could be brought. In the past 2 years, consultations were held on missing documents, incorrect metadata and index formatting problems and were generally resolved to the satisfaction of LTDL staff.

Table 3 New Timeline for Defendants document disclosure to the public

Number of days from the date a document is produced to plaintiffs in US-based smoking and health-related litigation	Defendant's obligation
14	Post electronic indices on their websites identifying specific documents by bates number, litigation action, the date on which it was produced to plaintiffs, and whether the document is subject to an internal review for confidential information such as trade secret or personal confidential information
45	Post documents on their websites and deposit them at the Minnesota Depository
90	Post documents subject to a confidentiality review on their websites and at the Minnesota Depository

Box 1 Enhancements on the Legacy Tobacco Documents Library (LTDL) redesigned site expected to be released in September 2014

- Enhanced search and retrieval software tools on LTDL.
- Log-in option allowing repeat users to save citations, search history and edit preferences (eg, how many results to display, sorting options, preferred citation format).
- Faceted searches giving users the option to filter results by date, document type and other parameters.
- Better suppression of duplicates and confidential documents.
- Timelines showing document dates in graphical form.
- More accurate relevancy ranking, easier query construction, including a "find similar documents" option, wildcard use in phrase searches and system offered search queries for misspellings (eg, "did you mean?").

Growing tobacco document collection remains a valuable resource for monitoring the tobacco industry

Although tobacco industry document management policies—largely designed to decrease litigation exposure by limiting the internal exchange of written information[44]—may result in less damaging disclosures than in decades past, corporate documents remain a valuable tool to monitor the US tobacco industry.

For example, a number of researchers have relied on documents dated within the past decade to expose the tobacco companies' internal strategies for producing and marketing their products. These investigators discovered documents about web-based focus groups disguised as forums for 20-something consumers[45]—a key target group for tobacco companies,[46 47] colour coding to connote so-called 'low tar' products to replace prohibited descriptors on packaging such as 'light' or 'ultra light',[48] recent internal sensory research related to modified risk tobacco products[49] and external research supported by tobacco companies.[50] As of February 2014, there are 328 000 documents produced by the RICO Defendants dated between 2004 and 2013 (198 705 of these are designated privileged or confidential and are therefore unavailable).

CONCLUSION

Although the document disclosure obligations under the Minnesota Settlement and the MSA ended in 2008 and 2010, respectively, ongoing requirements placed on the major US tobacco firms continue today. Documents will continue to be added to the public archives until 1 September 2021, a redesigned LTDL website with improved searching and indexing capabilities is expected in September 2014, and additional enhanced transparency measures are now in effect. The Minnesota Depository's continued existence allows the public to search and use materials unique to the facility, and check tobacco companies' compliance with its document disclosure obligations. Additionally, for the first time, a mechanism is in place to allow challenges to be made to certain redactions contained in publicly available documents, in order to prevent the companies from keeping parts of otherwise public documents secret. Last, because of the litigation effort to keep the Minnesota Depository open, approximately 100 000 documents were posted online that were not previously available and another 2300 documents have been returned to the publicly accessible document collections at the Minnesota Depository and online. To the best of our knowledge, there has not been a systematic search of those documents.

Taken together, these transparency measures provide the public health community with an opportunity to not only continue to expose the tobacco industry's past bad acts, but to also monitor their ongoing behaviour. These internal corporate documents provide an opportunity to discover new internal evidence related to, among other things, the tobacco industry's market research and strategies to reach young adults aged 18–21 years, packaging and labelling tactics and product design strategies. Such new discoveries might support innovative tobacco control measures, such as increasing a minimum legal tobacco product sale age to 21, which is currently being implemented in some US States.[51] They could also support the Food and Drug Administration's (FDA) efforts to regulate tobacco products under the Family Smoking Prevention and Tobacco Control Act, although the tobacco companies have been largely successful in staving off FDA regulation. The efforts of researchers to effectively access and use these documents will likely become even easier—in terms of technical searching enhancements—with the millions of dollars being provided to facilitate user-friendly and comprehensive document research in LTDL.

What this paper adds

- We describe the recently enhanced document disclosure obligations placed on the major U.S. tobacco companies as a result of federal racketeering litigation.
- We highlight the recent public release of certain documents as a result of events in the federal racketeering litigation leading up to these new requirements.
- We describe certain document indexing enhancements and redesign to the Legacy Tobacco Document Library website, which expected to be released in September 2014.

Contributors MEM originated the idea for the manuscript and MEM, HMC and KK conducted research, participated in drafting, reviewing and editing the manuscript.

Competing interests None.

Provenance and peer review Not commissioned; externally peer reviewed.

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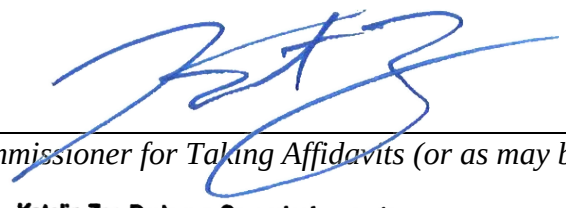
This is Exhibit "F" referred to in the Affidavit of Monique E. Muggli sworn by Monique E. Muggli of the City of Minneapolis, in the State of Minnesota, United States of America, before me at the City of Toronto, in the Province of Ontario , on January 20, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

Katelin Zoe Parker, a Commissioner, etc.,
Province of Ontario, for Fogler, Rubinoff LLP,
Barristers and Solicitors. Expires April 23, 2026.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, and TOBACCO-FREE KIDS ACTION FUND, *et al.* Plaintiff-Intervenors v. PHILIP MORRIS USA INC., *et al.*, Defendants.	Civil Action No. 99-CV-2496 (GK) Next scheduled court appearance: NONE

~~(Proposed)~~ ORDER #97-REMAND:
CONSENT ORDER BETWEEN THE UNITED STATES, THE PUBLIC HEALTH INTERVENORS, PHILIP MORRIS USA INC., ALTRIA GROUP, INC., AND R.J. REYNOLDS TOBACCO COMPANY CONCERNING DOCUMENT DISCLOSURE OBLIGATIONS UNDER ORDER #1015

Upon consideration of the Joint Motion for Consent Order Between the United States, the Public Health Intervenors (hereafter "Plaintiffs"), Philip Morris USA Inc., Altria Group, Inc., and R.J. Reynolds Tobacco Company (hereafter "Defendants") Concerning Document Disclosure Obligations Under Order #1015, and the entire record herein, it is hereby ORDERED that:

Defendants' document disclosure obligations under Order #1015 (DN 5733, Aug. 17, 2006), published as *United States v. Philip Morris USA Inc.*, 449 F. Supp. 2d 1, 940-44 (D.D.C. 2006), *aff'd in part & vacated in part*, 566 F.3d 1095 (D.C. Cir. 2009) (*per curiam*), *cert. denied*, 561 U.S. ___, 130 S. Ct. 3501 (2010), are MODIFIED as set forth below.

I. Effective Date

The effective date of this Order is November 1, 2011. Unless otherwise specified, the requirements in this Order will be prospective. All documents posted to Defendants' websites on or after January 1, 2012 will conform to these prospective requirements when posted. If Defendants post any documents between November 1, 2011 and January 1, 2012 that are not in conformance with these coding requirements, they will have until May 1, 2012 to bring such documents into conformance and re-post them.

II. Monetary Terms

A. Philip Morris USA Inc. and Altria Group, Inc. (collectively, hereafter "PM") and R.J. Reynolds Tobacco Company (hereafter "RJR"[1]) will each deposit, on or before the dates indicated below, the amounts indicated below with the Registry of the Court:

Friday, December 30, 2011	$200,000
Wednesday, February 15, 2012	$750,000
Friday, February 15, 2013	$750,000
Friday, February 14, 2014	$750,000
Monday, February 16, 2015	$675,000
Total (PM and RJR each):	$3.125 million
Total (combined):	$6.25 million

B. The Registry of the Court will, upon receipt of each of these installments, disburse the funds to the University of California, San Francisco (hereafter "UCSF").

C. PM and RJR will make these payments in lieu of their prior obligations under Order #1015 to code person mentioned, organization mentioned, and brand mentioned fields, and as part of a resolution of the scope of their coding obligations for documents posted on their public document websites as a result of production in court or administrative actions in the

[1] For purposes of obligations discussed in this Order, "RJR" shall refer to obligations associated with R.J. Reynolds Tobacco Company, Brown & Williamson, and American Tobacco.

United States concerning smoking and health, marketing, addiction, low-tar or low-nicotine cigarettes, or less hazardous cigarette research both prior to November 1, 2011, and on or after that date.

III. Monetary Conditions and Technical Meetings with UCSF

A. The funds deposited with the Registry of the Court will be used by UCSF to improve access to and functionality of the Legacy Tobacco Documents Library, *e.g.*, through coding documents and providing enhanced search capabilities (with the understanding that the university may assess some percentage for indirect costs). UCSF will not use these funds for any other purpose.

B. As a condition for receipt of the payments provided in Paragraph A above, UCSF will file through the ECF system, by December 31 of each year (beginning in 2012) and up to and including the final year in which these funds are used, a certification confirming that these funds have been used only for the purposes described in the preceding paragraph and not for any other purpose.

C. If UCSF uses any of these funds in a manner inconsistent with Paragraph B, any such funds will be refunded to the Registry of the Court. In that event, the parties will have thirty (30) days to apply to the Court requesting that the funds either be refunded to Defendants, or used in some other manner related to document coding and/or document websites.

D. UCSF may use the monies received for the purposes specified in Paragraph B through December 31, 2025. UCSF will have until that date to use all the funds provided by this Consent Order, and will continue to file annual certifications until all funds are used. If any of the funds remain unused by that date, any remaining funds will be refunded to the Registry of the

Court. In that event, the parties will have thirty (30) days to apply to the Court requesting that these funds either be refunded to Defendants, or used in some other manner related to document coding and/or document websites.

E. PM and RJR will, at UCSF's request, each participate in separate monthly technical meetings with representatives from UCSF, during which PM and RJR will seek to provide meaningful and substantive responses to queries.

IV. Coding Requirements for Bibliographic Fields on Defendants' Websites

The following provisions replace Paragraph II.C.10.c of Order #1015:

c. The technical requirements for documents posted to Defendants' Internet Document Websites are as follows:

i. Posting Requirements for Hardcopy and Electronic Documents

A. For scanned hard-copy documents, Defendants will post to their websites searchable PDFs of the documents, with Optical Character Recognition (OCR) search capability, and will include OCR text in a separate text file.

B. For electronic-source documents (both email and non-email), Defendants will post to their websites searchable PDFs of the documents, with OCR search capability, and will provide the extracted electronic text in a separate text file, unless those documents are redacted, in which case OCR text will be provided.

ii. Basic Bibliographic Coding Requirements for All Documents

A. Bibliographic coding of all documents will be done by humans or be at least equivalent in accuracy to human coding.

B. Defendants' Internet Document Websites will provide, and be searchable by, the following bibliographic fields (or fields with substantially similar names) for all documents (even those withheld on grounds of privilege or confidentiality): Document Title; Document ID; Master ID (to include Bates ranges for the document and all attachments; or if the document is an attachment, Bates ranges for the "parent" document to which it is attached and for all other attachments to that "parent" document); Other Number; Document Date; Primary Type; Person Author; Person Recipient; Person Copied; Organization Author; Organization Recipient; Organization Copied; File Name; Page Count; Date Loaded; Date Updated; Document Format; Characteristics; Redactions; and the four administrative fields. Certain of these fields are discussed further below. Hyperlink fields will also be included that will link to the actual document and to the separate text file.

C. For all documents, Defendants will prospectively add a Document Format field that will indicate whether the document is (a) an email; (b) a non-email electronic document; or (c) a scanned hard-copy document.

D. PM and RJR will also prospectively code documents with: (1) a "characteristics" field (or a separate "marginalia" field and "characteristics" field) that will indicate information historically coded in this field (e.g. marginalia, illegible, draft) and (2) a "redactions" field that will indicate the nature of any redaction in a document (*e.g.* privilege redaction, confidential redaction). In addition, by January 1, 2012, PM and RJR will provide all pre-existing redaction information for all documents that is readily obtainable other than from the document itself in the "redactions" field, but will have no further retrospective obligation for this field.

E. For all documents, the person author, organization author, person recipient, organization recipient, person copyee, and organization copyee fields will be populated with separate "person name" (*i.e.,* last name, first name) and "organization name" (*e.g.* PM USA, RJRT) variants.

F. For emails, Defendants will code the person author, organization author, person recipient, organization recipient, person copyee (including bcc's), and organization copyee (including bcc's) fields to the extent such information appears in the metadata, the company's internal email address book, the header, the footer, or the signature block of the email. To the extent this information cannot be captured from their internal email address book or using automated technologies, Defendants will open and review the first page of all emails, including signature blocks, headers, and footers. Person and organization names will be provided as fully as possible from this information, but Defendants will not be required to do any external research. If person names cannot be determined through the means set forth above, the email address will be provided as set forth on the face of the document.

G. For all electronic documents other than emails, Defendants will provide objective coding of document date, document title, person author, organization author, person recipient, organization recipient, person copyee, and organization copyee. To the extent this information cannot be captured using automated technologies, Defendants will open the electronic document and review the first page.

H. For electronic documents dated after January 1, 2012, and for electronic documents dated prior to January 1, 2012 to the extent they were not collected or processed for litigation prior to January 1, 2012, Defendants will provide file path information (including all

folder and sub-folder information for emails if collected from systems that have such information) as part of the File Name field. Defendants will not be required to provide file path information generated as a result of processing following collection for litigation purposes.

iii. Coding Requirements for "Administrative Fields"

A. Defendants prospectively will undertake, and retrospectively will undertake through their best efforts to the extent that such information is reasonably available (*e.g.*, is available on the Minnesota Depository 4B indices) to Defendants, to code documents required to be posted to the Defendants' websites for the following categories:

1. the court or administrative case in which the document was produced or transcript taken, provided that (i) prospectively, Defendants will be required to code a document only for those cases in which Defendants produce a defined set of documents (as opposed to production via a general reference to their websites), and (ii) retrospectively, Defendants will post document production histories to their public document websites for documents produced in any court or administrative action in the United States concerning smoking and health, marketing, addiction, low-tar or low-nicotine cigarettes, or less hazardous cigarette research beginning with the Minnesota AG case, State of Minnesota v. Philip Morris, Inc., No. C1-94-8565 (Minn. Dist. Ct.) (with the mutual understanding that certain of these document production histories may be inaccurate or incomplete).

2. the date on which the document was produced or transcript received, provided that (i) prospectively, Defendants will be required to code only for the first date of production, and (ii) retrospectively, for documents already coded to a date of production/posting, Defendants are not required to change that existing coding; for documents

lacking such existing coding, Defendants will be required to code a document only to the first date on which the document was produced to the extent such information is reasonably available to Defendants, and for transcripts may code the date upon which the deposition or other testimony was "taken" instead of the date upon which a Defendant "received" the transcript;

3. the date a hard copy was produced to the Minnesota Depository; and

4. the box number in which a hard copy was produced to the Minnesota Depository.

B. Defendants will have until May 1, 2012 to complete retrospective coding of these four categories.

V. Document Posting Requirements

The following provisions replace Paragraph II.C.10.b of Order #1015:

b. Document posting requirements are as follows:

i. With the exception of documents that are subject to confidentiality review, each Defendant will add these additional documents referred to in the previous subparagraph (subparagraph II.C.10.a.), as well as any other data newly acquired by this Final Judgment and Remedial Order, to its Internet Document Website(s) within 45 days of the date of production, in the case of documents; and within 45 days of receipt of the final transcript, in the case of depositions and letters of request testimony. These requirements are subject to Paragraph II.C.14 concerning documents under court order or ruling.

ii. Beginning November 1, 2011, Defendants will post, within fourteen days of production, electronic indices including the following information for each document produced:

A. Sufficient information to uniquely identify each item. For example, for produced documents, Document ID (typically the first and last Bates numbers) is sufficient; for transcripts, the witness name and date of testimony is sufficient.

B. Identification of the litigation or administrative action in which the document production or transcript receipt triggers the duty to add the documents or transcripts under Paragraph II.C.10.a.

C. The date on which the document was produced or the final transcript was received (including any errata).

D. Identification of documents subject to confidentiality review.

iii. For documents identified as being subject to confidentiality review (*e.g.*, trade secret information; personal confidential information), PM and RJR will have 90 days from the production date to post such documents in conformity with the confidentiality review.

VI. Minnesota Depository Requirement

a. The following provision replaces Paragraph II.C.11.b of Order #1015:

b. These documents shall be produced to the Minnesota Depository within 45 days of being produced in the related judicial or administrative proceeding (or upon receipt of a final transcript). PM and RJR will have 90 days from the production date to send the Minnesota Depository documents subject to the confidentiality review provision set forth in Paragraph 13.

b. The following provision replaces Paragraph II.C.11.c of Order #1015:

c. Each production of documents to the Minnesota Depository shall include a hard copy index of the Bates numbers of the documents in that production. Defendants will each update the electronic index of documents produced to the Minnesota Depository (historically known as

the Minnesota 4B Index) to reflect the documents in each production. The index shall include the fields specified in Paragraph II.C.10.c.ii.B. The 4B Index will be updated by May 1, 2012, to reflect any productions to the Minnesota Depository between November 1, 2011 and May 1, 2012. For all productions to the Minnesota Depository after May 1, 2012, the 4B Index will be updated at the same time that the documents are produced.

VII. Redaction Procedures for Personal Information

The following provisions replace Paragraph II.C.13 of Order #1015:

13.a. Defendants may redact from a document placed on their Internet Document Websites or produced to the Minnesota Depository the following information for any individual:

1. All Social Security numbers
2. All home addresses
3. All personal telephone numbers (home or mobile)
4. All financial account information (including last four numbers)
5. All driver's license and other personal identification numbers (including last four numbers)
6. Date of birth
7. Mother's maiden name
8. Names of minors (initials will be provided)

b. Defendants may redact from a document placed on their Internet Document Websites or produced to the Minnesota Depository, the following personal information about Defendants' employees, employees' relatives and children, and consumers in their capacity as consumers:

1. Redaction is authorized, prospectively, of personal email addresses for Defendants' employees, employees' relatives and children, and consumers in their capacity as consumers.

2. Redaction is authorized, prospectively, of names of Defendants' employees, employees' relatives and children, and consumers in their capacity as consumers if the document or transcript personally links the person to any one or more of the following categories of information:

A. Sexual orientation information

B. Health or medical information

C. Religious/ethnic information

D. Political opinion/affiliation information

E. Trade union membership information

F. Marital status

For deposition transcripts, Defendants may alternatively redact the information covered by this subsection rather than the name.

3. For any document or transcript that personally links an employee, an employee's relative or child, or a consumer in their capacity as a consumer to employment-related information, redactions may be made as follows:

A. Redaction is authorized, prospectively, of names of Defendants' employees' relatives and children, and consumers in their capacity as consumers, if the document or transcript personally links the person to employment-related information. For transcripts, Defendants may

alternatively redact the employment-related information covered by this subparagraph (¶ 13.b.3.A) rather than the name.

B. Redaction is prohibited, prospectively, of either the names of employees or employment-related information where the document or transcript personally links the employee to background employment information such as job history, qualifications, and reporting relationships, or employment-related information that is related to smoking and health, marketing, addiction, low-tar or low-nicotine cigarettes, or less hazardous cigarette research. As examples, this category includes documents and transcripts concerning an employee being disciplined for marketing to youth, or concerning an employee receiving a bonus for testimony in smoking-and-health litigation.

C. Redaction is authorized, prospectively, of names of Defendants' employees if the document or transcript personally links the employee to any employment-related information about him or her that is not covered by subparagraph 13.b.3.B above. As examples, this category includes documents and transcripts concerning an employee being disciplined for tardiness or missing work. For transcripts, Defendants may alternatively redact the employment-related information covered by this subparagraph (13.b.3.C) rather than the name.

c. Limitation on Subparagraphs 13.b.2 and 13.b.3: Notwithstanding subparagraphs 13.b.2 and 13.b.3, redaction is prohibited under these subparagraphs when (1) it is clear, on the

face of the document, that the individual has publicly and intentionally associated him or herself with one of the categories listed, or (2) the document is publicly available or has been publicly disseminated, such as a newspaper article or a public court filing.

d. Such redactions shall indicate that confidential personal information has been redacted.

e. For up to 75 documents per 30-day period, Plaintiffs may invoke the following procedure: If Plaintiffs believe that specific personal information in a document posted to a Defendant's website on or after January 1, 2010, is not redacted in a manner consistent with Paragraphs 13.a or 13.b above, Plaintiffs may request a copy of the document with the personal confidential information unredacted. In addition, Plaintiffs may request a copy of a document with redactions for personal information loaded to a Defendant's website prior to January 1, 2010, but such requests are limited to a total of 100 documents from Defendants over the course of this agreement. Within 10 days of receiving such a request, Defendants will either lift the specific redaction(s) and repost the document on the website and notify plaintiffs, or, alternatively will provide Plaintiffs with a copy of the document with the personal confidential information unredacted, which may be designated as "Confidential" under Order #7 if that Order's criteria apply. If, after reviewing the document with the personal confidential information unredacted, Plaintiffs continue to believe that the redaction was improper, then Plaintiffs may raise the issue with the Special Master. If the parties are unable to reach agreement on redaction, then the Special Master will issue a report and recommendation to the Court. Either party may file a written objection, not to exceed 15 pages, to the report and recommendation, after which the opposing party may file a response not to exceed 15 pages,

followed by a reply not to exceed 5 pages.

f. Apart from obligations arising under the challenge procedure in Paragraph 13.e above, Defendants will not be required to conduct a redaction review or otherwise conform redactions on documents posted to their public websites before November 1, 2011, to the requirements set forth in paragraphs 13.a through 13.c above.

g. The redaction protocol set forth above governs the redaction of confidential personal information only and does not pertain to or otherwise modify requirements regarding the redaction of trade secrets set forth in Paragraph 13.

h. Wherever less than the entirety of a document is subject to a claim of privilege or trade secret pursuant to Paragraph 14, Defendants shall produce the document in redacted form on their Internet Document Websites and the Minnesota Depository. Such redactions shall indicate that privileged or trade secret information, as appropriate, has been redacted.

VIII. Miscellaneous Provisions

A. This Consent Order is without prejudice to Defendants' argument that Order #1015 does not apply retrospectively, and no party will cite this Consent Order as a basis for arguing that any other part of Order #1015 applies retrospectively.

B. This Consent Order modifies certain provisions of Order #1015. By agreeing to this Consent Order, Defendants are not waiving their rights to move to vacate or modify this Consent Order or seek other relief based on future events, including without limitation the outcome of Defendants' pending appeal in United States v. Philip Morris USA Inc., No. 11-5145 (D.C. Cir.), which seeks to vacate Order #1015 in its entirety.

DATED: Dec 14, 2011

GLADYS KESSLER
U.S. District Judge

We consent to entry of the above consent order:

Dated: December 13, 2011

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Assistant Attorney General

MAAME EWUSI-MENSAH FRIMPONG
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MICHAEL BLUME, Director
KENNETH JOST, Deputy Director

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Attorneys for Defendant R.J. Reynolds Tobacco Company, individually and as successor by merger to Brown & Williamson Tobacco Corporation

This is Exhibit "G" referred to in the Affidavit of Monique E. Muggli sworn by Monique E. Muggli of the City of Minneapolis, in the State of Minnesota, United States of America, before me at the City of Toronto, in the Province of Ontario , on January 20, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (or as may be)

Katelin Zoe Parker, a Commissioner, etc.,
Province of Ontario, for Fogler, Rubinoff LLP,
Barristers and Solicitors. Expires April 23, 2026.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, and TOBACCO-FREE KIDS ACTION FUND, *et al.* Plaintiff-Intervenors v. PHILIP MORRIS USA, INC., *et al.*, Defendants.	Civil Action No. 99-CV-2496 (GK) Next scheduled court appearance: NONE

~~(Proposed)~~ ORDER #28-REMAND:
CONSENT ORDER BETWEEN THE UNITED STATES, THE PUBLIC HEALTH INTERVENORS, AND LORILLARD TOBACCO COMPANY CONCERNING DOCUMENT DISCLOSURE OBLIGATIONS UNDER ORDER #1015

Upon consideration of the Joint Motion for Consent Order Between the United States, the Public Health Intervenors (hereafter "Plaintiffs"), and Lorillard Tobacco Company (hereafter "Lorillard") Concerning Document Disclosure Obligations Under Order #1015, and the entire record herein, it is hereby ORDERED that:

Defendant's document disclosure obligations under Order #1015 (DN 5733, Aug. 17, 2006), published as *United States v. Philip Morris USA Inc.*, 449 F. Supp. 2d 1, 940-44 (D.D.C. 2006), *aff'd in part & vacated in part*, 566 F.3d 1095 (D.C. Cir. 2009) (*per curiam*), *cert. denied*, 561 U.S. ___, 130 S. Ct. 3501 (2010), are MODIFIED as set forth below.

I. Effective Date

The effective date of this Order is November 15, 2011. Unless otherwise specified, the requirements in this Order will be prospective, which means that they will apply only to documents that are posted to Lorillard's document website on or after November 15, 2011. All documents posted to Lorillard's website on or after the effective date will conform to these prospective requirements. Lorillard's obligations under this Order will expire on September 1, 2021.

II. Monetary Terms

A. Lorillard will deposit, on or before the dates indicated below, the amounts indicated below with the Registry of the Court:

Friday, January 13, 2012	$217,000
Monday, December 31, 2012	$217,000
Tuesday, December 31, 2013	$216,000
Total:	$650,000

B. The Registry of the Court will, upon receipt of each of these installments, disburse the funds to the University of California, San Francisco (hereafter "UCSF").

C. Lorillard will make these payments primarily in lieu of its prior obligations under Order #1015 to code the person mentioned, organization mentioned, and brand mentioned fields and as part of a resolution of the scope of Lorillard's coding obligations for documents posted on its public document websites as a result of production in court or administrative actions in the United States concerning smoking and health, marketing, addiction, low-tar or low-nicotine cigarettes, or less hazardous cigarette research both prior to November 15, 2011, and on or after that date.

III. Monetary Conditions and Technical Meetings with UCSF

A. The funds deposited with the Registry of the Court will be used by UCSF to improve access to and functionality of the Legacy Tobacco Documents Library, e.g., through coding documents and providing enhanced search capabilities (with the understanding that the university may assess some percentage for indirect costs). UCSF will not use these funds for any other purpose.

B. As a condition for receipt of the payments provided in Paragraph A above, UCSF will file through the ECF system, by December 31 of each year (beginning in 2012) and up to and including the final year in which these funds are used, a certification confirming that these funds have been used only for the purposes described in the preceding paragraph and not for any other purpose.

C. If UCSF uses any of these funds in a manner inconsistent with Paragraph B, any such funds will be refunded to the Registry of the Court. In that event, the parties will have thirty (30) days to apply to the Court requesting that the funds either be refunded to Lorillard, or used in some other manner related to document coding and/or document websites.

D. UCSF may use the monies received for the purposes specified in Paragraph B through December 31, 2025. UCSF will have until that date to use all the funds provided by this Consent Order, and will continue to file annual certifications until all funds are used. If any of the funds remain unused by that date, any remaining funds will be refunded to the Registry of the Court. In that event, the parties will have thirty (30) days to apply to the Court requesting that these funds either be refunded to Lorillard, or used in some other manner related to document coding and/or document websites.

E. Lorillard will, at UCSF's request, participate in monthly telephonic technical meetings with representatives from UCSF, during which Lorillard will seek to provide meaningful and substantive responses to queries about document website issues that may arise.

