

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, :

EX REL., JEFFREY SECKLER :

Plaintiff, *8209 Spring Hill Lane*  
*McLean, VA 22102* :

vs. :

Civil Action No. \_\_\_\_\_

DEMAND FOR JURY TRIAL

HEALTHY BUILDINGS INTERNATIONAL, INC. :

Defendant. *10378 Democracy Lane*  
*Fairfax, VA 22030* :

BRYANT, J. WBB

FILED

APR 7 1993

VERIFIED COMPLAINT

CLERK, U.S. DISTRICT COURT  
DISTRICT OF COLUMBIA

I  
INTRODUCTION AND OVERVIEW OF COMPLAINT

This complaint alleges that during the period 1989-1992, Healthy Buildings International, Inc. ("HBI") obtained contracts with the United States of America ("United States") to do inspections of the interiors of federal buildings under fraudulent and false pretenses. HBI had a secret contractual relationship with the Tobacco Institute ("TI") and other tobacco interests, including RJ Reynolds, and Philip Morris, to provide inspections that would not focus on the harms caused by cigarettes, and to testify against smoking bans in return for which (1) TI (and later RJ Reynolds) paid HBI a fee for each inspection HBI completed; (2) TI and other tobacco interests promised to and did provide HBI other fees and subsidies, (3) Philip Morris, through TI, paid HBI, under the guise of grants, hundreds of thousands of dollars to

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publish a magazine, Healthy Buildings International Magazine ("HBI Magazine"), which TI and Philip Morris used in the United States and around the world to combat the anti-smoking movement, (4) TI secretly subsidized HBI's office in Danvers, Massachusetts and other fixed expenses of HBI, and (5) TI, whenever it needed an inspection, would secretly pay for the cost of an HBI inspection. As a further part of this fraudulent scheme and conspiracy, TI, inter alia (1) paid to have HBI employees attend media training classes to learn how to speak against smoking bans, (2) paid for part of HBI employees' salaries, (3) told HBI employees to lie about their motivation for testifying at various hearings, (4) paid HBI to spy on anti-smoking individuals and groups, (5) along with Philip Morris, controlled the content and circulation of HBI Magazine, (6) secretly reviewed and approved many of HBI's speeches and public releases, and (7) conspired with RJ Reynolds and Philip Morris to funnel other monies to HBI in return for favorable inspections and testimony.

Defendant HBI never disclosed its relationship and agreements with TI, RJ Reynolds and Philip Morris to the United States when it contracted to do inspections of United States' federal buildings or analysis of the interior air quality of federal buildings leading the United States to believe HBI'S inspections would be impartial and unbiased, which HBI knew in advance they would not and could not be. Meanwhile, HBI boasted of its contractual relationship with United States in all of its promotional literature and press releases. Plaintiff alleges, inter alia, that the contracts signed

by the United States with defendant were thus false and fraudulent and asks for relief pursuant to the False Claims Act.

## II PARTIES

1. Plaintiff, ex rel., Jeffrey Robert Seckler (hereinafter "Seckler") is a citizen of the United States, and resides at 8209 Spring Hill Lane, McLean, VA 22102. He was employed by defendant 1989-1991.

2. Defendant, Healthy Buildings International, Inc. (hereinafter "HBI"), is a New Jersey corporation, with its principal place of business at 10378 Democracy Lane, Fairfax, Virginia 22030. Originally, incorporated as ACVA Atlantic, Inc., its name was changed to Healthy Buildings International, Inc. in 1989.<sup>1</sup> During the period covered by this complaint, HBI transacted business in the District of Columbia, particularly by contract with agencies and departments of the United States located in the District of Columbia.

## III JURISDICTION/VENUE/STANDING

3. Jurisdiction is predicated upon federal subject matter jurisdiction pursuant to 31 U.S.C. §3732(a).

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<sup>1</sup>ACVA Atlantic, Inc. and Healthy Buildings International, Inc. are hereinafter referred to as "HBI".

4. Venue in this district is predicated upon 31 U.S.C. §3732(a), particularly because defendant transacted and transacts business in this district.

5. The standing of plaintiff to sue to recover payments made to defendant by the United States upon false claims is granted by 31 U.S.C. §3730(b)(1).

