

TO: All Employees

DATE: July 20, 1998

FROM: Denise F. Keane

RE: Federal Court Decision on ETS

Last Friday's federal court decision rejecting the Environmental Protection Agency's classification of environmental tobacco smoke as a "Group A carcinogen" is significant for our industry in that it supports our long-held view that the EPA committed to a conclusion before research had begun and that it adjusted established scientific procedures to validate the agency's predetermined conclusion.

In his ruling, Judge William L. Osteen wrote, "In this case, EPA publicly committed to a conclusion before the research had begun; excluded (the) industry by violating the Act's procedural requirements; adjusted established procedure and scientific norms to validate the Agency's public conclusion, and aggressively utilized the Act's authority to disseminate findings to establish a de facto regulatory scheme intended to restrict plaintiffs' products and to influence public opinion.

"In conducting the ETS Risk Assessment, EPA disregarded information and made findings on selective information; did not disseminate significant epidemiological information; deviated from its Risk Assessment Guidelines; failed to disclose important findings and reasoning; and left significant questions without answers. EPA's conduct left substantial holes in the administrative record. While in so doing, EPA produced limited evidence, then claimed the weight of the agency's research evidence demonstrated ETS causes cancer."

Crucially, the Court found that, had EPA followed the procedures it was required to, it might have reached a different result.

This decision could have an important impact on public policy and pending litigation. A jury, earlier this year, rejected the argument that ETS caused the death of an Indiana woman. We believe this ruling will strengthen the arguments that led to the conclusion reached by that jury.

We recognize that ETS can be annoying or uncomfortable to some non-smokers, and that there are differing views on ETS science. We believe, however, Judge Osteen's ruling supports our view that if involuntary exposure is minimized in public places, the enactment of severe smoking restrictions is not justified. For this reason we are working on solutions, including technological improvements in

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ventilation systems, to accommodate the rights and preferences of both smokers and non-smokers in the workplace and in public places. In addition, we enthusiastically support voluntary restrictions and reasonable regulatory measures designed to minimize involuntary exposure to ETS while preserving our consumers' ability to enjoy a legal product.

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