IV. Coding Requirements for Bibliographic Fields on Defendant's Website

The following provisions replace Paragraph II.C.10.c of Order #1015:

c. The technical requirements for documents posted to Lorillard's Internet Document Websites are as follows:

i. Posting Requirements for Hardcopy and Electronic Documents

A. For scanned hard-copy documents that are posted to its document website, Lorillard will post a searchable PDF of the document that provides Optical Character Recognition (OCR) text and support, as well as an accompanying text file. The document website will include hyperlinks to the files that are posted pursuant to this paragraph.

B. For electronic-source documents (both email and non-email), Lorillard will post a text-searchable PDF of the document that provides Optical Character Recognition (OCR) text and support, as well as the electronic text in an accompanying file. If an electronic-source document contains redactions, searchable OCR text will be posted in lieu of electronic text. The document website will include hyperlinks to the files that are posted pursuant to this paragraph.

ii. Basic Bibliographic Coding Requirements

A. Except for emails, which are covered in a separate section below, bibliographic coding of documents will be done by humans or be at least equivalent in accuracy to human coding.

B. Lorillard's Internet Document Website (www.lorillarddocs.com) will provide, and be searchable by, the following bibliographic fields (or fields with substantially

similar names) for all documents (even those withheld on grounds of privilege or confidentiality): Document Title; Document ID; Master ID (if the document is a "parent" document, Bates ranges for the "parent" and all attachments that were attached at the time of collection; if the document is an attachment, Bates ranges for the "parent" document to which it is attached and all other attachments to that "parent" at the time of collection); Other Number (referring to non-Lorillard Bates numbers); Document Date; Primary Type; Person Author; Person Recipient; Person Copied; Organization Author; Organization Recipient; Organization Copied; File Name; Page Count; Date Loaded (only the first date the document was loaded); Date Updated (in no more than three separate fields with each containing one date); Redactions; Document Format; Text (OCR or electronic text, as appropriate) of the Document; and the four administrative fields discussed below.

C. Lorillard will prospectively add a Document Format field that indicates the type of document, substantially equivalent to the following: (1) Scanned hard-copy document; (2) Non-email electronic document; (3) Email with only internal Lorillard authors, recipients, and copyees; (4) Email with some external authors, recipients, and copyees.

D. Lorillard will also prospectively code documents with a "redactions" field that will indicate whether the redaction was a privilege redaction, trade secret redaction, or confidential personal information redaction. In addition, by January 6, 2012, Lorillard will provide all pre-existing redaction information for all documents that is readily obtainable other than from the documents themselves in the "redactions" field, but will have no further retrospective obligation for this field.

iii. Coding for Emails

A. Lorillard is not required to do any objective coding from the face of emails, but for all internal emails, will populate fields for the author, recipient and copyee with information that is available at the time of collection from Lorillard's main internal email address book. For emails that were not wholly internal, Lorillard will populate the author, recipient and copyee fields with information that is available at the time of collection in its main internal address book and its industrial address book.

B. Lorillard will code the above-described email documents as follows: For all internal emails, Lorillard will code the person author, person recipient, person copyee (including bcc's), organization author, organization recipient, and organization copyee (including bcc's) fields to the extent such information appears in the email metadata, or within Lorillard's main internal email address book available at the time of collection. For all authors, recipients, and copyees (including bcc's) with internal email addresses, Lorillard will populate relevant "organization" fields with "Lorillard." For emails sent to or from email addresses outside of Lorillard, Lorillard will populate such fields with information that is available at the time of collection in its main internal and industrial email address books, or the email address if no such information exists.

C. Lorillard will code the "personal" fields for the above-described emails in the format: Lastname, Firstname (email address); 2ndLastName, 2ndFirstName (2ndemail address); [etc.].

D. For emails, Lorillard will code the File Name field as follows: for emails that are part of a container file, such as an NSF or PST file, Lorillard will provide the file path name and file name for the container file from which the emails are extracted. For loose email

files, such as DXL, MSG, or EML files, Lorillard will provide the file path name and name of the file. In all cases, the file path will be the location of the file in the electronic processing environment at the time of processing. If, during the pendency of the document disclosure obligations under Order 1015, Lorillard changes its email collection system so that employee email folder or subfolder information existing at the time of collection is collected in a way that will provide folder and subfolder paths for particular emails, Lorillard will provide that information in the email file name field.

iv. Coding for Non-Email Electronic Documents

A. For all non-email electronic documents, Lorillard will provide objective coding of the following bibliographic fields as they appear on the face of the non-email electronic document: person author, person recipient, person copyee, organization author, organization recipient, organization copyee, date, other number, primary type, and title.

B. For all non-email electronic documents, Lorillard will provide the File Name field with the entire file path name, including the file name. For electronic source documents that are attachments to emails, the file path provided will be the file path of the email.

v. Coding Requirements for "Administrative Fields"

A. Lorillard prospectively will undertake, and retrospectively will undertake through their best efforts to the extent that such information is reasonably available (*e.g.*, is available on the Minnesota Depository 4B indices) to Lorillard, to code documents required to be posted to the Lorillard's websites for the following categories:

1. the court or administrative case in which the document was produced or transcript taken, provided that (i) prospectively, Lorillard will be required to code a document only for those cases in which Lorillard produces a defined set of documents (as opposed

to production via a general reference to their websites), and (ii) retrospectively, Lorillard will post document production histories to their public document websites for documents produced in lawsuits beginning with the Minnesota AG case, State of Minnesota v. Philip Morris, Inc., No. C1-94-8565 (Minn. Dist. Ct.) (with the mutual understanding that certain of these document production histories may be inaccurate or incomplete).

2. the date on which the document was produced or transcript received, provided that (i) prospectively, Lorillard will be required to code only for the first date of production, and (ii) retrospectively, for documents already coded to a date of production/posting, Lorillard is not required to change that existing coding; for documents lacking such existing coding, Lorillard will be required to code a document only to the first date on which the document was produced to the extent such information is reasonably available to Lorillard, and for transcripts may code the date upon which the deposition or other testimony was "taken" instead of the date upon which a Lorillard "received" the transcript;

3. the date a hard copy was produced to the Minnesota Depository; and

4. the box number in which a hard copy was produced to the Minnesota Depository.

B. Lorillard will have until May 15, 2012 to complete retrospective coding of these four categories.

V. Document Posting Requirements

The following provisions replace Paragraph II.C.10.b of Order #1015:

b. Document posting requirements are as follows:

i. With the exception of documents that require redaction, Lorillard will add these additional documents referred to in the previous subparagraph (subparagraph II.C.10.a), as well as

any other data newly acquired by this Final Judgment and Remedial Order, to its Internet Document Website(s) within 45 days of the date of production, in the case of documents; and within 45 days of receipt of the transcript, in the case of depositions and letters of request testimony. These requirements are subject to Paragraph II.C.14 concerning documents under court order or ruling.

ii. Beginning November 15, 2011, Lorillard will post, within fourteen days of production, electronic indices including the following information for each document produced:

A. Sufficient information to uniquely identify each item. For example, for produced documents, Document ID (typically the first and last Bates numbers) is be sufficient; for transcripts, the witness name and date of testimony is sufficient.

B. An identification of the litigation or administrative action in which the document production or transcript receipt triggers the duty to add the documents or transcripts under Paragraph II.C.10.a.

C. The date on which the document was produced or the transcript was finally received (including any errata).

D. Identification of documents subject to confidentiality review

iii. For documents identified as being subject to redaction review (*e.g.*, trade secret information; personal confidential information), Lorillard will have 90 days from the production date to post such documents in conformity with the redaction review.

VI. Minnesota Depository Requirement

a. The following provision replaces Paragraph II.C.11.b of Order #1015:

b. These documents shall be produced to the Minnesota Depository within 45 days of being produced in the related judicial or administrative proceeding (or upon receipt of a final transcript).

Lorillard will have 90 days from the production date to send the Minnesota Depository documents subject to the confidentiality review provision set forth in Paragraph 13.

b. The following provision replaces Paragraph II.C.11.c of Order #1015:

c. Each production of documents to the Minnesota Depository shall include a hard copy index of the Bates numbers of the documents in that production. Lorillard will update the electronic index of documents produced to the Minnesota Depository (historically known as the Minnesota 4B Index) to reflect the documents in each production. The index shall include the fields specified in Paragraph II.C.10.c.ii.B. The 4B Index will be updated by May 1, 2012, to reflect any productions to the Minnesota Depository between November 1, 2011 and May 1, 2012. For all productions to the Minnesota Depository after May 1, 2012, the 4B Index will be updated at the same time that the documents are produced.

VII. Redaction Procedures for Personal Information

The following provisions replace Paragraph II.C.13 of Order #1015:

13.a. Lorillard may redact from a document placed on its Internet Document Website or produced to the Minnesota Depository, prospectively, the following information for any individual:

1. All Social Security numbers
2. All home addresses
3. All personal telephone numbers (home or mobile)
4. All financial account information (including last four numbers)
5. All driver's license and other personal identification numbers (including last four numbers)
6. Date of birth

7. Mother's maiden name

8. Names of minors (initials will be provided)

b. Lorillard may redact from a document placed on its Internet Document Website or produced to the Minnesota Depository, the following information about Lorillard's employees, employees' relatives and children, and consumers in their capacity as consumers:

1. Redaction is authorized, prospectively, of personal email addresses for Lorillard's employees, employees' relatives and children, and consumers in their capacity as consumers.

2. Redaction is authorized, prospectively, of names of Lorillard's employees, employees' relatives and children, and consumers in their capacity as consumers if the document or transcript personally links the person to any one or more of the following categories of information:

   A. Sexual orientation information

   B. Health or medical information

   C. Religious/ethnic information

   D. Political opinion/affiliation information

   E. Trade union membership information

   F. Marital status

   For deposition transcripts, Lorillard may alternatively redact the information covered by this subsection rather than the name.

3. For any document or transcript that personally links an employee, an employee's relative or child, or a consumer in their capacity as a consumer to employment-related information, redactions may be made as follows:

A. Redaction is authorized, prospectively, of names of Lorillard's employees' relatives and children, and consumers in their capacity as consumers, if the document or transcript personally links the person to employment-related information. For transcripts, Lorillard may alternatively redact the employment-related information covered by this subsection (III.B.3.a) rather than the name.

B. Redaction is prohibited, prospectively, of either the names of employees or employment-related information where the document or transcript personally links the employee to background employment information such as job history, qualifications, and reporting relationships, or employment-related information that is related to smoking and health, marketing, addiction, low-tar or low-nicotine cigarettes, or less hazardous cigarette research. As examples, this category includes documents and transcripts concerning an employee being disciplined for marketing to youth, or concerning an employee receiving a bonus for testimony in smoking-and-health litigation.

C. Redaction is authorized, prospectively, of names of Lorillard's employees if the document or transcript personally links the employee to any employment-related information about him or her that is not covered by subparagraph 13.b.3 above. As examples, this category includes documents and transcripts concerning an employee being disciplined for tardiness or missing work. For transcripts, Lorillard may alternatively

redact the employment-related information covered by this subparagraph (13.b.3.C) rather than the name.

c. Limitation on Subparagraphs 13.b.2 and 13.b.3: Notwithstanding subparagraphs 13.b.2 and 13.b.3, redaction is prohibited under these subparagraphs when (1) it is clear, on the face of the document, that the individual has publicly and intentionally associated him or herself with one of the categories listed, or (2) the document is publicly available or has been publicly disseminated, such as a newspaper article or a public court filing.

d. Such redactions shall indicate that confidential personal information has been redacted.

e. For up to 75 documents per 30-day period, Plaintiffs may invoke the following procedure: If Plaintiffs believe that specific personal information in a document posted to a Lorillard's website on or after January 1, 2010, is not redacted in a manner consistent with Paragraphs 13.a or 13.b above, Plaintiffs may request a copy of the unredacted document. In addition, Plaintiffs may request a copy of a document with redactions for personal information loaded to a Lorillard's website prior to January 1, 2010, but such requests are limited to a total of 100 documents from Lorillard over the course of this agreement. Within 10 days of receiving such a request, Lorillard will either lift the specific redaction(s) and repost the document on the website and notify plaintiffs, or, alternatively will provide Plaintiffs with a copy of the unredacted document, which may be designated as "Confidential" under Order #7 if that Order's criteria apply. If, after reviewing the unredacted document, Plaintiffs continue to believe that the redaction was improper, then Plaintiffs may raise the issue with the Special Master. If the parties are unable to reach agreement on redaction, then the Special Master will issue a report and recommendation to the Court. Either party may file a written objection, not to exceed 15 pages, to

the report and recommendation, after which the opposing party may file a response not to exceed 15 pages, followed by a reply not to exceed 5 pages.

f. Apart from obligations arising under the challenge procedure in Paragraph 13.d above, Lorillard will not be required to conduct a redaction review or otherwise conform redactions on documents posted to their public websites before November 1, 2011, to the requirements set forth in paragraphs 13.a through 13.c above.

g. The redaction protocol set forth above governs the redaction of confidential personal information only and does not pertain to or otherwise modify requirements regarding the redaction of trade secrets set forth in Paragraph 13.

h. Wherever less than the entirety of a document is subject to a claim of privilege or trade secret pursuant to Paragraph 14, Lorillard shall produce the document in redacted form on its Internet Document Websites and the Minnesota Depository. Such redactions shall indicate that privileged or trade secret information, as appropriate, has been redacted.

VIII. Miscellaneous Provisions

A. This Consent Order is without prejudice to Lorillard's argument that Order #1015 does not apply retrospectively, and no party will cite this Consent Order as a basis for arguing that any other part of Order #1015 applies retrospectively.

B. This Consent Order modifies certain provisions of Order #1015. By agreeing to this Consent Order, Lorillard is not waiving their rights to move to vacate or modify this Consent Order or seek other relief based on future events, including without limitation the outcome of Defendants' pending appeal in United States v. Philip Morris USA Inc., No. 11-5145 (D.C. Cir.), which seeks to vacate Order #1015 in its entirety.

DATED: Dec. 23, 2011

Gladys Kessler
GLADYS KESSLER
U.S. District Judge

We consent to entry of the above consent order:

Dated: December 21, 2011

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Assistant Attorney General

MAAME EWUSI-MENSAH FRIMPONG
Acting Deputy Assistant Attorney General

MICHAEL BLUME, Director
KENNETH JOST, Deputy Director

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This is Exhibit "H" referred to in the Affidavit of Monique E. Muggli sworn by Monique E. Muggli of the City of Minneapolis, in the State of Minnesota, United States of America, before me at the City of Toronto, in the Province of Ontario , on January 20, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (or as may be)

Katelin Zoe Parker, a Commissioner, etc.,
Province of Ontario, for Fogler, Rubinoff LLP,
Barristers and Solicitors. Expires April 23, 2026.

Overview

Tobacco Industry Documents archive updated as of **2024 December 19**. It contains 104,669,793 pages in 18,011,368 documents.

The Truth Tobacco Industry Documents archive (formerly known as the Legacy Tobacco Documents Library) was created in 2002 by the UCSF Library. The archive was built to house and provide permanent access to tobacco industry internal corporate documents produced during litigation between US States and the seven major tobacco industry organizations and other sources. These internal documents give a view into the workings of one of the largest and most influential industries in the United States.

See Litigation Documents for more information on these lawsuits including links to legal documents.

The Truth Tobacco Industry Documents collection was established with funding from the American Legacy Foundation (now Truth Initiative).

Our Mission

The mission of the UCSF Industry Documents Library is to identify, collect, curate, preserve, and make freely accessible internal documents created by industries and their partners which have an impact on public health, for the benefit and use of policymakers, researchers, clinicians, educators, students, and the general public at UCSF and internationally.

Our Vision

The UCSF Industry Documents Library seeks to advance health worldwide by serving as a freely accessible global information resource providing permanent access to documents which shed light on industry practices which impact public health.

This is Exhibit "I" referred to in the Affidavit of Monique E. Muggli sworn by Monique E. Muggli of the City of Minneapolis, in the State of Minnesota, United States of America, before me at the City of Toronto, in the Province of Ontario , on January 20, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

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Public health

Big tobacco is watching: British American Tobacco's surveillance and information concealment at the Guildford depository

Monique E Muggli, Eric M LeGresley, Richard D Hurt

The 1998 State of Minnesota legal settlement with the tobacco industry required British American Tobacco (BAT) to provide public access to the 8 million pages housed in its document depository located near Guildford, UK, and to any company documents sent to the Minnesota depository. While the Minnesota depository is managed by an independent third party, BAT's Guildford depository is run by the company itself. Starkly different from the Minnesota depository, at the Guildford depository it is extraordinarily more difficult to access, search, and obtain requested documents. BAT's approach to running the Guildford depository, in our view, amounts to concealing what is supposed to be public information. Newly produced BAT documents from subsequent litigation, dating from 1996 to 2001 disclose the company's efforts to gather intelligence on visitors and their work. We believe that BAT has acted to make access to information more difficult by delaying document production requested by public visitors and refusing to supply requested documents in an electronic format despite, in the company's own words, the establishment of "big time imaging" capabilities at the Guildford depository. During testimony in 2000, then BAT Chairman, Martin Broughton stated to the UK House of Commons Health Select Committee that the scanning and subsequent placement of the Guildford collection online "would be an extreme effort for absolutely no purpose whatsoever", stating that "there is no indication to me that serious researchers are showing any interest in the papers . . .". New documents show that not only did the company recognise the importance of research undertaken by visitors, but also invested substantial resources and undertook numerous scanning projects during that time. The vulnerability of this important resource is demonstrated by the decreased number of files listed on the electronic database and the inadvertent deletion of an audio tape housed at the depository. With regard to intelligence gathering, BAT's law firm reported to BAT on the daily activities of depository visitors. Despite assurances to the contrary, these depository visitor reports show that BAT apparently tracked the database searches of a visitor. The company also tracked the physical movement of visitors and, in at least one instance, observed and noted the personal mobile phone use of a visitor. These activities raise ethical issues about BAT and/or its solicitors observing the work of lawyers and researchers representing health and government bodies. Given this new evidence, we assert that BAT is incapable of operating its depository in the spirit of the Minnesota settlement and should, therefore, be divorced from its operation. Accordingly, we recommend that the company provide its entire document collection electronically to interested parties thus allowing greater access to the public-health community as has been done in the USA.

Introduction

The 1998 State of Minnesota settlement[1] with the tobacco industry mandated that, for 10 years, the tobacco companies provide public access to the millions of pages of their documents housed in two document depositories that were set up during the Minnesota trial. These documents revolutionised tobacco control by showing the internal workings of the cigarette manufacturers. According to the terms of the Minnesota settlement,[1] stipulated public access to the documents differed substantially between the US based defendants and the UK based defendant, British American Tobacco (BAT). Philip Morris, RJ Reynolds, Brown and Williamson, Lorillard, The US Tobacco Institute, and the Council for Tobacco Research had their public document depository administered by an independent third-party paralegal firm, in Minneapolis, MN, USA[2], known as the Minnesota Tobacco Document Depository. BAT, on the other hand, was not required to manage its depository through a third-party administrator, but rather the company itself would run the daily operations of a separate depository located near Guildford, UK, often referred to as the Guildford depository.[3]

In June 2000, after the Guildford depository had been open to the public for over a year, the UK House of Commons Health Select Committee stated in its *Second Report on the Tobacco Industry and the Health Risks of Smoking*[4] that, "BAT is failing to enter into the spirit of the Minnesota agreement". 5 years after the opening of the Guildford depository, it seems to the authors that this is still the case. BAT appears to have exploited the terms of the operating instructions of the depositories set out by the Minnesota court. The company delayed the opening of its depository until February 22, 1999, almost a year after the Minnesota depository opened to the public. Lawyers representing the State of Minnesota in fact urged BAT to live up to its legal obligation to permit public access to the depository.[5] BAT stated that their solicitors needed additional time for review of privileged, trade secret, or personal material in the documents produced despite the fact that they had access to the entire collection for at least 3 years during the litigation.[6]

After finally opening its doors to the public, the Guildford depository was, and continues to be, more difficult to access and search than the Minnesota

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See Commentary page 1746

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depository.[4,7–9] Unlike the Minnesota depository, the BAT documents are indexed and searchable only by *file* rather than by *document* making it impossible to undertake a computer search for individual documents within the collection. Critically important is that the lag time between requesting and obtaining photocopies of the BAT documents is exponentially longer than that at Minnesota. One can obtain photocopies of a document request of 1 million pages within a month from the Minnesota depository, while this same request has taken nearly a year at the Guildford depository. Even access to BAT's building is more problematic. The Guildford depository is only open for 6 hours each day; the Minnesota depository is open for 10 hours each day. Additionally, BAT currently allows only two groups in the depository at one time, whereas the Minnesota depository has no restriction on the number of visitors on a space available basis.

However, the central issue is electronic access. The settling US defendants put the majority of their documents online,[10] while BAT did not. In fact, BAT will not produce documents electronically, despite multiple requests from various parties. For example, we requested electronic copies of a near 1 million page request[11] and were denied our request and told by BAT's legal counsel that they are not legally obligated to do so.[12] Additionally, BAT's then Chairman, Martin Broughton told the UK Health Select Committee in January, 2000, that the company had scanned only 350 000 pages of the estimated 8 million pages in the collection and that the imaging of "the other seven and half [million] would just be filling up the Internet to no purpose".[13]

We present a critical examination of the procedures carried out by BAT and its law firm, Lovells (formerly Lovell White Durrant) in the operation of the Guildford depository. In our view, BAT's efforts are tantamount to concealing what is supposed to be public information. We show BAT monitored the material searches and daily activities undertaken by researchers and litigants visiting its public depository. It is reasonable for the tobacco companies to monitor visitor's document requests for viewing and photocopying in order to maintain the integrity of the document collections. Unlike the Minnesota depository, however, visitors to the Guildford depository are not told of this practice when they sign the admission form, the *Guildford Depository Terms for Public Access*. We also report an instance where a visitor's search terms used to search the electronic file index to the Guildford collection were monitored by BAT. This practice is both significant and disturbing especially if carried out with any regularity. The Minnesota depository does not track visitors' electronic searches. Monitoring search terms used to navigate through documents may be a breach of ethical conduct. Similar to the operation of a library, the depositories are tasked with surveying the integrity of the document collection rather than monitoring academic or journalistic research.

We also show that BAT ranked files at Guildford for their "sensitivity", which often reflected possible embarrassment or damage to the company, rather than relevance for protecting legitimate trade secrets. In one case, a document containing handwritten alterations relating to the targeting of low income, illiterate 16 year olds was classified as "sensitive".

Finally, in testimony before the UK Health Select Committee in 2000, Martin Broughton stated that only a small fraction of the entire collection housed at the Guildford depository had been scanned and was in the company's possession. BAT has stated that it has not electronically imaged its entire collection at the Guildford depository due to the difficulty of scanning such a large volume and the complexity of the collection's file index as it is currently formatted.[14] We report new evidence of BAT's large scanning budgets, proposals, and the company's employment of a large scanning staff. We believe that these budgets and staff indicate that during 1998 and 1999 BAT had the capability to scan millions of pages of the Guildford collection. Further, in our view, BAT has acted to impede access to the public documents at Guildford by denying multiple requests for electronic copies of the documents; thus, in effect sequestering the collection from all but a small number of researchers and others with the resources to travel to the UK and devote considerable time and effort to search the collection.

Methods

The origin and structure of the two major tobacco industry document depositories arising out of the litigation settlement in Minnesota have been previously described.[7–9,15,16] BAT documents housed in the Guildford depository are dated from the company's origin in the early 1900s up to 1995. However, in accordance with the terms of the Minnesota settlement, new BAT documents from post-settlement smoking and health litigation in the USA are sent to the Minnesota depository, and not to the Guildford depository, until at least 2008. In this manner, approximately 750 000 pages of BAT documents dating mostly from 1996 to 2001, produced in response to litigation brought against the company by the US Department of Justice, are currently housed at the Minnesota depository. Unlike other tobacco document collections, this subset is not indexed and, therefore, searchable only by reviewing paper copies produced in 302 boxes delivered to the Minnesota depository beginning in 2001 and ending in 2004. We reviewed every document in each box and photocopied and scanned documents that pertained to the operation of the Guildford depository. The relevant material is referenced here. Other BAT documents housed at the Guildford depository were searched during numerous trips to England, collectively comprising several dozen weeks. Files belonging to or used by BAT scientists, management, and legal personnel were searched during those trips.

Documents referenced here are available online at the British-American Tobacco Document Collection at the University of California, San Francisco, Tobacco Control Archives (http://www.library.ucsf.edu/tobacco/batco/). Readers can view all the documents referenced here via URLs in the reference list at the end of this article.

Findings

Behind-the-scenes surveillance at Guildford

When reviewing documents at both of the tobacco industry's depositories, some level of surveillance is expected to ensure that the integrity of the collection is maintained. At the Minnesota depository, each page housed within a box is verified as remaining after a visitor returns the box. The Minnesota depository does not have video surveillance systems in its public review rooms. At the Guildford depository, however, readily observed video cameras are installed in the document review areas and video monitoring security systems are used throughout the facility. BAT has also installed a two-way mirror for depository staff to view visitors in the document review rooms. A security proposal for the depository set up indicates that audio monitoring equipment was to be installed in the building;[17] however, BAT has indicated

that audio surveillance is not undertaken in its public review rooms.[18] Unlike the plain view cameras placed within the Guildford depository rooms, new BAT documents reveal a high level of surveillance occurring behind the scenes at the Guildford depository, including tracking the physical movement of one visitor outside in front of the depository building,[19] and observing and noting the personal mobile phone use within the building outside the document review rooms of one of the authors (EML).[20,21] Until now, these attempts to monitor visitors have been generally unknown to visitors.

According to a BAT flowchart, company files being prepared in anticipation of litigation, were rated for their sensitivity on a scale from 1-5,[22] with 5 seeming to be the most "sensitive". The company's outside legal counsel, Lovells, generated daily "Depository Reports" of public visits to Guildford, some of which have been sent to the Minnesota depository. In each report, a solicitor from Lovells ". . . gives general guidance as to issues visitors appear to be interested in, and warns of any particularly sensitive files called up for review".[23]

In June, 2000, the UK Health Select Committee reported that it was "inappropriate" for BAT to track organisations using its depository: "We find it a matter of concern that BAT takes such an interest in those organisations using the Depository. We do not think it is appropriate for them to sift through the individuals wishing to examine public access materials, working out who is a scientist, who is an academic, who is British or who is a potential litigant."[4]

Newly produced Lovells Depository Reports far exceed the simple logging of visitor attendance that the UK Health Select Committee felt inappropriate. In fact, Lovells' reports describe the detailed research activities of visitors. Of the hundreds of Depository Report facsimile coversheets contained in the newly produced BAT documents, only three Depository Reports were attached to the coversheets and available for review. But even with just the small number of the reports remaining in the documents, we believe there is evidence of potentially unethical behaviour.

A Lovells' Depository Report for the visit of one of the authors (MEM) in February/March 2000 describes the most sensitive files that were requested that day; "The sensitivity 5 file is a Millbank file belonging to P Clarke [Peter Clarke, senior solicitor at BAT] which lists 214 BATCo research projects carried out between 1955 and 1995 including, for example, Project Bibra (long term toxicity studies on coumarin in the Baboon), Project Greendot ('Project Greendot must be defined at present as a burning cigarette light product in which tobacco smoke is the base vehicle and the tar is lowered in significant and incremental steps while retaining nicotine delivery') and Project Rio."[24]

Lovells' Depository Reports also include a section entitled, "Hot Docs" where solicitors tracked and described in detail visitors' requested documents that Lovells had classified as "hot", appearing to mean very significant.[26] In a depository visit from solicitors representing Guardian Insurance Company of Canada, "Hot Docs" included previously selected documents relating to BAT's 1976 corporate position on smoking, meeting notes from a 1976 scientific conference, and a 1985 document referencing lawyer involvement in research.[26] It appears to us that BAT's sensitivity ratings of the documents described in Lovells' reports had little to do with trade secret information that the company would legitimately want to keep from its competitors. If the sensitivity ratings were indicative of trade secret information, these documents would have been pulled for privilege from the estimated 8 million paged non-privileged collection. This was the not the case, as documents described in the Lovells' reports were photocopied for members of the public. Rather, "sensitive" files appear to relate more to information that might embarrass or potentially harm the company in litigation or if they were widely reported in the press.