#### IV FACTS

6. During the early 1980s, HBI operated as a small indoor air quality inspection company. However, during the mid 1980s HBI began to develop a complex and secret relationship with TI. TI, which is funded by the big six tobacco companies,<sup>1</sup> was concerned with the increasing focus on second-hand smoke and increasing attempts nationwide to ban smoking in public and private buildings. Unless TI could slow down this developing anti-smoking movement, cigarette smoking might be banned in all buildings. To that end, TI retained HBI to develop an analysis that would show only minor effects of second-hand smoke in office buildings, for which TI agreed to pay HBI. Once having done such an analysis and having performed building inspections to TI's approval,<sup>2</sup> HBI's President

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<sup>1</sup>Philip Morris Corp.; RJR Nabisco Holdings Corp.; American Brands, Inc.; B.A.T. Industries PLC (Brown & Williamson); Lowes Corp. (Lorillard); and Brooke Group Ltd. (Liggett Group).

<sup>2</sup>Throughout this time period, there was little, if any, federal or state regulation controlling who could be an indoor air quality inspector, so therefore, absent any standards, HBI was able to be lax in its inspections and employment of

Gray Robertson was thereafter requested by TI to speak about the results of his analysis before local and state authorities that were considering smoking bans. His patented speech -- which was reviewed and approved by TI and promoted throughout the country by the public relations firm of Fleishman Hillard, Inc., whose fees and expenses were reimbursed by TI, -- whether it be on "Good Morning America" or in People Magazine -- was that cigarette smoking was only a minor contributor to indoor air pollution. To help him, HBI retained Simon Turner, the son of Clive Turner, then Deputy Chief of the United Kingdom Tobacco Advisory Council, the British equivalent to the Tobacco Institute. Simon Turner's role was to go on media tours with Robertson and testify on behalf of TI against smoking bans. By late 1988, as HBI's relationship with TI became complex and TI's demands increased, it became obvious that Robertson and Turner could not meet all the speaking commitments themselves. They needed a third person, preferably someone who could be a "clone" of Robertson. They went in search of such a person and found Seckler.

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"inspectors". Thus, whenever any HBI "inspector" was writing a report of a building for TI, HBI told the inspector to describe the accumulation of ETS as a "symptom, not the cause" of an indoor air quality problem. To satisfy TI's position on smoking, HBI further instructed Seckler and all employees and inspectors to always describe smoking as a visible but minor pollutant and the only pollutant that actually could help determine if a building's ventilation and filtration systems were functioning properly.

1989

7. Seckler was hired by Robertson on February 6, 1989, as a sales representative. He was told, during the employment interview, that he might be asked from time to time to present HBI's "position" on environmental tobacco smoke (ETS) as an indoor pollutant. Robertson explained that ETS was a small part of the overall "sick building" problem and that HBI was occasionally asked by the tobacco industry to state this "fact". Robertson stressed this was a very small part of HBI's business. Seckler pointed out that he had little technical background and that if this was "factual" and not a major part of his duties, he would be willing to comply. One of Seckler's initial job responsibilities was to memorize a script of HBI's "position" on ETS. HBI's "position" on ETS also included a slide presentation (which Seckler also had to memorize) about indoor air pollution which stressed and emphasized the minor role (according to HBI) that ETS plays. Seckler soon realized the depth of HBI's relationship with the tobacco industry and TI when at lunch with Robertson about two weeks after being hired, Robertson pointed out that his "net worth had been significantly increased over the past several years as a result of HBI's tobacco involvement." It was obvious to Seckler that Robertson was trying to motivate Seckler to understand that it would be financially worthwhile for Seckler to, as Robertson stated, "go with the flow with TI."

8. A few weeks later (March 1989) Seckler went with Robertson to TI headquarters in Washington, DC to meet key staff people HBI was working with -- including Brennan Dawson, principal spokesperson for TI and Walker Merriman, her boss. Seckler recognized at the meeting that HBI's relationship with TI was very important to Robertson.

9. Also in March 1989 Seckler undertook media training classes (along with Simon Turner) with Michael Sheehan Associates, Inc., a media trainer and paid advocate of the "smoking-is-not-bad" school. During these classes, Seckler was taught how to answer questions from individuals who challenged HBI's "smoking-is-not-bad" position. During the classes, there was no mention of promoting HBI's building inspection business. TI's Kay Packett was present throughout the training session.

10. By April 1989, Robertson and Turner were spending 80%-90% of their time on TI related tobacco matters. Almost immediately Seckler became the third HBI employee working for TI and the tobacco interests. In April 1989 Seckler began testifying, allegedly on behalf of HBI, before organizations and local and state committees. At that time, his title was changed to "Senior Consultant", which change Robertson stated, would make Seckler's testimony "more believable." His first testimony was in Oregon before the House Environment and Energy Committee. Shortly thereafter he received a copy of an internal memo sent to Diana Avedon who coordinated the schedules of TI's scientific witnesses, by Brenda Babcock of TI, telling Avedon that Seckler did a great

job. Exhibit A.<sup>4</sup> Babcock was the Northwest Regional TI representative who worked with Kay Thomas Packett, who was in charge of TI's scientific witness program.

