



**The Lessons of “Light” and “Low Tar” Cigarettes:
Without Effective Regulation,
“Reduced Risk” Tobacco Products Threaten the Public Health**

Prepared for

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EXECUTIVE SUMMARY

After the U.S. Surgeon General concluded in 1964 that cigarette smoking causes lung cancer, tobacco companies recognized that health issues concerned millions of Americans smokers. The companies responded by introducing “light,” “filtered,” “low tar,” and “ultra low tar” brands and marketing them as less dangerous than regular cigarettes. Millions switched brands but experienced no health benefits as a result. The “light” and “low tar” experiment was a public health disaster.

Today, the U.S. tobacco industry is marketing a new generation of “reduced risk” tobacco products. These include “low nitrosamine” cigarettes, “heated” nicotine delivery devices, and smokeless tobacco. Companies are claiming they are “safer,” have “less toxins,” and deliver “reduced carcinogens.” An essential question regarding these products is whether history is repeating itself.

At the request of Reps. Henry A. Waxman and Janice D. Schakowsky, this report compares the history of “light” and “low tar” cigarettes to available evidence about the new “reduced risk” tobacco products, including previously undisclosed internal company documents. The report finds striking parallels between current “reduced risk” products and past experience with “light” and “low tar” cigarettes.

- **Marketing to Counter Health Fears**

Starting in the late 1960s, tobacco companies sold “light” and “low tar” brands as important scientific advances that addressed the growing anxiety smokers felt about their health. The companies’ claims could be explicit, as when Brown & Williamson marketed Fact, “the low gas, low ‘tar’” cigarette that should appeal to “critics of smoking.” More frequently, cigarette manufacturers exploited the widespread belief that since nicotine and tar were harmful, cigarettes offering less of these toxins had to be safer. As a result, when Philip Morris relied on machine-based testing of nicotine and tar to declare “Merit Science Works” or Brown & Williamson stated “Latest U.S. Gov’t Laboratory test confirms . . . Carlton is lowest,” smokers heard a clear message about health. The tobacco industry also sought to enlist health officials in their campaign to promote these products, with one company hoping “to generate statements by public health opinion leaders which will indicate tolerance for smoking and improve the consumer’s perception of ultra low ‘tar’ cigarettes.”

The tobacco industry is making strikingly similar claims for its “reduced risk” products today. For example, Brown & Williamson markets its Advance Lights brand as a “revolutionary breakthrough in cigarette technology” that provides “All of the taste . . . less of the toxins.” Vector Tobacco has promoted Omni as offering: “Reduced carcinogens. Premium taste.” In marketing Eclipse, R.J. Reynolds proclaims that “the toxicity of [Eclipse’s] smoke is dramatically reduced compared to other cigarettes.” According to internal company documents, Brown & Williamson’s parent company has developed a public relations campaign for “lower risk products” based on partnerships with the public health community.

- **Deceiving Consumers**

Even as their advertisements promoted “light” and “low tar” cigarettes as better for health, tobacco companies knew that smokers generally received the same amount of nicotine and other toxins from these products as from their regular cigarettes. In fact, the companies designed cigarettes to score low on machine-based testing but still allow users to inhale their usual amounts of nicotine and tar. To accomplish this, manufacturers took such steps as adding ventilation holes that drew in diluting air on machine testing but were blocked by smokers during actual use. An Illinois judge recently called one company’s actions in creating these brands “immoral, unethical, oppressive and unscrupulous.”

While new “reduced risk” products are still in their infancy, there are warning signs that tobacco companies may again be deceiving consumers. In 2000, in an internal company email, a senior scientist at Brown & Williamson’s corporate parent flatly dismissed the advertised advantages of the company’s special “low nitrosamine” tobacco. He wrote to other company officials that the technology to make cigarettes “appreciably less lethal . . . does not exist.” He added: “We should tone down future expectations. Firstly, it is not ethical and secondly we shall be asked to explain our failures at some point in the future.”

On its website today, R.J. Reynolds claims to have evaluated its “reduced risk” product Eclipse using a rigorous four-step verification process. However, the Department of Justice recently determined that “all R.J. Reynolds did was look at all of the work it already had done to evaluate Eclipse to date, categorize it, and retroactively dub it a ‘four step methodology.’” The head of the supposedly “independent” scientific effort reviewing Eclipse has received more than \$1.5 million from R.J. Reynolds.

- **Marketing to Deter (or Reverse) Quitting**

Tobacco companies marketed “light” and “low tar” brands to the health-conscious smoker as viable alternatives to quitting. For example, Lorillard’s brand True was advertised with the slogan, “Considering all I’d heard, I decided to either quit or smoke True. I smoke True.”

There are signals that similarly irresponsible marketing is occurring today. In 1998, Philip Morris introduced Accord as a tobacco product with less secondhand smoke. In January 2003, the Department of Justice determined that “to the extent that Philip Morris has sought to market Accord . . . there is evidence showing that it had its advertising agency assist in marketing Accord to those who want to quit or who have quit and are rejoining the cigarette market.”