For example, in the Lovells' Depository Report of February/March 2000 described previously in this article, the solicitor noted that a reference in a document, requested that day, discussed the company's marketing to "illiterate low-income 16 year olds" in the middle east and had been altered in the document to the less controversial age of 18 years.[24]

"Of the files which were selected today, one was sensitivity 4 and one was sensitivity 5. The sensitivity 4 file is a Millbank [a BAT office location] file belonging to S Osborne [Susan Osborne, Brand Management at Brown and Williamson and BAT China] which relates to marketing in the middle east *and is sensitive due to references to marketing to illiterate low-income 16 year-olds* ***[reference to 16 year-olds changed in manuscript to 18 year-olds]***" [emphasis added].[24]

The document subsequently retrieved from the Guildford depository, is a brand position memo for Player's Gold Leaf (PGL) and states, "PGL is targeted at low income low literacy Asians . . .".[25] Targeted groups, including 16-year-olds, were altered in handwriting to read 18-year-olds in over 20 references within the document. There is no indication of who altered the document or when it was altered.

Once the visitor's requests were processed, "end market lawyers" and BAT's "CORA (Corporate and Regulatory Affairs) personnel" were alerted of visitor document selections "to deal with any issues raised publicly in relation to those documents".[27] Accordingly, the Lovells Depository Reports available for public review were faxed to about 20 law firms that act on behalf of BAT in various countries. This procedure allows BAT a swift and well prepared response to the public dissemination of internal tobacco company documents to those markets. For example, as researchers consulting to WHO were selecting documents at the depository for the July, 2000, WHO report detailing the tobacco industry's efforts to undermine tobacco control at WHO,[16] solicitors were analysing their work and reporting so in Lovells' Depository Reports. An 88-page report with the handwritten marginalia, "File WHO Attorney Work Product" reported the following: "despite the existence of some documents that are not 'politically correct,' that is, supportive of an anti-tobacco agenda, these documents so far selected by visitors to the Guildford Depository do not support allegations of corporate misconduct on the part of BAT."[28]

In another instance, Lovells reviewed "Africa documents" requested by investigative journalist Duncan Campbell in February, 2000, by "attach[ing] a first stab at what might be said" of the documents selected.[29]

Tracking visitor database searches

New BAT documents also suggest that the company tracked visitor database searches of the file index to the publicly available documents at Guildford. During a depository visit from the law firm representing the government of British Columbia, Canada, Lovells reported that, "the files selected for review today were identified by searching for 'Morini'(a past legal director of BATCo) *as the file owner*"[30] [emphasis added]. Files at the Guildford depository are indexed on the searchable

electronic database by several fields including "File Owner" and "File User". BAT officials at Guildford have denied monitoring computer searches;[31] how, then, could Lovells know what the solicitors were searching on the database? If information is being obtained by monitoring the computer searches of solicitors visiting the depository in the course of litigation on behalf of a client who is suing BAT, this could be a serious ethical issue. Additionally, if visiting solicitors have been told that searches are not monitored, they are not voluntarily and knowingly surrendering this information to BAT or its legal advisors.

Unstated document imaging procedures at Guildford

BAT told the UK Health Select Committee in January, 2000, that the company had scanned and had in its possession only 350 000 pages of the estimated 8 million pages in the collection[13] and that it had no plans to scan the remaining documents.[32] The Committee inquired whether or not BAT would be willing to provide better access to the documents. BAT's then Chairman, Martin Broughton replied: "If I was convinced that it was going to be worth the effort . . . Frankly, the other seven and three quarter million pieces of paper I think would be an extreme effort [to put online] for absolutely no purpose whatsoever. Nobody has shown any interest in it despite all the people who have been there."[33]

Broughton also stated to the Committee that "there is no indication to me that serious researchers are showing any interest in the papers whatsoever".[34] During February and March, 2000, the Committee further corresponded with BAT "to establish which documents BAT or its lawyers currently [had] scanned electronically" and the Committee requested all such documents.[35–37] In addition to 350 000 pages that BAT admitted to scanning and having in its possession, the company also acknowledged that Lovells had scanned documents, "in the course of their preparation for active litigation where privilege issues remain to be determined", to create a "legally privileged database".[38,39] The company's explanation for scanning documents only as they are requested by depository visitors, rather than producing electronic images of documents immediately, is that BAT's solicitors are conducting an additional review for privileged, trade secret, or personal material.[38] Although this argument may have been defensible during the first few months of operation, it has been now over 5 years since the Guildford depository opened to the public, allowing ample time to conduct any residual review for privilege.

Although BAT admits to scanning only a fraction of the Guildford collection, new BAT documents suggest that BAT had the capabilities to undertake, in the company's own words, "big time imaging"[40] at Guildford at the time of the depository's opening. As early as 1986, BAT began to prepare for document management and production in response to anticipated litigation under the code name "Project Discovery".[41,42] Project Discovery was carried out in at least five phases continuing into 2000.[43] A BAT document created prior to 1995 describing the role of a Project Discovery manager states, "It should be evident that a plan for Stage III of Discovery goes far beyond counting and recording numbers of files that have been scanned. . . ".[44]

In November, 1996, BAT solicited a scanning and document-coding proposal for imaging one million pages of documents that was to be completed in 3 to 4 months.[45] This proposal also stated that BAT's document work was "focused on an initial group of approximately 4·4 million pages" and "a second group of post-1993 documents consist[ing] of approximately 1-2 million pages".[46] There is no indication in the documents available for public review whether or not BAT accepted this scanning proposal.

BAT and Lovells did, however, use the firm Legal Technologies Ltd (LTL) for their document imaging and optical character recognition (OCR) needs.[40,47–51] BAT had at least six ongoing imaging and coding projects with LTL as of January, 1999,[51] and LTL employed a staff of at least 50 for BAT between 1998 and 1999.[49,51] Further, BAT's budget for LTL was £3·1 million for 1998 and 1999.[42] Examples of scanning projects undertaken by the company included a "Latin American Project" in August, 1999,[52] "Smuggling Allegations and Price Fixing Document Project" in April, 2000,[53–56] and ongoing "Country Specific Requests".[57] One of the projects related to the "Country Specific Requests" undertaken by LTL for BAT was entitled, "Brazil" and involved the imaging of 717 000 pages from January to July, 2000.[58–60] These projects demonstrate the extraordinary imaging and scanning resources which BAT could have employed to make the Guildford documents available to the public if it had chosen to do so. Taken together, it is our view that it would have been possible for BAT to scan many more than 350 000 pages that BAT stated they had scanned and had possession of prior to evidence given to the UK Health Select Committee in January, 2000. Even if working with original documents containing staples, paper clips etc, or with extraordinarily slow scanners, a coding and scanning staff of this size could image millions of pages within several months as evidenced by BAT's proposed scanning of 1 million pages in 3 to 4 months using technology available in 1996.[45]

BAT did not want the scanning and OCR efforts, subsequently confirmed to the UK Health Select Committee, to be known to visitors, nor to a plaintiff; the Department of Justice. A BAT memo outlines the pros and cons of having the Department of Justice photocopy its own documents requested in litigation versus having BAT carry out the photocopying. BAT worried that if the Department of Justice did the photocopying BAT may, "end up back in court in Minnesota and [be] forced to make [the] depository available in computer format",[61] presumably due to public visitor complaints of the unavailability of documents at the Guildford depository.[61] On the other hand, the company notes, a risk of having BAT itself photocopy the requests was that their "process of imaging [would be] more easily discovered."[61]

Vulnerability of depository contents

Although managing large document collections does not come without problems and mishaps, there are now 181 fewer files on the electronic file index at the Guildford depository than there were upon the opening of the depository. There is no indication that these files have been pulled for privilege, as they are not on BAT's privilege log, and are therefore unavailable to the public.

Also exemplifying the vulnerability of the depository contents is an audio-tape recording of a BAT marketing conference requested by the authors in December 2001.[62] The taped discussion highlights a proposal to sell single cigarettes in developing countries. The presenter, Ian Ross, then at BAT's Finnish subsidiary states: " . . . the brand image must be enhanced by the new packaging . . . if you just say, this is a cheap cigarette for you dirt poor little black farmers . . . they're not going to go for it". [63]

Yet another conference participant ruminates, "We could sell them to the Palestinians if we made the plastic

hard enough that you could rip the end off and put your shells in them . . .".[63] Later in the tape, this same participant states, "When we see stick sales in the inner city, they aren't farmers, but they are poor and black".[63] When the authors requested the audio tape again in January, 2004, the entire side of the tape containing the above discussion was gone. We are not asserting that this was intentionally deleted. In fact, after bringing this to the depository staff's attention, the tape was replaced. This example does, however, demonstrate the vulnerability of the collection and that if it had not been requested again other users of the depository would not know of its existence.

Inappropriate use of legal privilege at the Guildford depository

We believe legal privilege may have been inappropriately used in the creation of the BAT's privilege log available to visitors of the depository. BAT's privilege log is a catalogue of all documents removed from public review ostensibly due to legally privileged, trade secret, or personal material being contained within a document. BAT's inappropriate use of privilege is exemplified by conducting a search of the term "inferred" in the company's privilege log. In 2004, a search at the Guildford depository showed that almost 10% (3 515/37 000) of the documents contained within the privilege log were inferred to be authored by a BAT solicitor. In some cases, a solicitor's name was not even associated with the document, but only the notation, "BAT solicitor" was present. It seems that BAT is likely, in some cases, to have based a claim of legal privilege not upon evidence, but upon their inference of authorship based upon unstated criteria. More importantly, users of the depository have no immediate mechanism while at the depository, or thereafter, for challenging the authorship inference and the subsequent privilege assertion.

Discussion

We describe what, in our view, constitutes BAT's efforts to conceal information at its Guildford depository and to monitor the activities of public visitors through behind-the-scenes surveillance. BAT's testimony given to the UK Health Select Committee claimed that scanning and subsequent placement of the Guildford collection online "would be an extreme effort for absolutely no purpose whatsoever".[33] However, the company internally recognised the importance of research undertaken by visitors, as evidenced by Lovells' Depository Reports, and invested substantial resources for tracking and scanning documents requested by visitors. Indeed, numerous scanning projects[54–56] during that time were undertaken in response to the public airing of documents visitors obtained from the Guildford depository.[64–69] Moreover, BAT has acted to impede access to the public documents at Guildford by denying multiple requests of electronic copies of the documents—thus, in effect, sequestering the collection.

BAT's activities described here conflict with the company's claimed new face of transparency and corporate social responsibility.[70] These activities show, as do the documents, that the company's claim of social responsibility[71] is really a public relations effort. In fact, 2 years prior to the opening of the depository, BAT was unconcerned about the further release of industry documents. In an internal presentation, BAT recognised that settlement talks in the late 1990s with US State Attorneys General would result in further disclosure of documents from its US subsidiary, Brown and Williamson. It was noted, however, that, "we [BAT] do not believe that this will be a major issue for the company".[72] In 2000, after the Guildford depository had been open for only a year, BAT's public relations firm, Shandwick, reported to the company that Guildford was a "skeleton" in the company's closet.[73] Given the public airing of documents found at Guildford relating to smuggling and price fixing,[67–69] the control of scientific research by lawyers,[15,74,75] and political attacks against health groups such as WHO,[16] it is not surprising that a public relations firm expressed concern. Likewise, it is not unexpected that the company has sought to impede effective use of the Guildford depository. However, we share the UK Health Select Committee's belief that the tracking of organisations visiting the depository is inappropriate and we further believe that tracking electronic searches by visitors exceeds ethical boundaries.

It is our view that BAT's surveillance of the activities of academic researchers, journalists, and litigants at the Guildford depository is an extension of its lobbying, marketing, and litigation efforts which we believe undermine the public health. Similar to operations at the Minnesota depository, BAT should be tasked with surveying only the integrity of its document population rather than being concerned with monitoring academic or journalistic research. BAT's surveillance by logging a visitor's mobile phone use and the physical movement of public visitors to the depository substantially deviates from the task of maintaining a document collection. Although it is logical that BAT tracks files requested by visitors, we believe it is unreasonable for BAT to covertly monitor database searches, which might anticipate research direction and litigation mindset, particularly after having told visitors that no such monitoring is conducted.

BAT has refused to produce electronic images of requested documents to visitors to its Guildford depository and, unlike other Minnesota defendants, BAT has not put the collection online for internet access. BAT steadfastly refuses to do so despite multiple requests from public parties, a British parliamentary committee and the government of the UK.[4,12,76] The June, 2000, UK Health Select Committee's *Second Report on the Tobacco Industry and the Health Risks of Smoking*[4] urged BAT to be more forthright with its document accessibility; "We believe that a commitment on the part of BAT to put all non-privileged documents held at Guildford on the internet, preferably in a searchable form, would indicate that [BAT] was serious in its attempts to 'start the new millennium with a positive approach' to bringing an end to the allegations and arguments which have characterised relationships between public health authorities and the tobacco companies."[4]

The British government responded to the committee report in October 2000 in a document entitled, *Government Response to the Health Select Committee*;[76] "The Government would like to see the BAT. . . documentation made more readily available to the public and researchers. It calls upon [BAT] to respond positively to the recommendations of the [Health Select] Committee."[76]

BAT told the UK Health Select Committee in January, 2000, that it had not imaged the entire collection at Guildford. The company's argument was that indexing and imaging all the documents in Guildford was unfeasible due to the volume of the collection and the lack of a document-by-document index.[14] BAT also asserted that there was little public interest in the non-imaged 7 million plus pages[33] and that the number of researchers attending the depository was limited during the first year

of operation.[34] In our view, the new evidence presented here related to BAT's monitoring of researchers' activities and work, scanning projects and budgets demonstrates the company's extensive imaging resources it is prepared to devote to "big time imaging".

In a letter to the company in April, 2003, we asked BAT to confirm whether the contents of the depository had been scanned.[11] At the same time, we asked for electronic copies of a near 1 million page document request.[11] BAT's in-house legal counsel responded, "You are incorrect that the Depository Collection at Guildford has been scanned and is available in electronic format. Even if all of the Guildford Depository documents were so available, we have no plans (or obligation) to provide documents in electronic form".[12]

In contrast to BAT's legal counsel response, BAT's then Chairman, Martin Broughton magnanimously characterised the Guildford depository in the press by declaring that, "there's no other company in the world which has such extensive documentation in the public arena".[77]

There are, however, practical changes that could readily be made by BAT to improve the situation. Simply making the electronic images of documents at Guildford available to public visitors would reduce the extraordinarily long time it takes BAT to deliver photocopies of requested documents, which is the greatest impediment to document access at the Guildford depository. The shipment of photocopies has usually taken many months, sometimes almost a year for large requests. We believe the need for this length of time it takes BAT to process copy requests should be questioned, since BAT's own internal documents show that its photocopy capacity at the time of the Department of Justice photocopy request was 36 000 pages per day,[61] and BAT has had nearly 6 years to review its files for privilege. A public request of 1 million pages then, for example, should take a mere month versus almost a year that it has taken in one case.[78] To compare, documents from all the other tobacco companies are usually delivered within 24 hours from the Minnesota depository and a photocopy request of 1 million pages would be completed in a month.[79]

Public dissemination terms for significant tobacco document collections that may be acquired in the future have to be more carefully set out. The plaintiffs in the Minnesota litigation understandably focused their attention primarily on the American defendant tobacco companies with significant operations in the USA. In our view, BAT has exploited this lack of attention. The comparatively vague settlement terms involving BAT's depository has rendered the depository largely inaccessible to the public, contrary to the intent of the settlement.

We agree with the UK Health Select Committee that BAT should make its documents electronically available.[4] We recommend that BAT provide a complete electronic version of the estimated 8 million pages housed at the Guildford depository to interested parties. In doing so, BAT documents would then be made readily accessible online by those parties. This would allow researchers, journalists, and litigants to view the collection without BAT monitoring their activities. Further, this arrangement would mirror the other tobacco companies whose document collections are run by a third party.

This work has been presented at the National Conference on Tobacco OR Health (December 2003, Boston, MA, USA) and the World Conference on Tobacco OR Health (August 2003, Helsinki, Finland).

Contributors

All authors contributed to preparation and editing of the article and saw and approved the final version.

Conflict of interest statement

None declared.

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3 Guildford Depository. British American Tobacco. Globe House 4, Temple Place London, UK WC2R 2PG, Fax: +44 20 7845 2783, Requests for admission to the depository should be faxed to the BAT Legal Department, Attention: Tom Astle.

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This is Exhibit "J" referred to in the Affidavit of Monique E. Muggli sworn by Monique E. Muggli of the City of Minneapolis, in the State of Minnesota, United States of America, before me at the City of Toronto, in the Province of Ontario , on January 20, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (or as may be)

Katelin Zoe Parker, a Commissioner, etc.,
Province of Ontario, for Fogler, Rubinoff LLP,
Barristers and Solicitors. Expires April 23, 2026.

Compilation of extracts regarding public disclosure of documents from U.S. tobacco, opioid and e-cigarette settlements

January 19, 2025

Compilation of extracts regarding public disclosure of documents from U.S. tobacco, opioid and e-cigarette settlements

January 19, 2025

Contents

8. *Final Teva Global Opioid Settlement Agreement*. February 8, 2023. Retrieved from https://nationalopioidsettlement.com/wp-content/uploads/2023/08/Final-Teva-Global-Settlement-Agreement-and-Exhibits-8.29.23.pdf. See Section V (pages 480-483 of PDF) for document disclosure provisions.

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MASTER SETTLEMENT AGREEMENT

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Tobacco Product Manufacturer that has the purpose or effect of: (1) limiting competition in the production or distribution of information about health hazards or other consequences of the use of their products; (2) limiting or suppressing research into smoking and health; or (3) limiting or suppressing research into the marketing or development of new products. Provided, however, that nothing in this subsection shall be deemed to (1) require any Participating Manufacturer to produce, distribute or otherwise disclose any information that is subject to any privilege or protection; (2) preclude any Participating Manufacturer from entering into any joint defense or joint legal interest agreement or arrangement (whether or not in writing), or from asserting any privilege pursuant thereto; or (3) impose any affirmative obligation on any Participating Manufacturer to conduct any research.

(r) Prohibition on Material Misrepresentations. No Participating Manufacturer may make any material misrepresentation of fact regarding the health consequences of using any Tobacco Product, including any tobacco additives, filters, paper or other ingredients. Nothing in this subsection shall limit the exercise of any First Amendment right or the assertion of any defense or position in any judicial, legislative or regulatory forum.

IV. PUBLIC ACCESS TO DOCUMENTS

(a) After the MSA Execution Date, the Original Participating Manufacturers and the Tobacco-Related Organizations will support an application for the dissolution of any protective orders entered in each Settling State's lawsuit identified in Exhibit D with respect only to those documents, indices and privilege logs that have been produced as of the MSA Execution Date to such Settling State and (1) as to which defendants have made

no claim, or have withdrawn any claim, of attorney-client privilege, attorney work-product protection, common interest/joint defense privilege (collectively, "privilege"), trade-secret protection, or confidential or proprietary business information; and (2) that are not inappropriate for public disclosure because of personal privacy interests or contractual rights of third parties that may not be abrogated by the Original Participating Manufacturers or the Tobacco-Related Organizations.

(b) Notwithstanding State-Specific Finality, if any order, ruling or recommendation was issued prior to September 17, 1998 rejecting a claim of privilege or trade-secret protection with respect to any document or documents in a lawsuit identified in Exhibit D, the Settling State in which such order, ruling or recommendation was made may, no later than 45 days after the occurrence of State-Specific Finality in such Settling State, seek public disclosure of such document or documents by application to the court that issued such order, ruling or recommendation and the court shall retain jurisdiction for such purposes. The Original Participating Manufacturers and Tobacco-Related Organizations do not consent to, and may object to, appeal from or otherwise oppose any such application for disclosure. The Original Participating Manufacturers and Tobacco-Related Organizations will not assert that the settlement of such lawsuit has divested the court of jurisdiction or that such Settling State lacks standing to seek public disclosure on any applicable ground.

(c) The Original Participating Manufacturers will maintain at their expense their Internet document websites accessible through "TobaccoResolution.com" or a similar website until June 30, 2010. The Original Participating Manufacturers will maintain the

documents that currently appear on their respective websites and will add additional documents to their websites as provided in this section IV.

(d) Within 180 days after the MSA Execution Date, each Original Participating Manufacturer and Tobacco-Related Organization will place on its website copies of the following documents, except as provided in subsections IV(e) and IV(f) below:

(1) all documents produced by such Original Participating Manufacturer or Tobacco-Related Organization as of the MSA Execution Date in any action identified in Exhibit D or any action identified in section 2 of Exhibit H that was filed by an Attorney General. Among these documents, each Original Participating Manufacturer and Tobacco-Related Organization will give the highest priority to (A) the documents that were listed by the State of Washington as trial exhibits in the State of Washington v. American Tobacco Co., et al., No. 96-2-15056-8 SEA (Wash. Super. Ct., County of King); and (B) the documents as to which such Original Participating Manufacturer or Tobacco-Related Organization withdrew any claim of privilege as a result of the re-examination of privilege claims pursuant to court order in State of Oklahoma v. R.J. Reynolds Tobacco Company, et al., CJ-96-2499-L (Dist. Ct., Cleveland County);

(2) all documents that can be identified as having been produced by, and copies of transcripts of depositions given by, such Original Participating Manufacturer or Tobacco-Related Organization as of the MSA Execution Date in the litigation matters specified in section 1 of Exhibit H; and

(3) all documents produced by such Original Participating Manufacturer or Tobacco-Related Organization as of the MSA Execution Date and listed by the

plaintiffs as trial exhibits in the litigation matters specified in section 2 of Exhibit H.

(e) Unless copies of such documents are already on its website, each Original Participating Manufacturer and Tobacco-Related Organization will place on its website copies of documents produced in any production of documents that takes place on or after the date 30 days before the MSA Execution Date in any federal or state court civil action concerning smoking and health. Copies of any documents required to be placed on a website pursuant to this subsection will be placed on such website within the later of 45 days after the MSA Execution Date or within 45 days after the production of such documents in any federal or state court action concerning smoking and health. This obligation will continue until June 30, 2010. In placing such newly produced documents on its website, each Original Participating Manufacturer or Tobacco-Related Organization will identify, as part of its index to be created pursuant to subsection IV(h), the action in which it produced such documents and the date on which such documents were added to its website.

(f) Nothing in this section IV shall require any Original Participating Manufacturer or Tobacco-Related Organization to place on its website or otherwise disclose documents that: (1) it continues to claim to be privileged, a trade secret, confidential or proprietary business information, or that contain other information not appropriate for public disclosure because of personal privacy interests or contractual rights of third parties; or (2) continue to be subject to any protective order, sealing order or other order or ruling that prevents or limits a litigant from disclosing such documents.

(g) Oversized or multimedia records will not be required to be placed on the Website, but each Original Participating Manufacturers and Tobacco-Related Organizations will make any such records available to the public by placing copies of them in the document depository established in The State of Minnesota, et al. v. Philip Morris Incorporated, et al., C1-94-8565 (County of Ramsey, District Court, 2d Judicial Cir.).

(h) Each Original Participating Manufacturer will establish an index and other features to improve searchable access to the document images on its website, as set forth in Exhibit I.

(i) Within 90 days after the MSA Execution Date, the Original Participating Manufacturers will furnish NAAG with a project plan for completing the Original Participating Manufacturers' obligations under subsection IV(h) with respect to documents currently on their websites and documents being placed on their websites pursuant to subsection IV(d). NAAG may engage a computer consultant at the Original Participating Manufacturers' expense for a period not to exceed two years and at a cost not to exceed $100,000. NAAG's computer consultant may review such plan and make recommendations consistent with this Agreement. In addition, within 120 days after the completion of the Original Participating Manufacturers' obligations under subsection IV(d), NAAG's computer consultant may make final recommendations with respect to the websites consistent with this Agreement. In preparing these recommendations, NAAG's computer consultant may seek input from Settling State officials, public health organizations and other users of the websites.

(j) The expenses incurred pursuant to subsection IV(i), and the expenses related to documents of the Tobacco-Related Organizations, will be severally shared among the Original Participating Manufacturers (allocated among them according to their Relative Market Shares). All other expenses incurred under this section will be borne by the Original Participating Manufacturer that incurs such expense.

V. TOBACCO CONTROL AND UNDERAGE USE LAWS

Each Participating Manufacturer agrees that following State-Specific Finality in a Settling State it will not initiate, or cause to be initiated, a facial challenge against the enforceability or constitutionality of such Settling State's (or such Settling State's political subdivisions') statutes, ordinances and administrative rules relating to tobacco control enacted prior to June 1, 1998 (other than a statute, ordinance or rule challenged in any lawsuit listed in Exhibit M).

VI. ESTABLISHMENT OF A NATIONAL FOUNDATION

(a) Foundation Purposes. The Settling States believe that a comprehensive, coordinated program of public education and study is important to further the remedial goals of this Agreement. Accordingly, as part of the settlement of claims described herein, the payments specified in subsections VI(b), VI(c), and IX(e) shall be made to a charitable foundation, trust or similar organization (the "Foundation") and/or to a program to be operated within the Foundation (the "National Public Education Fund"). The purposes of the Foundation will be to support (1) the study of and programs to reduce Youth Tobacco Product usage and Youth substance abuse in the States, and (2) the study of and educational programs to prevent diseases associated with the use of Tobacco Products in the States.

STATE OF MINNESOTA **DISTRICT COURT**

COUNTY OF RAMSEY **SECOND JUDICIAL DISTRICT**

THE STATE OF MINNESOTA,
BY HUBERT H. HUMPHREY III,
ITS ATTORNEY GENERAL,

and

BLUE CROSS AND BLUE SHIELD
OF MINNESOTA,

Plaintiffs,

vs.

PHILIP MORRIS INCORPORATED,
R.J. REYNOLDS TOBACCO COMPANY,
BROWN & WILLIAMSON TOBACCO
CORPORATION, B.A.T. INDUSTRIES
P.L.C., BRITISH-AMERICAN TOBACCO
COMPANY LIMITED, BAT (U.K. &
EXPORT) LIMITED, LORILLARD
TOBACCO COMPANY, THE AMERICAN
TOBACCO COMPANY, LIGGETT GROUP,
INC., THE COUNCIL FOR TOBACCO
RESEARCH-U.S.A., INC., and THE
TOBACCO INSTITUTE, INC.,

Defendants.

Case Type: Other Civil
Court File No. C1-94-8565

SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF CONSENT JUDGMENT

THIS SETTLEMENT AGREEMENT AND RELEASE ("Settlement Agreement") is made as of the date hereof, by and among the parties hereto, as indicated by their signatures below, to settle

of the Council for Tobacco Research which relate in any way to issues raised in this or any other Attorney General lawsuit. Defendants may not reconstitute the Council for Tobacco Research or its function in any form.

VII. PUBLIC ACCESS TO DOCUMENTS AND COURT FILES

A. The Court's previous Protective Orders are hereby dissolved with respect to all documents, including the 4A and 4B indices and the privilege logs, which have been produced to the Plaintiffs and for which Defendants have made no claim of privilege or Category II trade secret protection. Such documents shall be made available to the public at the Depository, in the manner provided as follows:

1. The public shall be given access to all non-privileged documents contained in the Minnesota Depository, including all documents set forth in Paragraph VII.A. above.

2. Plaintiffs and Settling Defendants shall meet with representatives of the current Minnesota Depository administrators, Smart Legal Assistance and Merrill Corporation, and/or other appropriate persons, to discuss staffing issues and the procedures that should be implemented to continue the operation of the Minnesota Depository, thereby to ensure broad and orderly access to these documents.