11. At the same time, HBI met with TI regarding the use of Seckler and worked out the following arrangement for the remainder of 1989 -- in recognition of the "value added" by Seckler to HBI's existing support of TI -- one-half of Seckler's time on TI related business (at a billing rate of \$1,500 per day) was to be covered by the existing retainer between HBI and TI and the other half was to be paid by TI. There were months when HBI billed TI, for one-half of Seckler's services, sums in excess of Seckler's monthly salary. The person who controlled and monitored the sending of the invoices to TI was Anne Robertson, Gray Robertson's wife; Seckler saw the monthly invoices she sent to TI. Beginning in the Fall of 1989, HBI hired a full-time bookkeeper named Brenda Groves, who can also verify these facts.

12. In the Spring of 1989, Seckler was appointed Technical Committee Chairperson of the Business Council on Indoor Air, a group formed by TI to work on lobbying the "Mitchell Bill", proposed federal indoor air legislation. Seckler believes TI paid all of the technical consultants' membership fees, including HBI's fees of \$15,000 and put HBI on the Board of Directors. When Seckler went to his first meeting in Washington, DC, he was immediately made Technical Committee Chairman because he was

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<sup>4</sup>All exhibits are attached hereto and are followed by the Disclosure Statement of Jeffrey Seckler.



employed by HBI. He was chosen by TI over Ph.D.s and engineers with far more knowledge. (Seckler had graduated in 1966 from Trinity College with B.A. in Psychology). Exhibit B, contains examples of minutes of council meetings.

13. In April of 1989, Seckler was sent to San Diego to spy, on behalf of TI, on what was being said about ETS at the International Indoor Air Quality Conference. The City of San Diego was having smoking ban hearings during that week. Seckler, while there, was called at his hotel by Peter Binney, who was Vice President of HBI, and told to go to the hearing and testify against the ban. Seckler was told by Binney to lie and say, he "just happened to be in the area to attend the air quality conference." While there, he was to meet representatives of the Coalition Advocating Individual Rights ("CAIR"), a group, heavily subsidized by TI, which testified against the bill. CAIR representatives were introduced to Seckler by the west coast TI representative, Ron Soldata. Seckler, Soldata, and two people, including Amanda McBride from CAIR, met the night before the testimony, at which time Seckler was told by Soldata to lie and testify that he "just happened to be in the area."

14. Seckler soon learned that TI would, depending upon the expected benefits, secretly pay HBI's fee to do inspections of buildings. For example, in May, 1989, HBI did an inspection of the Washington Essex Building in Boston, paid for by TI. TI secretly paid for the inspection because knowing, in advance, the result, they wanted to quickly respond to the original complaint of poor

air quality and thus help the local union. At that time, unions believed that workplace smoking should be a bargaining issue to be solved by union involvement. TI supported that position by encouraging unions to request inspections which TI was secretly paying HBI to do. The result was TI being able to get unions to support TI's position on ETS; and in fact, some of the unions did in turn testify on behalf of TI against smoking bans. TI also paid HBI to do "favorable" inspections of state and local buildings, which inspections TI used to curry local and state favors.

15. The following are examples of services Seckler provided TI and other tobacco interests in 1989:

(a) There was an Association of Energy Engineers two-day indoor air quality course in Atlanta on May 25-26, 1989 -- Seckler attended to report for TI. The instructor was Bud Offerman, who, at that time, was a vocal supporter of EPA's position on ETS (which was contrary to that of TI) and had become suspicious of HBI's close connection with TI. Seckler's task was to spy on Offerman and report to TI. Afterward, Seckler wrote a memo to TI; although the memo was addressed to no one, it was forwarded to Kay Packett at TI. Exhibit C.

(b) On July 25, 1989, a thank you note was sent from Donald Harris, Director of Communications, Philip Morris, thanking Seckler for having spoken to some French journalists who Philip Morris wanted Seckler to "brainwash" on the "smoking is-not-bad" issue. Exhibit D.

(c) On September 17/18, 1989, Seckler travelled to a health conference in Newport, Rhode Island to spy for TI. A Consumer Product Safety Commission spokesperson gave a talk on indoor air quality. Seckler took notes and reported back to TI. Exhibit E; and

(d) On September 19-21, 1989, Seckler was paid to go to Harvard School of Public Health to attend a short course on indoor air quality and to spy on Mr. John Spengler, a vocal anti-tobacco and second-hand smoke advocate. Seckler went on behalf of TI to monitor Spengler's speech and latest ideas on ETS; Seckler then reported back to TI. Exhibit F.