In 2000, the President of the U.S. Smokeless Tobacco Company wrote that a key company objective was “Promoting Dual Consumption” of smokeless tobacco among smokers frustrated by indoor air laws. Starting in 2001, the company began to market a

new product, Revel, with the slogan “a fresh new way to enjoy tobacco when you can’t smoke.” This marketing strategy, if successful, could sustain nicotine addiction and make it harder for smokers to quit.

- **Exploiting the Absence of Effective Regulation**

Health officials did not recognize the dangers posed by “light” and “low tar” cigarettes before it was too late. Without full access to information, some government officials even believed that substantial disease reductions were likely among “light” and “low tar” smokers. For decades, cigarette manufacturers advertised the numbers from the Federal Trade Commission’s flawed machine-based testing method while simultaneously fighting effective tobacco regulation.

Today, tobacco companies are making a blizzard of health claims about new “reduced risk” products without any significant government oversight. No agency has the authority to assess the claims made by the companies before they are made, routinely review company research and documents, or set standards for what might justifiably pose a reduced risk to consumers. As a result, the unregulated promotion of “reduced risk” products threatens to undermine smoking cessation (which is proven to save lives), cause former smokers to resume their addiction, and even attract young people to tobacco products.

I. INTRODUCTION

For more than 75 years, U.S. tobacco companies have marketed tobacco products to health-concerned smokers using direct or implied health claims that are unsupported by evidence. In the 1920s, for example, American Tobacco claimed that “20,679 Physicians Say Luckies Are Less Irritating.”¹ In the 1930s, R.J. Reynolds told the public that Camels “don’t get your wind,” and Philip Morris declared that “[o]n changing to Philip Morris, every case of irritation due to smoking cleared completely or definitely improved.”² In the 1940s, Brown & Williamson advertised: “Head stopped up? Got the sneezes? Switch to KOOLS . . . the flavor pleases!”³

In the 1950s, as reports on the health effects of smoking increased, tobacco companies competed for market share by promoting the health benefits of “filtered” cigarettes.⁴ Not only were the purported advantages of cigarette filters never proven, at least one was made of asbestos.⁵ As one Philip Morris report later noted, “[t]he illusion of filtration is as important as the fact of filtration.”⁶

In 1964, the U.S. Surgeon General’s conclusion that smoking causes lung cancer created anxiety among smokers — and among tobacco companies.⁷ To maintain their industry, cigarette manufacturers embraced a decades-long campaign to create doubt about the scientific evidence linking smoking to disease.⁸ At the same time, they began to market new “filtered,” “light,” “low-tar,” and “ultra low tar” cigarettes as viable health-conscious alternatives to quitting. As Brown & Williamson’s advertising agency noted in 1967:

¹Richard Kluger, *Ashes to Ashes*, 75, 77 (1997).

²*Id.* at 87, 102.

³Institute of Medicine, *Clearing the Smoke: Assessing the Science Base for Tobacco Harm Reduction*, 63 (2001).

⁴See National Cancer Institute, *Risks Associated with Smoking Cigarettes with Low Machine-Measured Yields of Tar and Nicotine*, 200 (Oct. 2001).

⁵Richard Kluger, *supra* note 1, at 151.

⁶M.E. Johnston, *Market Potential of a Health Cigarette*, Special Report No. 248, Philip Morris (June 1966), as cited in National Cancer Institute, *supra* note 4, at 206.

⁷See National Cancer Institute, *supra* note 4, at 199.

⁸See, e.g., Neil Francey and Simon Chapman, “Operation Berkshire”: *The International Tobacco Companies’ Conspiracy*, *British Medical Journal*, 371–74 (Aug. 5, 2000).

Psychologically, most smokers feel trapped. They are concerned about health and addiction. Smokers care about what commercials say about them. Advertising may help to reduce anxiety and guilt.⁹

Millions of smokers switched brands. According to the most recent data, more than 85% of cigarettes sold are considered “low tar,”¹⁰ and many of those who smoke “light” or “mild” brands believe they are reducing their risk from smoking.¹¹

Yet these beliefs are misplaced. Nearly 40 years after the Surgeon General’s report, “light” and “low tar” brands failed to reduce tobacco-related disease.¹² In an exhaustive review of available research, the National Cancer Institute recently found that “[t]here is no convincing evidence that changes in cigarette design between 1950 and the mid[-]1980s have resulted in an important decrease in the disease burden caused by cigarette use either for smokers as a group or for the whole population.”¹³ The National Cancer Institute concluded:

The absence of meaningful differences in smoke exposure when different brands of cigarettes are smoked . . . and the resultant absence of meaningful differences in risk . . . make the marketing of these cigarettes as lower-delivery and lower-risk products deceptive for the smoker The reality that many smokers chose these products as an alternative to cessation — a change that would produce real reductions in disease risks — makes this deception an urgent public health issue.¹⁴

II. THE PURPOSE OF THIS REPORT

Today, tobacco companies are marketing a new generation of “reduced risk” products. Like “light” and “low tar” cigarettes, these new products are being sold as a potentially safer substitute for conventional tobacco products. The new “reduced risk” products include:

⁹Oxtoby-Smith, Inc., *A Psychological Map of the Cigarette World* (Aug. 1967), prepared for the Ted Bates advertising agency and Brown & Williamson, as cited in National Cancer Institute, *supra* note 4, at 204.