3. Category II documents shall be returned to the Defendants as soon as practical, provided that Defendants, upon receiving appropriate assurances of trade secret protection from the Food and Drug Administration, shall forward a copy of the Category II documents bearing the Bates numbers from this action to said agency. Plaintiffs shall retain the Bates stamp numbers of all Category II documents produced in this case.

B. The documents produced in this case are not "government data" under the Minnesota Government Data Practices Act.

C. For documents upon which a privilege was claimed and found not to exist, including any briefs, memoranda and other pleadings filed by the parties which include reference to such documents, Plaintiffs may seek court approval to make such documents available to the public, provided that any such request be made to the Court within 45 days of the date of entry of this Consent Judgment.

D. Defendant British-American Tobacco Company Limited shall maintain and operate the Guildford Depository for a period of ten years. Defendant British-American Tobacco Company Limited shall have the option of maintaining such depository at its current location or at an appropriate alternative location. All documents, except those identified in Paragraph VII.A.3 above, which were selected by plaintiffs from the Guildford Depository in response to the Plaintiffs' discovery requests shall be moved to and retained at the Minnesota Depository.

E. The Minnesota Depository shall be maintained and operated at Settling Defendants' sole expense, in the manner set forth above for ten years after the date hereof, or such longer period as may be provided in federal legislation for a national document depository. At the end of such period, or sooner, at the State's discretion, the documents shall be transferred to the State Archives or other appropriate state body, where they shall remain available for historical and research purposes. The parties and the Depository staff shall cooperate with the State Archivist or such other state officials as may be involved in transferring the documents to the custody of the State.

F. Settling Defendants shall provide to the State for the Depository a copy of all existing CD-ROMs of documents produced in this action that do not contain any privileged or work-product documents or information, to be placed in the Depository.

G. Defendants shall produce to the Depository all documents produced by such defendants in other United States smoking and health litigation but not previously produced in Minnesota, within 30 days of their production such the other litigation, provided Defendants do not claim privilege with respect to such documents, and provided such documents are not subject to any protective order.

VIII. EQUITABLE RELIEF: NATIONAL RESEARCH; DEPOSIT OF FUNDS.

A. In furtherance of the equitable relief sought by the State, pursuant to the Court's equitable powers to shape appropriate injunctive relief, in light of the public health interests demonstrated by the evidence in this case, and pursuant to the agreement of the parties:

1. Consistent with the Prayer for Relief in the State's Complaint and Amended Complaints that the Defendants fund cessation programs in the State of Minnesota, the amount due in December, 1998 ($102 million), pursuant to the Settlement Agreement, Section II.D, shall be deposited into a separate cessation account and used to offer smoking cessation opportunities to Minnesota smokers, and shall be administered as ordered by the Court.

2. In addition to other money paid under this Consent Judgment and the Settlement Agreement and Stipulation for Entry of Consent Judgment, each Settling Defendant shall pay pro rata in proportion to its Market Share, on or before June 1, 1998, and no later than June 1 of each succeeding year through and including June 1, 2007, its share of

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	
	:	**Civil Action No. 99-2496 (GK)**
	:	
TOBACCO-FREE KIDS ACTION FUND, AMERICAN CANCER SOCIETY, AMERICAN HEART ASSOCIATION, AMERICAN LUNG ASSOCIATION, AMERICANS FOR NONSMOKERS' RIGHTS, and NATIONAL AFRICAN AMERICAN TOBACCO PREVENTION NETWORK,	:	
	:	
Intervenors,	:	
	:	
v.	:	
	:	
PHILIP MORRIS USA, Inc., (f/k/a Philip Morris, Inc.), *et al.*	:	
	:	
Defendants.	:	

ORDER #1015
Final Judgment and Remedial Order

Based upon the Findings of Fact and Conclusions of Law, the Court hereby enters this Final Judgment and Remedial Order.

I. Judgment

It is hereby Ordered that Final Judgment is entered for the Plaintiff, the United States of America, on Counts 3 and 4 of the Complaint, imposing liability under Sections 1962(c) and (d) of the Racketeer Influenced and Corrupt Organizations Chapter of Title 18 of the United States Criminal Code.

C. Document Disclosure in Depositories and on Websites

8. Defendants Philip Morris, R.J. Reynolds, Lorillard, and Brown & Williamson, shall maintain Internet Document Websites until September 1, 2016 at their expense. These Defendants shall maintain on their Internet Document Websites the documents and bibliographic information that currently appear on their respective Internet Document Websites as well as the additional documents and bibliographic information described below. These Defendants shall provide links to their Internet Document Websites from any and all publicly-accessible company websites and shall display such links prominently and in a manner easily accessible to visitors.

9. Defendant BATCo shall create and maintain by January 1, 2007 an Internet Document Website until September 1, 2016, at its expense. The BATCo Internet Document Website shall be created and publicly accessible no later than 120 days from the date of this Final Judgment and Remedial Order. BATCo shall provide links to its Internet Document Website from any and all publicly-accessible company websites and shall display such links prominently and in a manner easily accessible to visitors.

10. Each Defendant shall add documents and bibliographic data to its website(s) as follows:

a. Each Defendant shall add the following additional documents: (1) all documents produced to the Government in this case; (2) all documents produced on or after the date of this Final Judgment and Remedial Order in any court or administrative action in the United States concerning smoking and health, marketing, addiction, low-tar or low-nicotine cigarettes, or less hazardous cigarette research; and (3) all transcripts of depositions and letters

of request testimony (with corresponding exhibits if not already on the website) given by any of their current or former employees, officers, directors, corporate designees, attorneys or agents, in this action or in any court or administrative action in the United States concerning smoking and health, marketing, addiction, low-tar or low-nicotine cigarettes, or less hazardous cigarette research; such transcripts shall be in machine-readable text if received or available from a court reporter. Philip Morris shall provide on its website all such documents produced by, pertaining to, or concerning Altria.

b. Each Defendant shall add these additional documents referred to in the previous paragraph, as well as any other data newly required by this Final Judgment and Remedial Order, to its Internet Document Website(s) within 45 days of the date of production, in the case of documents; and within 45 days of receipt of the transcript, in the case of depositions and letters of request testimony. These requirements are subject to Section III(C)(¶14) concerning documents under court order or ruling.

c. Each Internet Document Website shall provide, and be searchable by, the following bibliographic fields for all documents (even those withheld on grounds of privilege or confidentiality):

(1) Document ID;

(2) Master ID;

(3) Other Number;

(4) Document Date;

(5) Primary Type;

(6) Person Attending;

(7) Person Noted;

(8) Person Author;

(9) Person Recipient;

(10) Person Copied;

(11) Person Mentioned;

(12) Organization Author;

(13) Organization Recipient;

(14) Organization Copied;

(15) Organization Mentioned;

(16) Organization Attending;

(17) Organization Noted;

(18) Physical Attachments;

(19) File Name;

(20) Old Brand;

(21) Primary Brand;

(22) Mentioned Brand;

(23) Page Count;

(24) Live hyperlink to document image (except where image is withheld);

(25) Court or administrative case in which document was produced or transcript taken, including case title(s), action number(s), court(s) or administrative body(ies);

(26) Date on which document was produced or transcript was received;

(27) Date hard copy was produced to Minnesota or Guildford Depository; and

(28) Box number in which hard copy was produced to Minnesota or Guildford Depository.

In addition, Defendant BATCo's bibliographic fields shall include the File Number, File Owner, and File User fields that it used in this lawsuit, and its website shall identify the Folder Number prefixes.

d. The Internet Document Websites shall also provide, and be searchable by, the above fields for documents withheld from the website on grounds of privilege ("the privilege log"), and for documents withheld from the website on grounds that they contain trade secret information ("the confidential document index"). Each Internet Document Website's privilege log shall also provide fields stating the basis for the privilege assertion with sufficient detail to allow an opposing party or court to assess the merits of the assertion; and, as in Order #51, ¶ III.G.9, a statement of whether the claimed privilege has ever been (i) expressly waived, or (ii) ruled waived, invalid, inapplicable or unenforceable for any reason by a court, with a specification of the case title(s), action number(s), court(s), date(s) of waiver or decision, and

Document ID(s) for such waivers, orders and decisions. Each Internet Document Website shall post a copy of all such waivers, orders and decisions (and underlying judicial materials such as magistrate judge reports and recommendations). Defendants may withhold the title of documents withheld on grounds of privilege if the document title, without reference to the document's contents, reveals privileged information, with the restriction that the title must be provided where a Defendant has previously waived privilege over the document title, e.g., pursuant to Order #75, ¶ 8.

e. Each Internet Document Website shall provide its bibliographic data index, privilege log and confidential document index in a format suitable for downloading (e.g., comma separated value (CSV) file, compressed in a ZIP or similar format). In addition, monthly update files shall be provided in a format suitable for downloading, and shall be maintained on the website for 12 months.

11. Each Defendant shall, at its expense, produce documents to the Minnesota Depository created in Minnesota v. Philip Morris Inc., No. C1-94-8565 (Minn. Dist. Ct.), or its successor, as follows:

a. Each Defendant shall produce to the Minnesota Depository hard copies of all documents described in Section III(C)(¶10)(a).

b. These documents shall be produced to the Minnesota Depository within 30 days of being produced in the related judicial or administrative proceeding

(or received from the court reporter). This requirement is subject to Section III(C)(¶14) below concerning documents under court order or ruling.

c. Each production of documents to the Minnesota Depository shall include an index of the documents produced in that production, with the fields specified in Section III(C)(¶10)(c), in both hard copy and electronic form.

d. Each Defendant shall continue to fund and produce documents to the Minnesota Depository until September 1, 2016.

12. BATCo shall continue to maintain its obligations as to documents available in the Guildford Depository until September 1, 2016. BATCo shall ensure access to the Guildford Depository for six organizations and 12 visitors per day.

13. A Defendant may redact from a document placed on its Internet Document Website or produced to the Minnesota Depository individual Social Security numbers, home addresses, and home telephone numbers. Such redactions shall indicate that confidential personal information has been redacted. Wherever less than the entirety of a document is subject to a claim of privilege or trade secret pursuant to Section III(C)(¶14), the Defendant shall produce the document in redacted form on its Internet Document Website and to the Minnesota Depository. Such redactions shall indicate that privileged or trade secret information, as appropriate, has been redacted.

14. This Final Judgment and Remedial Order does not require any Defendant to place on its Internet Document Website or in the Minnesota Depository documents that: (1) it continues to claim to be privileged or a trade secret in the document's entirety, or (2) continue to be subject in the document's entirety to any protective order, sealing order or other order or ruling that prevents or limits that Defendant from disclosing such documents. As defined in Order #36, a "trade secret"

is information, including a formula, pattern, compilation, program, device, method, technique or process that (a) derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure and use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. However, the foregoing exceptions shall not apply to documents which a Defendant continues to claim to be privileged but which this Court ordered produced in this lawsuit; and shall not apply to documents which a Defendant continues to claim to be a trade secret or contain confidential or proprietary business information, or which continue to be subject to any protective order, sealing order or other order or ruling that prevents or limits that Defendant from disclosing such documents, if this Court overruled such assertions and/or that Defendant did not make such assertions to prevent the documents from being used in open court during this lawsuit.

15. Because the economic value of many trade secrets substantially declines with the passage of time, each Defendant shall review all trade secret assertions every three years to determine whether they still satisfy the definition of "trade secret." The first review shall be completed within one year of this Final Judgment and Remedial Order. Each Defendant shall, every three years, file a report with the Court indicating any changes in the assertion of trade secret status.

D. Disclosure of Disaggregated Marketing Data

16. Each Defendant shall be required to disclose all disaggregated marketing data to the Government in the same form and on the same schedule which Defendants now follow in disclosing disaggregated marketing data to the Federal Trade Commission. Defendants must disclose such data to the Government for a period of ten years from the date of this Final Judgment and Remedial Order.

17. Disaggregated Marketing Data shall be maintained in the databases and formats maintained by Defendants, and all reports generated from such Disaggregated Marketing Data shall be made available to the Government.

18. In addition, each year's Disaggregated Marketing Data shall be separately maintained in a format suitable for downloading (e.g., comma separated value (CSV) file, compressed in a ZIP or similar format). All data fields shall be specified.

19. All Disaggregated Marketing Data shall be deemed "confidential" and "highly sensitive trade secret information," as defined in Orders #7 and #36, and shall be subject to the provisions of those Orders.

IV. Miscellaneous Provisions

20. **Transfer of Tobacco Brands or Businesses**. No Defendant shall sell or otherwise transfer or permit the sale or transfer of any of its cigarette brands, brand names, cigarette product formulas or cigarette businesses (other than a sale or transfer of cigarette brands or brand names to be sold, product formulas to be used, or cigarette businesses to be conducted, by the acquiror or transferee exclusively outside of the United States) to any person or entity unless (1) such person or entity is already a Defendant subject to this Final Judgment and Remedial Order, or (2) prior to the sale or acquisition, such person or entity (a) submits to the jurisdiction of this Court; and (b) applies for and obtains an Order from this Court subjecting such person or entity to the provisions of this Final Judgment and Remedial Order as of the date of the sale or transfer. No such Order will be entered, and no sale or transfer of any Defendant's cigarette brands, brand names, cigarette product formulas or cigarette businesses (other than a sale or transfer of cigarette brands or brand names to be sold, product formulas to be used, or cigarette businesses to be conducted, by the

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
MALLINCKRODT PLC, *et al.*,	)	Case No. 20-12522 (JTD)
Debtors.[1]	)	(Jointly Administered)

FOURTH AMENDED JOINT PLAN OF REORGANIZATION (WITH TECHNICAL MODIFICATIONS) OF MALLINCKRODT PLC AND ITS DEBTOR AFFILIATES UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

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Counsel to the Debtors and Debtors in Possession

Dated: February 18, 2022

[1] A complete list of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' claims and noticing agent at http://restructuring.primeclerk.com/Mallinckrodt. The Debtors' mailing address is 675 McDonnell Blvd., Hazelwood, Missouri 63042.

regardless of whether the Opioid MDT II Administrator has previously objected to such Other Opioid Claim or whether the Bankruptcy Court has ruled on any such objection; *provided*, however, any estimation of any Other Opioid Claim shall be subject to reconsideration upon the filing, at any time, of a motion by the holder of such Claim under section 502(j) of the Bankruptcy Code. The Bankruptcy Court shall retain jurisdiction to estimate any Other Opioid Claim at any time during litigation concerning any objection to any Other Opioid Claim, including, during the pendency of any appeal relating to any such objection. If the Bankruptcy Court estimates any Other Opioid Claim, that estimated amount shall constitute the maximum limitation on such Other Opioid Claim (unless such Other Opioid Claim is subsequently Allowed in a greater amount pursuant to section 502(j) of the Bankruptcy Code), and the Opioid MDT II Administrator may pursue supplementary proceedings to object to the ultimate allowance of such Other Opioid Claim. All of the aforementioned objection, estimation and resolution procedures are cumulative and not exclusive of one another. Other Opioid Claims may be estimated and subsequently compromised, settled, withdrawn, or resolved by any mechanism approved by the Bankruptcy Court.

Z. *Authority of the Debtors*

Effective on the Confirmation Date, the Debtors shall be empowered and authorized to take or cause to be taken, prior to the Effective Date, all actions necessary or appropriate to achieve the Effective Date and enable the Reorganized Debtors to implement effectively the provisions of the Plan, the Confirmation Order, the Scheme of Arrangement, the Irish Confirmation Order, the Restructuring Transactions, the Opioid MDT II Documents, and the Opioid Creditor Trust Documents.

AA. *Industry-Wide Document Disclosure Program*

The VI-Specific Debtors and/or the Reorganized VI-Specific Debtors shall participate in an industry-wide document disclosure program by disclosing publicly a subset of its litigation documents, subject to scope and protocols described below.

1. Documents Subject to Public Disclosure

The following documents shall be produced by the VI-Specific Debtors and/or the Reorganized VI-Specific Debtors to the Minnesota State Attorney General, on behalf of the Settling States, and are subject to public disclosure in perpetuity as part of an industry-wide document disclosure program, except for the redactions authorized by Article IV.AA.2:

(a) All documents, indices, and privilege logs the VI-Specific Debtors produced to any of the Settling States prior to the Petition Date, including in litigation and in response to investigative demands or other formal or informal requests related to opioids.

(b) All documents, indices, and privilege logs the VI-Specific Debtors produced in the Opioid Multi-District Litigation (*In re Nat'l Prescription Opiate Litig.*, No. 1:17-MD-2804 (N.D. Ohio)) and the New York litigation (*In re Opioid Litigation*, 400000/2017 (Suffolk County)) prior to the Petition Date.

(c) All documents, indices, and privilege logs the VI-Specific Debtors have produced in other litigation related to opioids, excluding patent litigation.

(d) All filings, motions, orders, court transcripts, deposition transcripts, and exhibits in the possession, custody, or control of the VI-Specific Debtors and/or Reorganized VI-Specific Debtors from litigation related to opioids, excluding patent litigation.

All documents produced under this provision shall be provided in electronic format with all related metadata. The VI-Specific Debtors and/or the Reorganized VI-Specific Debtors and the Minnesota State

Attorney General, on behalf of the Settling States, will work cooperatively to develop technical specifications for the productions.

2. Information That May Be Redacted

The following categories of information are exempt from public disclosure:

(a) Information subject to trade secret protection. A "trade secret" is information, including a formula, pattern, compilation, program, device, method, technique or process, that (i) derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure and use; and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Even if the information falls within the definition, "trade secret" does not include information reflecting sales or promotional strategies, tactics, targeting, or data, or internal communications related to sales or promotion.

(b) Confidential personal information. "Confidential personal information" means individual Social Security or tax identification numbers, personal financial account numbers, passport numbers, driver license numbers, home addresses, home telephone numbers, personal email addresses, and other personally identifiable information protected by law from disclosure. "Confidential personal information" does not include the names of the VI-Specific Debtors' and/or the Reorganized VI-Specific Debtors' officers, directors, employees, agents, or attorneys.

(c) Information that is inappropriate for public disclosure because it is subject to personal privacy interests recognized by law (e.g., HIPAA), or contractual rights of third parties that the VI-Specific Debtors and/or the Reorganized VI-Specific Debtors may not abrogate.

(d) Information regarding the VI-Specific Debtors' and/or the Reorganized VI-Specific Debtors' employees' personal matters unrelated to the VI-Specific Debtors and/or the Reorganized VI-Specific Debtors, including emails produced by the VI-Specific Debtors' custodians discussing vacation or sick leave, family, or other personal matters.

3. Redaction of Documents Containing Protected Information

Whenever a document contains information subject to a claim of exemption pursuant to Article IV.AA.2, the VI-Specific Debtors and/or the Reorganized VI-Specific Debtors shall produce the document in redacted form. Such redactions shall indicate that trade secret and/or private information, as appropriate, has been redacted. Redactions shall be limited to the minimum redactions possible to protect the legally recognized individual privacy interests and trade secrets identified above.

The VI-Specific Debtors and/or the Reorganized VI-Specific Debtors shall produce to the Minnesota State Attorney General, on behalf of the Settling States, a log noting each document redacted. The log shall also provide fields stating the basis for redacting the document, with sufficient detail to allow an assessment of the merits of the assertion. The log is subject to public disclosure in perpetuity. The log shall be produced simultaneously with the production of documents required by Article IV.AA.7.

In addition to the redacted documents, the VI-Specific Debtors and/or the Reorganized VI-Specific Debtors shall, upon any Settling State's request, also produce all documents identified in Article IV.AA.1 in unredacted form to such Settling State at the same time. The redacted documents produced by the VI-Specific Debtors and/or the Reorganized VI-Specific Debtors may be publicly disclosed in accordance with Article IV.AA.6. The unredacted documents produced by the VI-Specific Debtors and/or the Reorganized VI-Specific Debtors to a Settling State shall be available only to such Settling State unless the VI-Specific

Debtors' and/or the Reorganized VI-Specific Debtors' claim of exemption under Article IV.AA.2 is successfully challenged in accordance with Article IV.AA.4 or the trade secret designation expires in accordance with Article IV.AA.5.

4. Challenges to Redaction

Anyone, including members of the public and the press, may challenge the appropriateness of redactions by providing notice to the VI-Specific Debtors and/or the Reorganized VI-Specific Debtors. If the challenge is not resolved by agreement, it must be resolved in the first instance by a third party jointly appointed by the Minnesota State Attorney General, on behalf of the Settling States, and the VI-Specific Debtors and/or the Reorganized VI-Specific Debtors to resolve such challenges. The decision of the third party may be appealed to a court with enforcement authority over the Opioid Operating Injunction. If not so appealed, the third party's decision is final. In connection with such challenge, a Settling State may provide copies of relevant unredacted documents to the parties or the decisionmaker, subject to appropriate confidentiality and/or in camera review protections, as determined by the decisionmaker.

5. Review of Trade Secret Redactions

Ten years after the VI-Specific Debtors and/or the Reorganized VI-Specific Debtors complete the production of documents in accordance with this Article IV.AA, the Reorganized VI-Specific Debtors shall review all trade secret assertions made in accordance with Article IV.AA.2 and all non-manufacturing trade secret designations shall expire. The newly unredacted documents may then be publicly disclosed by the Minnesota State Attorney General, on behalf of the Settling States, in accordance with Article IV.AA.6. The Reorganized VI-Specific Debtors shall produce to the Minnesota State Attorney General, on behalf of the Settling States, an updated redaction log justifying its designations of the remaining trade secret redactions as manufacturing trade secrets.

6. Public Disclosure through a Document Repository

The Minnesota State Attorney General, on behalf of the Settling States, may publicly disclose all documents covered by this Article IV.AA through a public repository maintained by a governmental, non-profit, or academic institution. The Minnesota State Attorney General, on behalf of the Settling States, may specify the terms of any such repository's use of those documents, including allowing the repository to index and make searchable all documents subject to public disclosure, including the metadata associated with those documents. When providing the documents covered by this Article IV.AA to a public repository, no Settling State shall include or attach within the document set any characterization of the content of the documents. For the avoidance of doubt, nothing in this paragraph shall prohibit any Settling State from publicly discussing the documents covered by this Article IV.AA.

7. Timeline for Production

The VI-Specific Debtors and/or the Reorganized VI-Specific Debtors shall produce all documents required by Article IV.AA.1 within nine months from the Petition Date.

8. Costs

The VI-Specific Debtors and/or the Reorganized VI-Specific Debtors shall be responsible for their allocable share of all reasonable costs and expenses associated with the public disclosure and storage of the VI-Specific Debtors' and/or the Reorganized VI-Specific Debtors' documents through any public repository.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re	:	**Chapter 11**
INSYS THERAPEUTICS, INC., *et al.*,	:	**Case No. 19-11292 (KG)**
Debtors.[1]	:	**Jointly Administered**

SECOND AMENDED JOINT CHAPTER 11 PLAN OF LIQUIDATION OF INSYS THERAPEUTICS, INC. AND ITS AFFILIATED DEBTORS

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Attorneys for the Debtors and Debtors in Possession

Dated: January 14, 2020
Wilmington, Delaware

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, as applicable, are: Insys Therapeutics, Inc. (7886); IC Operations, LLC (9659); Insys Development Company, Inc. (3020); Insys Manufacturing, LLC (0789); Insys Pharma, Inc. (9410); IPSC, LLC (6577); and IPT 355, LLC (0155). The Debtors' mailing address is 3100 West Ray Rd., Suite 201, Chandler, Arizona 85226.

Other than corporate counsel for the Liquidating Trustee, which shall not be a professional who represented parties in interest in the Chapter 11 Cases unless otherwise agreed by the Creditors' Committee and the SMT Group Representatives prior to the Effective Date, and subject to the foregoing sentence the Liquidating Trustee may retain any professional, including any professional who represented parties in interest in the Chapter 11 Cases. All fees and expenses incurred in connection with the foregoing shall be payable from the applicable Trust Operating Reserve, subject to the terms of the Trust Agreements.

(d) **Exculpation of Liquidating Trustee**. The Liquidating Trustee shall be exculpated (subject, in each case, to exceptions for willful misconduct, bad faith, gross negligence, or fraud) to the fullest extent allowable by applicable law with respect to the liquidation of the Trust Assets and administration of the Trusts.

(e) **TUC Class Amount Final Determination**. The Liquidating Trustee will use its best efforts to achieve the TUC Class Amount Final Determination within six (6) months of the Effective Date; *provided*, *however*, that for purposes of initial Distributions to holders of Claims in Class 5 and Class 6, the TUC Class Amount shall be based on an estimate of Allowed Claims in Class 4 as of such time and shall not require a full resolution of all Claims in such Class. After the TUC Class Amount Final Determination, if the TUC Class Amount is less than $50 million, Estate Distributable Value in the ILT Recovery Fund that was initially attributable to Class 4 shall be reallocated among the Classes included in the Private Group Formula Amount, pursuant to the applicable Private Group Plan Distribution Percentage (without including Class 4).

(f) **DOJ Class Amount Final Determination**. The Liquidating Trustee will use its best efforts to achieve the DOJ Class Amount Final Determination within three (3) months of the Effective Date. After the DOJ Class Amount Final Determination, if the DOJ Class Amount is less than $283 million, Estate Distributable Value in the ILT Recovery Fund that was initially attributable to Class 7 shall be reallocated among Class 7, Class 8(a), and Class 8(b) in accordance with the Public Group Formula Amount and Public Group Plan Distribution Percentage.

(g) **Liquidating Trustee Disclosure Requirement**. Notwithstanding anything to the contrary herein, the Liquidating Trustee shall obtain all of the Debtors' documents books, and records relating to the Debtors' sale, promotion, marketing, compliance, and reimbursement for, or payments made with respect to, the sale of SUBSYS® and SYNDROS®, and shall publicly disclose (i) such non-privileged documents, books, and records without regard to the status of litigation brought by or against Insys, and (ii) such privileged documents, books, and records as soon as all affirmative claims by or on behalf of the Insys Liquidation Trust, including any and all Causes of Action against Insurance Companies, have been resolved, but in no event later than the date the Insys Liquidation Trust is terminated; *provided*, *however*, that any disclosures shall redact personally identifiable information and comply with HIPAA, applicable law, and, unless modified, all contractual obligations and court orders; *provided*, *further*, that the Liquidating Trustee will not incur ILT Operating Expenses in excess of $250,000 in complying with this paragraph except solely to the extent the members of the ILT Board designated by the SMT Group Representatives allocate to the ILT Operating Reserve for purposes of complying with this paragraph, at their sole discretion, all or part of the Distributions constituting the DOJ

Distribution Reallocation distributable to holders of Claims in Class 8(a) and Class 8(b) which, for the avoidance of doubt, does not include the SMT Reallocation.

5.7 ***Insys Liquidation Trust***.

(a) **Establishment of Insys Liquidation Trust**. On or before the Effective Date, the Debtors, or the Liquidating Debtors, and/or the Liquidating Trustee[3] shall take all necessary steps to establish the Insys Liquidation Trust for the benefit of holders of Non-PI General Unsecured Claims including executing the ILT Agreement and the Trust Transfer Agreement, and all Privileges held by the Debtors or the Liquidating Debtors shall transfer to, and vest exclusively in, the Trusts. This Section of the Plan sets forth certain of the rights, duties, and obligations of the ILT Board and the ILT Claims Arbiter with respect to the Insys Liquidation Trust. In the event of any conflict between the terms of the Plan and the terms of the ILT Agreement, the terms of the ILT Agreement shall govern.

(b) **Issuance of Parent Equity Interest to Insys Liquidation Trust**. On the Effective Date, after the transfer of the ILT Assets to the Insys Liquidation Trust pursuant to Section 5.7(d) of the Plan, the Liquidating Debtors and/or the Liquidating Trustee shall cause Insys Therapeutics, Inc. to issue the Parent Equity Interest to the Insys Liquidation Trust. The Parent Equity Interest shall be the only share of common stock of Insys Therapeutics, Inc., representing one-hundred percent (100%) of the capital stock thereof, from and after the Effective Date.

