

IN THE PULASKI COUNTY CHANCERY COURT

\_\_\_\_\_ DIVISION

STATE OF ARKANSAS

PLAINTIFF

vs.

Case No. IJ 97-2982

THE AMERICAN TOBACCO COMPANY;  
PHILIP MORRIS INCORPORATED;  
R.J. REYNOLDS TOBACCO COMPANY;  
BROWN & WILLIAMSON TOBACCO CORPORATION;  
B.A.T. INDUSTRIES, P.L.C.; LORILLARD TOBACCO  
COMPANY; LIGGETT GROUP, INC.; LIGGETT & MYERS, INC.;  
UNITED STATES TOBACCO COMPANY;  
HILL & KNOWLTON, INC.; THE COUNCIL FOR  
TOBACCO RESEARCH -- U.S.A., INC.; and  
THE TOBACCO INSTITUTE, INC.

DEFENDANTS

**COMPLAINT**

Comes now the State of Arkansas, by its Attorney General, Winston Bryant, and for its

Complaint alleges as follows:

**NATURE OF THE ACTION**

1. On January 4, 1954, the defendant tobacco manufacturers promised the Arkansas public that they would lead the effort to discover and disclose the truth about tobacco use and health. Despite that public promise, the defendants and their agents have, in fact, systematically suppressed and concealed material information and purposefully waged an aggressive and misleading campaign of misinformation and disinformation about the health consequences of tobacco use and the addictiveness of nicotine in order to sell their products.

The defendants have taken these actions even though they have known for years, based on their own secret research, that their products eventually injure and/or kill the consumer when used as defendants intended.

2. The defendants have known for decades, on the basis of their own secret and suppressed research, that nicotine is an addictive drug. At the same time, certain defendants developed sophisticated techniques to manipulate the content and bio-availability of nicotine in their products so as to create and sustain addiction in tobacco users. In spite of their knowledge and research, the defendants have denied, and continue to deny publicly, that nicotine is addictive and that they manipulate the nicotine content of their products. As late as April 1994, each of the Chief Executive Officers of the defendant cigarette manufacturers testified under oath before a Congressional Subcommittee that nicotine is not addictive. This testimony flies in the face of the companies' internal documents and research to the contrary

3. The defendants engaged in this course of conduct despite their knowledge that the vast majority of new smokers are minors. For example, of daily cigarette smokers, eighty-two percent (82%) start before the age of eighteen and every day more than 3,000 American teenagers begin smoking cigarettes. These statistics are even more troubling in Arkansas where 13.5% of Arkansas children age 15 or younger smoke cigarettes every single day.

4. Every single year more than 4,500 Arkansas citizens die from illnesses caused by smoking the defendant cigarette manufacturers' products. The State of Arkansas must spend hundreds of millions of dollars to purchase or provide medical and related services for its citizens suffering from diseases caused by use of defendants' product. Every single year, the defendants reap huge profits from the sale of cigarettes in our state and spend millions of dollars on

advertising campaigns that are specifically designed to addict Arkansas' youth to their products. In 1995 alone, defendants spent over six billion dollars in advertising, most of it aimed at hooking and addicting minors, the replacement market for older diseased and dying consumers of their products.

5. This is an equitable action. The State of Arkansas seeks injunctive relief and restitution for defendants' conduct alleged in this Complaint. Among other things, the State seeks a permanent injunction requiring the defendants to disclose their research on tobacco use, addiction and health; to fund a remedial public education campaign on the health consequences of tobacco use; and to fund cessation programs for nicotine-dependent tobacco users. The State also seeks an injunction to cease defendants' target advertising of Arkansas youth and to restore moneys spent by the State of Arkansas as a result of the defendants' wrongful actions. The State also seeks to enforce its other rights and remedies, including profit disgorgement under the Arkansas Deceptive Trade Practices Act.

#### THE PARTIES, JURISDICTION, AND VENUE

6. The Attorney General of the State of Arkansas, Winston Bryant, brings this action on behalf of the State of Arkansas pursuant to his authority under, inter alia, Arkansas common law, Arkansas statutes and the Arkansas Constitution. The Attorney General brings this action to obtain injunctive and equitable relief, restitution, profit disgorgement and damages. The Attorney General also seeks restitution for costs borne by the State and its taxpayers, including but not limited to medical expenditures for:

- a. Medical assistance provided under Arkansas' Medicaid program;
- b. State employee insurance program; and,

c. State funded hospital and research programs.

7. Defendant American Tobacco Company (“ATC”) is a Delaware corporation whose principal place of business is or was located at 6 Stamford Forum, Stamford, Connecticut 06904. The ATC was a subsidiary or division of American Brands, Inc. as of December, 1994. At times pertinent to the Complaint, defendant ATC designed, tested, manufactured, marketed and sold cigarettes, including the brands Lucky Strike, Pal Mall, Tareyton, Malibu, American, Montclair, Newport, Misty, Iceberg, Silk Cut, Silva Thins and Carlton, for use in the State of Arkansas or materially participated, conspired, assisted, encouraged, and/or otherwise aided and abetted one or more of the other defendants in doing so. On information and belief, American Tobacco Company was purchased by Brown & Williamson, who has succeeded the liabilities of ATC by operation of law or as a matter of fact.

8. Defendant B.A.T. Industries P.L.C. (“B.A.T. Industries”) is a British corporation with its principal place of business at Windsor House, 50 Victoria St., London, England, SW1H 0NL. Through a succession of intermediary corporations and holding companies, B.A.T. Industries is the sole shareholder of Brown & Williamson. Through Brown & Williamson, B.A.T. Industries has placed cigarettes into the stream of commerce with the expectation that substantial sales of cigarettes would be made in the United States and in Arkansas. B.A.T. Industries has also conducted, or through its agents, subsidiaries, associated companies, and/or co-conspirators, conducted significant research for Brown & Williamson on the topics of smoking, disease and addiction. Brown & Williamson also sent to England research conducted in the United States on the topics of smoking, disease and addiction in order to remove sensitive and incriminating documents from United States jurisdiction, and such

documents were subject to B.A.T Industries' control. B.A.T. Industries is a participant in the conspiracy described herein and has caused harm in Arkansas or materially participated, conspired, assisted, encouraged, and/or otherwise aided and abetted one or more of the other defendants in doing so.

9. Defendant Brown & Williamson Tobacco Corporation ("Brown & Williamson") is a Delaware corporation with its principal place of business at 1500 Brown & Williamson Tower, Louisville, Kentucky, 40202. The ATC was purchased by Brown & Williamson and merged into Brown & Williamson and Brown & Williamson has succeeded to the liabilities of ATC either by operation of law, or as a matter of fact. At times pertinent to the Complaint, defendant Brown & Williamson designed, tested, manufactured, marketed and sold cigarettes, including brands Kool, Belair, Barclay, Capri, Raleigh and Viceroy, for use in the State of Arkansas or materially participated, conspired, assisted, encouraged, and/or otherwise aided and abetted one or more of the other defendants in doing so.

10. Defendant The Council for Tobacco Research - U.S.A., Inc. ("CTR"), successor in interest to the Tobacco Industry Research Committee ("TIRC"), is a nonprofit corporation organized under the laws of the State of New York with its principal place of business at 900 3<sup>rd</sup> Avenue, New York, New York, 10022. At all times relevant hereto, CTR and TIRC operated as public relations and lobbying arms of the tobacco companies and as their agents and employees. They also acted as facilitating agencies in furtherance of defendants' combination and conspiracy as described in this complaint. In doing so, CTR and TIRC acted within the course and scope of their agency and employment, and acted with the consent,

permission, and authorization of the tobacco companies. CTR and TIRC have been involved continuously in the conspiracy described and their actions have caused harm in Arkansas.

11. Defendant Hill & Knowlton, Inc. (“Hill & Knowlton”) is a New Jersey corporation with its principal place of business located at 420 Washington Avenue, New York, New York. Hill & Knowlton has, in its capacity as the advertising and public relations agency for The Tobacco Institute, CTR and several members of the tobacco industry, aided the defendants in creating and disseminating false information and covering up the truth concerning the health effects of tobacco product use, the addictiveness of tobacco, and the true nature of the activities of CTR and its relationship to the industry.

12. Defendant Liggett Group, Inc. (“Liggett”) is a Delaware corporation with its principal place of business at 700 West Main Street, Durham, North Carolina 27702. At times pertinent to the Complaint, defendant Liggett Group, Inc., designed, tested, manufactured, marketed and sold cigarettes, including brands Chesterfield, Decade, L&M, Pyramid, El Dorado, Eve, Stride, Generic and Lark, for use in the State of Arkansas or materially conspired, assisted, encouraged, and/or otherwise aided and abetted one or more of the other defendants in doing so.

13. Liggett & Myers, Inc. (hereinafter "Liggett & Myers") is a Delaware corporation whose principal place of business is located at 700 West Main Street, Durham, North Carolina 27701. Defendant Liggett & Myers is a wholly-owned subsidiary or division of defendant Liggett Group, Inc. At times pertinent to the complaint, Liggett & Myers designed, tested, manufactured, marketed and sold cigarettes for use in the State of Arkansas and/or materially participated, conspired, assisted, encouraged and otherwise aided and abetted one or more of the other defendants in doing so.

14. Defendant Lorillard Tobacco Company (“Lorillard”) is a Delaware corporation with its principal place of business at 1 Park Avenue, New York, New York, 10016. At times pertinent to the Complaint, defendant Lorillard Tobacco Company designed, tested, manufactured, marketed and sold cigarettes, including brands Old Gold, Kent, Triumph, Satin, Max, Spring, Newport and True, for use in the State of Arkansas or materially conspired, assisted, encouraged, and/or otherwise aided and abetted one or more of the other defendants in doing so.

15. Defendant Philip Morris Incorporated (“Philip Morris”) is a Virginia corporation with its principal place of business at 120 Park Avenue, New York, New York, 10016. At times pertinent to the Complaint, Philip Morris designed, tested, manufactured, marketed and sold cigarettes, including brands Philip Morris, Merit, Cambridge, Marlboro, Benson & Hedges, Virginia Slims, Alpine and Players, for use in the State of Arkansas or materially participated, conspired, assisted, encouraged, and/or otherwise aided and abetted one or more of the other defendants in doing so.

16. Defendant R.J. Reynolds Tobacco Company (“RJR”) is a New Jersey corporation with its principal place of business at North Main Street, Winston-Salem, North Carolina, 27102. At times pertinent to the Complaint, defendant RJR designed, tested, manufactured, marketed and sold cigarettes, including the brands Camel, Vantage, Magna, Now, Doral, Winston, Sterling, Salem and Red Kamel for use in the State of Arkansas or materially participated, conspired, assisted, encouraged, and/or otherwise aided and abetted one or more of the other defendants in doing so.

17. Defendant The Tobacco Institute, Inc. ("TI") is a nonprofit corporation organized under the laws of the State of New York with its principal place of business at 1875 I Street N.W., Suite 800, Washington, D.C., 20006. At all times relevant hereto, the Tobacco Institute operated as a public relations and lobbying arm of the tobacco companies and as their agent and employee. It also acted as a facilitating agency in furtherance of the combination and conspiracy of the defendants described in this complaint. In doing so, the Tobacco Institute acted within the course and scope of its agency and employment, and acted with the consent, permission, and authorization of the tobacco companies. The Tobacco Institute has been involved in the conspiracy described in this complaint and its actions have caused harm in Arkansas.

