



August 8, 2008

LETTER OF COMMENT NO. 191

Via E-Mail to director@fasb.org

Russell Golden
Technical Director
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, CT 06856-5116

File Reference No. 1600-100

Dear Mr. Golden:

We write on behalf of two major cigarette manufacturers – Lorillard Tobacco Company and R.J. Reynolds Tobacco Company – to comment on the “Exposure Draft, Proposed Statement of Financial Accounting Standards, Disclosure of Certain Loss Contingencies, an amendment to FASB Statements No. 5 and 141(R),” or simply the “Exposure Draft.”

We are aware that a number of other groups have submitted comments noting potential deleterious consequences that may result from the proposed disclosure requirements set forth in the Exposure Draft, and we have similar reservations. We share, in particular, the concerns expressed by the American Bar Association and others that the proposed disclosures would undermine the well-established protections afforded by the attorney-client privilege, the opinion work product protection, and the work product protection.

We write separately, however, because our history in product liability litigation demonstrates in a graphic way the unworkability of the proposed requirement that, when “there is no claim or assessment amount” in a complaint, the reporting entity provide its “best estimate of the maximum exposure to loss.” (Prop. FAS 16X at ¶ 7(a)(2)). Because most jurisdictions prohibit requests for specific amounts of damages in initial complaints,¹ this provision would apply to the bulk of cases filed against companies.

¹ Some state statutes or rules that prohibit seeking a specified amount of damages above the jurisdictional minimum or that prohibit seeking specified amounts of punitive or exemplary damages include Ariz. R. Civ. P. 8(g); Cal. Civ. Proc. Code § 425.10; Colo. R. Civ. P. 8(a); Conn. Gen. Stat. § 52-91; Fla. Stat. §§ 768.042(1), 768.72; 735 Ill. Comp. Stat. Ann 5/2-604.1; Ind. R. Trial P. 8(A)(2); Iowa R. Civ. P. 1.403(1); Kan. Stat. Ann. §§ 60-208, 60-3703; Mich. Ct. R. 2.111(B)(2); Minn. Stat. §§ 2.111(B)(2), 549.191; Mo. Rev. Stat. § 509.050; N.J. Court R. 4:5-2; N.Y. C.P.L.R. § 3017(c); Ohio R. Civ. P. 8(a); Pa. R. Civ. P. 1021(b); Tex. R. Civ. P. 47. Analogous federal rules include U.S.D.C. D. Del. L.R. 9.4, U.S.D.C. D.N.J. L. Civ. R. 8.1; U.S.D.C. M.D. Pa. L.R. 8.1; U.S.D.C. W.D. Pa. L.R. 8.1.

Literally thousands of smoking and health product liability lawsuits have been filed against our companies and other cigarette manufacturers since the 1950s. The great majority of those cases have been dismissed either voluntarily or through judicial action with no payment to plaintiffs.

Of the thousands of smoking and health cases brought by individuals, approximately 77 have been tried. A substantial majority of those trials – approximately 55 – resulted in defense verdicts. The remainder, approximately 22 trials, resulted in verdicts for plaintiffs, a total that is fewer than 1% of all cases filed. Of those relatively rare cases that resulted in verdicts for plaintiffs, juries awarded damages that form no pattern whatsoever. One verdict was for \$0. The others range among the thousands, millions, tens of millions, hundreds of millions, and billions. The largest was \$28 billion. Every plaintiff's verdict, in essence, was idiosyncratic. Some of the verdicts were reversed on appeal. Others were affirmed. Of those that were affirmed, some of the damage awards, including the two most excessive awards, were reduced significantly. Others were sustained. Although no verdict over \$100 million has been sustained through final resolution, there remain vast differences in the amounts awarded in the rare cases in which plaintiffs have prevailed. Based on this history, the very concept of "best estimates[s]" of the "maximum exposure[s] to loss" in smoking and health product liability actions is illusory and such estimates, if made, could not likely provide financial statement users with reasonably reliable or meaningful information.

We support the Financial Accounting Standards Board's efforts to ensure that financial statement users be provided reliable, non-misleading, and non-injurious information about loss contingencies. In our view, however, the Exposure Draft's proposed disclosure rules require disclosure of information that is neither reliable nor meaningful to financial statement users.

Very truly yours,

/s/ Ronald S. Milstein

Ronald S. Milstein
Senior Vice President, Legal
and External Affairs,
General Counsel and Secretary
Lorillard Tobacco Company

/s/ Martin L. Holton III

Martin L. Holton III
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