¹⁰*See* Federal Trade Commission, *Cigarette Report for 2000*, 6 (2002).

¹¹National Cancer Institute, *supra* note 4, at 193–97.

¹²*See, e.g.*, National Cancer Institute, *supra* note 4, *passim*.

¹³National Cancer Institute, *supra* note 4, at 146.

¹⁴*Id.* at 1.

- **Cigarettes with modified tobacco.** Brown & Williamson sells Advance Lights, a brand advertised with two safety features: a special filter and tobacco that is low in nitrosamines, a type of carcinogen. Vector Tobacco has marketed Omni cigarettes as lower in carcinogens and is selling Quest cigarettes as low in nicotine.
- **Substantially modified cigarettes.** Philip Morris has test-marketed Accord, a product that only burns tobacco on inhalation, and R.J. Reynolds sells Eclipse, a product that primarily heats rather than burns nicotine.
- **Smokeless tobacco products.** The U.S. Smokeless Tobacco Company (UST) has proposed marketing its conventional smokeless tobacco products as posing “significantly less risk” than cigarettes. Star Scientific is selling Ariva, a compressed tobacco product claimed to be low in nitrosamines.

An essential question about these new products is whether history is repeating itself. The tobacco industry asserts that the “reduced risk” products represent a new health “breakthrough.” But this is essentially how the industry has promoted “light” and “low tar” cigarettes for decades.

At the request of Reps. Henry A. Waxman and Janice D. Schakowsky, this report compares the history of “light” and “low tar” cigarettes to available evidence about the new “reduced risk” tobacco products, including previously undisclosed internal company documents. The report finds four striking parallels between current “reduced risk” products and past experience with “light” and “low tar” cigarettes: marketing to counter health fears, deceiving of consumers, marketing to deter quitting, and exploiting the absence of effective regulation.

III. PARALLELS BETWEEN “LIGHT” AND “LOW TAR” CIGARETTES AND “REDUCED RISK” TOBACCO PRODUCTS

A. Marketing to Counter Health Fears

1. “Light” and “Low Tar” Cigarettes

Starting in the late 1960s, tobacco companies sold “light” and “low tar” brands as important scientific advances that addressed the growing anxiety smokers felt about their health. As a Brown & Williamson marketing study in 1977 noted, “Almost all smokers agree that the primary reason for the increasing acceptance of low ‘tar’ brands is based on the health reassurance they seem to offer.”¹⁵ Cigarette manufacturers created this reassurance through advertising.

¹⁵Hawkins, McCain, and Blumenthal, Inc., *Low “Tar” Satisfaction* (July 25, 1977), Bates Numbers 775036039-6067 at 775036047 (available online at <http://legacy.library.ucsf.edu>).

At times, health claims were explicit. In 1972, R.J. Reynolds marketed Vantage cigarettes as offering flavor:

without the high ‘tar’ and nicotine. And since it is the high ‘tar’ and nicotine that many critics of cigarettes seem most opposed to, even they should have some kind words for Vantage.¹⁶

In 1976, Brown & Williamson launched Fact, “the low gas, low ‘tar’” cigarette. Advertisements for Fact claimed that “some critics of smoking say it’s just as important to cut down on some of the gases as it is to lower ‘tar’ and nicotine. No ordinary cigarette does both. But Fact does.”¹⁷

More often, companies exploited the consumer’s assumption that since nicotine and tar were health risks, any products offering less of these toxins had to be safer. A 1976 study prepared for Philip Morris found that 74% of smokers cited specific brands as “better for health” on the basis of “less/lower in tar and nicotine” or “less/lower in tar.”¹⁸ As the National Cancer Institute concluded in an extensive review of advertisements from the period, “The reductions in tar were marketed as a surrogate for reductions in risk.”¹⁹ When Philip Morris declared on the basis of machine-based tar and nicotine readings “Merit Science Works”²⁰ or Brown & Williamson stated “Latest U.S. Gov’t Laboratory test confirms” that “Carlton is lowest,”²¹ smokers heard a clear message about health.

