

CIGARETTES, SMUGGLING, AND TERROR:
THE EUROPEAN COMMUNITY V. RJ REYNOLDS

By

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A. INTRODUCTION

On October 31, 2002, the European Community (EC) filed suit against RJ Reynolds (RJR), an American tobacco company based in Winston-Salem, North Carolina, alleging Money Laundering activities conducted by them surrounding cigarette smuggling.¹ The suit was filed in the District Court for the Eastern District of New York.² The money laundering activities alleged include money laundering for Italian and Russian Organized Crime, money laundering through the Bank of New York, through Central America and the Caribbean, through Panama, through the United Kingdom, through Brady Bonds, and through Secret Swiss Accounts.³ Finally, the EC alleges corruption of officials in the Balkans, illegal sales into Iraq, cocaine trafficking, and the existence of operations in Cyprus, Ireland, and Belgium.⁴ All this, it is alleged, was achieved “using special accounting methods, offshore tax havens and false invoicing.”⁵

¹ See Complaint, European Cmty. v. RJR Nabisco, et al. (E.D.N.Y., Oct. 31, 2002) [hereinafter "Complaint"]. The EC consists of Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, The Netherlands, Portugal, Spain, Sweden, and the United Kingdom. See *id.* at 3. The lawsuit was filed against, among others, RJR Nabisco which is the parent company of RJR Tobacco Company. See Complaint, European Cmty. v. RJR Nabisco, (E.D.N.Y., Oct. 31, 2002). RJR Tobacco Company and RJR Tobacco International, Inc. as well as various other RJR subsidiaries of RJR Nabisco are also named. See *id.* RJR claims that a sister company in Switzerland, RJ Reynolds International, was in charge of foreign sales, and the two companies are separate, operated independently of each other and have separate customers. See *60 Minutes II: Made in the USA* (CBS Television broadcast, Feb. 12, 2003) (quoting Tommy Payne, RJR's vice president of external relations). For the purposes of this paper, RJR will be used to describe all RJR defendants, as the Plaintiffs have done in the Complaint. See Complaint, *supra*. Cigarettes killed approximately 440,000 people in the United States between 1995-1999. See Michelle Leverett, et al., *Building Healthy Communities: Tobacco Use: The Impact of Prices, Highlight: Abstract*, 30 J. L. MED. & ETHICS. 88 (2002).

² See Complaint, *supra* note 1.

³ See *id.*

⁴ See *id.*

⁵ Douglas Farah, *RJ Reynolds Accused of Money Laundering, Suit Also Alleges Smuggling of Cigarettes to Iraq*, THE WASH. POST, Nov. 14, 2002, at A20.

The Complaint sets out in detail how cigarettes are being used to launder money by terrorist organizations and by RJR to evade taxes and maximize profits.⁶ In fact, “the [C]omplaint has described, chapter and verse, a blatant conspiracy.”⁷ Such cigarette transactions “have long been favored by drug traffickers as a means of laundering their illicit proceeds.”⁸ Now, cigarette smuggling has become a way of lubricating terrorism and other organized crime.⁹

This article will analyze this recent development of cigarette smuggling in the context of the lawsuit, including the various mechanisms allegedly utilized by RJR. It will then conclude that the large-scale tobacco smuggling evident today is one of the easiest areas in which large strides could be made by law enforcement toward cutting off terrorist financing. This in turn would curtail these groups’ ability to continue their illegal and devastating activities.

B. HISTORY OF CIGARETTE SMUGGLING

Black market cigarettes have long been a problem.¹⁰ “As many as a third of all cigarette exports wind up being sold on the black market, cheating governments of tax revenue and encouraging smoking by keeping cheap cigarettes available.”¹¹ A similar problem exists in

⁶ See Farah, *supra* note 2. Tobacco companies, including Philip Morris, seem worried about the smuggling in which they are not involved and do not profit. See Noam Neusner, *High Tax, Hot Cigs*, U.S. NEWS & WORLD REP., Nov. 4, 2002, at 46. The companies’ main concerns are Internet sales and counterfeiting, both of which appear to reduce their profits considerably. See *id.*

⁷ Michael A. Hiltzik & Henry Weinstein, *Cigarettes Portrayed as Currency of Crime; EU Suit Against R.J. Reynolds Describes a Worldwide System of Money Laundering*, L.A. TIMES, Nov. 5, 2002, §Main News, Business Desk, at 1.

⁸ Farah, *supra* note 2. Trucks driven one way filled with cigarettes return filled with drugs, making both trips highly profitable. See Neusner, *supra* note 6.

⁹ See Hiltzik & Weinstein, *supra* note 7.