16. By 1989, HBI had become TI's troubleshooter not only throughout the country but sometimes abroad. In 1989, Philip Morris paid HBI to go to Switzerland to do inspections of 28 buildings to help stifle growing anti-smoking concerns there. A summary report was drawn up to emphasize the unimportance of ETS as a pollutant even though most of the buildings had no central ventilation systems to dilute indoor pollutants. HBI was paid handsomely (\$5,000 per building) plus expenses. These payments constituted a large percentage of HBI's inspection fee income for 1989.

17. In late 1989, Seckler, then on a speaking tour, received a telephone call from Binney, Vice President and part owner of HBI, who told him, "get ready to move to New England, that's where TI wants to put the first HBI regional office." Within days, Seckler

was promoted to Northeast Regional Manager and told to move to New England.

1990

18. Beginning in January, 1990, Seckler worked out of HBI's first regional office in Danvers, Massachusetts. HBI opened the office to fulfill a secret agreement HBI had made with TI in 1989 to open five (5) regional offices nationwide over a five-year period and by which TI would pay HBI \$8,000 per month for one year to support the first office, to be located at a site selected by TI, in return for which HBI would continue to avidly support TI's position on smoking; future financial support of the other offices would be based on the effectiveness of the first office in supporting TI's goals and programs.<sup>5</sup>

19. As part of his job responsibilities Seckler was required to work closely with TI and generate some inspection sales. When soliciting potential clients, Seckler was advised to tell them that if they signed an inspection contract they might be included in HBI's newest venture, HBI Magazine, first published in the Fall of 1989.

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<sup>5</sup>One of Seckler's first meetings of 1990 was with Dennis M. Dyer, the Northeast Regional Vice President of TI, at his Beverly office. Dyer, who was outspoken, (1) disliked Philip Morris which he referred to as "the evil empire," (2) told Seckler he did not like the fact that TI was so heavily supporting HBI, and that an environmental company like HBI should "stand on it's own", and (3) referred to HBI's President, Mr. Gray Robertson, as "a snakeoil salesman" who would do anything TI asked him to do as long as he got paid.

20. HBI Magazine was conceived and financed By Philip Morris. Initial circulation was about 200,000, based upon paid mailing lists, and it was published in several languages in Australia, Europe (Spain/France) and Scandinavia. The magazine's yearly budget was hundreds of thousands of dollars. The Editor, Nicole Miles, worked out of HBI's main office. HBI secretly agreed to give TI and Philip Morris control over the magazine -- therefore Miles was required to obtain TI's approval of all substantive articles. She later complained to HBI employees that every article in HBI Magazine that contained information on second-hand smoke also had to be reviewed and cleared by Chris Proctor of Covington & Burling, TI's law firm. Miles was also required to and did speak daily with Mary Potteroff of Philip Morris, who, de facto, controlled the circulation and focus of HBI Magazine.

21. HBI Magazine's budget quickly escalated, reaching in excess of \$500,000 by 1991, which funded a larger circulation and more expensive targeted mailings; HBI spent thousands of dollars purchasing mailing lists. Yet, HBI's sales from inspections re-inspections and asbestos projects were modest in 1991, approximately \$1,000,000. Thus, HBI could only afford the magazine if it was paid for by someone else.

22. HBI paid for HBI Magazine from checks received from Philip Morris, which checks came under the guise of a "grant". Mike Price of HBI stated to Seckler that the money passed from Philip Morris to Covington & Burling (TI's lawyer) to HBI. HBI, TI and Philip Morris created a cover story -- that Philip Morris was

giving "grants" to HBI for various services -- to be used if someone inquired how HBI could afford this glossy magazine. However, dealing with a law firm as an intermediary was not always smooth; in late 1991, Brenda Groves of HBI complained to HBI's Mike Price (who in turn told Seckler) that although she knew a magazine payment check had left Philip Morris some two weeks previous, she had yet to receive it from Covington & Burling. She openly complained that the check, was badly needed to cover HBI's already incurred expenses. No effort was made by her to hide the source of the payments as some sort of a "grant" -- as far as she was concerned Covington & Burling had the magazine check, was late in forwarding it, and she needed it. She never made mention of labor or services being required by HBI to obtain the check.