As part of their campaign to promote “light” and “low tar” products, cigarette manufacturers courted health officials. For example, in 1982, Brown & Williamson proposed:

activities designed to generate statements by public health opinion leaders which will indicate tolerance for smoking and improve the consumer’s perception of ultra low ‘tar’ cigarettes (5 mg. or less) . . . Through political and scientific friends, B&W will attempt to elicit . . . statements sympathetic to the concept that

¹⁶R.J. Reynolds, Advertisement: *Anyone Who’s Old Enough to Smoke Is Old Enough to Make up His Own Mind* (June 25, 1972), Bates Number 502612446 (available online at <http://legacy.library.ucsf.edu>).

¹⁷National Cancer Institute, *supra* note 4, 1976 advertisement reproduced at 215.

¹⁸The Roper Organization, Inc., *A Study of Smokers’ Habits and Attitudes with Special Emphasis on Low Tar Cigarettes* (May 1976), Bates Numbers 2040543437-3734 at 2040543476 (available online at <http://www.pmdocs.com>).

¹⁹National Cancer Institute, *supra* note 4, at 70.

²⁰*Id.*, 1979 advertisement reproduced at 214.

²¹*Id.*, 1985 advertisement reproduced at 224.

generally less health risk is associated with ultra low [tar] delivery cigarette consumption.²²

These efforts were at least partially successful. In the 1970s and into the 1980s, some health officials, eager to address a growing epidemic of lung cancer, did express optimism about health benefits from “light” and “low tar” products.²³

2. “Reduced Risk” Products

Today, the marketing of many “reduced risk” tobacco products is again premised on health reassurance through scientific progress. Brown & Williamson officials, for example, have declared Advance Lights to represent a “revolutionary breakthrough in cigarette technology.”²⁴ The company’s advertisements for the product proclaim: “All of the taste . . . Less of the toxins.”²⁵

Other companies are making similar claims. R.J. Reynolds has claimed “there’s no cigarette like Eclipse” as “the toxicity of [Eclipse’s] smoke is dramatically reduced compared to other cigarettes.”²⁶ Vector Tobacco has marketed Omni as: “Reduced carcinogens. Premium taste.”²⁷

U.S. Smokeless Tobacco Company (UST), the nation’s leading manufacturer of smokeless tobacco, has stated that based on extensive research, its product “involves significantly less risk of adverse health effects than cigarette smoking.”²⁸ It even applied

²²Brown & Williamson, *What Are the Obstacles/Enemies of a Swing to Low “Tar” and What Action Should We Take?* Minnesota Trial Exhibit 26, 185 (1982), as cited in National Cancer Institute, *supra* note 4, at 218–19.

²³*See, e.g.*, description of Dr. Gio Gori, National Cancer Institute, in Richard Kluger, *supra* note 1, at 428–34.

²⁴Brown & Williamson, *Brown & Williamson Tobacco Tests New Advance Lights Cigarette, New Technologies Reduce the Levels of Many Toxins while Delivering Smooth Taste* (Nov. 5, 2001) (online at www.brownandwilliamson.com).

²⁵*Softly Lit or Blunt, “Less Toxic” Cigarette Ads Hint at Health*, Advertising Age (Nov. 12, 2001).

²⁶Eclipse Cigarettes, *The Eclipse Concept — The Eclipse Difference* (online at www.eclipse.rjrt.com/ECL/eclipse_difference.jsp).

²⁷*Softly Lit or Blunt, “Less Toxic” Cigarette Ads Hint at Health*, *supra* note 25.

²⁸Letter from Daniel C. Schwartz to the Honorable Donald S. Clark, Secretary, Federal Trade Commission (Feb. 5, 2002).

to the Federal Trade Commission for permission to make that statement in its advertising.²⁹

Moreover, the companies again appear to be seeking the endorsement of the public health community for “reduced risk” products. For example, according to internal company documents, Brown & Williamson’s parent company British-American Tobacco (BAT) has developed a public relations campaign aimed at developing support among public health leaders. This strategy involves “engagement and partnerships with key scientific and public health authorities [to] demonstrate that we are working effectively to develop lower risk products.” BAT apparently allocated 545,000 British pounds to work on this effort.³⁰

B. Deceiving Consumers

1. “Light” and “Low Tar” Cigarettes

By the late 1960s, major tobacco companies believed that the machine-based method of testing cigarettes for nicotine and tar did not measure actual intake by smokers.³¹ Nonetheless, tobacco companies specifically designed cigarettes that scored low on machine-based testing without delivering substantially reduced amounts of tar and nicotine to smokers. Product features that permitted this deception included ventilation holes that diluted air on the machines but were blocked by smokers’ fingers in actual use.³²

Companies were also aware that smokers would “compensate” while smoking “light” and “low tar” brands by breathing more deeply, taking more puffs, or blocking the ventilation holes in cigarette filters.³³ In 1974, Brown & Williamson researchers had evidence indicating that “whatever the characteristics of cigarettes as determined by smoking machines, the smoker adjusts his pattern to deliver his own nicotine

²⁹*Id.*

³⁰British-American Tobacco, *Cora Plan* (2001).

