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May 16, 1994

VIA HAND DELIVERY

The Honorable Henry A. Waxman
Chairman, Subcommittee on Health
and the Environment
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515-0529

Dear Chairman Waxman:

Twice within the last week King & Spalding has requested the opportunity to review documents identified in letters to my client and in media reports which are the subject matter of the hearing originally scheduled for May 17, 1994. As I stated to you in my letter of May 13, 1994, by denying Brown & Williamson access to these documents, you have effectively deprived my client of its right to counsel prior to the hearing.

My concern regarding the committee's possession and potential use of these documents and your refusal to allow my client and me to review them is heightened by four extremely serious issues. First, as you are aware from our prior correspondence and from the press reports in which you are quoted, we believe that the documents are stolen property. Second, again based on press reports in which you are quoted, we believe that many of these documents are subject to the attorney-client privilege. Third, these documents are subject to a state court injunction, a copy of which is provided with this letter. Fourth, based on available information, it appears that select portions of documents have been quoted out of context in a manner which distorts Brown & Williamson's position. It is a matter of fundamental fairness and due process that you allow me to review these documents in a timely manner so as to provide my client with the legal advice to which it has a constitutional right before the hearing.

We now understand that you intend to hold a Tuesday hearing which may include a discussion of one or more articles appearing recently in The New York Times. That article included references to Brown & Williamson's stolen documents. Since Brown & Williamson documents may be referenced at the Tuesday hearing and you have still not provided us with copies of these documents, we

have been forced to pursue immediate legal relief. To accomplish this, a subpoena is being sought which would require you to produce for inspection all Brown & Williamson documents in your possession which are subject to the injunction. Stolen property should be returned to the owner.

Brown & Williamson has tried to cooperate with the committee. Mr. Sandefur appeared voluntarily on April 14, 1994 and testified under oath. Also, with this letter, Brown & Williamson is providing the reports which you requested in your March 5, 1994 letter. This response excludes documents which are the subject of the above-mentioned injunction and/or the attorney-client or attorney work product privilege. In Re Beef Industry Antitrust Litigation, 457 F.Supp. 210, 212 (N.D. Tex. 1978), appeal dismissed, 589 F.2d 786 (5th Cir. 1979). However, under the circumstances, I cannot, as counsel, advise Brown & Williamson to submit itself to examination regarding documents, which are subject to an injunction, which were apparently stolen, and which you will not show to the rightful owner and which may be subject to the attorney-client privilege.

On behalf of Brown & Williamson, we provide herewith its response to your May 5, 1994 request for information regarding certain individuals and for information in Brown & Williamson files relating to the Battelle Memorial Institute's studies. First, with regard to the individuals identified in your letter, many of these employees have been retired for many years, are deceased or never worked for Brown & Williamson. Based on information now available, W. Cutchins (former CEO of Brown & Williamson), Charles Ellis (former Consultant to British American Tobacco Company), A. McCormick (formerly of the British American Tobacco Company Legal Department), R. S. Wade (former Research & Development Director for Brown & Williamson), R. B. Griffith (formerly employed in Brown & Williamson's Research & Development Department), and S. J. Green (former Senior Scientist at British American Tobacco Company) are deceased. A. Yeaman is retired from Brown & Williamson, where he was General Counsel. D. G. Felton is retired from British American Tobacco Company, where he was employed in its Research & Development Department.

With regard to your request for documents, enclosed are two copies of the following documents:

Hippo I - Final Report
Hippo II - First Report
Hippo II - Final Report
The Fate of Nicotine in the Body

These documents all relate to research conducted by Battelle Memorial Institute, Geneva in the early 60's under contract with British American Tobacco Co., Ltd. Copies of these documents were located in Brown & Williamson's file storage warehouse.

The position of Brown & Williamson with respect to these documents is as follows:

1. The first three documents refer to a study called Hippo. The fourth document describes the results of a separate study also conducted by the same laboratory under contract with British-American Tobacco Co., Ltd.
2. As is plain from these documents, the goal of the Hippo studies was not to establish or refute the claim that cigarette smoking or nicotine is addictive; in fact, there is no conclusion reached in these reports that nicotine is addictive. Therefore, any conclusion reached in the media or by others that these reports are a basis for Brown & Williamson concluding that nicotine is addictive is incorrect.
3. From Brown & Williamson's reading of these documents, the general aim of the Hippo research was to understand potential mechanisms of some of the effects attributed to nicotine. This research failed to identify any conclusive mechanisms explaining these effects. The second study referred to above also was not designed or intended to address the issue of addiction. Its goal was to investigate the absorption, distribution, breakdown, and elimination of nicotine in human beings and animals. Even though addiction was not the focus of the study, the authors concluded that their results offered no conclusive evidence for a mechanism related to nicotine "addiction." In fact, the authors could not identify any other leads to such a mechanism.
4. These studies represented only a very small portion of available research on nicotine because the published scientific literature on the effects of nicotine on man and animals was already extensive by 1961. Apparently, these studies provided no new important information and were unsuitable for scientific publication.

As you know, any research, and any contemporaneous statements by individuals concerning the import of that research, should be viewed within the framework of other available research. Further, in fairness, any phrases or sentences quoted from the reports

should be considered within the entire context of those reports. Finally, Brown & Williamson's corporate position should not be based on isolated remarks made by individuals in thirty-year old documents and taken out of their proper context.

Sincerely,


Griffin B. Bell

GBB:dc

Enclosure

cc: The Honorable Thomas J. Bliley, Jr.