18. United States Tobacco Company (hereinafter "US Tobacco") is a Delaware corporation whose principal place of business is located at 100 West Putnam Avenue, Greenwich, Connecticut. At times pertinent to the Complaint, US Tobacco designed, tested, manufactured, marketed and sold cigarettes for use in the State of Arkansas and/or materially participated, conspired, assisted, encouraged and otherwise aided and abetted one or more of the defendants in doing so.

19. When in this complaint reference is made to the conduct, statement, representation, act or practice of any of the defendants, such allegation shall be assumed to mean the conduct, statement, representation, act or practice of each defendant acting individually or as part of a common scheme or plan among the defendants.

20. When in this complaint reference is made to the conduct, statement, representation, act or practice of any of the defendants, such allegation shall be assumed to mean

that the officers, agents, representatives or employees of said defendants did or authorized such conduct, statement, representation, act or practice while acting within the scope of their actual or apparent authority.

21. As used in this complaint, the term "defendant" includes all predecessor and successor entities to the named defendants.

22. All defendants did and continue to do business in the State of Arkansas; made contracts to be performed in whole or in part in the State; and/or manufactured, tested, sold, offered for sale, supplied, or placed in the stream of commerce, or in the course of business, materially participated with others in so doing, tobacco products; and performed such acts as were intended to, and did, result in the sale and distribution of cigarettes in the State, from which the defendants derived substantial revenue. All defendants also caused injury by acts or omissions in the State, and/or caused injury in the State by acts or omissions committed outside the State.

23. This Court has jurisdiction over the subject matter of this action pursuant to, inter alia, Ark. Code Ann. § 16-13-301, *et. seq.* and Art. VII, § 15 of the Arkansas Constitution. This Court has personal jurisdiction over all of the defendants pursuant to Ark. Code Ann. § 16-4-101 and other Arkansas statutes, the Arkansas Constitution, the Arkansas Rules of Civil Procedure, and the Arkansas Deceptive Trade Practices Act.

24. Venue is proper in Pulaski County Chancery Court pursuant to Ark. Code Ann. §§ 16-60-104, 16-58-102, and 16-60-101.

THE HEALTH CONSEQUENCES OF TOBACCO USE

25. The human tragedy of tobacco-related disease flowing from defendants' actions is practically beyond comprehension. Tobacco use is the leading cause of premature death in the United States. According to the Federal Centers for Disease Control and Prevention, each year cigarette smoking and other tobacco use kills more than 400,000 Americans, exceeding the combined yearly deaths caused by automobile accidents, AIDS, alcohol use, use of illegal drugs, homicide, suicide and fires. Tobacco-related illnesses account for one of every five deaths each year in the United States.

26. At least 43 chemicals in cigarette smoke have been determined to be carcinogenic. Cigarette smoking causes more than 85% of all lung cancer, which has now surpassed breast cancer as the primary cause of death from cancer among women. Smoking is also linked to cancers of the mouth, larynx, esophagus, stomach, pancreas, uterus, cervix, kidney and colon, among others. All told, tobacco use is responsible for at least 30% of all deaths from cancer.

27. Smoking is the cause of more than 80% of deaths from pulmonary diseases such as emphysema and bronchitis. These chronic obstructive lung diseases have a profound social impact because of the extended disability of their victims.

28. Cigarette smoking is one of three major independent causes of coronary heart disease. Smoking is also responsible for thousands of deaths from cardiovascular disease, including stroke, heart attack, peripheral vascular disease and aortic aneurysm. Smoking is also linked to a large number of other serious illnesses.

29. The health consequences of smoking among women are of special concern because of the deleterious effect on reproduction. Smoking reduces fertility, increases the rate of miscarriages and stillbirths, retards uterine fetal growth and results in lower birth weights in infants.

30. The nicotine in defendants' tobacco products is addictive. Nicotine is recognized as an addictive substance by such major medical organizations as the Office of the U.S. Surgeon General, the World Health Organization, the American Medical Association, the American Psychiatric Association, the American Psychological Association, the American Society of Addiction Medicine, and the Medical Research Council in the United Kingdom. All of these organizations acknowledge tobacco use as a form of drug dependence or addiction with severe adverse health consequences. Defendants' internal reports also recognize this fact although defendants continue to deny it publicly. According to a draft report of one of the defendants, similar organic chemicals include "quinine, cocaine, atropine and morphine. While each of these substances can be used to affect human psychology, nicotine has a particularly broad range of influence."

#### 1994 CONGRESSIONAL TESTIMONY

31. In 1994, the chief executives of the defendant cigarette manufacturers testified under oath before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, U.S. House of Representatives, chaired by Congressman Waxman ("Waxman Subcommittee"). These executives knowingly made material misrepresentations and/or omissions to the Subcommittee about smoking, health and addiction. In particular, each defendant manufacturer stated that nicotine is not addictive. These statements were made with the

knowledge that they would be communicated to Arkansas consumers with the intent that they be relied upon. The testimony before the Waxman Subcommittee included, *inter alia*, the following:

a. Andrew Tisch, then CEO of Lorillard, asserted that smoking does not cause cancer. "We have looked at the data and the data that we have been able to see has all been statistical data that has not convinced me that smoking causes death."

b. Philip Morris President and CEO William I. Campbell, said that:

i. "Philip Morris does not manipulate nor independently control the level of nicotine in our products."

ii. "Cigarette smoking is not addictive."

iii. "Philip Morris research does not establish that smoking is addictive."

c. RJR CEO James W. Johnston said that, "smoking is no more addictive than coffee, tea or Twinkies."

32. These representations were made despite a substantial body of evidence, including evidence developed by the defendants themselves dating from as early as 1962, which indicated that nicotine is not only addictive but is the reason people use and continue to use tobacco products.

33. The defendants continue to deny that nicotine is addictive and instead use various misleading euphemisms to describe the role of nicotine in tobacco use, such as "satisfaction," "impact," "strength," "rich aroma" and "pleasure." Nonetheless, there is widespread agreement in the medical and scientific communities that the primary, if not sole, function of nicotine is to provide a pharmacological effect on the user of tobacco that leads to addiction.

## NATURE OF THE DECEPTION

34. This action arises out of an ongoing deception by the leading tobacco manufacturers and their trade associations and other agents, which together control the tobacco industry in Arkansas.

35. At all relevant times, Philip Morris, RJR, Brown & Williamson, B.A.T. Industries, Lorillard, Liggett, US Tobacco and ATC (hereafter sometimes referred to collectively "the cigarette manufacturers") together control virtually 100% of the cigarette market in Arkansas and in the United States.

36. The tobacco industry is one of the most profitable industries in the United States. Industry profits are in the billions of dollars annually from domestic sales alone.

37. The highly profitable tobacco industry has facilitated the planning, implementation and funding of a decades-long conspiracy by the defendants and their trade associations relating to the issues of tobacco, health and addiction.

38. The tobacco manufacturers have pursued a conspiracy of deceit and misrepresentation against the public designed to protect and perpetuate tobacco sales. The means by which the manufacturers carried out their plans were twofold: (1) they agreed falsely to represent to the public that questions about tobacco and health would be answered by a new, unbiased, and therefore trustworthy source, a joint research organization created in 1954; and (2) they use that organization and the public's trust to more effectively misrepresent, suppress and confuse the facts about the health dangers of smoking and other tobacco use and the addictiveness of nicotine. Since that time, they have used the credibility gained by claims of disinterested industry funded research as their propaganda vehicle to misrepresent the material

facts to the public, falsely claiming that there is insufficient objective research to determine if tobacco use causes disease.

39. The two interconnected strategies of misrepresenting their objectivity in their research to gain credibility and using that credibility better to deceive the public about tobacco and health have been repeated consistently for four decades. The defendant manufacturers, their trade associations and other agents have engaged in a continuous pattern to deceive the public regarding facts material to the decision to use cigarettes.

40. As internal industry research confirmed the dangers of tobacco use and the addictiveness of nicotine, the deception rose to a new level: the defendants concealed their own negative health and addiction research results from both the public and public health officials. These research results have still not been voluntarily released but have been intentionally hidden and suppressed for decades. Only recently has some of this internal industry research become available. It directly contradicts what the defendants have told the public for decades.

41. The success of the industry's campaign of deceit and misinformation depended on the defendants' acting together. If one company broke ranks and told the public what it knew about the health consequences of tobacco use, or its addictive nature, the conspiracy would fail. Without the agreement of each defendant manufacturer to suppress the truth, the deception would be revealed, and the companies' claims that "not enough facts are known" to indict tobacco use as a cause of disease would ring hollow. The defendant manufacturers agreed to come together and to stay together in order to accomplish what could not have otherwise occurred -- the unified and consistent distortion of public information on tobacco use, health and addiction.

42. On May 12, 1994, Stanton A. Glantz, Ph.D., a professor of medicine in the Division of Cardiology at the University of California, San Francisco (UCSF) and a scholar interested in the field of tobacco and the public health, received from an unknown source, "Mr. Butts," approximately 4000 pages of memoranda, reports, and letters, covering a 30-year period, from Brown & Williamson and its parent company, the British American Tobacco Company (BATCO). In the subsequent months, Glantz received several thousand additional pages of documents from Congressman Henry Waxman's House Subcommittee on Health and the Environment and another few hundred pages of documents from the estate of the chief scientist of BATCO. Glantz ultimately put all the documents into the library at UCSF. The July 19, 1995 Journal of the American Medical Association ("JAMA") is largely devoted to an analysis by Glantz and his colleagues of these three sets of documents.

43. As reported in JAMA, the documents show:

- a. that research conducted by the tobacco companies into the deleterious health effects of tobacco was often more advanced and sophisticated than studies by the medical community;
- b. that executives at Brown & Williamson knew early on that tobacco use was harmful and that nicotine was addictive, and that they debated whether to make the research public;
- c. that the industry, through the joint industry research group, decided to conceal the truth from the public;
- d. that the industry hid its research from the courts by sending the data through its legal departments, and that its lawyers asserted that the results were immune to

disclosure in litigation because they were the 'privileged product' of the lawyer-client relationship; and,

e. that despite knowledge to the contrary, the industry's public position was (and continues to be to this day) that the link between tobacco and ill-health was not proven, that they were dedicated to determining whether there was such a link and revealing this information to the public, and that nicotine was not addictive.

### WHAT THE INDUSTRY KNEW

#### 1953 Cancer Studies and the Joint Industry Suppression

44. In December of 1953, Dr. Ernest L. Wynder of the Sloan-Kettering Institute published the results of a study in which he painted the shaved backs of mice with cigarette smoke condensate residue. Malignant tumors grew in 44% of the mice in Dr. Wynder's study, providing biological evidence that cigarette smoke caused cancer. The previous year, a British researcher, Dr. Richard Doll, published a statistical analysis showing that lung cancer was more common among people who smoked and that the risk of lung cancer was directly proportional to the number of cigarettes smoked. The widespread reporting of these studies caused what cigarette company officials later called the "Big Scare" and was the backdrop for the creation of the industry's united and deceptive public relations front.

45. The tobacco industry responded quickly to the mounting adverse publicity of a link between smoking and cancer. The Chief Executive Officers/Presidents of the leading tobacco manufacturers met on December 15, 1953, at the Plaza Hotel in New York City. Present at this meeting were the presidents of American Tobacco, Benson & Hedges, Brown & Williamson, Lorillard, Philip Morris, R.J. Reynolds, and U.S. Tobacco. Also in attendance were

the chief executives of defendant Hill & Knowlton which was to play a central role in formulating and executing the industry response.

46. According to a Hill & Knowlton memorandum summarizing the meeting, industry executives viewed the problem as "extremely serious and worthy of drastic action." The document continues, "officials stated that salesmen in the industry are frantically alarmed and that the decline in tobacco stocks on the stock exchange market has caused grave concern . . . ."