(c) **Purpose of Insys Liquidation Trust**. The Insys Liquidation Trust shall be established for the purposes described in this Plan (including, without limitation, to allow the Liquidating Trustee to carry out the Authorized Acts) and any others more fully described in the ILT Agreement. The Insys Liquidation Trust shall retain all rights to commence and pursue all Causes of Action (other than Causes of Action arising from the Products Liability Insurance Policies which shall be reserved for the Victims Restitution Trust) that are not released under the Plan. The Insys Liquidation Trust shall have no objective to continue or engage in the conduct of a trade or business.

The Insys Liquidation Trust shall administer, process, settle, resolve, liquidate, satisfy, and pay (from the designated funds therefor), as applicable, Claims against the Debtors (other than Personal Injury Claims), subject to the terms of the ILT Agreement, this Plan, and the Confirmation Order. The Insys Liquidation Trust shall be administered and implemented by the Liquidating Trustee with the oversight of the ILT Board as provided in the ILT Agreement; *provided*, *however*, that for the avoidance of doubt, the approval of the ILT Board shall be required for the Liquidating Trustee to settle any dispute regarding the Insurance Rights or Causes of Action that are ILT Assets; *provided*, *further*, that notwithstanding the foregoing, the Liquidating Trustee shall have the exclusive authority to reconcile Trade and Other Unsecured Claims and determine and make Distributions on account of Claims without the approval of the ILT Board absent extenuating circumstances.

[3] With respect to actions taken in this Section, the Liquidating Trustee is acting solely in its capacity as trustee of the Insys Liquidation Trust.

537

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	**Chapter 11**
PURDUE PHARMA L.P., et al.,	**Case No. 19-23649 (RDD)**
Debtors.[1]	**(Jointly Administered)**

TWELFTH AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION OF PURDUE PHARMA L.P. AND ITS AFFILIATED DEBTORS

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Eli J. Vonnegut
Christopher S. Robertson

Counsel to the Debtors
and Debtors in Possession

Dated: September 2, 2021
New York, New York

[1] The Debtors in these cases, along with the last four digits of each Debtor's registration number in the applicable jurisdiction, are as follows: Purdue Pharma L.P. (7484), Purdue Pharma Inc. (7486), Purdue Transdermal Technologies L.P. (1868), Purdue Pharma Manufacturing L.P. (3821), Purdue Pharmaceuticals L.P. (0034), Imbrium Therapeutics L.P. (8810), Adlon Therapeutics L.P. (6745), Greenfield BioVentures L.P. (6150), Seven Seas Hill Corp. (4591), Ophir Green Corp. (4594), Purdue Pharma of Puerto Rico (3925), Avrio Health L.P. (4140), Purdue Pharmaceutical Products L.P. (3902), Purdue Neuroscience Company (4712), Nayatt Cove Lifescience Inc. (7805), Button Land L.P. (7502), Rhodes Associates L.P. (N/A), Paul Land Inc. (7425), Quidnick Land L.P. (7584), Rhodes Pharmaceuticals L.P. (6166), Rhodes Technologies (7143), UDF LP (0495), SVC Pharma LP (5717) and SVC Pharma Inc. (4014). The Debtors' corporate headquarters is located at One Stamford Forum, 201 Tresser Boulevard, Stamford, CT 06901.

other Person (including counsel and other professionals) who is (or has been engaged by, represents or has represented) any Holder of a Claim against or Interest in the Debtors or any Person that alleges or may allege a Claim, directly or indirectly, relating to or arising out of the Debtors' Products or operations and (iii) be preserved and not waived as a result of such transfer. For the avoidance of doubt, any such transfer shall have no effect on any right, Claim or Privilege of any Person other than the Debtors. No information subject to a Privilege shall be disclosed or communicated by the MDT Trustees or the Creditor Trustees (x) to any Person not entitled to receive such information, including for the avoidance of doubt any Person (including counsel and other professionals) who is (or has been engaged by, represents or has represented) any Holder of a Claim against or Interest in the Debtors or any Person that alleges or may allege a Claim, directly or indirectly, relating to or arising out of the Debtors' Products or operations or (y) for any reason or in any manner other than as necessary for such Persons to perform their respective duties as set forth in the Plan or in the MDT Documents or the applicable Creditor Trust Documents. Notwithstanding the foregoing, nothing herein shall preclude the MDT Trustees from providing information or documents received pursuant to this Section 5.11 to any Insurance Company as necessary to preserve, secure or obtain the benefit of the MDT Insurance Rights.

5.12 ***Public Document Repository***.

(a) **Summary**. The document disclosure program provided in this Plan will lead to the public disclosure of the most significant documents about Purdue, the Sackler family and the opioid crisis, including video depositions and millions of documents that Purdue produced in investigations and litigation over the past two decades. In addition, it will lead to the public disclosure of millions of documents not previously available to the public, including documents not previously produced in any investigation or litigation and certain privileged documents from the years when Purdue developed and promoted OxyContin, as identified below. The document disclosure program and Public Document Repository will be conducted in a way to maximize public confidence and public access and will set a new standard for transparency.

(b) **DOJ Repository Obligation**. The Debtors bear sole responsibility for complying with the DOJ document repository obligation set forth in the Plea Agreement ("***DOJ Repository Obligation***"), and the DOJ Repository Obligation is not modified by this Plan. Similarly, the Debtors' satisfaction of the DOJ Repository Obligation shall not diminish the additional commitment to disclosure provided by this Plan. Instead, the public shall receive the full benefit of both, and the Public Document Repository shall contain the full set of documents that the Debtors have agreed to host under the DOJ Repository Obligation.

(c) **Disclosure Oversight Board**. As described further below, the disclosure program provided in this Plan shall be overseen by the DOB created on the Confirmation Date, consisting of up to three (3) representatives appointed by each of the Ad Hoc Committee, the Non-Consenting States Group, the Creditors' Committee and the MSGE Group and one (1) representative appointed by the Native American Tribe Group. No current or former director, officer, employee or attorney of the Debtors shall serve on the DOB or oversee the disclosure program.

(d) **Purdue Legal Matters**. As described further below, important material for the disclosure program is contained in documents that the Debtors preserved, collected, logged and produced in connection with investigations and litigation about Purdue's opioid business. Many non-privileged documents were produced in those matters, and many privileged documents were identified and logged. This Section 5.12 provides for the disclosure of many documents from the Purdue Legal Matters, which is a broad set of investigations and litigation defined in the Plan.

(e) **Disclosure Program Budget**. As described further below, the disclosure program is designed to avoid unnecessary expense, including by employing an unpaid volunteer oversight

board and by using negotiated agreements to avoid the need for litigation. The disclosure program shall be funded in an aggregate amount of $44 million, which shall be paid in the following installments: (i) $2 million on the Effective Date, (ii) $11 million on the first Scheduled MDT Distribution Date, (iii) $11 million on the second Scheduled MDT Distribution Date, (iv) $10 million on the third Scheduled MDT Distribution Date and (v) $10 million on the fourth Scheduled MDT Distribution Date (collectively, the "***Disclosure Program Budget***"). The Disclosure Program Budget shall be spent at the direction of the DOB. In addition, as provided in the Plan, Domestic Governmental Entities may elect (but are not required) to direct portions of their distributions to the Public Document Repository under terms provided in the Plan. Moreover, the DOB shall be permitted, but not required, to coordinate its work on this disclosure program with the work of state Attorneys General on related disclosures in the opioid industry, in a manner that reduces the costs and increases the benefits of this disclosure program. Finally, to make efficient use of the knowledge and expertise of the Debtors and their professionals, the Plan provides for significant materials to be collected by the Effective Date, or as soon as reasonably practicable thereafter, as described further below. For the avoidance of doubt, the Public Document Repository shall not be owned, held, administered or operated by the DOB, the Master Disbursement Trust or any Creditor Trust; the role of the DOB is to develop and oversee a temporary program to set up the appropriate Public Document Repository and achieve the goals of the disclosure program.

(f) **Access Materials**. On the Effective Date, or as soon as reasonably practicable thereafter, the DOB shall be provided access to a set of non-privileged materials for the purpose of accomplishing the Public Document Repository (collectively, the "***Access Materials***"). These Access Materials shall include:

(i) all transcripts and audio or video recordings of depositions taken in the Purdue Legal Matters, together with the exhibits to those depositions;

(ii) all documents produced by the Debtors in the Purdue Legal Matters (which comprise more than thirteen million documents and more than one hundred million pages);

(iii) the non-privileged documents from the Relativity Database (as defined below) (which are estimated to comprise more than twenty million additional documents beyond those produced in the Purdue Legal Matters);

(iv) all privilege logs regarding documents withheld by the Debtors in the Purdue Legal Matters; and

(v) documents obtained during the Chapter 11 Cases by the NAS Committee regarding clinical and pre-clinical studies conducted by the Debtors or other companies associated with the Sackler Family Members.

(g) **Debtors' Relativity Database**. In the course of the Purdue Legal Matters, the Debtors collected a significant set of documents that are stored in a Relativity database (the "***Relativity Database***"). This collection includes files from more than two hundred custodians who played important roles at Purdue, including every Sackler Family Member who sat on the board or worked at the company. It also includes non-custodial documents, such as collections from electronic drives and paper archives. The custodial and non-custodial documents collected for the Relativity Database are from files that Purdue has preserved pursuant to broad document preservation policies in place for over twenty years, including from an email archive containing emails dating to the 1990s. Pursuant to the terms

provided in this Section 5.12, materials from the Relativity Database created before February 2018 will be available for the disclosure program as described above.

(h) **Additional Collections**. On or before the Effective Date, the DOB will identify to the Debtors the additional custodians whose documents should be collected, to the extent possible, from the email archive and other preserved files, and the Debtors will load those files into the Relativity Database for inclusion as Access Materials or Sequestered Materials, as applicable.

(i) **Sequestered Materials**. On the Effective Date, or as soon as reasonably practicable thereafter, the Debtors shall provide the Plan Administration Trust with certain Privileged documents, described below, collected by the Debtors during the course of the Purdue Legal Matters and stored in the Relativity Database ("***Sequestered Materials***"), to be preserved for access by the DOB. The provision of the Sequestered Materials to the Plan Administration Trust shall not constitute a waiver of any applicable privileges, and, for clarity, no waiver of any applicable Privilege shall occur prior to the Sequestration Date (as defined below). The Sequestered Materials are estimated to include hundreds of thousands of documents. To leverage efficiencies, the Debtors' current document review teams with experience reviewing Purdue's documents for privilege will screen and review, as necessary, all documents currently in the Relativity Database for Privilege, attorney work product, confidentiality, the Health Insurance Portability and Accountability Act or similar state or federal statute and critical business information before turning over documents as Access Materials or as Sequestered Materials. The DOB will aid the Debtors' document review team in setting parameters and search terms to effectuate accurate screening and review. The DOB may, confidentially and subject to privilege, request and be provided with information, and, as necessary, an appropriate, expert-aided statistically valid sampling of the relevant documents or other methodologies to aid in the foregoing review under an appropriate protective order and non-waiver agreement.

(i) Subject to the Sequestration Date, the Debtors agree to waive attorney client and work product privilege over documents created before May 1, 2014 ("***Cutoff Date***") that fall within the following categories:

(A) Marketing materials, promotional materials and sales strategies. This will include, for example, legal advice on: marketing and promotional materials as part of the medical, regulatory, legal review process and other reviews of statements in promotional and marketing materials to ensure consistency with a product's labeling and legal requirements; sales training materials (such as how to instruct the sales team on what they can and cannot say about the products); review of all call notes and whether statements on sales calls were appropriate; call planning; and sales bulletins. For the avoidance of doubt, "sales strategies" in this paragraph includes documents related to (I) medical liaisons, (II) continuing medical education, (III) the evolve to excellence program, (IV) Purdue's interactions with medical advocacy groups, and (V) legal advice regarding the performance, selection, retention, management and compensation of personnel in sales and marketing;

(B) Materials reflecting legal advice on submissions to the FDA and compliance with FDA regulations. This will include, for example, advice on the decision to reformulate OxyContin, advice on interactions and communications with FDA and advice on FDA requirements;

(C) Legal advice regarding distributions to or for the benefit of the Sackler Family Members;

(D) Legal advice regarding the organization or function of the board of directors;

(E) Legal advice regarding grants, gifts and other payments with respect to naming rights of Purdue and its shareholders;

(F) Legal advice regarding the performance, selection, retention, management and compensation of the CEO of Purdue Pharma;

(G) Legal advice regarding Purdue's interactions with state licensing boards and the federation of state medical boards;

(H) Legal advice regarding Purdue's interactions with key opinion leaders, advisory boards and treatment guidance;

(I) Legal advice regarding advocacy before the United States Congress or a state legislative branch with respect to OxyContin;

(J) Employment records and files created before the Cutoff Date pertaining to employment terminations or disciplinary actions related to opioid sales and marketing, including documents created before the Cutoff Date pertaining to internal investigations of personnel related to marketing of opioids, in all cases subject to applicable federal and state privacy and similar laws with respect to employees and with any redactions necessary to comply therewith; and

(K) To the extent provided during the time period while the corporate integrity agreement was in effect, legal advice regarding compliance with the corporate integrity agreement entered into between Purdue and the DOJ.

(ii) Subject to the Sequestration Date, below, the Debtors agree to waive attorney client and work product privilege over the following categories of documents:

(A) Documents reflecting law department reviews of, and decisions regarding, health care providers and pharmacies pursuant to Purdue's abuse and diversion detection, order monitoring system and suspicious order monitoring programs, which will have been or will be provided to the DOJ under a June 2019 non-waiver agreement;

(B) Documents created before February 2018 reflecting legal review, analysis and advice with respect to advice received from McKinsey & Company related to the sale and marketing of opioids; and

(C) Documents created before June 30, 2017 reflecting legal review, analysis and advice with respect to Practice Fusion.

(iii) To the extent documents subject to any of the foregoing waivers were previously logged on a privilege log in a Purdue Legal Matter, the Debtors shall provide the DOB with amended privilege logs that indicate the entries being produced pursuant to these waivers. For the avoidance of doubt, Privileged communications (during the applicable time periods set forth in Section 5.12(i)(i) and (ii)) about interactions with the media with respect to subject matters that are otherwise waived herein are included in such waivers.

(iv) Nothing herein shall waive any third-party privilege or other rights, whether arising from a joint defense agreement, common interest privilege or otherwise, to which any document described in Section 5.12(i)(i) and (ii) is subject and which the Debtors do not have authority to waive. The Debtors will provide the DOB with privilege logs reflecting documents subject to such third-party privileges and rights that are identified in the course of identifying and compiling the Sequestered Materials. No documents subject to such third-party privileges and rights shall be included in the Public Document Repository, absent appropriate resolution of such third parties' rights and privileges. Further, no waiver of Privilege described herein shall be construed as subject matter waiver. Subject to the foregoing, the Debtors, the Creditors' Committee, the Governmental Consent Parties and the Newly Consenting States shall work together in good faith to ensure that all documents consistent with the Sequestered Material categories shall be available to the DOB for potential inclusion in the Public Document Repository in accordance with this Section 5.12.

(j) **Protection of the Privilege**. For the avoidance of doubt, the Debtors do not waive any Privilege and do not agree to provide as Sequestered Materials for the Public Document Repository any Privileged documents or communications not otherwise identified in Section 5.12(i)(i) and (ii). Such Privileged documents and communications not otherwise identified in Section 5.12(i)(i) and (ii) shall be removed from the Relativity Database and separately preserved, and shall not be eligible for the

Public Document Repository at any time. All Privileged documents removed from the Relativity Database, and not included in the Sequestered Materials described above, will be provided to the Plan Administration Trust, separately from the Sequestered Materials. The Plan Administration Trust will retain these materials for the period described in Section 5.12(z). For clarity, except for the Sequestered Materials identified in Section 5.12(i)(i) and (ii), the Debtors shall not intentionally provide the Master Disbursement Trust or the DOB with access to any documents or content of documents that are Privileged. In the event that the Debtors inadvertently provide the Master Disbursement Trust or the DOB with access to Privileged documents except for those documents identified in Section 5.12(i)(i) and (ii), that inadvertent provision shall not operate as a waiver of the Privilege, and, upon discovery, the DOB and/or the Master Disbursement Trust, as applicable, must promptly take steps to return the documents to the Plan Administration Trust or destroy such documents.

(k) **Sequestration Date**. On January 1, 2025, the Plan Administration Trust shall deliver the Sequestered Materials to the Host Institution (the "***Sequestration Date***"). Those materials shall be made available for assessment by the DOB and disclosure in the Public Document Repository, subject to the other provisions of this Section 5.12. The Host Institution may add Sequestered Materials to the Public Document Repository on the earlier of June 30, 2025 and the date after January 1, 2025 on which the MDT Claims are paid in full under the Plan.

(l) **Responsibilities of the DOB**. The DOB shall be responsible for:

(i) accomplishing prompt, broad, permanent, public disclosure of millions of the Debtors' documents via the Public Document Repository in accordance with this Section 5.12 to allow the public to examine the Debtors' role in the opioid crisis;

(ii) engaging with survivors, advocates, journalists, scholars, policymakers and others to ensure that the disclosure program serves the public;

(iii) directing the use of the Disclosure Program Budget;

(iv) establishing protections for Protected Information, as described below;

(v) establishing procedures for resolution of challenges to the redaction or disclosure of information, as described below;

(vi) overseeing the Host Institution's implementation of the disclosure program;

(vii) coordinating, as appropriate, the disclosure of documents from other producing parties or non-parties in opioid cases whose confidential information is included in the Access Materials, including by discussing inclusion of Access Materials containing such third-party confidential information;

(viii) ensuring the long-term sustainability and success of the disclosure program; and

(ix) retaining and overseeing staff, counsel, or such other resources as are necessary and appropriate to accomplish the DOB's responsibilities under this Section 5.12.

(m) **Host Institution**. The host institution(s) shall be selected by the Governmental Consent Parties, the Creditors' Committee and the Newly Consenting States (the "***Host Institution***"). The Host Institution will be responsible for hosting and maintaining the Public Document Repository in perpetuity, including but not limited to: maintaining control and security over documents in the Public Document Repository; providing an accessible user interface; and providing clear and transparent explanations of its procedures to the public. Subject to restrictions and oversight imposed by the DOB, the Host Institution may employ appropriate resources to accomplish its responsibilities, including but not limited to the use of permanent university employees, temporary employees, contractors and vendor services. Commensurate with the large responsibilities assigned to the Host Institution, and subject to the decisions and oversight of the DOB and the requirements of this Plan, much of the Disclosure Program Budget may be directed to the Host Institution to fund the accomplishment of its responsibilities.

(n) **Prompt Disclosure**. In keeping with the importance of the matter, the DOB shall dedicate its best efforts to ensure prompt disclosure and shall seek to ensure that the public receives substantial disclosure at least every calendar quarter. The DOB shall prioritize prompt disclosure of the transcripts and audio and video recordings of depositions taken in the Purdue Legal Matters, together with the exhibits to those depositions. The Debtors will prioritize prompt production of the documents that Debtors have agreed to host pursuant to the DOJ Repository Obligation for immediate inclusion in the Public Document Repository for the sake of efficiency and cost savings.

(o) **Redaction of Protected Information**. The DOB shall implement appropriate procedures to protect the following information ("***Protected Information***") by redacting Protected Information in documents before they are disclosed to the public in the Public Document Repository and by promptly catching and correcting errors if Protected Information is disclosed. Protected Information is (i) any information protected from disclosure by the Health Insurance Portability and Accountability Act or similar state or federal statute; (ii) personal email addresses or personal phone numbers; (iii) information subject to confidentiality rights of third parties; (iv) information subject to current trade secrets protection; (v) information regarding individuals that is of a purely personal nature and does not pertain to the Debtors' opioid business or related practices; and (vi) information otherwise protected by law. For the avoidance of doubt, Protected Information that should be redacted in a written document shall also be redacted in audio or video, such as deposition recordings.

(p) **Limits on Redaction**. There shall be no redaction of: (i) names of the Debtors' directors, officers, employees, agents, attorneys or consultants or of prescribers or of officials or employees of a government agency; (ii) email addresses at the "pharma.com" or "purduepharma.com" domain; or (iii) trade secrets in documents dated more than five (5) years before the disclosure.

(q) **Inadvertent Release of Privileged or Protected Information**. Notwithstanding anything else in the Plan, the Public Document Repository shall not contain or disclose any documents or content of documents that are Privileged, except for those documents identified in Section 5.12(i)(i) and (ii) above that are eligible for the Public Document Repository after January 1, 2025, or any Protected Information. Inadvertent disclosure of Privileged documents in the Public Document Repository does not operate as a waiver of Privilege, and, upon discovery, any Privileged documents shall be promptly removed from the Public Document Repository. The DOB will have sole liability for reviewing, evaluating, processing and redacting all Protected Information before any document is placed in the Public Document Repository, but may permit any individual or entity to review, evaluate, process or redact Protected Information. The DOB will establish a procedure that permits any party or member of the

public to identify or challenge the disclosure of any potentially Protected Information placed in the Public Document Repository. The DOB will cause any document identified through this process to be immediately removed from the Public Document Repository pending review. Any disagreements regarding whether such material is Protected Information shall be resolved by the Special Master. The DOB will bear full legal responsibility arising out of or related to any improper disclosure of Protected Information.

(r) **Special Master**. Shortly after the Confirmation Date, the Debtors shall file an appropriate motion asking the Bankruptcy Court or the United States District Court for the Southern District of New York to select and appoint a disclosure oversight Special Master. The Special Master's qualifications shall include former service as a judicial officer, whether as a state or federal judge, and no current or former director, officer, employee or attorney of the Debtors, the Sackler Family Members, the Creditors' Committee, the Governmental Consent Parties or the Newly Consenting States shall be eligible to be appointed as the Special Master, counsel or staff working under the Special Master, *provided* that prior work for a Governmental Consent Party or a Newly Consenting State that was completed prior to 2015 shall not preclude the appointment of a Special Master. The Special Master will adjudicate all privilege and related disputes. The Special Master's reasonable hourly fees and expenses shall be paid out of the Disclosure Program Budget except as the Special Master orders otherwise upon finding that a party advanced an argument that was frivolous, harassing or in bad faith.

(i) Selection of Special Master. The selection of the Special Master shall be made by the Bankruptcy Court; *provided* that the Bankruptcy Court may consider a recommendation made jointly by the Debtors, the Sackler Family Members, the Creditors Committee, the Governmental Consent Parties, and the Newly Consenting States. For the purposes of determining if there is to be a joint recommendation, five (5) Business Days after the Confirmation Date, the parties ((x) the Debtors, (y) the Creditors' Committee, the Governmental Consent Parties and the Newly Consenting States and (z) the Sackler Family Members) each shall exchange a list of up to five (5) names as recommendations for the role of Special Master. The Debtors thereafter shall make a motion to the Bankruptcy Court to select a Special Master. If there are names in common on the exchanged lists, the Debtors' motion shall be limited to any name or names that are common to all such parties' lists. If there is no name common to each of the three lists, the Debtors' motion will ask the Bankruptcy Court, in its discretion, to select a Special Master.

(ii) Disclosure Challenges: To the extent that the DOB seeks to (A) challenge the Debtors' assertion of Privilege with respect to any documents withheld or redacted from production in the Purdue Legal Matters, or excluded by the Debtors from the Access Materials, or (B) disclose any Protected Information in the Public Document Repository, such efforts shall be subject to review by the Special Master, who shall have final say regarding whether (y) the DOB should be provided with such materials, and (z) such materials shall be protected from public disclosure.

(iii) Timing of Challenges: All challenges to the redaction or withholding of documents from the Public Document Repository, including with regard to the Privilege and to Protected

Information, including challenges brought by either the DOB or members of the public, shall be brought within the later of (A) one (1) year of the Effective Date and (B) one (1) year from when the document or information at issue is first withheld from the Public Document Repository by redaction or logging.

(iv) Counsel for Challenges: On or shortly after the Effective Date, the Debtors, the Governmental Consent Parties, the Creditors' Committee and the Newly Consenting States shall agree to appoint a law firm to defend the Debtors' Privilege assertions against challenges ("***Privilege Defense Counsel***"); *provided, however,* that if the Debtors, the Governmental Consent Parties, the Creditors' Committee and the Newly Consenting States are unable to reach an agreement regarding the identity of Privilege Defense Counsel, the Bankruptcy Court shall appoint the Privilege Defense Counsel. Third parties shall represent themselves before the Special Master and shall bear their own costs. Consistent with Sections 5.12(l)(ix) and 5.12(o), the DOB shall be responsible for defending against challenges to the disclosure or withholding of Protected Information.

(v) Procedure for Challenges: Any party seeking to initiate a challenge to the Privilege or Protected Information designation of a document or information in a document or any other challenge to the inclusion or exclusion of documents in the Public Document Repository (the "***Petitioner***") must first, as a condition precedent to any such challenge, meet and confer with the relevant defense counsel by serving a written statement of the specific material being disputed and the reasons for disputing each such material. If the meet and confer does not resolve the dispute, then the Petitioner shall submit a brief to the Special Master arguing why each individual document at issue should not be considered Privileged or Protected Information or should otherwise be included or excluded. Once a challenge has been submitted, the Special Master shall set a briefing schedule, permitting defense counsel no fewer than twenty-one (21) days to respond to the challenge, which may include in camera submissions in response. At the discretion of the Special Master, the briefing schedule may also include supplemental submissions, oral argument or other procedures the Special Master deems necessary to reach a determination. The Special Master shall then evaluate and decide the challenge based upon existing legal precedent of federal law within the U.S. Court of Appeals for the Second Circuit, and shall be empowered to determine whether such materials are subject to a valid claim of Privilege or otherwise constitute Protected Information or should have otherwise been included or excluded, but shall not be empowered to waive any Privilege ever asserted by the Debtors with respect to the Purdue Legal Matters or with respect to the Access Materials or the Sequestered Materials. If the Petitioner does not prevail, then the Special Master shall have the discretion to shift to the

Petitioner some or all of the reasonable legal expense of Privilege Defense Counsel, whose reasonable fees and expenses shall otherwise be paid for by the Disclosure Program Budget. If the Special Master determines that the challenge was frivolous, harassing, needlessly increasing costs or expenses, or otherwise brought for an improper purpose, then the Special Master shall shift to the Petitioner some or all of the reasonable legal expense of Privilege Defense Counsel. For avoidance of doubt, any materials determined by the Special Master to be Privileged or to contain Protected Information shall not be included in the Public Document Repository.

(vi) Pending resolution of a challenge asserting a document was improperly disclosed, the Host Institution shall remove or redact each identified, challenged document.

(s) **Materials Produced by Shareholder Released Parties**. The Public Document Repository shall include all Sackler Family Members' documents that were produced in the Chapter 11 Cases and that relate to the manufacturing, sale or marketing of opioids in the United States, the Debtors' alleged role or liability in connection with the opioid crisis or the regulatory approval of any opioid product sold in the United States by the Debtors, but subject to appropriate exclusions for documents covered by the attorney-client and work product privileges and certain confidential information (including exclusions for information and documents related to the finances, financing activities, taxes and tax filings, investments and third party business and advisory relationships of the Shareholder Released Parties).

(i) The Special Master appointed in accordance with Section 5.12(r) shall resolve disputes regarding whether certain documents or information is required to be included in the document repository by the Sackler Family Members.

(ii) The Sackler Family Members shall have the right to claw back documents that they were entitled to exclude in accordance with this provision but inadvertently produced to the Public Document Repository, and such inadvertent production shall not operate as a waiver of rights. The Special Master shall resolve any disputes between Sackler Family Members, the Governmental Consent Parties, the DOB and the Newly Consenting States concerning the exercise of clawback rights.

(iii) For the avoidance of doubt, "Sackler Family Members' documents" refer only to documents in the Sackler Family Members' possession, custody or control. Section 5.12(s) does not refer to documents including or involving Sackler Family Members that are in the Debtors' possession, custody or control.