³¹On May 24, 1968, research directors of major tobacco companies concluded, “We expect to be able to show that FTC Tar and Nicotine are of limited or questionable value as a measure of potential exposure to the smoker.” *Minutes of the Meeting of Research Directors at the Liggett & Myers Operations Center in Durham, North Carolina on Friday, May 24, 1968*, Bates Numbers 0001609623-9624 (available online at: <http://www.pmdocs.com>).

³²L. Kozlowski and R. O’Connor, *Cigarette Filter Ventilation Is a Defective Design Because of Misleading Taste, Bigger Puffs, and Blocked Vents*, Tobacco Control, 140–50, (Mar. 2002).

³³National Cancer Institute, *supra* note 4, at 13–38.

requirements.”³⁴ In 1975, Philip Morris even tested Marlboro smokers and found that they “did not achieve any reduction in smoke intake by smoking a cigarette (Marlboro Lights) normally considered lower in delivery.”³⁵

Despite this knowledge, all of the major tobacco companies persisted in marketing “light” and “low tar” cigarettes on the basis of machine-based testing. In one telling incident, Philip Morris employees in Holland published an advertisement pointing out that the tar measurements of a BAT brand dramatically misrepresented how much tar smokers actually received. The Chairman of BAT immediately sent a telex to the head of Philip Morris, stating: “I find it incomprehensible that Philip Morris would weigh so heavily the short-term commercial advantage from deprecating a competitor’s brand while weighing so lightly the long-term adverse impact from an ongoing anti-smoking programme.”³⁶ The next month, a top Philip Morris executive spoke with his counterpart at BAT, with notes of the conversation stating: “Essential Industry hang together. Holland activity was not PM company policy. They must try to prevent this happening in the future.”³⁷

The fact that “light” and “low-tar” cigarettes do not offer health benefits is now well understood. A comprehensive review by the National Cancer Institute found that while “[c]igarettes have changed dramatically over the last 50 years . . . the disease risks associated with smoking have not.”³⁸ In March 2003, an Illinois judge found that Philip Morris’s actions with respect to “light” and “low tar” brands were “immoral, unethical, oppressive and unscrupulous.”³⁹

³⁴*Notes on the Group Research & Development Conference at Duck Key, Florida (Jan. 28, 1974)*, Bates Numbers 680048892-8897 at 680048893 (available online at <http://legacy.library.ucsf.edu>).

³⁵Memorandum from B. Goodman to L.F. Meyer, *Marlboro-Marlboro Lights Study Delivery Data* (Sept. 17, 1975), as cited in National Cancer Institute, *supra* note 4, at 71.

³⁶E. Bruell, *Letter to All No Is of Operating Companies* (Sept. 20, 1983), as cited in Jeffrey E. Harris, *Supplemental Expert Report, Iron Workers Local Union No. 17 Insurance Fund and Its Trustees, et al. v. Philip Morris Incorporated, et al.* (Nov. 6, 1998) (available at: <http://www.pmdocs.com>).

³⁷*Telephone Conversation between H. Culman [sic] and E.A.A.B.* (Oct. 28, 1983), as cited in Jeffrey E. Harris, *Supplemental Expert Report, Iron Workers Local Union No. 17 Insurance Fund and Its Trustees, et al. v. Philip Morris Incorporated, et al.* (Nov. 6, 1998) (available online at <http://www.pmdocs.com>).

³⁸National Cancer Institute, *supra* note 4, at 1.

³⁹Judgment, *Price v. Philip Morris*, Cause No. 00-L-112 (Cir. Ct., Madison County, Ill. Mar. 21, 2003) (applying Illinois statute with element requiring that practice be immoral, unethical, oppressive, or unscrupulous).

2. “Reduced Risk” Products

Although the “reduced risk” products are in their infancy, there are warning signs that consumers are being deceived about their benefits. In November 2001, Brown & Williamson launched “Advance Lights,” a new cigarette with a “Trionic” filter and tobacco cured by a process developed by Star Scientific. In the press release heralding the product’s introduction, Brown & Williamson stated that the brand “has significantly less of many toxins than the leading Lights brand styles.”⁴⁰ According to Star Scientific, the key advantage of “StarCured” tobacco is fewer nitrosamines:

Scientific research has established that TSNAs are among the most powerful carcinogens in tobacco leaf and smoke. The curing process that Star has scaled up over the last several years results in significantly reduced TSNA levels.⁴¹

Despite Brown & Williamson’s and Star’s assertions that Advance Lights offer a significant advantage over conventional products, internal employee documents reveal that a senior scientist at the Brown & Williamson parent company BAT has raised serious doubts. In April 2000, the BBC radio show “Costing the Earth” looked at the issue of Star’s reduced-risk tobacco.⁴² After the show, BAT Senior Research Scientist Derek Irwin e-mailed managers in Research and Development:

I disagree with just about every point made by every speaker, including our own.