47. The participants in the meeting agreed that a strong public relations response from the industry was necessary. From the beginning, the emerging research linking smoking and cancer was viewed by these defendants as a public relations problem, not a public health issue.

According to the Hill & Knowlton memorandum summarizing the meeting:

a. The Chief Executive Officers of all the leading companies, except Liggett, "agreed to go along with a public relations program on the health issue."

b. "They are also emphatic in saying that the entire activity is a long-term, continuing program, since they feel that the problem is one of promoting cigarettes and protecting them from these and other attacks that may be expected in the future."

c. "The current plans are for Hill and Knowlton to serve as the operating agency of the companies, hiring all the staff and disbursing all funds."

#### Creation of Tobacco Industry Research Committee -- Counter Propaganda

48. Nine days later, Hill & Knowlton presented a detailed recommendation to the manufacturers and others. The recommendation recognized the importance of gaining the public trust, and avoiding the appearance of bias, if the "pro-cigarette" industry strategy was to be successful. According to the memorandum:

"[T]he grave nature of a number of recently highly publicized research reports on the effects of cigarette smoking . . . have confronted the industry with a serious problem of public relations.

It is important that the industry do nothing to appear in the light of being callous to considerations of health or of belittling medical research which goes against cigarettes.

The situation is one of extreme delicacy. There is much at stake and the industry group, in moving into the field of public relations, needs to exercise great care not to add fuel to the flames."

49. As a result of the joint industry meeting of December 15, 1953, and the recommendations of Hill & Knowlton, five of the six manufacturers agreed to create the Tobacco Industry Research Committee ("TIRC"). Liggett joined the industry trade group in 1964, the same year the Surgeon General issued his first report linking cigarette smoking to lung cancer. Also in 1964, TIRC changed its name to the Council for Tobacco Research. A second trade group, the defendant Tobacco Institute, was formed by manufacturers in 1958 for the purpose of lobbying.

50. Shortly after creating TIRC, the member cigarette manufacturers and US Tobacco made an unambiguous pledge to the public, including the people of Arkansas and those who advance and protect the public health. The defendants represented that through TIRC they would conduct and report objective and unbiased research regarding smoking and health. When they made this representation, the defendants knew or should have known that Arkansas consumers would consider the representation material to their decisions to purchase and smoke cigarettes. At that time, and continuing to the present, the defendants knew or should have known that their failure to fulfill the duty they undertook, and other conduct as alleged herein, would directly increase the health care costs to the State.

51. On January 4, 1954, the member defendants announced the formation and purpose of TIRC, with a full page newspaper advertisement entitled "A Frank Statement to Cigarette Smokers." The statement appeared in 448 newspapers across the nation including the Arkansas Gazette and the Arkansas Democrat, reaching a circulation of 43,245,000 in 258 cities.

52. The "Frank Statement to Cigarette Smokers" stated in part:

a. "Recent reports on experiments with mice have given wide publicity to a theory that cigarette smoking is in some way linked with lung cancer in human beings."

b. "Although conducted by doctors of professional standing, these experiments are not regarded as conclusive in the field of cancer research."

c. "[T]here is no proof that cigarette smoking is one of the causes [of lung cancer]."

d. "We accept an interest in people's health as a basic responsibility, paramount to every other consideration in our business."

e. "We believe the products we make are not injurious to health."

f. "We always have and always will cooperate closely with those whose task it is to safeguard the public health."

g. "We are pledging aid and assistance to the research effort into all phases of tobacco use and health."

h. "For this purpose we are establishing a joint industry group consisting initially of the undersigned. This group will be known as TOBACCO INDUSTRY RESEARCH COMMITTEE."

i. "In charge of the research activities of the Committee will be a scientist of unimpeachable integrity and national repute. In addition there will be an Advisory Board of scientists disinterested in the cigarette industry. A group of distinguished men from medicine, science, and education will be invited to serve on this Board. These scientists will advise the Committee on its research activities."

j. "This statement is being issued because we believe the people are entitled to know where we stand on this matter and what we intend to do about it."

### TIRC Control by Hill & Knowlton

53. As had been proposed at the December 15, 1953 meeting, the manufacturers (and later Liggett), through their agent Hill & Knowlton, operated and effectively controlled TIRC. Housed in the same building, internal documents confirm that Hill & Knowlton, and not independent scientists, actually ran TIRC. A "highly confidential" internal memo reported:

Since the [TIRC] had no headquarters and no staff, Hill and Knowlton, Inc. was asked to provide a working staff and temporary office space. As a first organizational step, public relations counsel assigned one of its experienced executives, W.T. Hoyt, to serve as account executive and handle as one of his functions the duties of executive secretary for the [TIRC].

54. In 1954, 35 staff members of Hill & Knowlton worked full or part time for TIRC. In that year, TIRC spent \$477,955 on payments to Hill & Knowlton, over 50% of TIRC's entire budget.

### The Industry's Promise to Smokers

55. By the spring of 1955, the self-defense strategy recommended by Hill & Knowlton and implemented by the industry through the "Frank Statement" was largely successful. Hill & Knowlton reported to TIRC:

- a. "progress has been made". . .
- b. "The first 'big scare' continues on the wane."
- c. "The research program of the [TIRC] has won wide acceptance in the scientific world as a sincere, valuable and scientific effort."
- d. "Positive stories are on the ascendancy."

### Industry Knowledge that Smoking is Harmful

56. Even before the sponsors of the Frank Statement represented that "there is no proof that cigarette smoking is one of the causes" of lung cancer, an industry researcher had reported the contrary. As early as 1946, Lorillard chemist H.B. Parmele, who later became Vice President of Research and a member of Lorillard's Board of Directors, wrote to his company's manufacturing committee:

Certain scientists and medical authorities have claimed for many years that the use of tobacco contributes to cancer development in susceptible people. Just enough evidence has been presented to justify the possibility of such a presumption.

57. In the years following the 1954 "Frank Statement," and continuing to the present, the defendants have repeatedly acted in breach of their assumed duty to report objective facts on smoking and health. As evidence of the link between cigarette smoking, cancer and other diseases mounted through industry and truly independent research, the defendants and their trade associations continued publicly to represent that nothing was proven against tobacco. Internal documents show that the truth was very different. The cigarette manufacturers knew and acknowledged internally the veracity of scientific evidence of the health hazards of smoking, and at the same time suppressed such evidence where they could, and attacked it when it did appear.

58. Internal industry documents reveal, for example:

a. A 1956 memorandum from the Vice President of Philip Morris' Research and Development Department to top executives at the company regarding the advantages of "ventilated cigarettes" stated that: "Decreased carbon monoxide and nicotine are related to decreased harm to the circulatory system as a result of smoking . . . . Decreased irritation is desirable . . . as a partial elimination of a potential cancer hazard."

b. A 1958 memorandum sent to the Vice President of Research at Philip Morris (who later became a member of its Board of Directors) from a company researcher stated "the evidence . . . is building up that heavy cigarette smoking contributes to lung cancer either alone or in association with physical and physiological factors . . . ."

c. A 1961 document presented to the Philip Morris Research and Development Committee by the company's Vice President of Research and Development included a section entitled "Reduction of Carcinogens in Smoke." The document stated, in part:

To achieve this objective will require a major research effort, because

-- Carcinogens are found in practically every class of compounds in smoke. This fact prohibits complete solution of the problem by eliminating one or two classes of compounds. The best we can hope for is to reduce a particularly bad class, i.e., the polynuclear hydrocarbons, or phenols . . . .

-- Flavor substances and carcinogenic substances come from the same classes, in many instances."

d. A 1963 memorandum to Philip Morris' President and CEO from the company's Vice President of Research describes a number of classes of compounds in cigarette smoke that are "known carcinogens." The document goes on to describe the link between smoking and bronchitis and emphysema. "Irritation problems are now receiving greater attention because of the general medical belief that irritation leads to chronic bronchitis and emphysema. These are serious diseases involving millions of people. Emphysema is often fatal either directly or through other respiratory complications. A number of experts have predicted that the cigarette industry ultimately may be in greater trouble in this area than in the lung cancer field."

e. Brown & Williamson and its parent company researched the health effects of nicotine and were aware early on, as reported at a B.A.T. Group Research Conference

in November 1970, that "nicotine may be implicated in the aetiology [cause] of cardiovascular disease . . . ."

f. A 1961 "Confidential" memorandum from the consulting research firm hired by Liggett to do research for the company states:

There are biologically active materials present in cigarette tobacco.

These are:

- a) cancer causing
- b) cancer promoting
- c) poisonous
- d) stimulating, pleasurable, and flavorful.

g. A 1963 memorandum from the Liggett consulting research firm states:

Basically, we accept the inference of a causal relationship between the chemical properties of ingested tobacco smoke and the development of carcinoma, which is suggested by the statistical association shown in the studies of Doll and Hill, Horn, and Dorn with some reservations and qualifications and even estimate by how much the incidence of cancer may possibly be reduced if the carcinogenic matter can be diminished, by an appropriate filter, by a given percentage.

59. These internal Liggett documents sharply contrast with the information Liggett provided to the Surgeon General in 1963. Liggett withheld from the Surgeon General the views of its researchers and consultants that the evidence showed cigarette smoking causes human disease.

60. The report Liggett presented to the Surgeon General omitted all of these views. Instead, it focused on alternative causes of disease, such as air pollution, coffee and alcohol consumption, diet, lack of exercise, and genetics. Liggett criticized the known statistical association between smoking and mortality and various diseases as "unreliably conducted" and "inadequately analyzed." The Liggett report concluded that the association between smoking and

disease was inconclusive, and was in fact due to other factors coincidentally associated with smoking.

61. Philip Morris also concealed from the public its actual views of the research conducted outside the influence of the industry. In a 1971 memorandum, Dr. H. Wakeham, then Vice President of Research and Development, referring to a recent study which found cigarette smoke inhalation caused lung cancer in beagles: "1970 might very properly be called the year of the beagle. Early in the year, the American Cancer Society announced that they had finally demonstrated the formation of lung cancer in beagles by smoke inhalation in the now infamous Auerbach and Hammond study." Although Dr. Wakeham criticized the mice cancer studies, he conceded that "the beagle test was a critical one . . . for the cigarette causation hypothesis."

62. Dr. Wakeham's memorandum demonstrates Philip Morris' approval of the industry's public dismissals of these independent studies: "The strong opposition of the industry to the beagle test is indicative of a new, more aggressive stance on the part of the industry in the smoking and health controversy. We have gone over from what I have called the 'vigorous denial' approach, the take it on the chin and keep quiet attitude, to the strongly voiced opposition and criticism. I personally think this counter-propaganda is a better stance than the former one."

63. Similarly, BATCO's internal view of the validity of mouse skin painting experiments differed markedly from the view expressed in public statements. Minutes from a 1969 BATCO research conference stated "[h]istorically, bioassay experiments were undertaken by the industry with the object of clarifying the role of smoke constituents in pulmonary carcinogenesis. The most widely used of these methods [was] mouse-skin painting . . . . (a) In the foreseeable future, say five years, mouse-skin painting would remain as the ultimate court of

appeal on carcinogenic effects." Two years later a Brown & Williamson public relations document stated that "[m]uch of the experimental work involves mouse-painting or animal smoke inhalation experiments . . . . [T]he results obtained on the skin of mice should not be extrapolated to the lung tissue of the mouse, or to any other animal species. Certainly such skin results should not be extrapolated to the human lung."

#### Repeated False Promises to the Public

64. The deceptions of the 1954 "Frank Statement to Cigarette Smokers" were renewed and repeated by the industry for decades. RJR chairman Bowman Gray told Congress in 1964: "If it is proven that cigarettes are harmful, we want to do something about it regardless of what somebody else tells us to do. And we would do our level best. It's only human."