(t) **Release of Confidentiality Rights by Parties Receiving Releases**. With regard to the disclosure of information in the Public Document Repository as authorized by this Section 5.12, the protections provided to Released Parties and Shareholder Released Parties shall be limited to the protections provided by this Plan. To the extent that Released Parties and Shareholder Released Parties possess rights to confidentiality beyond those provided this Plan (for example, a contractual confidentiality provision), those rights are waived to facilitate this disclosure program in exchange for the benefit of the releases provided to the Released Parties and Shareholder Released Parties by the Plan.

(u) **DOJ Settlement Communications**. Communications between the Debtors and DOJ regarding settlement or cooperation between 2015 and the final, non-appealable conclusion of *U.S. v. Purdue Pharma L.P.*, Case 2:20-cr-01028-MCA (D.N.J.) shall be protected from disclosure to the Master Disbursement Trust and the DOB and shall not be included in the Public Document Repository, nor shall any internal Debtor documents reflecting such communications or the strategy for such communications. The Debtors shall implement this exclusion when creating the set of Sequestered Materials.

(v) **Documents Produced By Certain Financial Institutions**. The disclosure program shall not include the documents produced by financial institutions pursuant to the examination authorized by the Bankruptcy Court at D.I. 1143. For the avoidance of doubt, if the same information also appears in a second source that is subject to disclosure (e.g., a deposition exhibit), then the information in that second source is subject to disclosure.

(w) **Active Vendor Contracts**. The Public Document Repository shall not disclose the NewCo's active vendor contracts or expired contracts that would reveal the sum and substance of active contracts. The DOB shall take appropriate steps to implement this exclusion.

(x) **Exculpation and Indemnification of DOB members and Host Institution**. To the maximum extent permitted by applicable law, the DOB members, whenever appointed, and the Host Institution shall not have or incur any liability for actions taken or omitted in his or her capacity as a DOB member, or on behalf of the DOB, except those acts found to be arising out of his or her willful misconduct, bad faith, gross negligence or fraud, and shall be entitled to indemnification, advancement and reimbursement for reasonable fees and expenses in defending any and all of his or her actions or inactions in his or her capacity as a DOB member, except for any actions or inactions found to be arising out of his or her willful misconduct, bad faith, gross negligence or fraud. Any valid indemnification claim of any of the DOB members shall be satisfied from the Disclosure Program Budget.

(y) **Reports**. On each of the first five anniversaries of the Effective Date, the DOB shall publish a public report describing the activities of the disclosure program, the use of any funds expended, and any funds committed for future use.

(z) **Wind Down**. In or after January 2026, the DOB shall wind itself down. If appropriate to facilitate the long-term success of the Public Document Repository, the DOB may arrange for another long-lived institution, such as one or more Attorneys General Offices, to interact with the Host Institution after the DOB is wound down (e.g., by receiving reports). Upon the wind down of the DOB, (i) the Host Institution shall be responsible for the permanent maintenance of the Public Document Repository; *provided* that, for avoidance of doubt, the access to the Access Materials and the Sequestered Materials granted to the DOB herein shall not be transferred to any successor institution other than the Host Institution and (ii) any Access Materials or Sequestered Materials in the possession of the DOB but not included in the Public Document Repository, for any reason, shall be, at NewCo's election, delivered to NewCo or destroyed or, if all or substantially all of the Assets of or Interests in NewCo have been sold, destroyed or delivered to Privilege Defense Counsel. Within ninety (90) days of the announcement of the dissolution of the Plan Administration Trust, the Plan Administration Trust shall use commercially reasonable efforts to return Privileged materials to Privilege Defense Counsel who shall retain the materials in a segregated client file.

(aa) **Master Disbursement Trust**. For the avoidance of doubt, nothing in this Section 5.12 limits the rights of the Master Disbursement Trust, subject to and in accordance with Section 5.11 of the Plan, to access or use Privileged documents, including Excluded Privileged Materials, in connection with any potential or actual Causes of Action, including, among other things, any potential or actual Causes of Action contemplated by or that may result from, the Shareholder Settlement Agreement,

including, without limitation, with respect to a Cause of Action against a Shareholder Release Snapback Party upon the filing of a Notice of Shareholder Release Snapback.

5.13 ***Effective Date Cash; Surplus Reserved Cash***.

(a) **Effective Date Fixed Payments**. On the Effective Date, Effective Date Cash shall be used to fund (i) the Professional Fee Escrow Account in an amount necessary to satisfy Professional Fee Claims in accordance with Section 2.1(b) of the Plan, (ii) the Priority Claims Reserve in an amount necessary to satisfy estimated Allowed Administrative Claims (other than Professional Fee Claims and the DOJ Forfeiture Judgment Claim), Allowed Secured Claims and Allowed Priority Claims, (iii) the Disputed Claims Reserves in accordance with Section 7.1 of the Plan, (iv) the Disputed Cure Claims Reserve in accordance with Section 8.2(d) of the Plan, (v) the Wind-Up Reserve in accordance with Section 5.3(d) of the Plan, (vi) the MDT Operating Reserve in accordance with Section 5.6(f) of the Plan, (vii) the Initial NewCo Cash in accordance with Section 5.4(c) of the Plan, (viii) the applicable PAT Distribution Account in the amounts necessary to make Distributions required in accordance with Article IV of the Plan in respect of Allowed Adlon General Unsecured Claims and Allowed Avrio General Unsecured Claims, each to the extent Allowed as of the Effective Date, (ix) the Truth Initiative Contribution and the attorneys' fees of the Ratepayer Mediation Participants in satisfaction of Ratepayer Claims in accordance with Section 4.8 of the Plan, (x) the Initial Private Creditor Trust Distributions, (xi) the Initial Tribe Trust Distribution, (xii) the Initial Federal Government Distribution, (xiii) amounts required to establish the Public Document Repository in accordance with Section 5.12 of the Plan, (xiv) the upfront insurance premium payments and other amounts in accordance with Sections 5.3(e), 5.4(g) and 5.5(d) of the Plan and (xv) any other amounts required to be paid on the Effective Date pursuant to the Plan. No later than five (5) Business Days prior to the Effective Date, the Debtors shall provide notice to the Creditors' Committee and the Governmental Consent Parties of the then-current estimated amount of Effective Date Cash and all amounts described in this Section 5.13(a), and shall promptly notify the Creditors' Committee and the Governmental Consent Parties of any changes to such estimations prior to the Effective Date. Any objection by the Creditors' Committee or the Governmental Consent Parties with respect to the Debtors' proposed amount of funding of any PAT Reserve shall be resolved by the Bankruptcy Court.

(b) **Initial NOAT Distribution**. On the Effective Date, all Effective Date Cash remaining after the satisfaction of all amounts described in the foregoing paragraph (a) shall be used to make the Initial NOAT Distribution, which is currently estimated to be $220 million.[5] An updated estimate of the Initial NOAT Distribution shall be provided in the Plan Supplement.

(c) **Surplus Reserved Cash**. Prior to the dissolution of the Plan Administration Trust, the Plan Administration Trustee shall determine, on each six (6)-month anniversary of the Effective Date, whether the amounts available in any PAT Reserve exceed the amounts necessary to satisfy the purpose for which such reserves were established. If the Plan Administration Trustee determines that a surplus exists in any PAT Reserve as of the date of such determination, such Surplus Reserve Cash shall be (i) *first*, used to satisfy any funding deficiency in any other PAT Reserve and (ii) *second*, with respect to any amounts not used to satisfy any such funding deficiency in another PAT Reserve, transferred to the Master Disbursement Trust in accordance with the MDT Agreement. All Cash and cash equivalents

[5] The final amount of the Initial NOAT Distribution on the Effective Date is subject to adjustment for (i) proposed accelerated payments payable on the Effective Date under the Debtors' 2021 key employee incentive plan and 2021 key employee retention plan if approved as proposed, (ii) year-to-date budget to actual adjustments for both operating and non-operating results, (iii) items outside of the Debtors' control, including but not limited to, potential variability in investment monetization proceeds, higher than forecasted restructuring-related professional fees and potential cash collateral necessary to secure insurance coverage for NewCo and TopCo and (iv) other adjustments.

ALLERGAN PUBLIC GLOBAL OPIOID SETTLEMENT AGREEMENT

4. Allergan shall not interfere with decisions made by the staff or reviewers associated with the independent Third-Party data center or platform owner.

5. Allergan shall bear all costs for making clinical data available pursuant to Section II.J.1 of this **Exhibit P**.

III. DOCUMENT DISCLOSURE

A. Documents Subject to Public Disclosure

The following documents must be provided to each Settling State and are subject to public disclosure in perpetuity, except for the redactions authorized by section B:

1. All Allergan-produced documents admitted as trial exhibits in *In re Opioid Litigation*, Index No. 400000/2017 (N.Y. Sup. Ct., Suffolk County), *The City and County of San Francisco, California and the People of the State of California, acting by and through San Francisco City Attorney David Chiu v. Purdue Pharma L.P., et al.*, Case No. 3:18-cv-07591 (N.D. Cal.), *The State of West Virginia ex rel. Patrick Morrisey, Attorney General v. Teva Pharmaceutical Industries Ltd., et al.*, Civil Action No. 19-C-104 BNE (W. Va. Cir. Ct., Boone County), or *The People of the State of California, acting by and through Santa Clara County Counsel James R. Williams, Orange County District Attorney Tony Rackauckas, Los Angeles County Counsel Mary C. Wickham, and Oakland City Attorney Barbara J. Parker v. Purdue Pharma L.P., et al.*, Case No. 30-2014-00725287-CU-BT-CXC (Cal. Super. Ct., Orange County), together with complete trial transcripts.

2. All Allergan deposition transcripts, and exhibits from or produced in the matters identified in subsection III.A.1, as well as in *In re Nat'l Prescription Opiate Litig.*, No. 1:17-md-02804 (N.D. Ohio).

3. All summary judgment filings, proposed findings of fact and law, and expert reports relating to the claims against Allergan that were filed in the matters identified in subsections III.A.1 and III.A.2, together with related exhibits.

4. All documents provided under this provision must be provided in an appropriate electronic format with appropriate metadata.

5. In addition, Allergan shall not object to public disclosure of the following documents, without further redaction: Acquired_Actavis_00000001-Acquired_Actavis_02689490.

B. Information That Allergan May Redact

1. The following categories of information are exempt from public disclosure:

a. Information subject to trade secret protection. A "trade secret" is information, including a formula, pattern, compilation, program, device, method, technique or process, that (a) derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure and use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Even if the information falls within the definition, "trade secret" does not include information reflecting sales or promotional strategies, tactics, targeting, or data, or internal communications related to sales or promotion or information in documents dated more than five (5) years before the disclosure required by this section.

b. Confidential personal information. "Confidential personal information" means individual Social Security or tax identification numbers, personal financial account numbers, passport numbers, driver license numbers, home addresses, home telephone numbers, personal email addresses, and other personally identifiable information protected by law from disclosure. "Confidential personal information" does not include the names of Allergan's officers, directors, employees, consultants, agents, or attorneys or of prescribers or of officials of a government agency.

c. Information that is inappropriate for public disclosure because it is subject to personal privacy interests recognized by law (e.g., HIPAA), or contractual rights of third parties that Allergan may not abrogate.

d. Information regarding Allergan employees' personal matters unrelated to Allergan, including emails produced by Allergan custodians discussing vacation or sick leave, family, or other personal matters.

e. Information that is protected by the attorney–client or attorney work product privilege.

f. Financial documents designated as "Highly Confidential" or "Highly Confidential Information" under Case Management Order No. 2 in *In re Nat'l Prescription Opiate Litig.*, No. 1:17-md-02804 (N.D. Ohio) and produced in response to the April 3, 2019 Ruling Regarding Jurisdictional Discovery on Defendants Allergan, Teva, and Mallinckrodt, including tax returns including all schedules and attachments, policies regarding accounting, and annual reports.

C. Redaction of Documents Containing Protected Information

1. Whenever a document contains information subject to a claim of exemption pursuant to section B, Allergan will provide the document in redacted form. Such redactions must indicate that trade secret and/or private information, as appropriate, has been redacted. Redactions are limited to the minimum redactions possible, consistent with section B.

2. Allergan must provide to each Settling State a log noting each document redacted. The log must also provide fields stating the basis for redacting the document, with sufficient detail to allow an assessment of the merits of the assertion. The log is subject to public disclosure in perpetuity. The log shall be provided by the production deadline.

3. In addition to the redacted documents, Allergan shall, upon any Settling State's request, also produce all documents identified in subsection III.A above in unredacted form to such Settling State at the same time, but only to the extent the document was produced by Allergan in an unredacted form in the underlying litigation, and only for the purpose of permitting a merits assessment and potential challenge of the redaction pursuant to Section IV herein.

D. Public Disclosure Through a Document Repository

1. Each Settling State may publicly disclose all documents covered by this section through a public repository maintained by a governmental, non-profit, or academic institution. Each Settling State may specify the terms of any such repository's use of those documents, including allowing the repository to index and make searchable all documents subject to public disclosure, including the metadata associated with those documents.

E. Timeline for Production

1. Allergan shall produce all documents required by Section A within nine months from the Effective Date.

F. Support Payment

1. Within thirty (30) calendar days of the Effective Date, Allergan will make one-time payments totaling $1,375,000 to the University of California, San Francisco Foundation (UCSF Foundation) and The Johns Hopkins University, to be used to support a public repository of documents subject to this section.

IV. ENFORCEMENT

A. For the purposes of resolving disputes with respect to compliance with **Exhibit P**, should any of the Settling States have reason to believe that Allergan has violated a provision of **Exhibit P**, then such Settling State shall notify Allergan in writing of the specific objection, identify with particularity the provisions of **Exhibit P** that

TEVA GLOBAL OPIOID SETTLEMENT AGREEMENT

2. The data archive shall have a panel of reviewers with independent review authority to determine whether the researchers are qualified, whether a research application seeks data for bona fide scientific research, and whether a research proposal is complete.

3. The panel may exclude research proposals with a commercial interest.

C. Non Interference

1. Teva shall not interfere with decisions made by the staff or reviewers associated with the third-party data archive.

D. Data Use Agreement

1. Any data sharing agreement with a Qualified Researcher who receives shared data via the third-party data archive shall contain contact information for Teva's pharmacovigilance staff. Every agreement shall require the lead Qualified Researcher to inform Teva's pharmacovigilance staff within 24 hours of any determination that research findings could detrimentally impact the risk-benefit assessment regarding the product. The lead Qualified Researcher may also inform regulatory authorities of the safety signal impacting the risk-benefit assessment. Teva's pharmacovigilance staff shall take all necessary and appropriate steps upon receipt of such safety information, including but not limited to notifying regulatory authorities or the public.

E. Cost

1. Teva shall bear all costs for making data and/or information available.

IV. TERM

A. Unless addressed in Section IV.B below, each term of this Exhibit P shall apply for thirteen (13) years from the Effective Date.

B. The provisions of Section II.A ("Ban on Promotion"), Section II.I ("General Provisions"), and Section II.J ("Compliance with All Laws and Regulations Relating to the Sale, Promotion and Distribution of Any Opioid Product") shall not be subject to any term.

V. DOCUMENT DISCLOSURE

A. Documents Subject to Public Disclosure

The following documents must be provided to each Settling State and are subject to public disclosure in perpetuity, except for the redactions authorized by section B:

1. All Teva-produced documents admitted as trial exhibits in *In re Opioid Litigation*, Index No. 400000/2017 (N.Y. Sup. Ct., Suffolk County), *The City and County of*

San Francisco, California and the People of the State of California, acting by and through San Francisco City Attorney David Chiu v. Purdue Pharma L.P., et al., Case No. 3:18-cv-7591-CRB (N.D. Cal.), *The State of West Virginia ex rel. Patrick Morrisey, Attorney General v. Teva Pharmaceutical Industries Ltd., et al.*, Civil Action No. 19-C-104 BNE (W. Va. Cir. Ct., Boone County), or *The People of the State of California, acting by and through Santa Clara County Counsel James R. Williams, Orange County District Attorney Tony Rackauckas, Los Angeles County Counsel Mary C. Wickham, and Oakland City Attorney Barbara J. Parker v. Purdue Pharma L.P., et al.*, Case No. 30-2014-00725287-CU-BT-CXC (Cal. Super. Ct., Orange County) and *Oklahoma v. Purdue Pharma L.P., et al.*, No. CJ-2017-816 (Cleveland Cty., Okla. Dist. Ct.), together with complete trial transcripts.

2. All Teva deposition transcripts and exhibits from or produced in the matters identified in section A.1, as well as in *In re Nat'l Prescription Opiate Litig.*, No. 1:17-MD-2804 (N.D. Ohio).

3. All summary judgment filings, proposed findings of fact and law, and expert reports relating to the claims against Teva that were filed in the matters identified in section A.2 and A.3, together with related exhibits.

4. All documents, indices, and privilege logs produced in *In re Nat'l Prescription Opiate Litig.*, No. 1:17-MD-2804 (N.D. Ohio) ("the MDL") bearing the bates prefixes Acquired_Actavis and TEVA_MDL_A and produced on or before October 4, 2019, except personnel files produced on Jan. 16, 2019, Jan. 20, 2019, Feb. 8, 2019, and Aug. 10, 2019.

5. All documents provided under this provision must be provided in an appropriate electronic format with appropriate metadata.

B. Information That Teva May Redact

1. The following categories of information are exempt from public disclosure:

   a. Information subject to trade secret protection. A "trade secret" is information, including a formula, pattern, compilation, program, device, method, technique or process, that (a) derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure and use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Even if the information falls within the definition, "trade secret" does not include information reflecting sales or promotional strategies, tactics, targeting, or data, or internal communications related to sales or promotion or information in documents dated more than five (5) years before the disclosure required by this section.

   b. Confidential personal information. "Confidential personal information" means individual Social Security or tax identification numbers, personal financial account numbers, passport numbers, driver license numbers, home

addresses, home telephone numbers, personal email addresses, and other personally identifiable information protected by law from disclosure. "Confidential personal information" does not include the names of Teva's officers, directors, employees, consultants, agents, or attorneys or of prescribers or of officials of a government agency.

c. Information that is inappropriate for public disclosure because it is subject to personal privacy interests recognized by law (e.g., HIPAA), or contractual rights of third parties that Teva may not abrogate.

d. Information regarding Teva employees' personal matters unrelated to Teva, including emails produced by Teva custodians discussing vacation or sick leave, family, or other personal matters.

e. Information that is protected by the attorney–client or attorney work product privilege.

f. Financial documents designated as "Highly Confidential" or "Highly Confidential Information" under Case Management Order No. 2 in *In re Nat'l Prescription Opiate Litig.*, No. 1:17-MD-2804 (N.D. Ohio) and produced in response to the April 3, 2019 Ruling Regarding Jurisdictional Discovery on Defendants Teva, and Mallinckrodt, including tax returns including all schedules and attachments, policies regarding accounting, and annual reports.

C. Redaction of Documents Containing Protected Information

1. Whenever a document contains information subject to a claim of exemption pursuant to section B, Teva will provide the document in redacted form. Such redactions must indicate that trade secret and/or private information, as appropriate, has been redacted. Redactions are limited to the minimum redactions possible, consistent with section B.

2. Teva must provide to each Settling State a log noting each document redacted. The log must also provide fields stating the basis for redacting the document, with sufficient detail to allow an assessment of the merits of the assertion. The log is subject to public disclosure in perpetuity. The log shall be provided by the production deadline.

3. In addition to the redacted documents, Teva shall, upon any Settling State's request, also produce all documents identified in Section A above in unredacted form to such Settling State at the same time, but only to the extent the document was produced by Teva in an unredacted form in the underlying litigation, and only for the purpose of permitting a merits assessment and potential challenge of the redaction pursuant to section VII herein.

D. Public Disclosure Through a Document Repository

1. Each Settling State may publicly disclose all documents covered by this section through a public repository maintained by a governmental, non-profit, or academic institution. Each Settling State may specify the terms of any such repository's use of those documents, including allowing the repository to index and make searchable all documents subject to public disclosure, including the metadata associated with those documents.

E. Timeline for Production

1. Teva shall produce all documents required by Section A within nine months from the Effective Date.

F. Support Payment

1. Within thirty (30) calendar days of the Effective Date, Teva will make one-time payments totaling $1,375,000 to the University of California, San Francisco Foundation (UCSF Foundation) and The Johns Hopkins University, to be used to support a public repository of documents subject to this section.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss. SUPERIOR COURT
C.A. No.

COMMONWEALTH OF MASSACHUSETTS,
Plaintiff

v.

MCKINSEY & COMPANY, INC. UNITED STATES,
Defendant

CONSENT JUDGMENT

Plaintiff, the Commonwealth of Massachusetts (the "Commonwealth" or "Plaintiff") has filed a Complaint for a permanent injunction, damages and other relief in this matter pursuant to Mass. Gen. L. c. 93A, § 4 alleging that Defendant McKinsey & Company, Inc. United States ("McKinsey" or "Defendant") committed violations of the Massachusetts Consumer Protection Act, G.L. c. 93A, § 2. Plaintiff, by its counsel, and McKinsey, by its counsel, have agreed to the entry of this Consent Judgment ("Judgment") by the Court without trial or adjudication of any issue of fact or law, and without finding or admission of wrongdoing or liability of any kind.

IT IS HEREBY ORDERED THAT:

I. FINDINGS

A. For purposes of this proceeding only, this Court has jurisdiction over the subject matter of this lawsuit and over the Parties (as defined below). This Judgment shall not be construed or used as a waiver of any jurisdictional defense McKinsey may raise in any other proceeding.

B. The terms of this Judgment shall be governed by the laws of the Commonwealth of Massachusetts.

H. The foregoing injunctive terms may be amended by agreement between McKinsey and Massachusetts without this Court's approval or amendment of this Judgment.

IV. PUBLIC ACCESS TO MCKINSEY DOCUMENTS

A. **Documents Subject to Public Disclosure**

1. The following documents shall be produced by McKinsey to each Settling State and are subject to public disclosure in perpetuity as part of a document disclosure program, except for the redactions authorized by Section B:

All non-privileged documents McKinsey produced to any of the Settling States in response to investigative demands or other formal or informal requests related to opioids in 2019, 2020, or 2021, prior to the date of this Judgment, that fall within the following categories:

a. All communications with Purdue Pharma LP ("Purdue");

b. All documents reflecting or concerning McKinsey's work for Purdue;

c. All communications with Endo Pharmaceuticals ("Endo"), Johnson & Johnson, or Mallinckrodt Pharmaceuticals ("Mallinckrodt") related to opioids;

d. All documents reflecting or concerning McKinsey's work related to opioids for Endo, Johnson & Johnson, or Mallinckrodt;

e. All documents and communications sent or received by individual consultants agreed upon by McKinsey and the Settling States related to opioids or the opioid crisis;

f. All documents listed by Bates number in Appendix A.

2. All documents produced under this provision shall be provided in electronic format with all related metadata. McKinsey and the Settling States will work cooperatively to develop technical specifications for the productions.

B. Information That May Be Redacted

The following categories of information are exempt from public disclosure:

1. Information subject to trade secret protection. A "trade secret" is information, including a formula, pattern, compilation, program, device, method, technique or process, that (a) derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure and use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Even if the information falls within the definition, "trade secret" does not include information reflecting opioid sales or promotional strategies, tactics, targeting, or data, or internal communications related to sales or promotion of opioids.

2. Confidential personal information. "Confidential personal information" means individual Social Security or tax identification numbers, personal financial account numbers, passport numbers, driver license numbers, home addresses, home telephone numbers, personal email addresses, and other personally identifiable information protected by law from disclosure. "Confidential personal information" does not include the names of officers, directors, employees, agents, or attorneys of McKinsey, Purdue, Endo, Johnson & Johnson, or Mallinckrodt, or of a government agency.

3. Information that is inappropriate for public disclosure because it is subject to personal privacy interests recognized by law (*e.g.*, HIPAA), or contractual rights of third parties (including McKinsey's clients) that McKinsey may not abrogate. McKinsey shall make its best efforts to ensure that disclosure into the document repository is not limited or prohibited by contractual rights of Purdue with regard to any documents, or by contractual rights of Endo, Johnson & Johnson, or Mallinckrodt with regard to documents related to opioids.

4. Information regarding McKinsey partners' or employees' personal or professional matters unrelated to McKinsey or opioids, including but not limited to emails produced by McKinsey custodians discussing vacation or sick leave, family, or other personal matters.

C. Redaction of Documents Containing Protected Information

1. Whenever a document contains information subject to a claim of exemption pursuant to Section B, McKinsey shall produce the document in redacted form. Such redactions shall indicate that trade secret and/or private information, as appropriate, has been redacted. Redactions shall be limited to the minimum redactions possible to protect the legally recognized individual privacy interests and trade secrets identified above.

2. McKinsey shall produce to each Settling State a log noting each document redacted. The log shall also provide fields stating the basis for redacting the document, with sufficient detail to allow an assessment of the merits of the assertion. The log is subject to public disclosure in perpetuity. The log shall be produced simultaneously with the production of documents required by Section IV.F.

3. In addition to the redacted documents, McKinsey shall, upon any Settling State's request, also produce all documents identified in Section IV.A above in unredacted form to such Settling State at the same time. The redacted documents produced by McKinsey may be publicly disclosed in accordance with Section IV.E below. The unredacted documents produced by McKinsey to a Settling State shall be available only to such State unless McKinsey's claim of exemption under Section IV.B is successfully challenged in accordance with Section IV.C.4 or the trade secret designation expires in accordance with Section IV.D.

4. Anyone, including members of the public and the press, may challenge the appropriateness of redactions by providing notice to McKinsey and a Settling State, which Settling State shall

review the challenge and inform McKinsey of whether the challenge has sufficient merit to warrant triggering the remaining provisions of this paragraph. If the challenge is not resolved by agreement, it must be resolved in the first instance by a third party jointly appointed by the Settling State and McKinsey to resolve such challenges. The decision of the third party may be appealed to a court with enforcement authority over this Judgment. If not so appealed, the third party's decision is final. In connection with such challenge, a Settling State may provide copies of relevant unredacted documents to the parties or the decisionmaker, subject to appropriate confidentiality and/or in camera review protections, as determined by the decisionmaker.

D. Review of Trade Secret Redactions

Seven years after McKinsey completes the production of its documents in accordance with Section IV.F and upon notice by a Settling State, McKinsey shall review all trade secret assertions made in accordance with Section IV.B. The newly unredacted documents may then be publicly disclosed by a Settling State in accordance with Section IV.E. McKinsey shall produce to each Settling State an updated redaction log justifying its designations of the remaining trade secret redactions.

E. Public Disclosure through a Document Repository

Each Settling State may publicly disclose all documents covered by Section IV.A through a public repository maintained by a governmental, non-profit, or academic institution. Each Settling State may specify the terms of any such repository's use of those documents, including allowing the repository to index and make searchable all documents subject to public disclosure, including the metadata associated with those documents. When providing the documents covered by Section IV.A to a public repository, no Settling State shall include or attach within the document set any characterization of the content of the documents. For the avoidance of

doubt, nothing in this paragraph shall prohibit any Settling State from publicly discussing the documents covered by Section IV.A.

F. Timeline for Production

McKinsey shall produce all documents required by Section IV.A within nine months from the Effective Date.

G. Costs

The Settling States may allocate funds from the Settlement to fund the allocable share of all reasonable costs and expenses associated with the public disclosure and storage of McKinsey's documents through any public repository.