¹⁰ See *id.*

¹¹ See *id.*

American states with high taxes.¹² Also, “[c]igarette transactions have long been favored by drug traffickers as a means of laundering their illicit proceeds” because of the crack down on wire transfers and because of the sheer weight of the cash making it difficult to transport.¹³ “Instead, drug traffickers often buy millions of dollars worth of cigarettes with the proceeds, smuggle the cigarettes into their home countries and resell them to recoup their profits.”¹⁴ Thus, “[h]ighly profitable, easy to transport and ever in demand, cigarettes have long been a multibillion-dollar industry for smugglers across the world.”¹⁵ Since September 11, 2001, there has been increasing concern that terrorists are using the industry to pay for their operations.¹⁶ Concern increased when a recent smuggling ring confirmed suspected terrorist links.¹⁷

In June 2002, a federal criminal jury convicted two Lebanese brothers of cigarette smuggling.¹⁸ The brothers participated in smuggling low-tax cigarettes from North Carolina to high-tax Michigan, diverting a portion of the profits to the Iranian/Syrian backed Lebanese terrorist group Hezbollah.¹⁹ The link surprised the Bureau of Alcohol, Tobacco, and Firearms

¹² *See id.* It has been estimated that in California alone, “organized and casual smuggling has resulted in a loss of over \$80 million of tax revenues each year.” Leverett, *supra* note 11 at 93. One country to see an increase in cigarette smuggling due to a tax raise on tobacco was Canada which raised its taxes in the early 1990s. *See* Neusner, *supra* note 6. Canada subsequently lowered its taxes. *See id.*

¹³ *See* Farah, *supra* note 2.

¹⁴ *Id.*

¹⁵ Brian Louis, *Cigarette Smuggling a Worry: Illegal Sales Help Terrorist Groups Worldwide*, *ATF Fears*, WINSTON-SALEM J., Nov. 3, 2002, at A1.

¹⁶ *See* Louis, *supra* note 15. There is evidence that the group originally responsible for bombing the World Trade Center in 1993, and which later merged with al-Qaeda, had in its possession counterfeit cigarette tax stamps. *See* Neusner, *supra* note 6.

¹⁷ *See* Louis, *supra* note 15.

¹⁸ *See* Hiltzik & Weinstein, *supra* note 7. The brothers received 37-month prison sentences and face deportation after the sentences are completed. *See* Tim Whitmire, *3 Sentenced in Cigarette Smuggling Case*, ASSOCIATED PRESS, Feb. 27, 2003, available at 2003 WL 14957890.

¹⁹ *See* Hiltzik & Weinstein, *supra* note 7; Louis, *supra* note 15. Hezbollah is “a Lebanese terrorist group that was blamed for the 1983 bombing of the U.S. Marine barracks in Lebanon that killed 241 Americans.” Hiltzik & Weinstein, *supra* note 7. Hezbollah has also been linked

(ATF), which has increased the number of cigarette smuggling investigations and implemented a new focus on terrorist links.²⁰ The spike in investigations was a response to a rise in smuggling due to greater taxes.²¹ Even after this discovery and the increased investigations, experts believe that terrorist links to cigarette smuggling are more extensive than is known.²²

Regardless of terrorist links, cigarette smuggling costs governments between \$25 billion and \$30 billion in taxes each year with almost 20 billion packs of cigarettes smuggled every year.²³ Experts indicate that this could be as much as one third of cigarette exports each year.²⁴ Increasingly, tobacco companies themselves have become linked to the smuggling and stand accused of knowingly aiding and abetting the activity.²⁵ An April 2001 study by the Campaign for Tobacco-Free Kids reported: “By supporting smuggling . . . the companies are able to penetrate closed markets and increase sales by being able to sell cigarettes at lower prices because they are not taxed.”²⁶ Cigarette corporations deny smuggling accusations; industry analysts themselves contend that tobacco companies cannot control who the final consumer is.²⁷ However, some experts believe that it is the “legal responsibility of the companies to take all

to several hostage situations and the 1996 bombing of an American military housing complex in Saudi Arabia that killed another 19 U.S. serviceman. *See* Editorials, *Cigarette Taxes for Terrorist*, WASH. TIMES, Feb. 10, 2003, at A22. Al-Qaeda is the only other terrorist group to have killed more Americans than Hezbollah. *See id.*

²⁰ *See* Louis, *supra* note 15. “We weren’t looking for terrorist ties,” stated Jerry Bowerman, the Chief of Alcohol and Tobacco in the ATF in Washington. *See id.* The number of investigations has increased from 9 in 1997 to 140 for 2002 by the end of September. *See id.*

²¹ *See id.*

²² *See id.*

²³ *See id.*

²⁴ *See* Myron Levin & William C. Rempel, *Cigarette Smuggling Probed*, L.A. TIMES, May 8, 2002.

²⁵ Louis, *supra* note 15.

²⁶ *Id.*

²⁷ *See id.*

reasonable steps to ensure that their products do not end up in the wrong place, even if sold through second or third parties.”²⁸

Legal responsibility for the tobacco companies includes criminal and civil responsibility. In 1998, a RJR Nabisco²⁹ subsidiary, Northern Brands, pleaded guilty to federal criminal charges.³⁰ The company was charged with smuggling cigarettes from upstate New York across the border to Canada, evading Canadian tobacco taxes.³¹ The company paid a fine of \$15 million.³² A Northern Brands sales executive also went to prison.³³ RJR Nabisco is also under criminal investigation for possible shipments of contraband cigarettes to Europe.³⁴

In civil court, the lawsuit filed by the EC against RJR Nabisco in October 2002 replaces a similar lawsuit dismissed in part without prejudice by a judge in the same court in February of that year.³⁵ The case was filed against RJR and Phillip Morris, Inc.³⁶ The EC had sought to

²⁸ *Id.* Labeling is a suggested way of controlling smuggling and well as chain-of-custody record-keeping initiatives. *See id.*

²⁹ As mentioned *supra* note 1, RJR is itself a subsidiary of parent company RJR Nabisco. *See* Complaint, *supra* note 1, at 6.