23. Throughout 1990, Seckler continued to travel around the country for TI to testify before state committees considering smoking bans. For examples: (a) On March 8, 1990, Seckler testified before the New Hampshire State Committee. Present was E. Barclay Jackson from TI's Beverly office. TI's lobbyist in New Hampshire set up Seckler's testimony and told Seckler to say to the committee that he was a local businessman who "just wanted to testify on an issue affecting his business"; and (b) On July 5, 1990, a lobbyist for TI wrote a thank you letter to Seckler for testifying for TI in Norwood, Ohio, with a cc to the Midwest Regional Manager of TI, Exhibit G to which is attached Mr. Seckler's testimony, Exhibit H.

24. Throughout 1990, TI and HBI continued to work closely together including exchanging memos and drafts of positions on various environmental matters. A consistent effort was made by TI and HBI to retain a unified position on air quality issues. For example, in December 1990, while in Danvers, Seckler was faxed a long critique done by HBI (edited by S. Turner) of an EPA paper on indoor air quality in commercial buildings. It was forwarded to Seckler by M. Price. At the top of the fax, there is a notation showing it was faxed to John Rupp of Covington & Burling (counsel for TI), K. Thomas at TI, and EPA. Exhibit I.

25. Throughout 1990 (and 1991), HBI continued to spend considerable time and efforts on media tours. These tours, which had begun in 1987, consisted of a series of events orchestrated by TI: TI would pick a city that was considering an anti-smoking ban; media kits on HBI were then created and distributed by Fleishman Hillard to all media; Fleishman Hillard's promotions agents would then set up interviews for HBI's spokesmen who were promoted as "sick-building" experts who were alleged to be in the area to see clients. Exhibit J is a sample group of documents of five (5) media tours Seckler went on in 1990/1991.<sup>6</sup> HBI never disclosed to the media or the public during any of the media tours and hundreds of interviews that the tour was being sponsored by TI and other tobacco interests.

26. In 1989 and throughout 1990, HBI was paid \$1,500 by TI for each HBI inspection (including inspections of government

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<sup>6</sup>There were similar media tours for Robertson and Turner.

buildings), to obtain favorable results. In the event the source of payment was ever discussed, the "cover story" was to be that payment of \$1,500 to HBI was for taking ETS measurements; HBI's employees were well aware that this "cover story" was a facade and treated the assignment accordingly.' The secret \$1,500 payment became critical to HBI because it allowed HBI to underbid its competitors. It was critical to TI because it insured HBI's support of TI's position on smoking.

27. As HBI's business expanded, HBI also focussed on obtaining contracts from the United States. Throughout 1990, HBI, through TI's public relations firm, Fleishman Hillard, Inc., openly boasted of HBI's many contracts with the United States. For example, the following press release:

"HBI also has performed special projects or exclusive long-term contracts for several government agencies, including the U.S. Department of Health and Human Services, the Social Security Administration, the Longworth Congressional Office Building, the U.S. Supreme Court, the Federal Reserve Bank and the General Services Administration, which operates some 7,000 government buildings." (Emphasis supplied) Exhibit K.

These measurement results were allegedly to be compiled to produce a "scientific" paper showing that ETS was not a problem in office buildings. The data was compiled and the paper written by Simon Turner, son of Clive Turner, (then head of the Asian Tobacco Council). However, HBI technicians openly commented as to the inaccuracy and falsity of the data they collected. Seckler was told by Price that many air samples were taken in the van on the return trip from an inspection to save time, because all of the technicians knew the data for the so-called "scientific paper" would be "fabricated anyway".



1991

28. In 1991, as a further example of the by then fully developed conspiracy between HBI, TI and TI's sponsors (including RJ Reynolds and Philip Morris, etc), RJ Reynolds agreed to pay HBI \$2,500 for each building inspection HBI undertook. This subsidy, for which HBI, TI and RJ Reynolds concocted a "cover story",<sup>6</sup> enabled HBI to continue to underbid its competition. Mike Price of HBI told Seckler that the \$2,500 was funnelled to HBI by RJ Reynolds through The Center for Indoor Air Research ("CIAR") a front funded by the tobacco interests.

29. Meanwhile, Seckler continued to work with TI and the tobacco interests in 1991:

(a) In February 1991, Seckler traveled twice to Salt Lake City to testify on behalf of TI, before a state committee, against a proposed smoking ban. A copy of his testimony is Exhibit L;

(b) Throughout 1991, Kay Thomas (Packett) of TI continually sent Seckler articles regarding tobacco smoke to enforce upon him the importance of supporting TI's position. Exhibit M is an example of a typical article she forwarded Seckler;

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<sup>6</sup>The alleged purpose of the \$2,500 payment (the "cover story") was to take additional VOC measurements -- volatile organic compounds -- chemical compounds which RJ Reynolds and TI wanted to prove were worse than tobacco smoke. RJ Reynolds alleged purpose in building a database of non-ETS indoor air pollutants was to develop a factual argument against OSHA passing ETS regulations in the workplace. However, HBI quickly learned that the statistics, no matter how manipulated, could not support their assumption.