65. Another advertisement co-sponsored by TIRC and the Tobacco Institute called "A Statement about Tobacco and Health," stated:

We recognize that we have a special responsibility to the public -- to help scientists determine the facts about tobacco and health, and about certain diseases that have been associated with tobacco use. We accepted this responsibility in 1954 by establishing the TIRC, which provides research grants to independent scientists. We pledge continued support of this program of research until the facts are known.

We shall continue all possible efforts to bring the facts to light.

66. Additional representations were made in 1970 when the cigarette industry through its lobbying group, the Tobacco Institute, placed a number of advertisements similar to the 1954 "Frank Statement," throughout the country. One advertisement stated in part:

a. After millions of dollars and over 20 years of research: The question about smoking and health is still a question.

b. In the interest of absolute objectivity, the tobacco industry has supported totally independent research efforts with completely non-restrictive funding.

c. In 1954, the Industry established what is now known as CTR, the Council for Tobacco Research--USA, to provide financial support for research by independent scientists into all phases of tobacco use and health. Completely autonomous, CTR's research activity is directed by a board of ten scientists and physicians who retain their affiliations with their respective universities and institutions. This board has full authority and responsibility for policy, development and direction of the research effort.

d. The findings are not secret.

67. Another advertisement in 1970 stated that the industry "believes the American public is entitled to complete, authenticated information about cigarette smoking and health . . . . The tobacco industry recognizes and accepts a responsibility to promote the progress of independent scientific research in the field of tobacco and health."

68. In 1972 TI President Horace Kornegay, testifying before Congress, stated that "the cigarette industry is as vitally concerned or more so than any other group in determining whether cigarette smoking causes human disease . . . . That is why the entire tobacco industry . . . since 1954 has committed a total of \$40 million for smoking and health research through grants to independent scientists and institutions."

69. In March of 1983, Sheldon Sommers, MD, scientific director of CTR, testified before Congress that: "Cigarette smoking has not been scientifically established to be a cause of chronic diseases, such as cancer, cardiovascular disease, or emphysema. Nor has it been shown to affect pregnancy outcome adversely."

70. In 1984, RJR placed an editorial style advertisement in the *New York Times* stating that "[s]tudies which conclude that smoking causes disease have regularly ignored significant evidence to the contrary."

71. In April 1994, William Campbell, President of Philip Morris, told the Waxman Subcommittee, in response to what he described as "a number of charges . . . leveled against the tobacco industry generally, and Philip Morris specifically . . .":

. . . our consumers are being misled and when that happens Philip Morris has and will continue to speak out loudly and clearly. Our consumers deserve to know the truth . . . .

72. Each of the representations to the public about sponsoring independent objective research and bringing the truth to light were false and deceptive. Through such misrepresentations, defendants sought to gain the trust of the public in order to better distort and suppress substantive information about tobacco use and health.

73. Evidence began to surface concerning the defendants' deception. On February 2, 1992, United States District Court Judge H. Lee Sarokin issued an opinion in Haines v. Liggett Group, Inc., Civ. Action 84-678, after reviewing 1500 documents in camera. Judge Sarokin noted that "In 1954, the tobacco industry promised to disseminate the results of industry-sponsored, independent scientific research for the purpose of answering the question: "Does cigarette smoking cause illness?" To fulfill its promise, the tobacco industry proffered the allegedly "independent" research organization, the Council for Tobacco Research ('the CTR'), which purportedly would examine the risks of smoking and report its findings to the public." After his review of the withheld documents, Judge Sarokin concluded:

Despite the industry's promise to engage independent researchers to explore the dangers of cigarette smoking and to publicize their findings the evidence clearly suggests that the research was not independent; that potentially adverse results were shielded under the caption of "special projects;" that the attorney-client privilege was intentionally employed to guard against such unwanted disclosure; and that the promise of full disclosure was never meant to be honored, and never was.

As a result of this finding, Judge Sarokin went on to note:

A jury might reasonably conclude that the industry's announcement of proposed independent research into the dangers of smoking and its promise to disclose its findings was nothing but a public relations ploy -- a fraud -- to deflect the growing evidence against the industry, to encourage smokers to continue and non-smokers to begin, and to reassure the public that adverse information would be disclosed.

### The "Gentlemen's Agreement"

74. This industry strategy aptly outlined by Judge Sarokin depended for its success on joint and concerted action by the tobacco manufacturers and their trade associations. Each of the defendants agreed not to reveal to the public the true nature of TIRC, and later CTR, and not to disclose adverse information on tobacco use and health, in order to protect continued sales.

75. In 1964, a "strictly confidential" memorandum stated:

In the U.S., by far the most important factor conditioning action by the manufacturers is the law suit situation and the danger of costly damages being awarded against the manufacturers in a flood of cases. . . The leadership in the U.S. smoking and health situation therefore lies with the powerful Policy Committee of senior lawyers advising the industry, and their policy, very understandably, in effect is 'don't take any chances.' It is a situation that does not encourage constructive or bold approaches to smoking and health problems, and it also means that the Policy Committee of lawyers exercises close control over all aspects of the problems.

76. This memorandum demonstrates that there was a general agreement on the part of the industry not to conduct research or activities which could be construed as an implied omission:

Implied admissions that cigarettes may be harmful, when made by any manufacturer, are immediately criticized by their competitors as capable of being damaging in law suits. Such admissions, we were told, may effect decisions by juries on whether (sic) smoking caused the disease of the plaintiff and whether the defending manufacturer was aware that his cigarette might be harmful.

77. In 1968, a memo addressed to the CEO of Liggett regarding a meeting of the research directors of the six cigarette manufacturers stated on the topic of smoking and health "a

general feeling that an industry approach as opposed to an individual company approach was highly desirable."

78. Each company also agreed not to perform research on smoking and health on their own. This agreement was referred to as the "Gentlemen's Agreement." A 1968 internal Philip Morris draft memorandum entitled "Need for biological research by Philip Morris research and development," and prepared by the company's Vice President of Research and Development, states:

We have reason to believe that in spite of the gentlemen [sic] agreement for the tobacco industry in previous years that at least some of the major companies have been increasing biological studies with their own facilities.

79. As indicated by the 1968 "Gentleman's Agreement" memo, it was believed within the industry that individual companies were performing certain research on their own, in addition to the joint industry research. But the fundamental understanding and agreement remained intact: that harmful information and activities would be restrained, suppressed, and/or concealed. This included restraining, suppressing, and concealing research on the health effects of tobacco use, including the addictive qualities of nicotine, and restraining, concealing, and suppressing the research and marketing of safer cigarettes.

#### Suppression and Concealment of Industry-Sponsored Biological Research

##### Role of CTR as a Industry Shield and "Cheap Insurance"

80. Internal documents demonstrate that the joint industry research efforts undertaken through TIRC, and later, through CTR, were not disinterested or objective. Rather, they were designed and used to promote favorable research, to suppress negative research where

possible, and to attack negative research where it could not be suppressed; all in order to convince the public that the "case against smoking is not closed."

81. A 1974 report to the CEO of Lorillard from a research executive described CTR's scientific projects as "hav[ing] not been selected against specific scientific goals, but rather for various purposes such as public relations, political relations, position for litigation, etc. Thus, it seems obvious that reviews of such programs for scientific relevance and merit in the smoking and health field are not likely to produce high ratings."

82. A 1972 internal document from a Tobacco Institute official to the group's President described the importance of using joint industry research to maintain public doubt about the link between smoking and disease:

For nearly twenty years, this industry has employed a single strategy to defend itself on three major fronts: litigation, politics, and public opinion.

While the strategy was brilliantly conceived and executed over the years helping us win important battles, it is only fair to say that it is not - nor was it ever intended to be - a vehicle for victory. On the contrary, it has always been a holding strategy, consisting of

- creating doubt about the health charge without actually denying it
- advocating the public's right to smoke, without actually urging them to take up the practice
- encouraging objective scientific research as the only way to resolve the question of the 'health hazard.'

As an industry, therefore, we are committed to an ill-defined middle ground which is articulated by variations on the theme that, 'the case is not proved.'

In the cigarette controversy, the public -- especially those who are present and potential supporters (e.g. tobacco state congressmen and heavy smokers) -- must perceive, understand, and believe in evidence to sustain their opinions that smoking may not be the causal factor.

As things stand, we supply them with too little in the way of ready-made credible alternatives.

83. A 1978 memo addressed to the CTR file from a Philip Morris official characterized CTR as "an industry 'shield.'" The memorandum goes on to state:

the 'public relations' value of CTR must be considered and continued . . . . It is extremely important that the industry continue to spend their dollars on research to show that we don't agree that the case against smoking is closed . . . . There is a 'CTR basket' which must be maintained for 'PR' purposes . . . .

84. In 1993, a former 24-year employee of CTR confirmed publicly that the joint industry research efforts were not objective:

When CTR researchers found out that cigarettes were bad and it was better not to smoke, we didn't publicize that . . . .The CTR is just a lobbying thing. We were lobbying for cigarettes.

85. This and other evidence demonstrates that the role and purpose of TIRC and CTR in the defendants' strategy was to seek to use the public's trust to propagate "pro-cigarette" propaganda -- a public relations ploy. An industry official wrote in his personal notes describing a meeting which included high level officials from various cigarette manufacturers that:

CTR is best & cheapest insurance the tobacco industry can buy and without it the Industry would have to invent CTR or would be dead.

86. Nonetheless, in its annual reports published between 1985 and 1992, CTR falsely stated that its Scientific Advisory Board funded peer-reviewed research projects "judging them solely on the basis of scientific merit and relevance." In 1994, Dr. James F. Glenn, CEO of CTR, submitted testimony to the Waxman Subcommittee that:

a. "[t]he Council . . . sponsors research into questions of tobacco use and health and makes the results available to the public."

b. "Council grantees are assured complete scientific freedom in conducting their studies . . . . Publication of research results is encouraged in all instances."

The Example of Dr. Homburger

87. In fact, CTR-sponsored research projects were purposely shifted away from research that might add to the evidence against smoking. When CTR-sponsored research did produce unfavorable results, the information was distorted or simply suppressed. For example, Dr. Freddy Homburger, a researcher in Cambridge, Massachusetts, undertook a study of smoke exposure on hamsters. According to Dr. Homburger, he received a grant from CTR which was changed half-way through the study to a contract "so they could control publication -- they were quite open about that." Dr. Homburger has testified that when the study was completed in 1974, the Scientific Director of CTR and a CTR lawyer "didn't want us to call anything cancer" and that they threatened Dr. Homburger with "never get[ting] a penny more" if his paper was published without deleting the word cancer.

88. An internal CTR document describes how Dr. Homburger attempted to call a press conference about the incident and how CTR stopped it:

He . . . was to tell the press that the tobacco industry was attempting to suppress important scientific information about the harmful effects of smoking. He was going to point specifically at CTR.

I arranged later that evening for it to be canceled.

Homburger was given a cordial welcome and nicely hastened [sic] out the door.

P.S. I doubt if you or Tom will want to retain this note.

CTR Special Projects Division - Deadwood

89. Another mechanism that CTR used to suppress research results that implicated smoking in disease was selectively to involve lawyers, and then invoke the attorney/client privilege to prevent the disclosure of harmful information. CTR used the term "special projects" to mean a project that carried a risk of a negative result that might have to be suppressed. "Special projects" were selected and monitored by industry lawyers to prevent disclosure. One Philip Morris official characterized CTR as a "front" for performing "special projects."