Our main problem appears to be the notion that “the technology exists to make cigarettes which are appreciably less lethal and that many tobacco companies appear to be looking for any excuse not to use it.”

The technology does not exist . . . It will not exist. . . Internal overstatement is one thing, externally it is even less in the Company’s interests.

We should tone down future expectations. Firstly, it is not ethical and secondly we shall be asked to explain our failures at some point in the future.⁴³

None of these concerns are made available to consumers by the companies.

⁴⁰Brown & Williamson, *supra* note 24.

⁴¹Star Scientific, *What is StarCured?™* (Sept. 2002).

⁴²*Tobacco Death Toll “Needlessly High,”* BBC News (Apr. 27, 2000) (online at <http://news.bbc.co.uk/1/hi/sci/tech/727103.stm>.)

⁴³E-mail from Derek Irwin to Graham Read (May 2, 2000) (emphasis added).

Similar questions of consumer deception have been raised by the marketing of the “reduced risk” product Eclipse by R.J. Reynolds. Although R.J. Reynolds claims that Eclipse, which acts by heating tobacco, has lower toxicity compared to combusted cigarettes, these claims have been specifically refuted by a study commissioned by the Massachusetts Department of Public Health and performed by Labstat, a cigarette testing company. R.J. Reynolds’s website had claimed a reduction of 80% in carcinogens in the smoke, but the Massachusetts study found that in all measurable categories of carcinogens tested, Eclipse frequently had similar or even higher levels than two other brands of cigarettes.⁴⁴

In communications with the public, R.J. Reynolds claims to have based its assertions about the reduced risk of Eclipse on a “four-step scientific methodology” including “[c]hemical testing and analysis,” “[b]iological and toxicological testing,” “[h]uman testing,” and “[i]ndependent scientific verification.”⁴⁵ However, the Department of Justice has determined that this characterization greatly overstates the level of analysis that R.J. Reynolds undertook:

R.J. Reynolds has represented to the public that the four step methodology was a well thought out, peer-reviewed-in-advance protocol established to overcome an “obstacle” and to fill a void created by government, scientific, medical and public health communities’ failure to establish a standard for assessing potential risk reduction. On the contrary, the evidence reveals that all R.J. Reynolds did was look at all of the work it already had done to evaluate Eclipse to date, categorize it, and retroactively dub it a “four step methodology.”⁴⁶

The Department has also determined that no trained epidemiologist worked on any part of the “four step” analysis, despite R.J. Reynolds’s conclusion that “[e]pidemiology is the only way ... of estimating relative risk.”⁴⁷

The fourth prong of R.J. Reynolds’s four-step methodology is “independent scientific evaluation and verification.” But in this area, too, the Department of Justice has raised serious questions. As late as October 2000, the expert scientific panel for Eclipse was chaired by Dr. Bernard Wagner of New York University. According to the Department of Justice, Dr. Wagner has been affiliated with R.J. Reynolds since the

⁴⁴Letter from Howard Koh, Commissioner, Massachusetts Department of Public Health, to the Honorable Robert Pitofsky, Chairman, Federal Trade Commission (Oct. 3, 2000).

⁴⁵R.J. Reynolds Tobacco Company, *Eclipse and Premier* (online at http://www.rjrt.com/TI/TIpremier_eclipse.asp.)

⁴⁶U.S. Department of Justice, *United States’ Preliminary Proposed Findings of Fact, U.S. v. Philip Morris*, No. 99-CV-2496, 947 (D.D.C. filed Jan. 29, 2003).

⁴⁷*Id.* at 951 (ellipsis in Department of Justice filing).

1980s. He served on R.J. Reynolds's Scientific Advisory Board beginning in 1985, developed R.J. Reynolds's scientific research on Premier (Eclipse's predecessor), and acted as a paid consultant to R.J. Reynolds from 1991 to 1997.⁴⁸ From 1992 to 1994 alone Wagner received over \$1.5 million in fees and reimbursements from R.J. Reynolds; a minimum of \$810,000 in fees was for consulting on the development of Eclipse.⁴⁹ When he left the consultant position in 1997, Wagner commented that "Eclipse represents the future and needs to be defended in the market place."⁵⁰

C. Marketing To Deter (or Reverse) Quitting

1. "Light" and "Low Tar" Cigarettes

To sell "light" and "low tar" cigarettes, tobacco companies targeted health conscious smokers who might otherwise have quit. As the National Cancer Institute found, "these brands were targeted at those smokers who were thinking of quitting in an effort to intercept the smokers and keep them smoking cigarettes."⁵¹ "To smoke or not to smoke," declared a Vantage ad for R.J. Reynolds in 1974:

That is the question.

With all the slings and arrows that have been aimed at smoking, you may well be wondering why you smoke at all.