(c) On March 22, 1991, Barclay Jackson wrote a thank you letter to Seckler for testifying for TI before the Connecticut House Labor and Commerce Committee on the issue of pending indoor air quality bill. Exhibit N. Exhibit O is a memo from Jackson to Regional Vice President, Dennis Dyer of TI, saying Seckler did a good job and recommending follow-up, including sending HBI's "sick building syndrome booklet" to all the legislators throughout their region;

(d) On July 17, 1991, the City of Phoenix's Mayor sent a letter to Seckler thanking him for his testimony (given at the request of TI's lobbyist in Arizona) on their proposed smoking ban. Exhibit P; and

(e) In July-August, 1991, Seckler made three trips on behalf of TI to St. Paul, Minnesota, to testify against a proposed smoking ban in public buildings.

30. During 1991, HBI also continued to assist TI and Philip Morris internationally. Attached as Exhibit Q is a late 1990 internal memorandum of Philip Morris (as related by HBI employee Mike Price to Seckler). It discusses the "HBI concept" with particular emphasis on HBI's activities in Australia.<sup>9</sup> TI's plan was to use the concept in a series of five regional public

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<sup>9</sup>At that time, Australia was the pilot international public relations campaign, suggested by Philip Morris, to combine "the HBI story", HBI Magazine, and world-wide Harris Polls about indoor air quality as part of public relations scheme on the risks of "sick building syndrome: and what a small part ETS plays. The program and concept was used in Australia in 1991 and as then taken to Europe, Scandinavia, South America and back to the U.S.

relations campaigns across the U.S. in 1992, which were later halted because of Seckler's June 16, 1992 interview on NBC, described in Paragraph 37-39, below. The use of Harris Polls (at a cost of \$30,000 per city) was to attract the press in major markets in the U.S., which press had become bored with TI's and HBI's regular pitch.<sup>10</sup>

31. By late 1991, TI's funding had been drastically cut-back by Philip Morris; accordingly, an effort evolved to save money by not sending HBI employees to testify at smoking ban hearings, but simply to submit HBI's testimony in writing. In the opinion of TI, this could best be accomplished by TI actually writing the testimony. As an example, in late 1991, Diana Avedon of TI wrote and edited testimony for Robertson to be given before the Phoenix City Council. Once written, she faxed it to HBI for Robertson's approval. Exhibit R is the testimony she wrote for HBI and a cover note from her to HBI -- upon which Robertson hand-wrote (at the bottom) 4 short lines of notes. The document is dated September 3, 1991.

32. Meanwhile, HBI Magazine continued to grow. While the subscription database of HBI Magazine as of 9/03/91, showed only 400 names, producing only \$24,000 per year in income, the annual cost of the magazine (which by 1991 had a circulation of approximately 300,000 - 350,000) exceeded one-half million dollars.

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<sup>10</sup>In 1991 and 1992, Philip Morris paid HBI tens of thousands of dollars per month as a retainer to present the "smoking-is-not-bad" philosophy in HBI's inspections and to testify before state and federal officials. However, by 1991 the press was becoming bored with the issue.

Exhibit S. The subscription list included federal agencies, U.S. House of Representatives, Library of Congress, Congressional Research Service, U.S. Department of Justice, HUD, NCUA and EPA. At no time did HBI Magazine disclose in the magazine nor did HBI disclose to its customers, including the United States, the then existing agreements between HBI and Philip Morris, the closeness and extent of their relationship,<sup>11</sup> the secret payments by Philip Morris, nor of the other secret payment agreements existing between HBI and TI and HBI and RJ Reynolds.

33. In September 1991, Seckler left HBI, dismissed on the grounds of alleged poor productivity and expense account irregularities. Although Seckler contended he could disprove these charges, he agreed to leave HBI in exchange for Robertson's offer of assistance with the tobacco industry to help launch Seckler's proposal to start a new indoor air quality business.

