Meyer Glitzenstein & Crystal
1601 Connecticut Avenue, N.W.
Suite 700
Washington, D.C. 20009-1056

Katherine A. Meyer
Eric R. Glitzenstein
Howard M. Crystal
Kimberly D. Ockene
Tanya M. Sanerib

Telephone (202) 588-5206
Fax (202) 588-5049
www.meyerglitz.com

October 18, 2005

Delivered by Hand

Robert McCallum
Associate Attorney General
Department of Justice
950 Pennsylvania Ave., N.W.
Room 5706
Washington, D.C. 20530

Re: United States of America and Tobacco-Free Kids Action Fund, *et al.* v. Philip Morris USA, Inc., *et al.*, Civ. No. 99-2496 (GK)

Dear Mr. McCallum:

As you know, we represent the Plaintiff-Intervenors in this case – Tobacco-Free Kids Action Fund, American Cancer Society, American Heart Association, American Lung Association, Americans for Nonsmokers Rights, and National African American Tobacco Prevention Network. We are writing to make a formal request that, in the event the United States contemplates settling this case and/or engages in any settlement communications with all or some of the defendants, you involve the Plaintiff-Intervenors in the decision as to the remedies that are requested in any such settlement, and that you ensure that we are included in all such discussions with any of the defendants.

When the District Court granted our clients' motion to intervene on July 22, 2005 for purposes of advocating remedies in this case, the Court emphasized that "it will serve the public interest for major public health organizations, such as Intervenors, who have long experience with smoking and health issues, to contribute their perspectives on what appropriate and legally permissible legal remedies may be imposed should liability be found." Id. at 10-11 (emphasis added).

Even apart from our status as parties to this case, it is well established that, prior to approving any consent decree in a case brought by the United States, the District Court has an independent obligation to "satisfy itself of the settlement's 'overall fairness to beneficiaries and consistency with the public interest.'" Citizens for a Better Environment v. Gorsuch, 718 F.2d 1117, 1126 (D.C. Cir. 1983) (emphasis added); accord, United States v. District of Columbia, 933 F. Supp. 42, 46 (D..D.C. 1996); State of New York v. Microsoft Corp., 231 F. Supp.2d 203, 205 (D.D.C. 2002). Therefore, if our clients had not successfully intervened at the remedies phase of the litigation, they could have sought to do so in the event the parties sought to enter into a consent decree that was arguably not in the public interest. See, e.g., Conservation Law Foundation of New England v. Mosbacher, 966 F.2d 39 (1st Cir. 1992).

Since the Court will eventually take the public interest into account before approving any final consent decree, it makes sense to allow the Intervenors to be involved at the beginning of any settlement process, rather than at the end of the process when the Government will have devoted time and resources to devising and negotiating the terms of a settlement that may have to be changed to ensure "consistency with the public interest." Citizens for a Better Environment.

Accordingly, should the Government be considering a settlement of this case, we request that you include the Intervenors in that process to the fullest extent possible. We would, of course, agree to keep all such discussions confidential.

Please let us know as soon as possible whether you will be able to agree to this request, and, if so, how we should proceed.

Sincerely,

Katherine A. Meyer

Ethan Carson Eddy
Attorneys for the Plaintiff-Intervenors

cc. Sharon Eubanks