* * *

The cigarettes of the past provided a lot of smoking pleasure but they also delivered a lot of the 'tar' and nicotine the critics have aimed at.

* * *

But now Vantage has entered the scene.

Vantage is the cigarette that succeeds in cutting down 'tar' and nicotine without compromising flavor.

* * *

If you smoke, try a pack of Vantage. And if you don't, why not show this ad to someone who does.

It might settle the question.⁵²

Similarly, Lorillard's brand True was advertised with the slogan, "Considering all I'd heard, I decided to either quit or smoke True. I smoke True."⁵³

⁴⁸*Id.* at 949.

⁴⁹*Id.* at 950.

⁵⁰*Id.* at 949.

⁵¹National Cancer Institute, *supra* note 4, at 5.

⁵²*Id.*, 1974 advertisement reproduced at 229.

⁵³*Id.*, 1976 advertisement reproduced at 222.

Many internal industry documents show the explicit understanding of tobacco companies that “light” and “low tar” products deterred quitting. BAT noted that “[i]t is useful to consider lights more as a third alternative to quitting and cutting down — a branded hybrid of smokers’ unsuccessful attempts to modify their habit on their own.”⁵⁴ A study prepared for Philip Morris found, “In point of fact, smoking an ultra low tar cigarette seems to relieve some of the guilt of smoking and provide an excuse not to quit.”⁵⁵

2. “Reduced Risk” Products

There are indications that tobacco companies are again marketing new “reduced risk” products to deter quitting. Philip Morris has ostensibly sold Accord since 1998 for committed smokers.⁵⁶ But in fact, the company may also be targeting both smokers who want to quit and former smokers. According to the Department of Justice:

[T]o the extent that Philip Morris has sought to market Accord, despite the company’s statements that it will not get in the way of anyone who wants to quit smoking, there is evidence showing that it had its advertising agency assist in marketing Accord to those who want to quit or who have quit and are rejoining the cigarette market.⁵⁷

Philip Morris may also be hinting to investors that it intends to use “reduced risk” products to increase its market share. In April 2002, financial firm Salomon Smith Barney initiated coverage of Philip Morris, a process that typically involves extensive interaction with the covered company.⁵⁸ An “Industry Note” from Salomon Smith Barney notes a 1% to 2% reduction in the “secular demand trend” for cigarettes over the preceding decade, but then suggests several reasons why this trend might not persist:

⁵⁴British American Tobacco, *Research & Development/Marketing Conference* (c. 1985), as cited in National Cancer Institute, *supra* note 4, at 221.

⁵⁵Goldstein/Krall Marketing Resources, Inc., *A Qualitative Exploration of Smoker Potential for a New Entry in the Ultra Low Tar Market Category* (Jan. 1979), Bates Numbers 2040066742-6766 at 2040066754.

⁵⁶See Philip Morris, *Philip Morris U.S.A. Begins Limited Retail Sales Test in Richmond on New Cigarette Smoking System* (Aug. 17, 1998) (online at http://www.philipmorrisusa.com/pressroom/content/press_release/articles/pr_August_17_1998_PMUBLRST.asp.)

⁵⁷U.S. Department of Justice, *supra* note 46, at 1112 (emphasis added).

⁵⁸Salomon Smith Barney Industry Note, *Tobacco: Initiating Coverage of the Tobacco Industry* (Apr. 29, 2002).

Because most of the so-called news is already priced in, we do not expect a major shift in the secular demand trend for cigarette consumption. If anything, we might see the secular demand trend increase, as technology will play an increasingly important role for this industry in the future. Often it is fun to speculate about what this industry will look like in five years. If Philip Morris or the other manufacturers [are] successful in developing, marketing, and selling a reduced-risk cigarette, we may start to see consumption closer to flat and maybe even increase slightly. Keep in mind that for the approximate 50 million adult smokers in the United States, we believe smoking is something that, for the most part, they truly enjoy. Therefore, if there is an opportunity to develop a reduced-risk cigarette that, of course, burns, and tastes very similar to conventional cigarettes, this could possibly prevent people from quitting and may encourage some people to start smoking. . . . As the leader in so many things, Philip Morris has been working on a reduced-risk product and may be ready to introduce something this year or next year.⁵⁹

Other companies explicitly market their products as an alternative to quitting. For example, R. J. Reynolds's advertising for Eclipse declares: "the best choice for smokers who worry about their health is to quit. The next best choice is Eclipse."⁶⁰

Although UST says publicly that it wants to promote smokeless tobacco as a safer alternative to cigarettes, internal documents suggest that it is actually pursuing a "dual use" strategy. In 2000, UST President Murray S. Kessler presented the company's "Strategic Plan." The first slide states: "Solid Fundamentals . . . Smoking Restrictions Fuel Category Growth." The second slide elaborates: "Solid Fundamentals . . . Promoting Dual Consumption." The slide indicates that "dual usage" rose from 27% in 1998 to 33% in 1999.⁶¹

UST's support for "dual usage" became explicit in August 2001 with the launch of Revel, a small pouch containing smokeless tobacco. UST markets Revel as "a fresh new way to enjoy tobacco when you can't smoke." One advertisement states, "If you are a smoker, here are two words that will transform the way you enjoy tobacco: Anytime. Anywhere." In describing the campaign, UST President Kessler has said, "Whether restricted on an airplane, in a meeting, on the factory floor, or in a shopping mall, we believe that Revel is the answer adult smokers have been seeking."⁶²

⁵⁹*Id.* at 2 (emphasis added).