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<sup>11</sup>Each year, 1989-1991, TI would have an annual meeting to meet with their scientists, consultants, and witness program participants. Present were the people who wrote for, spoke for, or did media tours for TI. HBI always attended. In 1989, J. Seckler attended the annual meeting, held in a downtown D.C. hotel. In 1991, Seckler attended the meeting which was held at Covington and Burling's D.C. headquarters. Also, throughout 1989-1991, each month Kay Thomas Packett, in charge of the scientific witness programs for TI, prepared and circulated a Scientific Witness Activity Report, which listed what HBI employees and other witnesses were doing for TI throughout the country.

1992

34. In late 1991 through April 1992, Seckler attempted to launch a for-profit organization named Building Environmental Services and Technologies Institute ("B.E.S.T."), to help small companies in the indoor air quality business (equipment or services). B.E.S.T. was to provide certification services, marketing and public relations assistance. The idea to create B.E.S.T. was supported by HBI employee Mike Price who told Seckler he would join him if Seckler would get funding support; one of the funding sources Seckler approached were members of the tobacco industry, but he withdrew solicitation when he (1) received offers conditioned with demands for editorial and management control; and (2) learned that Robertson was openly undermining his effort by speaking against him. As a direct result, relations between Seckler and Robertson deteriorated and Seckler's idea to promote B.E.S.T. withered.

35. Seckler blamed Robertson for the harsh treatment given Seckler at HBI and Robertson's attempts to prevent B.E.S.T. from becoming a reality, and thus requested compensation and damages from HBI, which HBI and its counsel refused. Their relationship further deteriorated and in March 1992, HBI began to fear that Seckler would reveal HBI's true relationship with TI/Philip Morris/RJ Reynolds and therefore (according to Price as told to Seckler) purged its headquarter's files of all tobacco related correspondence, under the direction of Miles, as ordered by

Robertson. At that time, Miles openly told Robertson, in front of HBI employees, that she would not lie if later "asked under oath" as to whether she purged the files to recreate history.

36. At this same time -- the spring of 1992 -- HBI was in the process of launching a series of five regional indoor air quality seminars, working from the west to the east coast. These seminars were to be based on "the HBI concept", preceded by Harris Polls, at a cost of about \$30,000 per city.<sup>12</sup> The east coast tour and southeast tour never took place because on June 16, 1992 NBC ran a story on the HBI/TI relationship, based upon interviews with Seckler.

37. In those interviews, Seckler told NBC some of the details of the relationship between HBI and TI and the other tobacco interests. A transcript of the resulting TV segment is Exhibit T.

38. Until Seckler was interviewed by NBC, HBI had continued throughout 1992 to implement the secret agreements with TI/Philip Morris/RJ Reynolds and HBI Magazine continued to promote the tobacco industry's position on smoking and in return Philip Morris and TI continued to fund the magazine. In fact, according to HBI's Michael Price, by 1992 the circulation exceeded 500,000 copies per issue in seven (7) languages. However, within several months of the NBC interview, HBI Magazine was discontinued.

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<sup>12</sup>The Harris polls were interviews of the man-on-the-street (1,000 per city) asking if he thought he missed work, etc. due to poor indoor air quality. HBI would then hold a press conference to release the results and expound upon their theory that the "real cause" of these problems was poor ventilation in buildings.

39. Throughout 1992, HBI continued its interior inspections, each inspection under the guise of an unbiased analysis by an independent company. At the same time, HBI continued to brag about its many contracts for inspections of federal government buildings. In another one of its promotional releases (Exhibit U), HBI boasted of its many federal government clients by providing a detailed client list and list of references, including the Federal Reserve Bank, in seven (7) locations throughout the country; FDIC in Washington, DC; HUD in Washington, DC; USDA in Beltsville, MD; the Architect of the Capitol, Washington, DC; the General Services Administration in Washington, DC; and Health and Human Services, one of the government's largest agencies and ironically, the federal agency trusted with overseeing the nation's health.

V  
ALLEGATIONS

40. When contracting with United States agencies and departments to do inspections, for which HBI was to be paid, HBI intentionally and wilfully failed to disclose that (1) HBI was not independent or unbiased, (2) that HBI was directly and secretly subsidized by TI, Philip Morris and/or RJ Reynolds, and (3) that HBI had conspired with TI, Philip Morris and RJ Reynolds to promote the tobacco industry's position on smoking in return for payment of monies and other benefits from TI, RJ Reynolds and/or Philip Morris.

41. HBI's intentional misrepresentations were intended to mislead and did fraudulently mislead the United States and its

agencies and departments to procure and pay for and rely upon inspection services that it never would have procured had the truth been revealed.