90. Notes prepared at a 1981 meeting of the cigarette industry's Committee of General Counsel state:

When we started the CTR Special Projects, the idea was that the scientific director of CTR would review a project. If he liked it, it was a CTR special project. If he did not like it, then it became a lawyers' special project.

. . . we were afraid of discovery for FTC and Aviado, we wanted to protect it under the lawyers. We did not want it out in the open.

91. At least one defendant used similar tactics to suppress and avoid disclosure of its internal research on smoking and disease. At a time when the company was resisting discovery in a number of personal injury lawsuits, Brown & Williamson's general counsel, J. Kendrick Wells, recommended in a memorandum dated January 17, 1985 that much of the company's biological research be declared "deadwood" and shipped to England. He recommended that no notes, memos or lists be made about these documents. Wells stated, "I had marked certain of the document references with an X . . . which I suggested were deadwood in the behavioral and biological studies area. I said that the "B" series are "Janus" series studies and should also be considered as deadwood." ("Janus" was a name of a project that attempted to

isolate and remove the harmful elements of tobacco.) Wells further recommended that the research, development and engineering department also should undertake "to remove the deadwood from the files."

92. Through CTR and TI, the tobacco manufacturers have used lawyers and the claim of attorney/client privilege to insulate CTR-funded research projects from disclosure to the public and to government officials. As one memo describes TI "there is a need for a voice to speak on behalf of the industry on all matters -- not merely health and TI is that voice, but its activities are minimal. The impression that we obtained is that TI is largely a voice at the end of a telephone line from the lawyers, and speaks only when and as directed." This conduct demonstrates the falsity of the industry representations jointly to fund objective research, and to report the results of that research to the public.

#### Suppression and Concealment of Internal Biological Research

93. In the 1960s, RJR established a facility in Winston-Salem, North Carolina, to perform research on the health effects of smoking using mice. RJR scientists conducted research in a number of specific areas, including studies of the actual mechanism whereby smoking causes emphysema in the lungs.

94. The RJR lab made significant progress in understanding this mechanism. Despite this progress, RJR disbanded the entire research division in one day, and fired all 26 scientists without notice.

95. Several months before the 1970 closure and firings, RJR attorneys collected dozens of research notebooks from the scientists. One of the researchers later stated about RJR's executives and lawyers that "they like to take the position that you can't prove harm

because you don't know mechanism . . . . And sitting right under their noses is evidence of mechanism[.] What are they going to do with this stuff? They decided to kill it."

96. Internally, a scientist in a RJR-commissioned report favorably described his testing on mice as "the more important of the smoking and health research efforts because it comes close to determining what was thought to be the underlying pathobiology of emphysema." None of this work was disclosed to the public.

#### Safer Products Suppressed

97. Several cigarette manufacturers' biological research appears to have been directed toward developing a cigarette with reduced health risks. These companies performed research which involved dividing cigarette smoke into its different chemical constituents, or "fractions," to discover which part of the cigarette smoke caused disease. Several companies were successful in discovering which specific constituents in tobacco smoke were carcinogens, or were linked to other diseases. This research was concealed from the public.

98. A number of companies also successfully removed certain harmful constituents from cigarette smoke, and developed prototype cigarettes with reduced health effects. These products were never marketed.

99. A memorandum written by an attorney at the firm of Shook, Hardy & Bacon, long-time lawyers for the tobacco industry, articulated the industry-wide position regarding the issue of a safer cigarette. The 1987 memorandum, referring to the marketing by RJR of a smokeless cigarette, Premier, stated that the smokeless cigarette could "have significant effects on the tobacco industry's joint defense efforts" and that "[t]he industry position has always been that there is no alternative design for a cigarette as we know them." The attorney also noted that,

"Unfortunately, the Reynolds announcement . . . seriously undercuts this component of industry's defense."

100. As early as 1958, a memorandum from a Philip Morris researcher to the company's Vice President of Research and Development proposed that the company attempt to make a safer cigarette that could enable it to "jump on the other side of the fence . . . on the issue of tobacco smoking and health . . . ."

101. Philip Morris performed research and developed a safer product. However, the company never released the research, and never informed the public that existing cigarettes were not safe or that a safer cigarette was possible. A 1964 Philip Morris research and development presentation to its Board of Directors stated:

Two years ago, in anticipation of a health crisis to be precipitated by the Smoking and Health Report of the Surgeon General's Committee, we undertook to develop a physiologically superior cigarette.

[W]e put together a charcoal filter product with performance superior to anything in the market place. That product was known as Saratoga. Physiologically it was an outstanding cigarette. Unfortunately then after much discussion we decided not to tell the physiological story which might have appealed to a health conscious segment of the market. The product as test marketed didn't have good 'taste' and consequently was unacceptable to the public ignorant of its physiological superiority.

102. The research and development department at Philip Morris nonetheless viewed continued research into safer cigarettes as necessary to compete in the event that another cigarette company marketed a safer cigarette. The presentation to the Philip Morris Board of Directors continued:

The Research and Development Department is working to establish a strong technological base with both defensive and offensive capabilities in the smoking

and health situation. Our philosophy is not to start a war, but if war comes, we aim to fight well and to win.

Liggett Safer Cigarette: XA

103. Liggett also developed a safer cigarette. Company researchers believed that they had discovered which cigarette smoke constituents were carcinogens, and found a way to remove them. Despite Liggett officials' belief that the product was commercially marketable, the company never marketed the safer cigarette and suppressed the research that led to its development.

104. Liggett began its research by repeating the smoke condensate painting studies of mice performed by Dr. Wynder through a contract with a consulting firm. The consulting firm confirmed Dr. Wynder's findings, and, as a result, in 1968 Liggett began "a tobacco additive program designed to reduce or eliminate the tumorigenic activity of cigarette smoke."

105. By 1979, Liggett had declared the work a success. Company documents state:

Briefly, as a result of 20 years effort in cooperation with [the consulting firm], we have developed a cigarette system which produces smoke of reduced biological activity . . . . [T]here can be no argument that the use of the additives has resulted in a product with lower carcinogenic effects . . . .

106. Liggett's safer cigarette, a product called "XA," was never marketed and the XA project was abandoned. Liggett did so for two reasons. First, disclosing the feasibility of a safer cigarette would imply that all existing cigarettes were not safe. Second, Philip Morris apparently threatened Liggett with retaliation if Liggett violated the industry agreement not to disclose negative information on smoking and health. Liggett's Assistant Research Director, Dr.

James Mold, reported that Liggett's president said that he was "told by someone in the Philip Morris Company that if we tried to market such a product that they would clobber us."

107. During the XA project, Liggett attempted to insulate the research by the use of company lawyers. According to Dr. Mold, after 1975, "all meetings that we had regarding this project were to be attended by a lawyer . . . . All paper that was generated . . . [was] to be directed to the Law Department." Dr. Mold stated that lawyers even collected all the notes after each meeting.

108. Dr. Mold stated that despite its significance, the company lawyers not only ultimately succeeded in stopping the project, but ordered him not to publish the results of the research that led to the safer cigarette. Only an abstract of the paper, modified by the legal department, was published by the consulting firm, without Dr. Mold's name.

109. When asked why Liggett never marketed the safer XA cigarette, Dr. Mold explained that:

[Management circles] felt that such a cigarette if put on the market would seriously indict them for having sold other types of cigarettes that didn't contain this, for example. Or that they were carrying on this biological research at the same time saying it meant nothing.

### Liggett Safer Cigarette Patent

110. Liggett had also obtained a patent for the process it had discovered to produce its safer cigarette. The patent application described the reduction in cancer in mouse studies, prompting stories in the media that Liggett was the first cigarette company to admit that smoking caused cancer. Liggett responded by issuing a press release it called a "Liggettgram" which stated:

Liggett and the cigarette industry continue to deny, as they have consistently, that any conclusions can be drawn relating such test results on mice in laboratories to cancer in human beings. It has never been established that smoking is a cause of human cancer.

The laboratory experiments reported in the patent were conducted for Liggett by an independent researcher, The Life Sciences Division of Arthur D. Little, Inc.

111. At the time Liggett made this statement, Dr. Mold estimates that Liggett had spent a total of \$10 million on research involving mice, in part to develop the safer XA cigarette. Liggett's internal reports on the benefit of the XA, and the absence of increased risk of harm from the additives used, specifically used animal studies as reliable indicators of the health effect of the product on humans.

112. Despite overwhelming scientific evidence, and the confirmation of this evidence by their own internal research, the cigarette manufacturers and their trade associations continue to this day to repeat over and over, in a unified stance, that there is no causal connection between tobacco use and adverse health effects because it has not been scientifically proven. These representations are misleading, deceptive and untrue. They rest at the heart of the industry's ongoing conspiracy to market and profit from a product it knows is deadly and to mislead the public, including Arkansas youth, on the addictive qualities of nicotine.

## THE ROLE OF NICOTINE IN TOBACCO USE

113. The tobacco industry has made every effort to conceal and deny that nicotine is a powerfully addictive substance. While carefully studying its addictive character and acting upon that knowledge to maintain sales, each of the defendant manufacturers has denied that nicotine is addictive.

114. This public deception and the industry's secret manipulation of nicotine were and are critically important to the tobacco manufacturers. As objective researchers increased their warnings of the health dangers of tobacco, nicotine addiction kept people smoking using their products. This component in their strategy to sell their dangerous products allows the manufacturers to continue to sell their dangerous products -- even to those who eventually come to doubt the industry's health claims.

### Industry Knowledge of the Addictiveness of Nicotine:

#### A Hook In Every Can (Pack)

115. The defendant manufacturers have known since at least the early 1960's of the addictive properties of the nicotine contained in the tobacco products they manufacture and sell. Despite their public denials, industry documents are replete with evidence of such knowledge: For example,

a. In 1962, Sir Charles Ellis, scientific advisor to the board of directors of British American Tobacco Company, Brown & Williamson's parent company, stated at a meeting of BATCO's worldwide subsidiaries, that "smoking is a habit of addiction" and that "[n]icotine is not only a very fine drug, but the technique of administration by smoking has

considerable psychological advantages . . . ." He subsequently described Brown & Williamson as being "in the nicotine rather than the tobacco industry."

b. A research report from 1963 commissioned by Brown & Williamson states that when a chronic smoker is denied nicotine: "A body left in this unbalanced state craves for renewed drug intake in order to restore the physiological equilibrium. This unconscious desire explains the addiction of the individual to nicotine."

c. Addison Yeaman, general counsel at Brown & Williamson, summarized his view about nicotine in an internal memorandum also in 1963: "Moreover, nicotine is addictive. We are, then, in the business of selling nicotine, an addictive drug effective in the release of stress mechanisms."

d. Internal reports prepared by Philip Morris in 1972 and the Philip Morris U.S.A. Research Center in March 1978, demonstrate Philip Morris' understanding of the role of nicotine in tobacco use: "We think that most smokers can be considered nicotine seekers, for the pharmacological effect of nicotine is one of the rewards that come from smoking. When the smoker quits, he foregoes [sic] his accustomed nicotine. The change is very noticeable, he misses the reward, and so he returns to smoking." An undated draft report refers to nicotine and similar organic chemicals, "quinine, cocaine, atropine and morphine. While each of these substances can be used to affect human physiology, nicotine has a particularly broad range of influence."

e. From 1940-1970, ATC conducted its own nicotine research, funding over 90 studies on the pharmacological and other effects of nicotine on the body; 80% of all

biological studies funded by ATC over this period. In 1969, ATC even test marketed a nicotine-enriched cigarette in Seattle, Washington.

f. In a 1972 document entitled "RJR confidential research planning memorandum on the nature of the tobacco business and the crucial role of nicotine therein," an RJR executive wrote: "In a sense, the tobacco industry may be thought of as being a specialized, highly ritualized, and stylized segment of the pharmaceutical industry. Tobacco products uniquely contain and deliver nicotine, a potent drug with a variety of physiological effects."