⁶⁰R.J. Reynolds Tobacco Company, *Making the Switch* (online at http://www.R.J.Reynoldst.com/TI/TIpremier_eclipse.asp).

⁶¹Murray S. Kessler, *United States Tobacco Co. Strategic Plan* (2000) (emphasis added).

⁶²*Smoke Screens: Alternatives to Traditional Cigarettes May Have Retailers Reassessing Their Display Priorities*, Tobacco Retailer (Dec. 2001) (online at <http://www.retailmerchandising.net/tobacco/2001/0112/0112smk.asp>).

The public health implications of encouraging dual use are profound. Dual use can offer smokers a way to sustain addiction to nicotine, diminishing the incentive to quit. A recent study of smokeless tobacco use among teenage boys in Sweden found that 71% of smokeless tobacco users also smoke cigarettes, and dual users smoke more than those who smoke cigarettes alone.⁶³

Star Tobacco's smokeless product Ariva is also marketed for "when you can't smoke."⁶⁴

D. Exploiting the Absence of Effective Regulation

Health officials did not recognize the dangers posed by "light" and "low tar" cigarettes before it was too late. Without full access to information, some government officials even believed that substantial disease reductions were likely among "light" and "low tar" smokers.⁶⁵ For decades, cigarette manufacturers used numbers from the FTC's machine-based testing method in advertisements, with Brown & Williamson promoting Carlton's numbers on the basis of the "Latest U.S. Gov't Laboratory test."⁶⁶

The absence of effective regulation means that even now, after scientific consensus has been reached that "light" and "low tar" cigarettes are a fraud, these brands still dominate the market for cigarettes. While several countries have moved to ban the use of these misleading descriptors,⁶⁷ not a single tobacco company has voluntarily dropped the "light" or "low tar" label to communicate honestly with consumers. To the contrary, Philip Morris and other companies have fought public health efforts to bar these descriptors on the grounds of trademark rights.⁶⁸

⁶³M. Rosaria Galanti, Seppo Wickholm, and Hans Gilljam, *Between Harm and Dangers: Oral Snuff Use, Cigarette Smoking and Problem Behaviours in a Survey of Swedish Male Adolescents*, *European Journal of Public Health*, 340–45 (2001).

⁶⁴"When You Can't Smoke" is featured prominently on Ariva packages.

⁶⁵See Judgment, *Price v. Philip Morris*, *supra* note 39.

⁶⁶National Cancer Institute, *supra* note 4, 1985 advertisement reproduced at 224.

⁶⁷See, e.g., *Canada to Ban "Light" Labels on Cigarettes*, *Boston Globe* (Aug. 14, 2001).

⁶⁸For example, Philip Morris has recently argued that Canada's attempt to ban such descriptors as "light" and "mild" violates its trademark rights under the North American Free Trade Agreement and World Trade Organization Technical Barriers to Trade Agreement. Robert Weissman, *Philip Morris' Trade Card*, *Multinational Monitor* (Apr. 1, 2002).

Today, the lack of effective regulation has resulted in the proliferation of bold and sometimes contradictory claims for “reduced risk” products. Some companies, such as Brown & Williamson, insist that modified tobacco can be made into cigarettes that offer significant reductions in exposure and likely risk. Other companies, including UST, say that all combusted products pose an unacceptable risk, but oral products (like smokeless tobacco) do not. No agency has the authority to assess the claims made by the companies before they are made, routinely review company research and documents, or set standards for what might justifiably pose a reduced risk to consumers. Absent effective regulation, it may be impossible to determine whether the new products have helped or harmed public health for decades.

IV. CONCLUSION

The disastrous history of “light” and “low tar” cigarettes may be repeating itself in a new generation of “reduced risk” products. As in the past, tobacco companies are making claims about the health benefits of their products; there is evidence of deceptive practices by the companies; and there is reason to believe that companies are marketing their products to quitters and former smokers.

Absent effective regulation, it will be difficult if not impossible for consumers to sort through a blizzard of health claims. As a result, unregulated marketing of “reduced risk” tobacco products could undermine smoking cessation (which is proven to save lives), cause former smokers to resume their addiction, and even attract young people to tobacco products.