³⁰ *See* Levin & Rempel, *supra* note 24.

³¹ *See id.* The cigarettes actually originated in Canada, were shipped into the United States under the auspices that they were then to be shipped to Russia and the Republic of Estonia, when in fact they were smuggled back over the border into Canada via an Indian Reservation that straddles the border. *See* CNN.com, *RJR Affiliate Pleads Guilty to Cigarette Smuggling*, Dec. 23, 1998, at <http://www.cnn.com/US/9812/23/rjr.smuggling> (last visited, Feb. 24, 2003).

³² *See* Levin & Rempel, *supra* note 24. RJR Nabisco has disclosed that it is under investigation by the Canadian Mounted Police for the actions of its subsidiary in that case. *See id.*

³³ *See id.*

³⁴ *See id.* Recently, RJR received a grand-jury subpoena for documents on international cigarette sales. *See id.*

³⁵ *See* Farah, *supra* note 2. The lawsuit was dismissed on February 19, 2002, when a judge ruled that U.S. courts do not have jurisdiction over foreign tax issues. *See* Tom Hays, *EU Accuses R.J. Reynolds of Smuggling Cigarettes*, LEGAL INTELLIGENCER, Nov. 4, 2002, at 4. Another lawsuit was also dismissed in which Canada, after doubling its cigarette taxes in 1991 was plagued by cigarette smuggling, impacting revenue. *See Separation of Powers – Foreign Affairs – Second Circuit Holds that the Rule Bars a Foreign Sovereign’s Civil RICO Suit for Tax Revenue*, 115 HARV. L. REV. 2333, 2333-34 (2002). In that case, the Second Circuit agreed with the District Court that it could not enforce Canada’s tax laws, basing its decision on the “revenue rule” that

recover billions in tax revenue lost on the smuggled cigarettes.³⁷ The Complaint alleged that the companies had been “actively involved in smuggling contraband cigarettes into the EC and numerous countries outside of the EC for many years.”³⁸ The judge explained that he did not have jurisdiction over the collection of foreign taxes – in other words, the smuggling claims, but suggested that he would have for the money laundering claims.³⁹ The EC filed an appeal with the Second Circuit – which subsequently affirmed the lower court’s application of the revenue rule – and filed suit against RJR for only the money laundering claims.⁴⁰

C. EUROPEAN COMMUNITY V. RJR

The EC filed the replacement suit in the same federal court, this time alleging money laundering under the Racketeer Influenced and Corrupt Organizations Act (RICO) to keep the case in Federal court.⁴¹ The Complaint alleges that the scheme begins with cocaine sales

prevents it from enforcing a court from enforcing the tax claims of another sovereign. *See id.* at 2333. The revenue rule popularly dates from the 1775. *See id.* at 2340, n3; *see also* Hiltzik & Weinstein, *supra* note 7. Another such case dismissed for similar reasons was a lawsuit filed by Ecuador against Phillip Morris. *See Republic of Ecuador v. Phillip Morris Companies, Inc.*, 188 F. Supp. 2d 1359 (S.D. Fla. 2002).

³⁶ *See* Michelle Mauro, *The European Community v. RJR Nabisco, Inc.*, 150 F. Supp. 2d 456 (E.D.N.Y. 2001), 15 N.Y. INT’L L. REV. 141, 141 (2002).

³⁷ *See* Farah, *supra* note 2.

³⁸ *European Cmty. v. RJ Reynolds*, 150 F. Supp. 2d 456, 462 (E.D.N.Y. 2001).

³⁹ *See* Farah, *supra* note 2; Hays, *supra* note 35, at 4. Presiding was U.S. District Judge Nicholas Garaufis. *See id.* *See also* Press Release, European Commission, Commission Files Civil Money Laundering Action Against R.J. Reynolds (Oct. 31, 2002), *available at* <http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/02/1592&format=HTML&aged=0&language=EN&guiLanguage=en>.

⁴⁰ Levin & Rempel, *supra* note 24; *see also* Press Release, European Commission, *supra* note 39. The Second Circuit affirmed the district court’s decision on January 14, 2004, addressing the October 31, 2002, suit only in dicta: “[the EC] are free to replead [the money laundering] claims in a separate action, we do not review the court’s determination as to the nature of the claims and plaintiffs’ allegations of causation.” *European Community v. RJ Reynolds*, 355 F.3d 123, 139 n.10 (2d Cir., 2004).