116. Internal memoranda from defendant US Tobacco and statements of its former employees similarly acknowledge the role played by nicotine in smokeless tobacco. For example, intra-company correspondence dated June 5, 1981, from Per Erik Lindqvist, UST Senior Vice President of Marketing, to B.J. Nova, President of the Tobacco Division, stated: "Flavorwise we should try for innovation, taste, and strength. Nicotine should be medium, recognizing the fact that virtually all tobacco usage is based upon nicotine, 'the kick,' satisfaction." Larry D. Story, a U.S. Tobacco chemist until 1982, has been quoted in the Wall Street Journal as stating "There used to be a saying at UST that 'there's a hook in every can.' And that hook is nicotine."

#### Kings of Suppression and Concealment on Nicotine Addiction

117. The tobacco manufacturers, rather than fulfilling their promise to the public to disclose material information about smoking and health, as guaranteed in the "Frank Statement," chose a course of suppression, concealment, and misinformation about the true properties of nicotine and the addictiveness of smoking. In essence, they put profits over the public health and sales over safety in direct contradiction to their promise to the public.

118. Philip Morris hired Victor DeNoble in 1980 to study nicotine's effects on the behavior of rats and to research and test potential nicotine analogues. DeNoble, in turn, recruited Paul C. Mele, a behavioral pharmacologist.

119. DeNoble and Mele discovered that nicotine met two of the hallmarks of potential addiction -- self-administration (rats would press levers to inject themselves with a nicotine solution) and tolerance (a given dose of nicotine over time had a reduced effect).

120. However, Philip Morris instructed DeNoble and Mele to keep their work secret, even from fellow Philip Morris scientists. Test animals were delivered at dawn and brought from the loading dock to the laboratory under cover.

121. DeNoble was later told by lawyers for the company that the data he and Mele were generating could be dangerous. Philip Morris executives began talking of killing the research or moving it outside of the company so Philip Morris would have more freedom to disavow the results.

122. In August 1983, Philip Morris ordered DeNoble to withdraw from publication a research paper on nicotine that had already been accepted for publication after full peer review by the Journal of Psychopharmacology. According to DeNoble, the company changed its mind because it did not want its own research showing nicotine was addictive or harmful to compromise the company's defense in litigation recently filed against it. DeNoble said that Philip Morris officials had rightly interpreted the suppressed nicotine studies as showing that, in terms of addictiveness, "nicotine looked like heroin."

123. In April 1984, Philip Morris closed DeNoble's nicotine research lab. DeNoble and Mele were forced to halt their studies, turn off all their instruments and turn in their

security badges by morning. Philip Morris executives threatened the scientists with legal action if they published or talked about their nicotine research. According to DeNoble, the lab literally vanished overnight. The animals were killed, the equipment was removed and all traces of the former lab were eliminated.

124. DeNoble testified to the Waxman Subcommittee that "senior research management in Richmond, Va., as well as top officials at the Philip Morris Company in New York, continually reviewed our research and approved our research." DeNoble also stated that these officials were specifically told that nicotine was a drug of abuse.

125. Brown & Williamson undertook its potentially sensitive research on nicotine through a contractor in Geneva, Switzerland, and through British affiliates at an English lab called Harrogate.

126. In 1963, Brown & Williamson debated internally whether to disclose to the U.S. Surgeon General, who was preparing his first official report on smoking and health, what the company knew about the addictiveness of nicotine and the adverse effects of smoking on health. Addison Yeaman, general counsel, advised Brown & Williamson to "accept its responsibility" and disclose its findings to the Surgeon General. He said that such disclosure would then allow the company openly to research and develop a safer cigarette.

127. Brown & Williamson rejected Yeaman's advice to make full disclosure to the Surgeon General. A series of six letters and telexes exchanged by Yeaman and senior BATCO official A.D. McCormick between June 28 and August 8, 1963, document the company's decision not to disclose its research findings to the Surgeon General. That research, some of which was later characterized in a report in the Journal of the American Medical Association as

"at the cutting edge of nicotine pharmacology," preceded the main published reports from the general scientific community by several years.

128. A chronology of the industry's research and development activities confirms that the tobacco manufacturers understood early on that nicotine was the key to their industry's success. The industry has conducted extensive research establishing that smokers require a certain level of nicotine from their cigarettes and that tobacco "satisfaction" is attributable to nicotine's effect on the body after absorption.

129. Philip Morris internal reports from 1972 and 1978 characterize the role of nicotine in tobacco use: "The cigarette should be conceived not as a product but as a package. The product is nicotine . . . . Think of the cigarette pack as a storage container for a day's supply of nicotine . . . . Think of the cigarette as a dispenser for a dose unit of nicotine."

130. Documents from a BATCO study called Project Hippo show that as far back as 1961, this cigarette company was actively studying the physiological and pharmacological effects of nicotine. Project Hippo reports were circulated to other U.S. cigarette manufacturers and to TIRC, demonstrating that some of the industry's nicotine research was shared. BATCO sent the reports to officials at Brown & Williamson and RJR, and circulated a copy to TIRC with a request that TIRC "consider whether it would help the U.S. industry for these reports to be passed on to the Surgeon General's Committee."

131. Similarly, an RJR-MacDonald Marketing Summary Report from 1983 concluded that the primary reason people smoke is "probably the physiological satisfaction provided by the nicotine level of the product." An earlier 1972 confidential RJR report, Research Planning Memorandum and the Crucial Role of Nicotine Therein, describes the tobacco industry

as "a specialized , highly ritualized and stylized segment of the pharmaceutical industry . . . nicotine is known to be a habit-forming alkaloid hence the confirmed user of tobacco products is primarily seeking the physiological 'satisfaction' derived from nicotine . . ."

132. To this day, the tobacco manufacturers have concealed from the public and public health officials their extensive knowledge of the addictive properties of nicotine and its critical role in smoking. In fact, as evidenced from the testimony before the Waxman Subcommittee, top executives of the tobacco companies continue to affirmatively deny that nicotine is addictive.

133. The tobacco manufacturers have long understood that reducing or eliminating nicotine from their products would hurt sales. As one company researcher wrote in a 1978 report to Philip Morris executives:

If the industry's introduction of acceptable low-nicotine products does make it easier for dedicated smokers to quit, then the wisdom of the introduction is open to debate.

134. Instead, the industry attempted to develop ostensibly safer ways of delivering adequate doses of nicotine to create and sustain addiction in the smoker.

135. Some members of the industry studied artificial nicotine or nicotine analogues that would have the addictive and psychopharmacological properties of nicotine without its dangerous effects on the heart. Dr. DeNoble was hired by Philip Morris, in part, to research and develop a nicotine analogue.

136. DeNoble did discover such an analogue, but Philip Morris chose to halt its effort to determine whether the nicotine analogue could be used to make a safer cigarette. Philip Morris decided not to pursue nicotine analogues in order to avoid the risk of adverse publicity

and of compromising the industry's consistent position that there was no alternative design for cigarettes.

137. Brown & Williamson also understood that nicotine was the essential ingredient in maintaining tobacco sales. The company attempted to develop a "safer" cigarette which internal documents described as "a nicotine delivery device."

138. By the end of the 1970's, however, Brown & Williamson, in a pattern that was repeated throughout the industry, closed its research labs and halted all work on a safer cigarette.

139. RJR's efforts to develop a safer cigarette also focused on delivering nicotine to the consumer without the harmful constituents of tobacco smoke. In the late 1980's, RJR developed and test marketed Premier, a smokeless and virtually tobacco-free cigarette which was, in essence, a nicotine delivery system.

### Industry Control and Manipulation of Nicotine

140. Tobacco manufacturers have developed and used highly sophisticated technologies designed to deliver nicotine in precisely calculated quantities -- quantities that are more than sufficient to create and sustain addiction in the vast majority of individuals who smoke regularly. Tobacco manufacturers control the nicotine content of their products through selective breeding and cultivation of plants for nicotine content, and careful tobacco leaf purchasing plans. The companies control nicotine delivery (i.e. the amount received by the consumer) with various design and manufacturing techniques.

### Manipulation of Nicotine Content: Y-1

141. The story of Brown & Williamson's development of a new tobacco plant dubbed "Y-1" is one of the more egregious examples of the tobacco industry's concealment of its control and manipulation of the nicotine levels in its products.

142. On June 21, 1994, Dr. David A. Kessler told the Waxman Subcommittee that FDA investigators had discovered that Brown & Williamson had developed a high nicotine tobacco plant, which the company called "Y-1." This discovery followed Brown & Williamson's flat denial to the FDA on May 3, 1994, that it had engaged in "any breeding of tobacco for high or low nicotine levels."

143. When four FDA investigators visited the Brown & Williamson plant in Macon, Georgia on May 3, 1994, Brown & Williamson officials denied that the company was involved in breeding tobacco for specific nicotine levels. Only after the FDA had learned of the development of Y-1 in its investigation and confronted company officials with the evidence did the company admit that it was growing and using the high-nicotine plant.

144. In fact, in a decade-long project, Brown & Williamson secretly developed a genetically-engineered tobacco plant with a nicotine content more than twice the average found naturally in flue-cured tobacco. Brown & Williamson took out a Brazilian patent for the new plant, which was printed in Portuguese. Brown & Williamson and a Brazilian sister company, Souza Cruz Overseas, grew Y-1 in Brazil and shipped it to the United States where it was used in five Brown & Williamson cigarette brands including three labeled "light." When the company's deception was uncovered, company officials admitted that close to four million pounds of Y-1 were stored in company warehouses in the United States.

145. As part of its cover-up, Brown & Williamson even went so far as to instruct the DNA Plant Technology Corporation of Oakland, California, which had developed Y-1, to tell FDA investigators that Y-1 had "never [been] commercialized." Only after the FDA discovered two United States Customs Service invoices indicating that "more than a half-million pounds" of Y-1 tobacco had been shipped to Brown & Williamson on September 21, 1992, did the company admit that it had developed the high-nicotine tobacco.

146. Y-1 is one example of an overall trend in the tobacco industry to increase or "spike" the nicotine content of tobaccos. American tobaccos of all types have undergone cumulative increases in total nicotine levels since the 1950s. Nicotine levels in the most widely grown American tobaccos increased between 10 - 50 percent between 1955 and 1980. On information and belief, this increase is the result of the industry's active and controlling participation in efforts to breed and cultivate tobacco for high nicotine levels.

#### Manipulation of Nicotine Delivery

147. The nicotine content of the raw tobacco is not the only variable manipulated by the cigarette manufacturers to deliver a pharmacologically active dose of nicotine to the consumer. Cigarettes are not simply cut tobacco rolled into a paper tube. Modern cigarettes as sold in Arkansas are painstakingly designed and manufactured to control nicotine delivery to the consumer.

148. David A. Kessler, MD, then-Commissioner of the Food and Drug Administration, testified in detail before the Waxman Committee about the various forms of nicotine manipulation practiced by the tobacco industry: manipulating the rate at which nicotine is delivered in the cigarette; transferring nicotine from one material to another; increasing the amount of nicotine in cigarettes; and adding nicotine to any part of a cigarette.

149. Dr. Kessler's disclosures show that nicotine is not an inevitable or unavoidable component of tobacco products. In fact, each of the defendant manufacturers has the capability to remove all or virtually all of the nicotine from tobacco using technology already in existence.