V. PAYMENT

1. McKinsey shall pay to the Settling States a total amount of $573,919,331 ("the Settlement Amount"). Of the Settlement Amount, $558,919,331 shall be allocated among the Settling States as agreed to by the Settling States. It is the intent of the Parties that the $558,919,331 paid to the Settling States will be used, to the extent practicable, to remediate the harms caused to the Settling States and their citizens by the opioid epidemic within each State and to recover the costs incurred by the Settling State in investigating and pursuing these claims.[2] McKinsey shall pay the $15,000,000 balance of the Settlement Amount to the National Association of Attorneys General ("NAAG Fund"). The NAAG Fund shall be used: first, to

[2] The Commonwealth's share of the Settlement Amount is $13,227,291, composed of an initial payment of $10,963,578 followed by four equal installments of $565,928, as set forth in paragraph 2 of this Section. The Massachusetts Attorney General will allocate the Commonwealth's share as follows: (a) $11,727,291 will be deposited into the Opioid Recovery and Remediation Trust Fund established pursuant to M.G.L. c. 10, §35OOO to mitigate the impacts of the opioid epidemic in the Commonwealth; and (b) $1,500,000 will be deposited to an account or accounts held by the Office of the Attorney General, pursuant to G.L. c. 12 § 4A, to be used in the Attorney General's sole discretion to (i) promote initiatives designed to improve care and treatment related to prescription medications or otherwise assist Massachusetts health care consumers and programs, or (ii) support efforts to enforce compliance with state and federal laws and regulations that protect Massachusetts health care consumers.

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[Defendants' Counsel Continued on Next Page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
CIVIL DIVISION

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

JUUL LABS, INC., ADAM BOWEN, JAMES MONSEES, NICHOLAS PRITZKER, RIAZ VALANI, AND DOES 6-100, INCLUSIVE,

Defendants.

Case No. RG19043543

[PROPOSED] CONSENT JUDGMENT

Dept: 19
Judge: Stephen Kaus
Trial Date: October 6, 2023
Action Filed: November 18, 2019

customer service receives information or complaints of California Retail Stores violating the age-verification requirements or product quantity limits, JLI shall conduct a JLI Compliance Check of those California Retail Stores within ninety (90) days of receipt of such information or complaints.

f. JLI's obligations under this Paragraph become effective on the first day of the first full calendar month beginning no earlier than twenty-one (21) days after the Effective Date.

g. Every six (6) months, JLI shall provide the Attorney General with results of its JLI Compliance Checks of California Retail Stores conducted pursuant to Paragraph 40(a), with the first set of results being provided six (6) months and two weeks after the terms of this Paragraph become effective pursuant to Paragraph 40(f).

41. The Parties agree that JLI shall not be subject to any liability for any conduct by California Retail Stores arising out of or relating to JLI's creation and maintenance of the retailer-compliance program described above.

42. JLI shall continue to include serial numbers on JUUL Devices that permit consumers in California to report the serial number of a JUUL Device confiscated from a Youth through a website, currently https://www.juul.com/trackandtrace. Every six (6) months with the reports provided pursuant to Paragraph 40(g), JLI shall report to the Attorney General any and all information regarding any submissions to the website for transactions identified as relating to a California Retail Store.

III. DOCUMENT DEPOSITORY

43. Depository Documents shall be made available to the public in a Document Depository established consistent with this Part:

a. Within six (6) months of the Effective Date, JLI shall identify the Depository Documents that were made available to the public, withheld, or redacted pursuant to Section IV of the consent judgment between JLI and the State of North Carolina dated June 28, 2021. The Settling Litigating

States may transmit these documents to the Depository Institution to be made available to the public on the same basis as resolved pursuant to the North Carolina consent judgment. The Settling Litigating States may not make any additional objections to withheld or redacted documents that were made available to the public, withheld, or redacted pursuant to the North Carolina consent judgment.

b. For Depository Documents that have not already been made available to the public, withheld, or redacted pursuant to the North Carolina consent judgment, JLI may redact the following categories of information from the Depository Documents:

i. Privileged information or attorney work product.

ii. Trade secret material, including documents that could be used to create counterfeit or black market JUUL Products.

iii. Confidential Tax information.

iv. Confidential Personal Information and JLI personnel files, so long as those personnel files do not contain information about any employee's Covered Conduct. For the avoidance of doubt, information related to compensation, purchase of shares, or financial details relating to company acquisition are not encompassed within the definition of Confidential Personal Information or JLI personnel files.

v. Information that may not be disclosed under applicable federal, state, or local law.

vi. Information that cannot be disclosed without violating the contractual rights of third parties that JLI may not unilaterally abrogate.

vii. Information regarding personal or professional matters unrelated to JLI or ENDS, including but not limited to emails produced from the

files of JLI custodians discussing vacation or sick leave, family, or other personal matters.

c. JLI may withhold a Depository Document in its entirety if it contains only information in subparagraphs 43(b)(i)-(vii) above. Documents so withheld must be replaced by JLI with a slip sheet identifying the document by Bates Number (where available) and JLI must identify any category that forms the basis for redaction or withholding.

d. JLI's inadvertent failure to redact or withhold a document under Paragraph 43(b) shall not constitute a waiver of any confidentiality rights that JLI has under this Paragraph, nor shall it prevent JLI from later redacting or withholding the document, or requesting that the State Plaintiffs return the inadvertently produced copy of the document.

e. Within sixteen (16) months of the Effective Date, JLI shall identify every Depository Document it seeks to redact or withhold and identify the category that forms the basis for redaction or withholding. Within three (3) months of JLI's identification of a document for redaction or withholding, the Multistate Leadership Committee shall confer with JLI about its redaction or withholding requests. The Multistate Leadership Committee may challenge such requests on the ground that the information at issue does not fall within the categories in Paragraph 43(b)(i)-(vii) above. In the event differences remain between the Parties with regard to JLI's redaction or withholding requests, within thirty (30) days after the deadline for the Multistate Leadership Committee and JLI to meet and confer, the Parties shall request that a court in one of the Settling Litigating States appoint one or more special masters to review any disputed documents and determine whether the information that JLI requests to redact or withhold falls within the categories in Paragraph 43(b)(i)-(vii) above. The determination of the special master(s) shall be binding on the Parties. The costs and fees of the

special master(s) shall be borne equally by the Parties. For the avoidance of doubt, JLI's prior designation of any Depository Document under a Settling Litigating State confidentiality or protective order shall not create any presumption as to the confidentiality of such document for purpose of the Document Depository.

44. The Document Depository shall be maintained and operated by one or more public universities or similar research entities chosen by the Settling Litigating States (the "Depository Institution"). The Settling Litigating States shall notify JLI of the Depository Institution chosen. Upon its selection, the Depository Institution will commit to hosting for the public the Depository Documents for no less than ten (10) years. The Document Depository shall be freely accessible to the public and government entities of all states and territories in the United States.

45. JLI shall be responsible for and shall reimburse the Depository Institution for any reasonable expenses incurred by it in the receiving, indexing, storing, and providing public access to the Depository Documents for ten (10) years, not to exceed $5,000,000. JLI shall establish a single escrow account to be used by the Settling Litigating States collectively for the purpose of reimbursing the Depository Institution established under Paragraph 44 for such expenses, which shall be funded with $1,000,000 within ninety (90) days of the Effective Date; provided that the $1,000,000 shall be used only after (i) the amounts reimbursed by JLI under this Paragraph exceed $4,000,000 in the aggregate or (ii) JLI is unable to reimburse the Depository Institution within ninety (90) days of receipt of a written request for reimbursement. In the case of a change in control of JLI or a sale of all or substantially all of JLI's assets, JLI agrees to place the remaining $4,000,000 in escrow for the purpose of reimbursing the Depository Institution within ninety (90) days of such event.

46. The Depository Institution will make the Depository Documents produced by JLI available to the public within two (2) years of its selection, provided that the documents produced by or on behalf of the Individual Defendants shall be made available to the public only after the Reference Date. Should the Depository Institution choose to discontinue hosting the Depository Documents, the Depository Documents shall be transferred to the Settling Litigating States,

where they will remain available to the public at the discretion of and in the form selected by such Settling Litigating States.

IV. MONETARY PAYMENT

47. JLI hereby warrants and represents that, as of the date of the execution of this Consent Judgment, it is not insolvent as such term is defined and interpreted under 11 U.S.C. §§ 101 et seq. ("Code") including, without limitation, Code §§ 547 and 548.

48. Subject to the terms and conditions below, JLI shall pay a total amount of $462,000,000 ("the Litigating States' Settlement Amount") to the Settling Litigating States as follows: (a) $57,750,000 within ninety (90) days of the Effective Date; (b) $57,750,000 by June 1, 2024; (c) $57,750,000 by June 1, 2025; (d) $57,750,000 by June 1, 2026; (e) $57,750,000 by June 1, 2027; (f) $57,750,000 by June 1, 2028; (g) $57,750,000 by June 1, 2029; and (h) $57,750,000 by June 1, 2030. JLI shall notify the Settling Litigating States, in writing, at least ninety (90) days prior to transmitting any payment required under subparagraphs (b)-(h).

49. If one or more state(s) listed on Exhibit B is not a Settling Litigating State, the amounts in Paragraph 48, including the total and each annual payment, will be reduced by a percentage reflecting the ratio of (a) the total population of all states listed on Exhibit B that are not Settling Litigating States to (b) the total population of all states listed on Exhibit B, in each case employing the population figures from the 2020 United States census.

50. Each payment under Paragraph 48 shall be allocated and distributed among the Settling Litigating States in their sole discretion, in accordance with Exhibit D. Accordingly, JLI shall pay the State Plaintiffs the following amounts as the State of California's share: (a) $21,983,237.26 within ninety (90) days of the Effective Date; (b) $21,983,237.26 by June 1, 2024; (c) $21,983,237.26 by June 1, 2025; (d) $21,983,237.26 by June 1, 2026; (e) $21,983,237.26 by June 1, 2027; (f) $21,983,237.26 by June 1, 2028; (g) $21,983,237.26 by June 1, 2029; and (h) $21,983,237.26 by June 1, 2030, subject to Paragraph 49 and any prepayment adjustments in Paragraph 51. Each payment shall be paid to the Attorney General and allocated and distributed among the Attorney General, the District Attorney for Los Angeles County, and Los Angeles County Counsel in accordance with Exhibit E. If the Effective Date for a Settling

STATE OF NORTH CAROLINA
DURHAM COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
19-CVS-2885

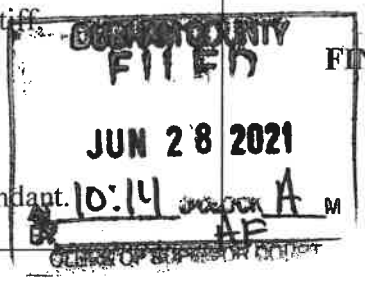
STATE OF NORTH CAROLINA, ex rel.
JOSHUA H. STEIN, Attorney General,

Plaintiff,

v.

JUUL LABS, INC.,

Defendant.



FINAL CONSENT JUDGMENT

Plaintiff, the State of North Carolina, by and through its Attorney General, Joshua H. Stein, (the "State" or "Plaintiff") has filed a Complaint for a permanent injunction, equitable monetary relief, and other relief in this matter pursuant to N.C.G.S. § 75-1.1 et seq., alleging that Defendant Juul Labs, Inc. ("JLI") violated the North Carolina Unfair or Deceptive Trade Practices Act, N.C.G.S. § 75-1.1 et seq. Plaintiff, with the advice and approval of its counsel, and JLI, with the advice and approval of its counsel, have agreed to the entry of this Final Consent Judgment ("Consent Judgment") by the Court without trial or resolution of any contested issue of fact or law, and without finding or admission of wrongdoing or liability of any kind.

IT IS HEREBY ORDERED THAT:

I. FINDINGS

1. The Parties (as defined below) agree that this Court has jurisdiction over the subject matter of this lawsuit and over the Parties with respect to this Action (as defined below) and Consent Judgment. This Consent Judgment shall not be construed or used as a waiver of any jurisdictional defense JLI may raise in any other proceeding.

33. Beginning nine (9) months from the Effective Date, if JLI makes any statement about the nicotine content of JUUL Products in its promotional materials, JLI Owned Website, or in-store retail promotions other than through the JUUL Product packaging or label, JLI shall also disclose the amount of nicotine content by weight *and* by volume, in both milligrams and by a percentage in terms of total volume of a JUULpod. The obligations under this Paragraph are no longer in effect if (1) the FDA implements a uniform nicotine content disclosure standard for all promotional advertising, in-store or online, of ENDS products or (2) JLI receives FDA authorization for JUUL Products that permits JLI to use a specific nicotine content disclosure on its label or packaging or in the promotion of its products, on its website, or in-store.

Monitoring and Compliance

34. JLI shall, after diligent inquiry, annually certify compliance with this Consent Judgment to the North Carolina Attorney General's Office.

IV. DOCUMENT DEPOSITORY

35. Documents created on or before May 14, 2019 and produced to the State by JLI shall be made available to the public in the North Carolina Depository, in the manner provided as follows:

a. The public shall be given access to all documents contained in the North Carolina Depository. The following categories of information may be redacted from the documents in the North Carolina Depository by JLI before public disclosure; provided that documents may be withheld in their entirety from the North Carolina Depository by JLI before public disclosure if they contain only information in the following categories:

i. Privileged information or attorney work product, as defined by North Carolina law.

ii. Trade secret material, as defined by North Carolina law, including documents that could be used to create counterfeit or black market JUUL Products.

iii. Confidential Tax information, as defined by North Carolina law.

iv. Confidential Personal Information and JLI personnel files, so long as those personnel files do not contain information about any employee's Covered Conduct. For the avoidance of doubt, information related to compensation, purchase of shares, or financial details relating to company acquisition are not encompassed within the definition of Confidential Personal Information or JLI personnel files.

v. Information that may not be disclosed under federal, state, or local law.

vi. Information that cannot be disclosed without violating the contractual rights of third parties that JLI may not unilaterally abrogate.

vii. Information regarding personal or professional matters unrelated to JLI or ENDS, including but not limited to emails produced from the files of JLI custodians discussing vacation or sick leave, family, or other personal matters.

b. Within twelve (12) months of the Effective Date, JLI shall identify every document it seeks to redact or withhold and identify the category that forms the basis for redaction or withholding. JLI shall identify the first set of documents within three (3) months of the Effective Date, and continue to identify the remaining documents on the rolling basis through the end of the twelve (12) month period. Within three (3) months of JLI's identification of a document for redaction or withholding, the State shall confer with JLI about its redaction or withholding requests. The State may challenge such request on the ground that the information at issue does not fall within the categories in Paragraph 35(a)(i)-(vii) above. In the event differences remain between the Parties with regard to JLI's redaction or withholding requests, within 30 days after the deadline for the State and JLI to meet and confer, the Parties shall request that the Court appoint one or more special masters to review any disputed documents and determine whether the information that JLI requests to redact or withhold falls within the categories in Paragraph 35(a)(i)-(vii) above. The determination of the special master(s) shall be binding on the Parties. The costs and fees of the special master(s) shall be borne equally by the parties. For the avoidance of doubt, JLI's prior designation of any document under the Protective Order in this case shall not create any presumption as to the confidentiality of such document for purpose of the North Carolina Depository.

c. Unredacted versions of documents redacted in accordance with Paragraph 35(a) above shall be returned to JLI by the State as soon as practicable

after JLI produces a redacted copy of the document. The State shall retain the Bates stamp numbers of all documents produced to the State.

d. JLI's inadvertent failure to redact or withhold a document under Paragraph 35(a) shall not constitute a waiver of any confidentiality rights that JLI has under this Paragraph, nor shall it prevent JLI from later redacting or withholding the document, or requesting that the State return the inadvertently produced copy of the document.

36. The North Carolina Depository shall be maintained and operated by a North Carolina public university to be chosen by the State. The State shall notify JLI of the university that is chosen.

37. There shall be no prohibition on the use of the North Carolina Depository for conducting research or to develop and collect data on ENDS usage.

38. The State will cause the North Carolina Depository to be made available to the public on or after July 1, 2022. Should the State close the North Carolina Depository, the documents from the North Carolina Depository shall be transferred to the State archives or other appropriate state body, where they shall remain available for historical and research purposes.

V. MONETARY PAYMENT

39. JLI shall pay a total sum of $40,000,000 to the State, subject to the following terms and conditions:

a. JLI shall pay $40,000,000 over six years as follows:

i. JLI shall make the first payment of $13,000,000 within thirty (30) days of the Effective Date.

This is Exhibit "K" referred to in the Affidavit of Monique E. Muggli sworn by Monique E. Muggli of the City of Minneapolis, in the State of Minnesota, United States of America, before me at the City of Toronto, in the Province of Ontario , on January 20, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (or as may be)

Katelin Zoe Parker, a Commissioner, etc.,
Province of Ontario, for Fogler, Rubinoff LLP,
Barristers and Solicitors. Expires April 23, 2026.

Donate to the UCSF Industry Documents Library

Contribute Documents

The UCSF Industry Documents Library relies on lawyers, journalists, researchers, advocacy organizations, and other groups to help build our document collections. We collect industry documents from litigation, Freedom of Information Act Requests, partner libraries, and other sources. For more information please see our Collection Development Policy.

If you would like to contribute documents, please contact our staff. Document contributions may be made anonymously.

Make a Financial Donation

Since its inception, the IDL has become a cornerstone for researchers, journalists, and the public seeking the truth behind some of the most pressing issues of our time. Our collections include millions of pages of internal documents, marketing materials, and scientific studies, exposing the often-hidden workings of these powerful industries. But here's the challenge: making this vast information freely available comes with a hidden cost. Preserving and providing access to these millions of pages requires robust servers and infrastructure, and unfortunately, many of these costs are not covered by traditional funding sources. That's where you come in. As you leverage the IDL materials, we hope you will consider making a gift to support our work. By making a gift today, you will directly help us bridge this gap and ensure the IDL remains a beacon of transparency and accountability.

Donor support allows the Library to expand and maintain its collections by providing:

- addition of new collections
- item-level descriptive metadata for targeted search and retrieval
- reference and research services
- large datasets and downloads for computational analysis and AI research
- long-term secure document storage
- website maintenance and development

Your gift is a tax-deductible donation to the UCSF Foundation, in support of the Industry Documents Library (tax ID number: 94-2829914). For more information please see Giving to UCSF: Frequently Asked Questions.

Thank you for your support!

Support Industry Documents Library

This is Exhibit “L” referred to in the Affidavit of Monique E. Muggli sworn by Monique E. Muggli of the City of Minneapolis, in the State of Minnesota, United States of America, before me at the City of Toronto, in the Province of Ontario , on January 20, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely..

Commissioner for Taking Affidavits (or as may be)

Katelin Zoe Parker, a Commissioner, etc.,
Province of Ontario, for Fogler, Rubinoff LLP,
Barristers and Solicitors. Expires April 23, 2026.

University of California
San Francisco

Library

530 Parnassus Avenue
San Francisco, CA 94143

Kate Tasker
Director of the Industry Documents Library
kate.tasker@ucsf.edu
415-799-8847
industrydocuments.ucsf.edu

January 14, 2025

Ms. Monique Muggli
Vice President, International Legal Consortium
Campaign for Tobacco-Free Kids

Dear Ms. Muggli,

I am writing to confirm that the UCSF Industry Documents Library would absolutely be in a position to receive the documents arising from Canadian tobacco litigation, and specifically arising from provincial government health care cost recovery lawsuits.

We have tremendous experience with tobacco industry documents in our Library. These documents have been obtained from tobacco litigation, including state government health care cost recovery lawsuits, and proceedings under the federal Racketeer-Influenced and Corrupt Organizations Act.

As of December 19, 2024, the Truth Tobacco Industry Documents Library, which is part of the UCSF Industry Documents Library, had in the online depository 18,011,368 documents with 104,669,793 pages. Our Library also includes documents from other industries, including e-cigarettes and opioids.

The UCSF Industry Documents Library currently includes documents from three previous Canadian tobacco cases:

- constitutional challenge to the national Tobacco Products Control Act, commenced in 1988
- constitutional challenge to the national Tobacco Act, commenced in 1997
- the Blais/Letourneau class actions in Quebec

I have enclosed for your information a UCSF document dated July 26, 2021, and entitled “Technical Recommendations for Preserving Industry Documents Disclosed in Litigation”.

Please contact me if I can provide more information.

Yours truly,

DocuSigned by:
Kate Tasker
9FDD417CAF41433...

Kate Tasker | MLIS, CA
Director of the Industry Documents Library
UCSF Library
kate.tasker@ucsf.edu
industrydocuments.ucsf.edu

encl.

Technical Recommendations for Preserving Industry Documents Disclosed in Litigation

UCSF Industry Documents Library
July 26, 2021

Summary

Attorneys General and private parties are engaging in ongoing litigation about tobacco (including e-cigarettes), opioids, global warming and other issues in which important documents and other evidence is being produced. Settlements to date in e-cigarette (Juul) and opioid cases have included key provisions to provide for public access to the discovery materials. To make these provisions a reality, it is important that these materials be provided in forms that can be efficiently made freely available to the public and maintained at minimum cost over the long term.

"Discovery materials" can take many forms, including paper and digital documents, oversized records (such as posters and visual displays), multimedia records (such as audio and video recordings), and three-dimensional objects (such as sample products). The key to providing widespread economical public access is storing the discovery materials in digital form to the greatest extent possible. Any agreement to make discovery materials available should not only deal with such digital or digitizable documents, but also all other types of discovery materials produced.

The UCSF Industry Documents Library, based on two decades of experience collecting, preserving, and providing public access to industry documents disclosed in litigation, offers the following recommendations on how to make these materials freely available in perpetuity and what costs should be included as part of settlements or judgements.

1. Documents produced from an eDiscovery platform should be exported in three formats: native files, TIFF images, and PDF files. If paper documents or other physical materials are produced they should be organized by Bates number or other control number, and sufficient funding should be provided to cover costs of digitization and/or storage.
2. Detailed metadata should be provided for each document, as specified below; if metadata that meet the required standards are not provided by a company, costs should be included in the settlement to cover the costs of creating high quality metadata.

3. Optical Character Recognition (OCR) should be performed on digital and digitized documents to generate raw text with page-break indicators, which can be used for full-text search, or for screening and redacting any protected information (if required).
4. Specific limited provisions should govern document redaction, including the creation of a redaction log which indicates the type of information which has been redacted, with sufficient detail to allow an assessment of the merits of the privileged, trade secret, or privacy assertion by an independent agent with the authority to resolve any disputes.
5. A procedure should be established by which members of the public may challenge the appropriateness of a redaction or withheld document(s) and appeal to have that document(s) reviewed and released by an independent agent.
6. If a company does not provide metadata, PDF files, OCR text, or perform specified redactions in a timely manner, additional funding must be provided to enable a documents repository to do this work.
7. Funding to process documents and maintain long-term free public access should be included in the settlement or judgement.

Background

The UCSF Industry Documents Library (IDL) is a digital archive which provides public access to more than 15 million documents (94 million pages) from tobacco, opioid, pharmaceutical, chemical, food, and fossil fuel industries released through litigation and other sources.

IDL was established as the Legacy Tobacco Documents Library in 2002 at the University of California, San Francisco (UCSF) for the purpose of preserving and providing public access to 40 million pages of tobacco industry documents released by the 1998 Master Settlement Agreement between the major tobacco companies and 46 U.S. states, 5 U.S. territories, and the District of Columbia. The Legacy Tobacco Documents Library was created with $15 million from the American Legacy Foundation (now Truth Initiative) which also supported the creation of the UCSF Center for Tobacco Control Research and Education (CTCRE). Of this amount, $2.5 million was a 5-year grant, $2.5 million was to cover capital costs of creating the Library and Tobacco Center and $10 million was to create an endowment to cover ongoing costs. Half of these funds were allocated to the costs of creating and maintaining the Tobacco Documents Library.

In 2011 the US Department of Justice negotiated a consent order with the defendants in *U.S. v. Philip Morris* in which the tobacco companies provided an additional $6.9 million to UCSF to cover additional costs of processing and housing tobacco industry documents

disclosed after the Master Settlement Agreement.[1,2] In *U.S. v. Philip Morris* the Department of Justice sued several major tobacco companies for fraudulent and unlawful conduct under the Racketeer Influenced and Corrupt Organizations Act (RICO). The 2006 court order required that the tobacco companies make public all documents produced in litigation related to smoking and health until September 2021, and UCSF has continued to collect all documents produced under the RICO judgment.[3] Additional funds have come from foundation and government grants, but the funding from the MSA (indirectly) and RICO judgment provide the core funding for the collection.

The Legacy Tobacco Documents Library became the Truth Tobacco Industry Documents in 2015 (reflecting the American Legacy Foundation's name change to Truth Initiative) and is now managed under the umbrella of the UCSF Industry Documents Library.

In addition, UCSF also collects documents created by other industries which impact public health – specifically drug (including opioids), chemical, food, and fossil fuel industries. These collections have been funded by a variety of sources.

Recommendations

1. **Documents produced from an eDiscovery platform should be exported in three formats: native files, TIFF images, and PDF files. If paper documents are produced, they should be organized by Bates number or other control number, and sufficient funding should be provided to cover costs of digitization.**

UCSF can accept and process paper documents but doing so adds substantially to processing costs. The fact that most if not all documents now produced in litigation are already digital means that obtaining digital copies will substantially speed processing and lower costs. These digital records are, however, in a wide variety of file formats. These records include word processing documents, PDFs, email messages, spreadsheets, slide presentations, websites, images, audio and video recordings, social media, data files from chat communication platforms such as Slack, and other ever-evolving formats.

Each of these file formats have specific digital preservation issues which must be considered (for just one example, how to preserve tracked changes in a Word document). Digital archivists and other experts in the U.S. and around the world have conducted

[1] (Order #27 Remand: Consent Order Between the United States, the Public Health Intervenors, Philip Morris USA Inc., Altria Group, Inc., and R.J. Reynolds Tobacco Company Concerning Document Disclosure Obligations Under Order #1015, 2011)
[2] (Fernandez, 2011)
[3](Public Health Law Center, n.d.)

extensive research and provided detailed preservation recommendations for many of these formats.[4]

Fortunately, today these discovery materials are usually handled through an eDiscovery software system, which provides the option for files to be exported in various formats: native files; single-page TIFF (Tagged Image File Format) images; or PDF files.

The recommendations below assume that documents will be produced from eDiscovery software. It this is not the case, please contact us and we will provide more specific recommendations based on the formats of the available documents.

We recommend that digital documents be produced in all three formats: native format, TIFF image, and PDF.

Each of these formats has specific advantages and disadvantages:

Type	**Advantages**	**Disadvantages**
Native format	- Original content with significant properties maintained (e.g., track changes, spreadsheet formulas, email headers)	- Dependence on specific software - Can be altered by a user - Some formats not easily viewable in a web browser
TIFF image	- All documents are in a standardized format - Stable, well-documented, widely adopted, and uncompressed file format used for preservation - Supports Optical Character Recognition (OCR)	- Potential loss of original/significant properties - Produced as single pages which must be recombined to form complete document - Larger file size
PDF file	- Stable, flexible format which can be easily viewed, printed, or downloaded	- Potential loss of original/significant properties - Difficult to accurately convert some native formats to PDF (e.g., spreadsheets)

[4] Digital preservation standards have been developed by the U.S. National Archives and Records Administration (The U.S. National Archives and Records Administration, 2019); the Library of Congress (Library of Congress, n.d.); the Digital Preservation Coalition (Digital Preservation Coalition, n.d.) the University of California Libraries (Schaefer, et al., 2020) and many other organizations.

Together, these three formats provide a full package of data which supports preservation of original content, creation of OCR text for document screening/redaction and full-text search, and flexible online access and delivery.

2. **Detailed metadata should be provided for each document, as specified below; if metadata that meet the required standards are not provided by a company, costs should be included in the settlement to cover the costs of creating high quality metadata.**

Each document should be described with the metadata fields listed in the Metadata Specification below so that it is discoverable among millions of other documents. We have found that the quality and quantity of metadata provided by a company can vary widely, with some documents missing such basic information as title, date, or author. To minimize costs, it is important that the settlement specify the specific metadata to be produced for each document.

Alternatively, missing metadata can be created by trained indexers supported by automated tools where possible, but the additional cost (detailed below) can be substantial. Settlements should carefully address this issue and, if necessary, include specific funds for the UCSF Library (or other archive) to create the metadata needed to make the collection useful to the public.