⁴¹ *See* Complaint, *supra* note 1. RICO, both a criminal and civil statute, “was passed as part of a major crime-fighting bill to protect the public from ‘parties who conduct organizations affecting interstate commerce through a pattern of criminal activity.’” Pamela H. Bucy, *Private Justice*, 76

throughout the EC and the United States, the proceeds of which needed to be laundered in order to be useable by the narcotics traffickers.⁴² This money laundering is accomplished through operations in Columbia, Panama, Switzerland, and other places.⁴³ The Complaint also alleges similar operations administered by Russian organized crime, supplying heroin produced in Middle East countries, primarily Afghanistan.⁴⁴ All operations allegedly “ultimately result in the proceeds . . . being deposited into the coffers of the RJR Defendants.”⁴⁵ All this is done to facilitate the acquisition of American dollars, which is the currency of choice in many markets.⁴⁶ The EC seeks to enjoin RJR from selling cigarettes in question into offshore corporations, offshore banks, or any other person who cannot fully account for the source of funds with which cigarettes are brought and also to create protocols by which such cigarettes can be tracked, and finally to produce all profits gained as compensation.⁴⁷

SO. CAL. L. REV. 1, 19 (2002) (quoting 115 CONG. REC. 9568 (1969) (remarks of Sen. McClellan). There are four types of conduct prohibited by RICO: "(1) using or investing income derived from a pattern of racketeering activity in an enterprise; (2) acquiring or maintaining control of an enterprise through a pattern of racketeering activity, (3) conducting the affairs of the enterprise through a pattern of racketeering activity; and (4) conspiring to do any of the above." *Id.* at 21 (quoting the RICO statute, 18 U.S.C. § 1962(a)-(d)). The Complaint alleges violation of each type of conduct. *See* Complaint, *supra* note 1, at 126. The EC may have an uphill struggle however, because a survey completed by Bucy of federal appellate cases between 1999 and 2001 indicates that civil RICO plaintiffs have "a dismal rate of success." Bucy, *supra* at 22. This is evidenced by 70% of those cases being dismissed early on in the case and an ultimate win rate of only 2%. *See id.* (3 cases obtaining judgments at trial that have been upheld on appeal).

⁴² *See id.* at 12. In fact, customs officials estimate that illegal drug sales in the United States alone generate an estimated fifty-seven billion dollars in annual revenues, primarily in cash. *See id.* at 14. The resulting funds are often in the form of Euros, which are then exchanged for preferred currencies to purchase American cigarettes from American companies and their designated agents. *See id.* at 12-18.

⁴³ *See id.* at 12.

⁴⁴ *See id.* The complaint also directly implicates Middle Eastern crime syndicates and terrorist groups based in the Middle East, in the heroin scheme. *See id.*

⁴⁵ *Id.*

⁴⁶ *See id.* at 13-14.

⁴⁷ *See* Complaint, *supra* note 1, at 98-102.

According to the Complaint, RJR has been aware of organized crime's involvement in the distribution of its products since at least the 1970s.⁴⁸ A meeting took place at that time that was attended by the general counsel of RJR in which published reports of the role of organized crime was discussed.⁴⁹ Instead of formulating a plan to address or investigate the role of organized crime, the companies "agreed to formulate a joint plan of action to protect the industry from scrutiny of the U.S. Congress."⁵⁰ In addition to this notice, RJR funded a study to investigate and analyze illegal activity involving cigarettes in the United States.⁵¹ The report indicated that Columbian cocaine barons were still using cigarettes to "patriate" cocaine profits within the United States.⁵² Moreover, various RJR distributors had their bank accounts frozen by the United States because funds credited to the accounts represented laundered drug money.⁵³

The Complaint further alleges that the company knew of its existence and covered it up; actively encouraged it, establishing protocols for "layered transactions" allowing payments through multiple intermediaries; generated false or misleading invoices and shipping documents; approved criminal customers on an expedited basis without any formalities; and provided for documentation of shipping to one port, while actually shipping that cargo to another undocumented port for illegal sale.⁵⁴ Put another way, RJR had direction and control over the entire money-laundering scheme.⁵⁵

⁴⁸ *See id.* at 18.

⁴⁹ *See id.* at 19. Additionally, ALL of the large tobacco companies were present at the meeting. *See id.*

⁵⁰ *Id.*

⁵¹ *See id.* at 44.

⁵² *See id.* at 44-45.

⁵³ *See id.*

⁵⁴ *See id.* at 21-22.

⁵⁵ *See id.* at 26.

D. RJR'S METHODS OF MONEY LAUNDERING

The Complaint alleges three main ways in which the money groups used to purchase cigarettes were laundered by RJR, each accomplished with a trail of false paperwork and other methods that RJR allegedly used to cover up sales to organized crime, Iraq, and terrorist groups.

1. Cash

Often at the beginning of cigarette smuggling and money laundering, it is alleged that employees of RJR would meet with known money launderers, who would give them large amounts of cash in return for cigarettes.⁵⁶ At the least, the employees would be there when the transaction took place.⁵⁷ “[I]t was virtually a monthly routine that employees of RJR . . . would travel to Columbia by way of Venezuela.”⁵⁸ They would enter Columbia illegally, bribing guards on the border to not stamp their passports, and then travel by car to various locations where they would meet face to face with money launderers.⁵⁹ At the meetings, the employees would receive American dollars, Venezuelan bolivars, third-party checks, or cashiers checks.⁶⁰ They would smuggle the money back into Venezuela, again bribing the border guards, and wire the money into bank accounts of RJR in the United States.⁶¹

2. Brady Bonds

Brady Bonds were used to avoid the former transportation of bulk cash.⁶² Brady Bonds were created in association with the IMF or World Bank as part of an effort to restructure

⁵⁶ *See id.* at 54.