150. For example, cigarette manufacturers add several ammonia compounds during the manufacturing process which increase the delivery of nicotine and almost double the nicotine transfer efficiency of cigarettes.

151. Brown & Williamson publicly denied that the use of ammonia in the processing of tobacco increases the amount of nicotine absorbed by the smoker. Nevertheless, the company's own internal documents reveal that it and its rivals use ammonia compounds to increase nicotine delivery. A 1991 Brown & Williamson confidential blending manual states:

Ammonia, when added to a tobacco blend, reacts with the indigenous nicotine salts and liberates free nicotine . . . . As the result of such change the ratio of extractable nicotine to bound nicotine in the smoke may be altered in favor of

extractable nicotine. As we know, extractable nicotine contributes to impact in cigarette smoke and this is how ammonia can act as an impact booster.

According to the Brown & Williamson manual, all American cigarette manufacturers except Liggett use ammonia technology in their cigarettes.

152. Tobacco industry patents also show that the industry has developed the capability to manipulate nicotine levels in cigarettes to an exacting degree. For example:

a. A Philip Morris patent application discusses an invention that "permits the release . . . in controlled amounts and when desired, of nicotine into tobacco smoke."

b. Another Philip Morris patent application explains that the proposed invention "is particularly useful for the maintenance of the proper amount of nicotine in tobacco smoke," and notes that "previous efforts have been made to add nicotine to Tobacco Products when the nicotine level in the tobacco was undesirably low."

c. A 1991 RJR patent application states that "processed tobaccos can be manufactured under conditions suitable to provide products having various nicotine levels." An RJR research memorandum states "our industry is then based upon design, manufacture and sale of attractive dosage forms of nicotine, and our company's position in our industry is determined by our ability to produce dosage forms of nicotine which have more overall value, tangible or intangible, to the consumer than those of our competitor."

153. The manufacturers' manipulation and control of nicotine levels is further evidenced by the emergence of companies that specialize in manipulating nicotine and that are now offering their services to tobacco manufacturers. On information and belief, a process called

tobacco reconstitution, patented and marketed by the Kimberly-Clark Corporation subsidiary, LTR Industries, is widely used throughout the industry.

154. Reconstituted tobacco is made from stalks and stems and other waste that cigarette manufacturers formerly discarded and now use to make cigarettes more cheaply. In the reconstitution process, pieces of tobacco material undergo treatment that results in the extraction of some soluble components, including nicotine. The pieces are then physically formed into a sheet of tobacco material, to which the extracted nicotine is re-added. Although denied by tobacco executives, it is publicly reported that this process adjusts nicotine levels in the products, and that one manufacturer "readily admits to setting levels of nicotine . . . for the tobacco sheet."

155. An advertisement in tobacco industry trade publications for the Kimberly-Clark tobacco reconstitution process states:

Nicotine levels are becoming a growing concern to the designers of modern cigarettes, particularly those with lower 'tar' deliveries. The Kimberly-Clark tobacco reconstitution process used by LTR Industries permits adjustments of nicotine to your exact requirements . . . . We can help you control your tobacco.

156. The tobacco industry's own trade literature explains that the Kimberly-Clark process enables manufacturers to triple or even quadruple the nicotine content of reconstituted tobacco, thereby increasing the nicotine content of the final manufactured product.

157. Another enterprise quite explicitly specializes in the manipulation of nicotine and its use as an additive. This company does business under the name "The Tobacco Companies of the Contraf Group." An advertisement run by the Contraf Group in the international trade press states: "Don't Do Everything Yourself! Let us do it More Efficiently!" Calling itself

"The Niche Market Specialists," Contraf lists among its areas of specialization "Pure Nicotine and other special additives."

#### Light Cigarettes: a Marketing Hoax

158. The industry's manipulation of nicotine is particularly deceptive in its marketing of "light" or "low-tar" and "low-nicotine" actual cigarettes to retain the health conscious segment of the smoking market. Recent studies demonstrate that cigarettes advertised as "low-tar" and "low-nicotine" have higher concentrations of nicotine, by weight, than high yield cigarettes. Nevertheless, the cigarette manufacturers have successfully identified "light" cigarettes to consumers as a reduced tar and reduced nicotine product. The cigarette manufacturers have accomplished this deception through several strategies.

159. First, cigarette manufacturers have designed their "light" products so that advertised tar and nicotine levels, as measured by the FTC method, understate the amounts of tar and nicotine actually ingested by human smokers. Such design features include a technique called filter ventilation in which nearly invisible holes are drilled in the filter paper, or the filter paper is made more porous. Predictably, many smokers of advertised "low-tar" and "low-nicotine" cigarettes block the tiny, laser generated perforations in ventilated filters with their fingers or lips, thereby resulting in greater tar and nicotine yields to those smokers than those measured by the FTC smoking machine.

160. Cigarette manufacturers know that the ability to block ventilation holes allows smokers to "compensate" for nicotine losses that would otherwise be caused by tar-reducing modifications. The industry has studied smoker compensation in order to design cigarettes that allow smokers to compensate for lower nicotine yields. One such design feature is known as

"elasticity." This refers to the ability of a cigarette, whatever its FTC measured nicotine yield, to deliver enough smoke to permit a smoker to obtain the nicotine he needs, e.g., through more or longer puffs, or by covering ventilation holes.

161. Industry studies show that smokers tend to obtain close to the same amount of nicotine from each cigarette despite differences in yield as measured by the FTC smoking machine. In a 1974 BATCO conference, researchers described the result of one such study:

The Kippa study in Germany suggests that whatever the characteristics of cigarettes as determined by smoking machines, the smoker adjusts his pattern to deliver his own nicotine requirements (about 0.8 mg. per cigarette).

Smokers' compensation to obtain adequate nicotine also results in the delivery of more tar than the FTC test measure.

162. Second, the FTC testing method does not distinguish between the slower acting salt-bound nicotine and the more potent "free" nicotine that ammonia helps release. An ammoniated cigarette that delivers more potent nicotine to smokers measures the same as a cigarette with no such additives.

163. The use of ammonia is another method used by the cigarette industry to reduce the FTC measured tar and nicotine levels in their cigarettes over the past two decades while still furnishing smokers with sufficient nicotine delivery. According to John Kreishner, a former associate scientific director for CTR, "[a]mmonia helped the industry lower the tar and allowed smokers to get more bang with less nicotine. It solved a couple of problems at the same time."

164. Third, the cigarette industry maintains that nicotine levels follow tar levels. In the words of Dr. Alexander Spears, Vice Chairman of Lorillard, in his 1994 testimony before the

Waxman Subcommittee: "[n]icotine [level] follows the tar level," and the correlation between the two "is essentially perfect," and "shows that there is no manipulation of nicotine." Dr. Spears neglected to mention to Congress that in a 1981 study, not intended for public release, he stated explicitly that low-tar cigarettes use special blends of tobacco to keep the level of nicotine up while tar is reduced: "[T]he lowest tar segment [of product categories] is composed of cigarettes utilizing a tobacco blend which is significantly higher in nicotine." RJR, Lorillard, ATC, and TI have similarly represented to the public and to the FDA that the nicotine levels in their products are purely a function of setting the tar levels of such products.

165. ATC told the Waxman Subcommittee in an October 14, 1994 letter that "nicotine follows 'tar' delivery, i.e. high 'tar' --high nicotine, low 'tar' -- low nicotine . . . . Nicotine is neither adjusted nor altered to compensate for losses inherent in the manufacturing process." Internal company documents reviewed by the Waxman Subcommittee show, however, that ATC's experimentation with adding nicotine to its tobacco was extensive -- extensive enough for ATC executive John T. Ashworth to instruct employees in a confidential memorandum: "In the future, our use of nicotine should be referred to as 'Compound W' in our experimental work, reports, and memorandums, either for distribution within the Department or for outside distribution."

166. Recent tests conducted at the direction of the FDA show that the low-tar brands actually have more nicotine by weight than the non-"light" brands. The high level of nicotine found in lower tar cigarettes seriously misleads consumers and renders the industry's claim of an "essentially perfect" correlation between reduced tar and nicotine levels false. According to the FDA, this has been accomplished by a combination of the methods described

above for boosting nicotine delivery to compensate for nicotine losses from the application of tar-reducing design modifications. The cigarette industry thereby maintains a continuing market for a product that consumers are misled to believe contains less of all of the harmful ingredients in regular cigarettes.

167. Against this mounting body of evidence of the cigarette industry's manipulation and control of nicotine levels in cigarettes, the cigarette manufacturers continue to deny to the public, and recently denied to Congress under oath, that they manipulate and control nicotine levels. Top executives from Philip Morris, RJR, Lorillard, Liggett and Brown & Williamson testified in April 1994 that their respective companies do not manipulate nicotine, add it, independently control it, restore it during the manufacturing process, or otherwise achieve a minimum level of nicotine in their products. Thomas E. Sandefur, Jr., CEO of Brown & Williamson, has admitted that the company controlled nicotine, but in a now familiar refrain, stated that the company did so only for "taste."

168. Thus the cigarette manufacturers' attempt to deceive the public and government officials continues. As recently as April 1994, cigarette manufacturers placed advertisements across the country denying that they believe cigarette smoking is addictive, and misleading the public about whether the cigarette manufacturers deliberately control nicotine levels in their products.

169. An advertisement placed by Philip Morris in newspapers across the country in April 1994, affirmatively represented that Philip Morris does not "manipulate" nicotine levels in its cigarettes, and that "Philip Morris does not believe that cigarette smoking is addictive."

170. RJR placed a similar advertisement in newspapers across the United States in 1994 stating that "we do not increase the level of nicotine in any of our products in order to 'addict' smokers. Instead of increasing the nicotine levels in our products, we have in fact worked hard to decrease 'tar' and nicotine . . . ." RJR's advertisement then touted its use of "various techniques that help us reduce the 'tar' (and consequently the nicotine) yields of our products."

171. These statements and others by the industry mislead the consuming public because, as alleged above, the manufacturers used and continue to use various sophisticated techniques to increase the nicotine content in their products and the actual nicotine delivery to Arkansas citizens.

#### DISTRIBUTION AND TARGETING OF ARKANSAS' KIDS

172. In Arkansas, and across the nation, the overwhelming majority of cigarette use and addiction begins with children or teenagers. Nationally, 3000 kids begin smoking each day. Eighty-two (82%) percent of daily smokers had their first cigarette before age 18, sixty-two (62%) percent before the age of 16, thirty-eight (38%) percent before the age of 14. Thus, a person is likely to begin smoking in childhood or adolescence if at all. The younger a person begins to smoke, the more likely he or she is to become a heavy smoker. In Arkansas, 13.5% of Arkansas children under the age of 15 smoke. 6.4% of Arkansas youth smoked their first cigarette when they were 8 years old or younger.

173. Smoking at an earlier age increases the risk of lung cancer and other diseases. Studies have shown that lung cancer mortality is highest among adults who began smoking before the age of 15.

174. Cigarette smoking among children and teens is on the rise. A 1995 National Institute of Drug Abuse study found that between 1991 and 1994, the proportional increase in smoking rates was greatest among eighth graders, rising by 30%.

175. Cigarettes and other tobacco products are among the most promoted consumer products in the United States. The Federal Trade Commission reported to Congress that domestic cigarette advertising and promotional expenditures rose from close to \$4 billion in 1990 to more than \$6 billion in 1993. Tobacco product brand names, logos, and advertising messages are all-pervasive, appearing on billboards, buses, trains, in magazines and newspapers, on clothing and other goods. The effect is to convey the message to young people that tobacco use is desirable, socially acceptable, safe, healthy, and cool. Cigarette and tobacco manufacturers, knowing that their advertising appeals to young people, continue to use these image-based marketing techniques to sell their products to Arkansas youths.