42. HBI's actions were fraudulently undertaken (1) to mislead the United States to believe each HBI inspection would be independent and unbiased when HBI had already agreed in advance with TI as to the outcome, (2) to illegally benefit TI/Philip Morris/RJ Reynolds at the expense of the United States, and (3) understate the health risk to federal employees from smoking and second-hand smoke to the benefit of TI, Philip Morris and RJ Reynolds.

43. All of the monies received by HBI from the United States' building inspections were the result of fraudulent inspections and thus constitute fraud upon the United States.

44. HBI, at all times pertinent hereto, had actual knowledge of its fraudulent and false inspections and reports, acted in deliberate ignorance of the falsity of its inspections and reports and acted in reckless disregard of the true condition of the buildings it inspected.

45. HBI knowingly presented invoices to the United States and its landlords for inspections and services HBI knew were fraudulently provided.

46. HBI knowingly made and used these false and misleading services and inspections to get their fraudulent invoices approved by the United States.



47. HBI conspired with TI, Philip Morris and RJ Reynolds to defraud the government to pay HBI for inspections HBI knew were fraudulent, false and/or misleading.

VI  
COUNTS

Violation of False Claims Act

48. Officers of defendant HBI had full knowledge of the fraudulent, false and misleading nature of the inspection reports and studies they did for the United States and rather than take corrective or remedial action with respect to same, suppressed and concealed from the United States the truth thereof and thus presented the United States with false and fraudulent claims for payment, in violation of 31 U.S.C. §3729a(1).

49. Officers of defendant HBI acted in furtherance of the above-referenced actions and conspiracy to fraudulently obtain the payments of false claims through the use of false inspection reports, false studies, false statements, fraudulent statistics and the collaborative omission and suppression of material facts about the inspection in violation of 31 U.S.C. §3729(a)(1), (2) and (3).

50. Officers of defendant HBI further conspired to suppress and/or destroy evidence of the false claims and false reports, by purging their files in order to prevent the United States from being aware of HBI's false claims and in order to permit HBI to

continue to receive contract payments and to increase its profits, in violation of 31 U.S.C. §3729(a)(1), (2) and (3).

51. Officers of defendant HBI conspired to suppress evidence of the true nature of the air quality of the buildings it inspected for United States so as to assist TI, Philip Morris and RJ Reynolds, which entities had paid HBI to do so, all of which constituted a knowing use of a false report and record to get a false claim paid by the United States, in violation of 31 U.S.C. §3729(a) (2) and which further was a conspiracy to defraud the United States by reason of getting a false or fraudulent claim paid, in violation of 31 U.S.C. §3729(a)(3).

VII  
PRAYER

WHEREFOR, plaintiff prays for judgment against defendant as follows:

1. For restitution to the United States of all monies wrongfully received by HBI from false inspection reports and studies of buildings used by the United States and its employees according to proof at the time of trial, pursuant to 31 U.S.C. §3729 et seq.;

2. For three times the dollar amount proven to have been wrongfully charged by HBI and paid by the United States to HBI, pursuant to 31 U.S.C. §3729(a);

3. For recovery of all awards or percentages of the proceeds of the action or settlement pursuant to 31 U.S.C. §3730(d);

4. For costs of suit incurred herein, including reasonable attorneys fees pursuant to 31 U.S.C. §3730(d);

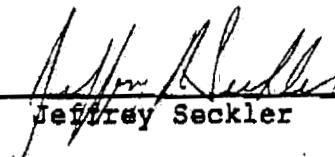
5. For such further relief as the Court deems just and proper.

VIII  
DEMAND FOR JURY TRIAL

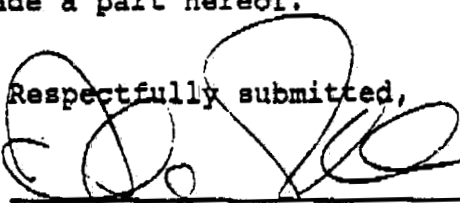
Plaintiff hereby demands trial by jury pursuant to Rule 38(b) Federal Rules of Civil Procedure.

IX  
VERIFICATION AND DISCLOSURE STATEMENT  
PURSUANT TO 31 U.S.C. §3730(b)(2)

I hereby verify that the above facts are true and correct to the best of my belief.

  
\_\_\_\_\_  
Jeffrey Seckler

A signed and notarized disclosure statement of Jeffrey Seckler is also attached hereto and made a part hereof.

Respectfully submitted,  
  
By: \_\_\_\_\_  
Alexander J. Pires, Jr. 185cc7  
CONLON, FRANTZ, PHELAN, KNAPP  
& PIRES  
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April 6, 1993