⁵⁷ *See id.*

⁵⁸ *Id.*

⁵⁹ *See id.*

⁶⁰ *See id.*

⁶¹ *See id.* at 55.

⁶² *See id.*

outstanding sovereign loans into liquid debt instruments.⁶³ “Brady Bonds were coupon-bearing bonds for which the principal and interest were collateralized by United States Treasury zero-coupon bonds and other high-grade instruments.”⁶⁴ Creditor banks exchanged their own sovereign bonds for Brady Bonds, using them as means in which debtor governments could have debts reduced.⁶⁵ Brady Bonds were used to restructure the debt in a number of countries, including Venezuela.⁶⁶ RJR used the cash obtained in Columbia and subsequently smuggled into Venezuela to purchase Brady Bonds instead of depositing the cash, via wire transfer, into U.S. bank accounts.⁶⁷ Once purchased, the Bonds would be transferred to an exchange in New York where they would be sold for dollars and delivered into RJR bank accounts in New York.⁶⁸

3. Secret Swiss Accounts

RJR allegedly moved its international operations to Switzerland in the late 1990s after it received notice that many of its distributors had been laundering narcotics profits.⁶⁹ Profits from criminal customers paying for cigarette shipments were by secret Swiss bank accounts, which would conceal the activities.⁷⁰

4. False Paperwork

In order to cover up the sale of cigarettes and cigarette smuggling to organized crime groups, RJR had to create a trail of false paperwork.⁷¹ Many countries require costly surety bonds to transport cigarettes through a country, RJR undervalued the value of the cigarettes in

⁶³ *See id.* at 55-56.

⁶⁴ Complaint, *supra* note 1, at 56.

⁶⁵ *See id.*

⁶⁶ *See id.*

⁶⁷ *See id.*

⁶⁸ *See id.*

⁶⁹ *See* Complaint, *supra* note 1, at 57.

⁷⁰ *See id.*

⁷¹ *See id.* at 76.

order to pay reduced surety and thereby reducing the cost of sale and delivery.⁷² Additionally, RJR filed false and fraudulent documents with the Spanish authorities to conceal the final destination of cigarettes to Iraq, and also to lower the cost and raise profits.⁷³ This pattern of behavior was typical in all smuggling operations and was indicative of a cigarette smuggling/criminal customer.⁷⁴

E. RJR, ORGANIZED CRIME, AND TERRORIST GROUPS

There are numerous allegations against RJR in the Complaint; representative allegations for RJR's link to organized crime, terrorism, and Iraq are now further examined.⁷⁵

1. RJR and Organized Crime

a. *RJR and Italian Organized Crime*

The first type of money laundering activity alleged against RJR is the sale of large volumes of cigarettes to Gerardo Cuomo.⁷⁶ Cuomo is an Italian citizen residing in Switzerland currently under indictment by the Italian government for money laundering and other criminal activities.⁷⁷ Cuomo and RJR allegedly created a "complex web of companies located in various

⁷² See *id.* at 77.

⁷³ See *id.*

⁷⁴ See generally *id.*

⁷⁵ The Complaint also details RJR's connection to money laundering in other European countries including Ireland, Cyprus, Belgium, the United Kingdom, Spain, France, and Portugal, as well as several non-European countries such as the United States, Senegal, Angola, Panama, the Caribbean, and Central America. See generally Complaint, *supra* note 1. "Organized criminals, who have traditionally been involved in smuggling illicit narcotics, are suddenly realizing that tobacco is a good thing to get into, as you make just as much money, and its perhaps not quite as anti-social." What You Need to Know About, *A Smoking Gun: Cigarette Smuggling is a Billion-Dollar Industry with Links to Organized Crime and Terrorism*, at <http://organizedcrime.about.com/library/weekly/aa090402a.htm> (last visited Feb. 24, 2003).

⁷⁶ See Complaint, *supra* note 1, at 28.

⁷⁷ See *id.* The European Anti-Fraud Office reports that at least one well-known Sicilian criminal was arrested in a March 2002 round up of cigarette smugglers as a result of an investigation by

bank secrecy havens to disguise the true nature and origin of the proceeds” which included the proceeds of arms and drug trafficking and other Italian mafia-type organized crime activities.⁷⁸ The money received would be exported from Italy in large cash amounts and received by money brokers located in Switzerland.⁷⁹ One of the companies created would then distribute the RJR cigarettes to itself and at the same time to arms and drug trafficking organizations, and then the money broker would credit the company for the entire amount.⁸⁰ The entire process was conducted using the illegal funds.⁸¹ The Complaint identifies at least eight companies involved in this and in other similar schemes connected to Cuomo.⁸²