METADATA SPECIFICATION FOR E-DISCOVERY DOCUMENTS

FIELD NAME	FIELD DESCRIPTION
BEGDOC	Beginning Bates number (production number)
ENDDOC	End Bates number (production number)
BEGATTACH	First Bates number of family range (*i.e.,* Bates number of the first page)
ENDATTACH	Last Bates number of family range (*i.e.,* Bates number of the last page of the last attachment)
ATTCOUNT	Number of attachments to an email
ATTACH	Populate parent records with original filenames of all attached records, separated by semi-colons
CUSTODIAN	Name of person from whose files the document is produced
AUTHOR	Author of the e-doc or attachment
RECIPIENTS	Recipients of e-doc
FROM	Sender of email
TO	Recipient of email
CC	Additional recipients of email
BCC	Blind additional recipients of email
FILESIZE	Size of the file
PGCOUNT	Number of pages in the e-doc

FIELD NAME	FIELD DESCRIPTION
DATERECD	YYYYMMDD Date email was received
TIMERECD	[hh]:[mm]:[ss] Time email was received
DATESENT	YYYYMMDD Date sent
TIMESENT	[hh]:[mm]:[ss] Time sent
CRTDATE	YYYYMMDD Date created
CRTTIME	[hh]:[mm]:[ss] Time created
LASTMODDATE	YYYYMMDD Date last modified
LASTMODTIME	[hh]:[mm]:[ss] Time last modified
TITLE	Title field value extracted from the properties of the native file
MODBY	Name of person(s) who modified e-doc
SUBJECT	The value in the subject field of an e-doc or e-attachment
FILENAME	The full name of the native file
DOCUMENTTYPE	The category of document (*e.g.,* letter, email, memo, report, presentation, advertisement, etc)
NAMED INDIVIDUALS	Individuals named in the document who were not authors or recipients
NAMED ORGANIZATIONS	Organizations named in the document who were not authors or recipients
BRAND	The name of any brand or products discussed in the document, if any (*e.g.,* JUULpod, JUUL Device)
PROJECT NAME	Name of any project associated with the document
FILE EXT	The extension of the file
MD5HASH	MD5 Hash Value created during processing
FULLPATH	File source path for all electronically collected documents, which includes location, folder name, file name, and file source extension
RECORDTYPE	Should contain the value of email, e-doc, or e-attachment
APPLICATION	Name and version of the application used to open the file
VOLUME	Production volume number (*e.g.,* V001, V002, etc)
COMMENT	Values extracted from comments metadata field
ENTRYID	Unique identifier of emails in mail stores
ATTLIST	List of each attribute on a previous defined element definition with an DTD
FAMILYDATE	YYYYMMDD Date value of parent file (email or e-doc)
REQUESTNO	Reference number of the specific discovery request for which the document was produced
NATIVELINK	The full path to the produced native on the production deliverable
TEXTPATH	The full path to the produced text files on the production deliverable
CASE	Eight-digit ID number and/or name of the court case for which a document was produced
COURT	The name of the court where the document was filed

FIELD NAME	FIELD DESCRIPTION
EXHIBITNUMBER	Identifier for documents listed as trial exhibits
DATEPRODUCED	YYYYMMDD Date on which document was produced or transcript was received in litigation
COUNTRY	The primary country or countries mentioned in a document
LANGUAGE	Language a non-English document is written in
RESTRICTIONS	Privilege, trade secret, contains redacted material, or none

METADATA SPECIFICATION FOR PAPER DOCUMENTS (AND OTHER DISCOVERY MATERIALS)

FIELD NAME	FIELD DESCRIPTION
DOCUMENTID	Bates Number or other identifying number or alpha-numeric code assigned to a document
MASTERID	A range of Bates Numbers identifying a group of documents found attached to, or physically close to, each other during the discovery process
OTHERNUMBER	An identifying number or alpha-numeric code assigned to a document, in addition to its Bates Number
TITLE	The title of the document
DOCUMENTDATE	YYYYMMDD The date, if any, which appears on the document
DOCUMENTTYPE	The category of document (*e.g.,* letter, email, memo, report, presentation, advertisement, etc)
PERSONATTENDING	Any person present at a meeting mentioned in a document
PERSONAUTHOR	The author of the document
PERSONRECIPIENT	The recipient of the document
PERSONCOPIED	The person(s) copied on a document
PERSONMENTIONED	The person(s) mentioned in the document
ORGANIZATIONAUTHOR	The organizational author of the document
ORGANIZATIONRECIPIENT	The organization(s) which received the document
ORGANIZATIONCOPIED	The organization(s) copied on a document
ORGANIZATIONMENTIONED	The organization(s) mentioned in the document
ORGANIZATIONATTENDING	Any organization present at a meeting mentioned in a document
PHYSICALATTACHMENTS	Document IDs of any documents which are physically attached
FILENAME	If document has been digitized, filename of the scanned digital copy

FIELD NAME	FIELD DESCRIPTION
BRAND	The name of the brand(s) or product(s) mentioned in the document
PAGECOUNT	Number of pages in the document
CASE	Eight-digit ID number and/or name of the court case for which a document was produced
COURT	The name of the court where the document was filed
EXHIBITNUMBER	Identifier for documents listed as trial exhibits
DATEPRODUCED	YYYYMMDD Date on which document was produced or transcript was received in litigation
AREA	The physical location where a document was found in the offices of the providing company
BOX	Box number where the physical document is stored
FILE	The title of the file folder in which a document was originally kept
COUNTRY	The primary country or countries mentioned in a document
LANGUAGE	Language a non-English document is written in
RESTRICTIONS	Privilege, trade secret, contains redacted material, or none

3. Optical Character Recognition (OCR) should be performed on digital and digitized documents to generate raw text with page-break indicators, which can be used for full-text search, or for screening and redacting any protected information (if required).

It is very important that digital documents, whether provided in native, TIFF, or PDF format, are accompanied by text (TXT) files containing the raw text of the file. Raw text is required to conduct text analysis to identify and locate protected information which must be redacted; it is also necessary for providing full-text search and for text mining or other computational research.

Text files should include page break indicators so that specific text can be located on a particular page of the corresponding native file. If text files are not provided, they can be created from TIFF images or PDF files, at an additional cost (detailed below) which should be included in the settlement payments.

4. Specific limited provisions should govern document redaction, including the creation of a redaction log which indicates the type of information which has been redacted, with sufficient detail to allow an assessment of the merits of the privileged, trade secret, or privacy assertion by an independent agent with the authority to resolve any disputes.

These redactions should be limited to:

- Confidential Personal Information and personnel files, including home addresses, phone numbers, Social Security numbers, personal bank account and credit card numbers, and personal health information, unless this information is directly relevant to any employee's conduct relevant to the issues in the litigation.
- For the avoidance of doubt, information related to compensation, purchase of shares, or financial details relating to company acquisition are not encompassed within the definition of Confidential Personal Information or personnel files.
- Privileged information or attorney work product, as defined by relevant state law may be withheld so long as the metadata that would be present in a privilege log is provided.
- Trade secret material, as defined by relevant state law may be withheld for 3 years after the data of document creation, so long as enough metadata are made available to understand the topic of the document. Trade secret claims may be renewed for additional 3-year periods after review by the independent agent with the authority to resolve any disputes.

There is precedent for these provisions in the 2006 Final Judgment and Remedial Order (Order #1015) in *U.S. v. Philip Morris* (which requires defendants to review all trade secret assertions every three years to determine whether they still satisfy the definition of "trade secret")[5] and in the 2021 Judgment in *Commonwealth of Massachusetts v. McKinsey & Company* (which requires defendants to review all trade secret assertions after a period of seven years and to produce unredacted copies).[6]

Redactions should be completed by a company within 3 months of the settlement and a redaction log be created by that company and made public. A company should provide the corresponding metadata records for the withheld or redacted documents, giving users a complete picture of the entire corpus of documents.

If a company does not meet this deadline the documents should be provided to the document repository in partially redacted or unredacted form together with necessary funding so the repository can complete the redaction process.

The Attorney General or other plaintiff should retain unredacted forms of the documents so that future disputes can be resolved.

An independent authority to resolve disputes over redaction, privilege and trade secret issues should be identified. The defendant should pay the costs of maintaining this authority.

The UCSF Library or other repository should create a process for applying additional redactions if the need arises later.

[5] (U.S. v. Philip Morris USA, Inc., et al. Order #1015 Final Judgment and Remedial Order, 2006, p. 16)
[6] (Commonwealth of Massachusetts v. McKinsey & Company, Inc, United States. Assented-To Motion for Entry of Judgment, 2021, p. 12)

5. **A procedure should be established by which members of the public may challenge the appropriateness of a redaction or withheld document(s) and appeal to have that document(s) reviewed and released.**

Members of the public, including document repository staff, should have the ability to request that any document which has been redacted or withheld be reviewed and released by a company if the document does not, or no longer, contains information which must be protected under the provisions outlined in Recommendation 4 above. The 2011 consent order in *U.S. v. Philip Morris* established this procedure for the tobacco documents, which the UCSF Library, working with the US Department of Justice, helps to facilitate.[7]

6. **If a company does not provide metadata, PDF files, OCR text, or perform specified redactions in a timely manner, additional funding must be provided to enable a documents repository to do this work.**

Processing documents to create metadata, generate OCR text, create PDF access copies, and to identify and redact protected information incurs significant additional expense (detailed below) which should be reflected in any cost estimates.

7. **Funding to process and maintain long term free public access should be included in the settlement or judgement.**

Preserving and maintaining public access to digital materials in the long-term requires sustainable funding. Although some physical materials can theoretically exist in a state of "benign neglect" for years without great risk of loss, digital archives require active management to protect against file corruption ("bit rot"), hardware/ software obsolescence, and storage media failure, and to maintain a functional user interface and access point.[8]

A successful model has been used for more than two decades to support UCSF's Truth Tobacco Industry Documents, which in 2001 received $7.5 million (equivalent to $11.3 million in 2021 dollars; half the total funds to UCSF described above) from the American Legacy Foundation (ALF), which was created and funded by the Tobacco Master Settlement Agreement. This $7.5 included a $5 million endowment ($7.5 million in 2021 dollars) that has ensured the availability and longevity of public access to the tobacco documents at UCSF, which, in turn, enabled the development of a robust worldwide research community which has collectively produced over 1,000 scientific papers and reports citing the documents, leading to life-saving work in global tobacco control, public health policy, and ongoing tobacco litigation.[9]

[7] (Order #27 Remand: Consent Order Between the United States, the Public Health Intervenors, Philip Morris USA Inc., Altria Group, Inc., and R.J. Reynolds Tobacco Company Concerning Document Disclosure Obligations Under Order #1015, 2011)
[8] See (DeRidder, 2011), (Ovenden, 2019)
[9] (UCSF Industry Documents Library)

This funding model was sufficient to acquire, process, preserve, and maintain public access for the original 40 million pages of tobacco documents disclosed as a result of the Master Settlement and for ongoing document disclosures mandated through 2010. However, the final court order in *U.S. v. Philip Morris* required the tobacco companies to continue making their documents public for a period of fifteen years, which extended the MSA's original date for another eleven years until 2021. Over that period the IDL has acquired and preserved an additional 3.6 million documents which has put pressure on the original endowment. In 2011, the U.S. Department of Justice secured a consent order that provided $6.9 million ($8.5 million in 2021 dollars) from the tobacco companies through the court.[10] These funds were provided to UCSF improve public access and to enhance metadata.

The example of the Snowden Archive illustrates the difficulties of maintaining a digital repository over the long term without sustainable funding. The Intercept created the Snowden Archive to house the vast trove of National Security Agency documents leaked by Edward Snowden in 2013, but its parent company shut down the archive in 2019 citing "other editorial priorities" and encouraged the archive's creators to "find a new partner – such as an academic institution or research facility – that will continue to report on and publish the documents in the archive consistent with the public interest."[11]

Costs

The costs for preserving and providing long-term public access to millions of documents include: 1) initial costs of data servers and storage; 2) creation of OCR text if required; 3) redaction of protected information if required; 4) indexing (creation of metadata) if required; 5) trained personnel to actively monitor the files, provide user support, and maintain and update the technical infrastructure; and 6) long-term document storage and maintenance in perpetuity. As noted above, if the documents are not provided in digital form, there will be additional costs to digitize them.

Data Servers and Storage

The IDL currently uses Amazon Web Services (AWS) to store, back up, and serve data, as AWS has been identified as the most cost-effective option. The average cost for all functions related to document ingest, processing, storage, backup, and public access is $0.96 per GB per year. Cost estimates should account for the original data, plus processed data such as PDF access files, metadata records, extracted text files, thumbnail images, and backups of the original and processed data. We have found that the total storage required may be up to nine times the file size of the original data. The annual budget for data servers and storage in FY2020-2021 for 15 million documents (55 TB) was $55,000.

[10] (Order #27 Remand: Consent Order Between the United States, the Public Health Intervenors, Philip Morris USA Inc., Altria Group, Inc., and R.J. Reynolds Tobacco Company Concerning Document Disclosure Obligations Under Order #1015, 2011)

[11] (Society of American Archivists Human Rights Archives Section, 2019)

Creation of OCR Text
As described above, OCR text is required to screen documents to identify and redact any personal information, and to enable full-text search. It can be generated from TIFF or PDF files if it is not provided with the original data. The costs to generate OCR text include: data server(s) to process the files; use and maintenance of OCR software such as Amazon Textract, ABBYY FineReader, Tesseract, or iText (including software license and support fees); and staff costs to monitor and perform quality control checks on the OCR output. Depending on the extent and image quality of the documents, and on the type of software required, OCR costs may range from $0.0013 to $0.004 per page. For example, for 10 million pages (estimated 2.5 million documents) this is a cost of $13,000 to $40,000.

Redaction of Protected Information
Documents cannot be made available for public access if they contain legally-protected information. **We strongly recommend that documents be redacted prior to transfer to a public documents repository, as long as this can be completed in a timely manner and these is an efficient process for challenging company redactions.**

If documents are not redacted, there are significant additional costs involved in screening files to identify and locate all protected information and to apply and document appropriate redactions. Based on an estimate from a third-party de-identification vendor, these costs may range from $0.35 to $0.75 per page.[12] For example, a collection of 10 million pages could incur costs of $350,000 to $750,000 for screening and redaction.

Metadata and Indexing
Each document must be described with the minimal metadata fields listed in the Metadata Specifications above so that it is discoverable among millions of other documents. If metadata is missing it must be created manually, supported by automated methods. Previous costs incurred by the IDL for manual indexing range from $0.15 to $0.58 per page, depending on the number of metadata fields to be completed. A recent project to create detailed metadata for 207,824 pages at $0.52 per page cost $108,069.

Automated indexing using text analysis (including Natural Language Processing and Named Entity Recognition) and machine learning is becoming an increasingly viable and cost-effective solution. However, automated indexing is not yet reliable or scalable for documents containing handwriting, images, or with poor-quality extracted text.

Personnel
The IDL currently employs 4.15 FTE which includes archivists, software developers, and administrative staff. This team has the capacity to collect, process, and make public approximately 50,000 documents per month; provide reference services and other user support; perform regular software updates, security checks, user interface upgrades, and other technical maintenance; and conduct education and outreach activities to benefit current and potential archive users. The personnel budget in FY2020-2021 (including benefits) was $730,000.

[12] (Braided Data Solutions)

Long-Term Data Storage
Preserving the original and processed data, and maintaining a technical environment for public access, incurs ongoing costs. Although data storage costs are decreasing every year it is still a significant annual expense to store, backup, and provide public access to millions of documents. As noted above, the ongoing annual budget for data servers and storage is currently $55,000 for 15 million documents.

Endowment Funding Model
The tobacco documents archive has been successfully maintained for nearly 20 years thanks to a restricted $5 million endowment which generates sufficient income to cover annual data costs and essential personnel. For the reasons outlined above, future document disclosure initiatives should include an endowment to pay for long-term preservation and access to the documents.

Cost Scenarios

As an example, we estimate costs below for a collection of 2.5 million documents (10 million pages).

A) **In a best-case scenario**, where documents are in digital form and: 1) are redacted prior to transfer to a repository; 2) are produced in native, TIFF, and PDF format and accompanied by OCR text containing page-break indicators; 3) are indexed with full metadata; and 4) require little intervention by staff, the minimum annual cost for maintaining, preserving, and providing access to this collection is approximately $125,500 ($0.012 per page). An endowment of $2.9 million ($0.29 per page) would be needed to generate sufficient income to support this annual cost in perpetuity, bringing the total combined cost for upfront processing plus long term preservation and access to **$3 million ($0.30 per page)**.

B) **In a medium-case scenario**, where the documents are provided digitally but: 1) contain protected information and are unredacted; 2) are produced in native format only with no accompanying OCR text; 3) do not include sufficient metadata; and 4) require significant intervention and management by staff, the minimum upfront cost to process is approximately $2.4 million ($0.24 per page), followed by annual costs for preservation and access services of approximately $125,500 ($0.012 per page). An endowment of $2.9 million ($0.29 per page) would be required to generate sufficient income to support this annual cost in perpetuity. The combined cost of upfront processing and long-term preservation and access is **$5.3 million ($0.53 per page)**.

C) **The worst-case scenario** would be one in which the documents are produced on paper and require digitization. Estimated costs would include digitization (approximately $0.36 per page) and shipping, in addition to: creation of OCR text; creation of metadata; review and redaction as needed; processing by staff; and

long-term preservation and access. The cost to digitize 10 million pages is approximately $3.6 million, which combined with the costs listed in B) brings the total cost to **$8.9 million ($0.89 per page)**.

The UCSF Library is available to consult (at no cost) with Attorneys General and others negotiating settlements to develop specific cost estimates that reflect the realities of individual cases and settlements.

Additional Comments on Preservation of Chat Messages and Channels (Slack)

Production and preservation of chat messages from platforms such as Slack is an issue that is only just beginning to be investigated by the legal and archival professions. Slack offers various options for exporting data depending on the type of permissions and subscription held by the user.[13] The exports contain a workspace's message history in JavaScript Object Notation (JSON) format and include file links from all public channels. Every Slack message in a JSON file will include the following fields at minimum:

- type: indicating that the data is a message (or other type)
- user: the ID of the Slack user who sent the message
- text: contains the text of the message
- timestamp ("ts"): the time the message was posted (in Unix timestamp format)

Additional fields may be present if, for example, a message has attachments, was starred or pinned by a user, or received emoji reactions from other users. Edited messages may include a field showing the original unedited text. These and other fields are all detailed in the Slack guide on how to read messages exported in JSON files[14].

For organizational accounts, Slack provides access to its Discovery Application Programming Interface (API), which can integrate with eDiscovery and data loss prevention (DLP) solutions. Several eDiscovery companies offer software and services to interpret the JSON export in a more human-readable format.[15]

From an archival perspective, the JSON export is suitable for long-term preservation. The Library of Congress Recommended Formats Statement (RFS) includes JSON as a preferred format for datasets.[16] **Therefore, IDL recommends preserving the original JSON export in a documents repository**. If a JSON file is produced it should include all applicable fields from the eDiscovery Metadata Specifications above (including, but not limited to, date the JSON file was created, the JSON filename, file size). Metadata for each individual Slack message should also be included in the JSON file as noted above.

[13] (Slack, 2021a)
[14] (Slack, 2021b)
[15] For example: (Logikcull, 2021) and (Onna, 2021)
[16] (Library of Congress)

From an access perspective, the JSON export presents challenges because it is not easily readable to the average user unless the data is presented in an appropriate viewer. However there are various Slack export viewer tools available which could be adopted by a documents repository or by an individual user.[17] The Slack application itself can also be used to import the JSON data and recreate Slack messages and public channels.[18]

Conclusion

As Dr. Stanton Glantz wrote in a 2019 Op-Ed for *The Washington Post*, "lawsuits against companies aren't just about getting money. They're about revealing the truth."[19] Document disclosure is a powerful action by state attorneys general and others prosecuting cases against companies like Juul to pursue transparency, accountability, and justice. The groundbreaking effort for disclosure from the Tobacco Master Settlement Agreement enabled the creation of the Truth Tobacco Industry Documents Library and led to significant contributions to life-saving research and public health policies and laws. UCSF offers these technical recommendations for preserving industry documents in a cost-effective and sustainable model with the goal of supporting similar efforts to shine a light on industry actions, and to continue the drive to investigate these factors and protect public health.

For more information please contact:

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[17] For example: (Faran, 2021), (JSONviewer, 2021), or (Backupery, 2021)
[18] (Slack, 2021c)
[19] (Glantz, 2019)

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U.S. v. Philip Morris USA, Inc., et al. Order #27 Remand: Consent Order Between the United States, the Public Health Intervenors, Philip Morris USA Inc., Altria Group, Inc., and R.J. Reynolds Tobacco Company Concerning Document Disclosure Obligations Under Order #1015, Civil Action No. 99-CV-2496 (GK) (United States District Court for the District of Columbia December 15, 2011).

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This is Exhibit "M" referred to in the Affidavit of Monique E. Muggli sworn by Monique E. Muggli of the City of Minneapolis, in the State of Minnesota, United States of America, before me at the City of Toronto, in the Province of Ontario , on January 20, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (or as may be)

Katelin Zoe Parker, a Commissioner, etc.,
Province of Ontario, for Fogler, Rubinoff LLP,
Barristers and Solicitors. Expires April 23, 2026.

https://clintonwhitehouse4.archives.gov/WH/Work/071798.html

PRESIDENT CLINTON:
PROTECTING AMERICA'S YOUTH FROM TOBACCO

Let's agree on at least one thing: Children are not the future of our tobacco companies. They are the future of America. We must not let their future, or America's future, go up in smoke.

President Bill Clinton
July 17, 1998

Today, President Clinton signs an Executive Memorandum directing the Secretary of Health and Human Services (HHS) to coordinate a public health review of tobacco industry documents and develop a plan to make the documents more accessible to researchers and the public. The President also announces that the Department of Justice will file a brief in support of the State of Minnesota's efforts to make the tobacco industry's own, currently existing, computerized index to these documents available to the public. Through these actions, we can use the industry's darkest secrets to save a new generation of children from this deadly habit.

Most Tobacco Documents Are Not Readily Accessible. For decades, the tobacco companies sought to hide from the public the truth about the dangers of smoking and the industry's own efforts to target children. Documents that have been released show that even as tobacco companies denied the addictive nature of nicotine, they conducted secret research in their labs and devised marketing strategies to addict children to smoking. These documents are the tobacco companies' legacy of shame; however, most of these documents are not readily accessible by the public.

A Presidential Plan For Public Access To Tobacco Industry Documents. President Clinton is directing the Department of Health and Human Services to devise a plan to make these documents more accessible for all Americans. The President is calling on HHS to create a plan that would:

- *Propose a strategy for coordinating the review of tobacco documents* and make them available through an easily searchable index and/or digest of the reviewed documents;
- *Devise a plan to widely distribute the index and/or digest* as well as the documents themselves, including expanded distribution on the Internet;
- *Provide a strategy for coordinating a broad public and private review* and analysis of the documents to gain critical public health information. As part of this analysis, issues to be considered include, an analysis of nicotine addiction and pharmacology, biomedical research, product design, and youth marketing strategies.

Access To Documents Will Lead To Additional Research. By making these documents widely available, the public and private sector will benefit:

- Public health experts can design more effective anti-smoking strategies by studying marketing plans in these documents;
- Scientists can look to the documents for findings that can aid their research into nicotine addiction and tobacco-related illnesses;

- All Americans can understand the role the tobacco industry has played in addicting our children to this deadly habit.

Supporting Efforts To Unseal The Key Tobacco Industry Database. The President will announce that the Department of Justice will file a brief in the trial court of Minnesota in support of the efforts by the State of Minnesota to unseal a comprehensive index to industry documents created by the tobacco companies for use in litigation. This index is the tobacco industries' road map to its own documents, and it will significantly improve the ability of public health experts, scientists, state and federal officials, and the public to gain important public health information. Opening the doors to these documents will help lift the veil of secrecy regarding the tobacco industry's efforts to hook our children on cigarettes.

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PRESIDENT CLINTON: PROTECTING AMERICA'S YOUTH FROM TOBACCO

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This is Exhibit "N" referred to in the Affidavit of Monique E. Muggli sworn by Monique E. Muggli of the City of Minneapolis, in the State of Minnesota, United States of America, before me at the City of Toronto, in the Province of Ontario , on January 20, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (or as may be)

Katelin Zoe Parker, a Commissioner, etc.,
Province of Ontario, for Fogler, Rubinoff LLP,
Barristers and Solicitors. Expires April 23, 2026.

Bibliography - Publications based on Truth Tobacco Industry Documents

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0 selected : E-mail

1. Juul considered launching a "low-cost vape" in Brazil and selling it in bars and neighborhood markets (in Portuguese); Juul avaliou lançar "vape de baixo custo" no Brasil e vendê-lo em botecos e mercados de bairro. E-MAIL

The North American manufacturer received tips on how to enter the national market from executives in the Brazilian tobacco industry and estimated that e-cigarettes would be released here by 2024, internal company reports show. US e-cigarette maker Juul has considered launching "low-cost vapes" in Brazil and selling them in bars and small neighborhood businesses, considered places where anti-smoking rules "are generally not enforced," company documents obtained by Truth Tobacco Industry Documents (TTID) at the University of California and reviewed by Joio show.; Fabricante norte-americana recebeu dicas de como entrar no mercado nacional de executivos da indústria do tabaco brasileira e estimava que cigarros eletrônicos seriam liberados por aqui até 2024, mostram relatórios internos da empresa.

Author : Nakamura, Pedro

Publication Date : 2024 September 23

Reference Type : Newspaper article; website

Periodical : O Joio e O Trigo

Category : Health And Medicine; Economics; Marketing; Illegal Activity

Document Cited : gklg0285; qyly0286; hklg0299; nnpm0311; fjlw0322

Link : https://ojoioeotrigo.com.br/2024/09/juul-avaliou-lancar-vape-de-baixo-custo-no-brasil-e-vende-lo-em-botecos-e-mercados-de-bairro/

Truth Tobacco Bibliography

2. The Conspiracy Widens E-MAIL

Part III in a series about the sociopathy behind the Opioid Crisis: Anatomy of a Long Con First comes an idea: Tell doctors that the New England Journal of Medicine has discovered that opioids aren't addictive. How? Easy. Cite a years-old, five-sentence letter to the editor called "Porter & Jick" (see Part II). The letter doesn't actually say that, but the New England Journal's archives also aren't on-line before 2011, so for many years the busy, practicing physician won't find it easy to double-check such claims. Spreadsheets from opioid manufacturers (again, see Part II) showed how methodically that fake literature base was generated. One pharmaceutical company made a spoof "Dr. Evil" motivational video for its staff inviting them all to laugh at how seriously doctors took these "studies". The next stage: Create trainings and seminars based on this fake literature base. Pay the leading institutions in medicine — including those that represent all doctors, license all doctors, and accredit all hospitals — to host said "trainings." Force doctors and nurses to sit docilely in the audience, taking notes.

Author : Bivens, Matt

Publication Date : 2024 September 05

Reference Type : Newspaper article; website

Periodical : mattbivens.substack.com - The 100 Days

Category : Health And Medicine; Marketing; Politics And Policy; History

Document Cited : fgnx0111; jfmh0257; mlph0257

Link : https://mattbivens.substack.com/p/the-conspiracy-widens

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **JTI-MACDONALD CORP.**
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **IMPERIAL TOBACCO CANADA LIMITED** AND **IMPERIAL TOBACCO COMPANY LIMITED**
AND IN THE MATTER OF A PLAN OF COMPROMISEOR ARRANGEMENT OF **ROTHMANS, BENSON & HEDGES INC.**

Applicants

Court File No. CV-19-615862-00CL
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Court File No. CV-19-616779-00CL

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