Alfred Bossert also allegedly ran one of the primary organizations in Switzerland allegedly involved in the money-laundering activities connected to RJR.⁸³ The company received large cash payments that stemmed from a variety of criminal activity in Italy, via couriers, that would be counted and credited to the person or entity to which the funds belonged.⁸⁴ The organization would then change the various currencies into U.S. dollars and hold the money in various accounts, sending a statement each month to the owners.⁸⁵ The company would then follow the instructions of the owners and use the money to buy cigarettes

the Belgian Police’s Anti-mafia Prosecution unit. *See* Press Release, European Anti-Fraud Office, OLAF’s Continuing Assistance in the Fight Against Cigarette Smuggling (Feb. 13, 2003), *available at* http://europa.eu.int/comm/anti_fraud/press_room/press_releases/2003/2003_05_en.html.

⁷⁸ *See* Complaint, *supra* note 1, at 28.

⁷⁹ *See id.* at 28-29. A money broker is an intermediary, also known as a “cut out” who, in this case, uses European contacts to place illegal money into the European banking system, thereby legitimizing it. *See id.* at 15-16.

⁸⁰ *See id.* at 29.

⁸¹ *See id.*

⁸² *See id.* at 30-31.

⁸³ *See* Complaint, *supra* note 1, at 31.

⁸⁴ *See id.* at 31, 35.

⁸⁵ *See id.* at 32.

directly from RJR.⁸⁶ RJR allegedly knew that their primary customers were not the company, but the individual Italian mafia families.⁸⁷ The fact that RJR knew this, the Complaint alleges, shows that they had knowledge that the Swiss company was acting as a cut out, a clear sign of money laundering.⁸⁸ Moreover, employees of RJR inspected the warehouses and facilities used by the criminal groups to ensure the freshness of their products just as they would for any customer.⁸⁹

b. RJR and Russian Organized Crime

RJR was allegedly involved in the Bank of New York money laundering scheme highlighted in the 1990s.⁹⁰ The scheme itself involved both legitimate and fabricated entities opening correspondence accounts through which Russian organized crime passed millions of dollars.⁹¹ Three companies who had accounts with the Bank of New York were Sinex, Benex, and BECS.⁹² All companies were a front for Russian organized crime, and RJR sold cigarettes to all three.⁹³ Specifically, Sinex transferred dirty money to the Depositaro Kliringovy Bank via its accounts at the Bank of New York.⁹⁴ The money was then sent to accounts at the Credit Suisse First Boston in Geneva and in turn paid out to RJR.⁹⁵ Total payments evidenced in the

⁸⁶ *See id.*

⁸⁷ *See id.* 33.

⁸⁸ *See Complaint, supra* note 1, at 33.

⁸⁹ *See id.* at 35.

⁹⁰ *See id.* at 36.

⁹¹ *See id.* The total amount of money believed laundered in the scheme was estimated at approximately \$7 billion. *See* 147 CONG. REC. S1618-01 (2001) (statement of Sen. Kerry). *See also* Business & Financial Desk, *Regulators End Scrutiny of Bank*, NEW YORK TIMES, June 11, 2002, at C6.

⁹² *See Complaint, supra* note 1, at 36-39.

⁹³ *See id.* Sinex was administered by Aleksey Volkov who is currently incarcerated as a result of his money-laundering activities. *See id.* at 37. Moreover, other employees of both Sinex and the Bank of New York pled guilty to money laundering charges. *See id.* at 39.

⁹⁴ *See id.* at 37.

⁹⁵ *See id.*

Complaint show RJR receiving over four million dollars in these payments in a three-month period alone.⁹⁶ A similar operation was conducted through Benex and BECS in complicity with New York Bank's vice president of its Eastern European division, Peter Berlin.⁹⁷

2. RJR, Iraq, and Terrorist Groups

a. *RJR and Iraq*

RJR is alleged to have sold cigarettes to Iraq throughout the 1980s, before Desert Storm, and afterwards in violation of the trade embargo.⁹⁸ These transactions “financed both the Iraqi regime and terrorist groups.”⁹⁹ Separately from the lawsuit filed by the EC, federal investigators have now launched a criminal investigation into the transactions that involves at least six customs inspectors domestically and internationally.¹⁰⁰ The trade sanctions bar both direct shipments and shipments through middlemen or third countries.¹⁰¹ Penalties for criminal violations of the sanctions include a 12-year prison sentence and \$1 million fine.¹⁰²

An individual called Issa Audeh, a previous employee of RJR and Regional Director of the Middle East/Near East Region, was allegedly the key to the start up of operations in Iraq.¹⁰³

⁹⁶ See *id.* at 37-38. The total amount laundered by Sinex was seven billion dollars between 1996 and 1999. See *id.* at 38.

⁹⁷ See Complaint, *supra* note 1, at 39. Peter Berlin and his wife Lucy Edwards both also pled guilty to charges of money laundering. See *id.* Berlin and Edwards admitted that they received \$1.8 million in commission for their participation in the scheme. See *In Re* Bank of New York, 173 F. Supp. 2d 193, 196 (S.D.N.Y. 2001).

⁹⁸ See Complaint, *supra* note 1, at 59. Imperial Tobacco, a European tobacco company, is also alleged to have taken part in a cigarette smuggling scheme in which cigarettes were smuggled into Iraq. See Jon Ashworth, *Leader of the Pack Singes its Fingers*, TIMES (LONDON), Jan. 27, 2003. Imperial Tobacco is also accused by German authorities of illegally exporting cigarettes into Iraq. See *id.* The tobacco company was raided by 850 police and custom's officers, and reports say that criminal charges are pending. See *id.*

⁹⁹ Louis, *supra* note 15.

¹⁰⁰ See Levin & Rempel, *supra* note 24.

¹⁰¹ See *id.*

¹⁰² See *id.*

¹⁰³ See Complaint, *supra* note 1, at 59.

Audeh set up numerous companies in the Middle East whose job it was to sell cigarettes to countries throughout the area, including Iraq.¹⁰⁴ RJR allegedly controlled these companies, including setting up an agreement with Abdel Hamid Damirji for him to sell RJR cigarettes in Iraq.¹⁰⁵ Damirji transferred his operations to Jordan to supply Iraq with cigarettes from Amman after Iraq invaded Kuwait in the fall of 1990.¹⁰⁶ Damirji would purchase the cigarettes from Audeh himself or through Audeh's companies and then sell them on to Iraq.¹⁰⁷ On several occasions, when Damirji needed more cigarettes than he could get through the companies, he would buy them directly from RJR.¹⁰⁸

Between March 1991 and September 1992, the Complaint alleges that Damirji purchased around six hundred thousand master cases of cigarettes either directly from RJR or through Audeh or Audeh's companies.¹⁰⁹ In October 1992, Audeh and RJR agreed that Damirji would have the exclusive rights to distribute RJR products in Iraq.¹¹⁰ Pursuant to that agreement, a number of buildings and warehouses were erected in Turkey to facilitate sales to Iraq.¹¹¹ Between 1993 and 1995 hundreds of millions of dollars of RJR cigarettes were purchased by

¹⁰⁴ *See id.*

¹⁰⁵ *See id.*

¹⁰⁶ *See id.*

¹⁰⁷ *See id.* at 60. Damirji was so successful at distributing the cigarettes, he was invited for a goodwill trip to North Carolina where photographs show him being entertained by RJR International executives and touring RJR's offices. *See 60 Minutes II: Made in the USA* (CBS Television broadcast, Feb. 12, 2003). Damirji is himself suing RJR International seeking for compensation for lost business when RJR International's operations were transferred to Japan Tobacco. *See id.* The lawsuit is a valid one – it never was illegal for an Iraqi businessman to import cigarettes into Iraq from Turkey. *See id.* Japan Tobacco has itself been the target of an earlier EC lawsuit filed in the Eastern District of New York that was dismissed pursuant to the revenue rule and that was part of the appeal discussed *supra*, note 40. *See European Cmty. v. Japan Tobacco, Inc.*, 186 F. Supp. 2d 231 (2002).

¹⁰⁸ *See Complaint, supra* note 1, at 60.

¹⁰⁹ *See id.* There are 10,000 cigarettes in a master case. *See id.*

¹¹⁰ *See id.*

¹¹¹ *See id.* at 60-61.

Damirji and sold and distributed in Iraq.¹¹² Between October 1996 and December 1996, forty-four, forty-foot containers of RJR Winston cigarettes were delivered to Damirji in addition to fifty-seven containers of RJR Aspen cigarettes.¹¹³ Each container typically held approximately ten million cigarettes.¹¹⁴ This activity continued through at least 2002 via various companies and people, usually with at least some connection to Damirji.¹¹⁵ The money from these sales, illegal under the U.S. Iraq Sanctions Act of 1990, updated in 1994 and 1998, was subsequently laundered.¹¹⁶

Although the cigarettes were not themselves smuggled into Iraq, RJR allegedly used false invoices and shipping ports to avoid detection that the sales were actually destined for Iraq.¹¹⁷ On at least one occasion, employees of RJR are alleged to have visited the Turkish port where the cigarettes were shipped from Turkey to Iraq.¹¹⁸ Additionally, a company was hired by RJR to track the movements of the cigarettes through Turkey to ensure that they were properly handled.¹¹⁹ There is also evidence, according to the EC, that RJR created two brands to be sold throughout the Middle East, including Iraq and distributed through a company with a main

¹¹² *See id.* at 61.

¹¹³ *See* Complaint, *supra* note 1, at 61.

¹¹⁴ *See id.*

¹¹⁵ *See id.* at 62-70.

¹¹⁶ *See* Complaint, *supra* note 1, at 67.

¹¹⁷ *See id.* The cigarettes entered Iraq legally, although at a grossly understated price, but all were declared and certified as being imported from Turkey. *See id.* The cigarettes were usually marked for export to Russia but diverted to Iraq. *See* Farah, *supra* note 2. Before reaching Turkey, the majority of the cigarettes were exported from Puerto Rico via Spain, Cypress and Lebanon. *See 60 Minutes II: Made in the USA* (CBS Television broadcast, Feb. 12, 2003).

¹¹⁸ *See* Complaint, *supra* note 1, at 67. An affidavit filed by a Turkish security consultant to support the allegations against RJR reveals that the consultant learned by questioning people working and living in the area that every day trucks of the cigarettes were shipped into Iraq. *See* Levin & Rempel, *supra* note 24.

¹¹⁹ *See* Complaint, *supra* note 1, at 67.

address that matches that of the RJR corporate offices in Winston-Salem, North Carolina.¹²⁰ The cigarettes themselves, named Easton and Barton, are labeled as being made by RJR and are often accompanied by marketing materials for the brands that RJR claim as its own.¹²¹

b. RJR and the PKK

“Substantial portions of the cigarettes sold into Iraq were sold to or for the benefit of various terrorist groups, including the PKK, located in Northern Iraq.”¹²² The PKK, or the Kurdistan Workers’ Party, was labeled a terrorist group by the then Secretary of State, Madeline Albright in 1999.¹²³ It was also outlawed in Turkey as a separatist group.¹²⁴ This is consistent with its activities that include targeting the Turkish government, diplomats, and commercial activities in dozens of West European cities.¹²⁵ In addition, the group bombed tourist sites and hotels and kidnapped foreign tourists in Turkey, and has regularly sold heroin and weapons and taken part in other criminal activities to finance their operations.¹²⁶ The group seeks to create an independent Kurdish state in Southeastern Turkey, Iraq, Iran, and Syria and has been trying to do so for the last three decades.¹²⁷

Saddam Hussein and his family allowed the PKK to import the RJR cigarettes, charging a fee for every container of cigarettes allowed to pass through the region, even though they were often at odds with the Kurdish groups in Northern Iraq.¹²⁸ One of Saddam Hussein’s sons, Uday Hussein, is alleged to have personally profited from the illegal import of cigarettes into Iraq, and

¹²⁰ *See id.* at 68.

¹²¹ *See id.* at 68-69.

¹²² *Id.* at 70. The allegations were supported with an affidavit that was filed “under seal to protect an informant.” Levin & Rempel, *supra* note 24.

¹²³ *See* Complaint, *supra* note 1, at 70.

¹²⁴ *See* Hays, *supra* note 35.

¹²⁵ *See* Complaint, *supra* note 1, at 70-71.

¹²⁶ *See id.* at 71.

¹²⁷ *See id.*; Hays, *supra* note 35.

in fact oversaw the operation.¹²⁹ In fact, “Uday [was] the single largest beneficiary of the sanctions, since he controll[ed] many facets of smuggling in Iraq.”¹³⁰

F. CONCLUSION

RJR has called the lawsuit filed against it by the EC “completely absurd.”¹³¹ RJR claim to operate their business legally and that “[t]he plaintiff’s allegations that [RJR] w[as] either involved in or aware of money laundering, conspiracy or any other illegal activities are unfounded.”¹³² “[A]t the end of the day, [the Complaint is] still 150 pages of fiction.”¹³³ However, the allegations contained in the Complaint seem too detailed to be completely without merit, and the EC too determined to continuously try to litigate the claims for them to be frivolous. There seems to be evidence of direct links between RJR and cigarette smuggling, which, if they are allowed to go unchecked and indeed profited from, they should be held accountable. Moreover, even if through ignorance, the actions of RJR in failing to notice what appear to be signs of smuggling, allowing terrorist groups to bank money and finance their activities with tobacco products, is inexcusable.

In order to function as a terrorist group and in order to carry out terrorist activities, such a group needs financing. Where terrorists obtain financing in such an easy manner, with a legal product such as with cigarettes, and cigarette smuggling with the aid of the tobacco companies

¹²⁸ See Complaint, *supra* note 1, at 70.

¹²⁹ See *id.* at 70.

¹³⁰ See Editorial, *Weapons or Smokes?* RICHMOND TIMES-DISPATCH, Nov. 18, 2002, at A8. A former personal assistant to Uday Hussein, Al-Janabi has said that the scam netted millions of dollars for the Hussein regime. See *id.*

¹³¹ See Louis, *supra* note 15.

¹³² Farah, *supra* note 2.

¹³³ *60 Minutes II: Made in the USA* (CBS Television broadcast, Feb. 12, 2003) (quoting Tommy Payne, RJR's vice president of external relations).

themselves, then the tobacco companies should be held accountable.¹³⁴ Although the latest lawsuit by the EC cannot address criminal liability, such may become an issue in the future if culpability is proven. Cigarette smuggling is an easy source of funding for terrorists, and it should be relatively easy for tobacco companies working with law enforcement to contain. Eliminating an easy source of funds for terrorists and organized crime in turn would eradicate the ability of the smuggler to obtain resources, and would force the use of illegal products that would be harder to conceal. With the assistance of the tobacco companies instead of blindness, one more channel of terrorist funding would be extinguished.

¹³⁴ Smuggling has, after all, been recognized as one of the major means of financing terrorism. *See Memorandum of Law, European Cmty. v. RJ Reynolds, et al, Case No. 01-Civ-5188 (NGG) (VVP) (E.D.N.Y. Feb. 1, 2002), at 3.*