176. A July 1995 report by the California Department of Health Services surveyed tobacco advertisements in or around stores. In looking at almost 6,000 stores, it was found that the total average tobacco advertisements and promotions per store was 25.26. Marlboro was the most frequently advertised and promoted cigarette brand with an average of 10.15 advertisements and promotions per store. Camel was the second most frequently advertised and promoted cigarette brand and had an average of 4.84 advertisements and promotions per store. Not surprisingly, Marlboro, Camel, and Newport, the most heavily advertised brands, are the leading brands smoked by children.

177. This same report also found that stores within 1,000 feet of a school had significantly more tobacco advertising and promotions than stores that were not near schools.

Stores near schools were also more likely to have at least one tobacco advertisement placed next to candy or displayed at three feet or below. A significantly higher average number of tobacco advertisements also were found on the exterior of stores located in neighborhoods in which at least one-third of the population in that zip code were 17 years of age or less.

178. RJR has even identified the stores in proximity to the youth market. RJR's Division Manager for Sales wrote all RJR sales representatives in 1990 regarding the "Young Adult Market" and asked them to identify what stores were in proximity to colleges or high schools. A follow-up letter by the sales division calls for a resubmitted list of Y.A.S. (Young Adult Smoker) accounts using new criteria, focusing on all accounts located across from, adjacent to, or in the general vicinity of high schools or college campuses.

179. The cigarette manufacturers know that they attract underage consumers to their products. For example, since 1988, RJR has used a cartoon character called Joe Camel in its advertising campaign. It has massively disseminated products such as matchbooks, signs, clothing, mugs, and drink can holders advertising Camel cigarettes. The advertising has been effective in attracting adolescents, and RJR has knowledge of this fact but still continues the Joe Camel advertising campaign. As a result of the campaign, the number of teenage smokers who smoke Camel cigarettes has risen dramatically. One study found that Joe Camel is almost as familiar to six-year old children as Mickey Mouse. This character is enticing thousands of teens to smoke that brand, and has caused Camel's popularity with 12-17 year olds to surge dramatically. RJR knew or willfully disregarded the fact that cartoon characters attract children. In fact, documents reveal that RJR, under scrutiny for its target advertising, willfully destroyed documents related to this campaign.

180. The model who portrayed the "Winston Man" for RJR's Winston brand cigarettes testified before Congress: "I was clearly told that young people were the market that we were going after." He further testified "it was made clear to us that this image was important because kids like to role play, and we were to provide the attractive role models for them to follow . . . . I was told I was a live version of the G.I. Joe . . . ."

181. An RJR affiliate studied in detail the motivations of young smokers. A "Youth Target" study was the first of a planned series of research studies into the lifestyles and value systems of young men and women in the 15-24 age range, the stated purpose of which was to "provide marketers and policy makers with an enriched understanding of the mores and motives of this important emerging adult segment which can be applied to better decision making in regard to products and programs directed at youth." The study focused on the "primary elements of lifestyles and values among the youth of today," in learning how to market products to children and teens.

182. A Brown & Williamson document shows how image projection advertising was used to attract young people:

For the young smoker, the cigarette is not yet an integral part of life, of day-to-day life, in spite of the fact that they try to project the image of a regular, run-of-the-mill smoker. For them, a cigarette, the whole smoking process, is part of the illicit pleasure category . . . In the young smoker's mind a cigarette falls into the same category with wine, beer, shaving, wearing a bra (or purposely not wearing one), declaration of independence and striving for self-identity. For the young starter, a cigarette is associated with introduction to sex life, with courtship, with smoking "pot" and keeping late studying hours.

183. During the 1980's, advertising for Salem cigarettes also became more youth-oriented. Whereas the dominant advertising theme for Salem cigarettes used to be clean fresh

country air, during the 1980's Salem ads were populated by muscular surfers and beach bunnies, fun-loving party animals, and other attractive adolescent role models. Another successful advertising campaign targeted at young people is the Lorillard campaign promoting Newport cigarettes. Newport ads frequently show men and women in sexually suggestive positions always having fun using the slogan "Alive with Pleasure."

184. The advertising imagery used to promote tobacco use among young people particularly appeals to those with low self esteem and emotional insecurity. Once the young person has been predisposed toward tobacco use, a variety of factors can precipitate actual experimentation. For many young people, the precipitating factor is being given a free pack of cigarettes or a free sample of chewing tobacco by a tobacco company representative, or purchasing tobacco products in order to obtain an attractive tee-shirt, baseball cap, or other gimmick used to promote tobacco use.

185. One of the best examples of this was the transformation of Marlboro cigarettes from a red-tipped cigarette for women to the cigarette for the macho cowboy. By changing advertising imagery, Philip Morris was able to tap into a wholly new and different market. In 1950, Reynolds was the king of the cigarette business. It sold more cigarettes than any other company. Philip Morris, though doing well on the basis of its fraudulent health-oriented advertising, was still far behind. In 1981, Philip Morris passed Reynolds in market share and each year had extended its lead by developing an effective marketing campaign for recruiting young new smokers to its brands. The wild spirit of the Marlboro man captures the adolescent imagination. Also, Philip Morris' representatives fanned out to colleges across the country, giving free cigarettes to incoming freshmen to get them hooked. The children and teenagers who started

smoking Marlboro became tenaciously loyal customers. Soon, Marlboro became the dominant brand of cigarettes among teenagers. Up until 1988, nearly three-fourths of teenage smokers used Marlboro.

186. All defendants promote and market their products primarily to minors and, incidentally, other "new" users of tobacco. At least one company, Philip Morris, tracked hyperactive children in grade school to research whether they would become smokers. Philip Morris apparently conducted market research concerning minors who smoke or are apt to smoke: In a 1969 presentation to the Board of Directors by the Philip Morris Research Center, W.L. Dunn, Jr. and F.J. Ryan talked about the future of the "psychology department," noting that more attention was being paid to "Why do people smoke . . . . There is general agreement on the answer to [why people begin to smoke]. The 16 to 20 year old begins smoking for psychological reasons. The act of smoking is symbolic; it signifies adulthood, he smokes to enhance his image in the eyes of his peers." Philip Morris, having apparently studied the minor market for tobacco has recently begun a program characterized as "Marlboro Unlimited," which is a program offering premiums for coupons from cigarette packages. This program is a direct response to RJR's success in the minor market, is designed to appeal to minors, and is an effort by Philip Morris to maintain Marlboro's dominance of that illegal market.

187. Each tobacco company defendant engages in various advertising and promotional activities in an effort to develop a "minor" market. These activities include pervasive sponsorship of various sporting events, concerts and other events likely to attract extensive youth interest. Another means of appealing to youth used by the companies is paying for promotional appearances, such as in movies which, because of the subject matter or the actors in films, are

most likely to appeal to youth. For example, Brown & Williamson entered into an agreement with actor Sylvester Stallone under which Stallone would smoke B&W's cigarettes in at least five feature films in exchange for \$500,000. Philip Morris paid for the promotion of Marlboro in "Superman II," "Risky Business," and "Crocodile Dundee" and for promotion of Lark in "License to Kill." It paid for or otherwise provided promotional material for 56 films in 1987-1988. Liggett paid for promotion of Eve [its brand designed especially to appeal to young women] in "Supergirl." American Tobacco promoted Lucky Strike in "Beverly Hills Cop." Reynolds paid for the promotion of Camel in "Who Framed Roger Rabbit," "Desperately Seeking Susan," and "Honey, I Shrunk the Kids."

188. The tobacco industry is currently under intense scrutiny from state and federal officials. In an attempt to stave off FDA regulations, Philip Morris publicly proposed a series of changes to its marketing practices. In a letter to the Attorney General of Arkansas, Philip Morris stated that it had devised a "blue print which directly addresses the issue of youth smoking."

Among the proposals were the following:

- Ban tobacco ads near schools and playgrounds and in youth oriented publications;
- Prohibit tobacco brand names, logos and characters on promotional items like t-shirts and caps;
- Ban cigarette vending machines;
- Limit tobacco brand name sponsorship to events with primarily adult audiences;
- Ban tobacco advertising in video arcades and family oriented centers.

189. These proposals constitute an admission that Philip Morris and the other defendants have attempted to attract minors to their products when they (1) place tobacco ads

near schools, playgrounds, and in youth oriented publications; (2) use logos and characters such as "Joe Camel" that are intended to appeal to minors; (3) sponsor events that have primarily youth audiences; (4) place ads in places likely to reach minors such as video and family oriented centers. These admissions are powerful evidence that the tobacco industry has knowingly and intentionally targeted minors.

190. According to one manufacturer's internal document, the defendants must aggressively target their advertisements toward minors to maintain the industry's huge profits: "If younger adults turn away from smoking, the industry must decline, just as a population which does not give birth will eventually dwindle." Thus, the companies must obtain and retain the youth market to replace the older diseased and dying consumers of their products. Their image based advertisements are geared toward achieving this objective.

191. In studying the marketing of their products to youth, the tobacco manufacturers have characterized three groups of smokers: "presmoker" "learning" and "confirmed." For the "pre-smoker" and "learner", the physical effects of smoking are largely unknown, unneeded, or actually quite unpleasant or awkward. The expected or derived psychological effects are largely responsible for influencing the pre-smoker to try smoking, and provide sufficient motivation during the "learning" period to keep the "learner" going, despite the physical unpleasantness and awkwardness of the period. In contrast, once the "learning" period is over, the physical effects become of overriding importance and desirability to the confirmed smoker, and the psychological effects, except the tension-relieving effect, largely wane in importance or disappear. The common thread binding the three groups together appears to be the fact smoking of cigarettes offers and provides a desired mechanism for coping with the

stresses of living, which may run from boredom to high tension and from fatigue to high arousal, a hyperactivity. Once this mechanism had been experienced and used, physical and psychological habit patterns are firmly established and become self-perpetuating.

192. In fact, documents of the defendants show that they recognize and exploit the insecurities and vulnerability of youth through image based advertising and marketing in order to sell and eventually addict them to their products:

a. Group Identification. -- Pre-smokers learn to smoke to identify with and participate in shared experiences of a group of associates. If the majority of one's closest associates smoke cigarettes, then there is a strong psychological pressure, particularly as a young person, to identify with the group, follow the crowd, and avoid being out of phase with the group's value system even though, paradoxically, the group value system may esteem individuality. This provides a large incentive to begin smoking. If this be true, then the same effect strongly influences the brand chosen, it likely being the popular, "in" brand used by one's close associates. Thus, a new brand aimed at the young smoker must somehow become the "in" brand and its promotion should emphasize togetherness, belonging and group acceptance, while at the same time emphasizing individuality and "doing one's own thing."

b. Stress and Boredom Relief -- The teens and early twenties are periods of intense psychological stress, restlessness and boredom. Many socially awkward situations are encountered. The minute or two required to stop and light a cigarette, ask for a light, find an ashtray, and the like provide something to do during periods of awkwardness or boredom, and afford a little "time-out period" when confronting a stressful situation. Smoking also gives one something to do with the hands, eyes, and something to talk about in a situation where otherwise one might simply have nothing to do or say. This desirable attribute of smoking should be strongly emphasized in promoting a new youth brand.

c. Self-Image Enhancement -- The fragile, developing self-image of the young person needs all of the support and enhancement it can get. Smoking may appear to enhance that self-image in a variety of ways. If one values, for example, an adventurous, sophisticated, adult image, smoking may enhance one's self-image. If one values certain characteristics in specific individuals or types and those persons or types smoke, then if one also smokes he is psychologically a little more like the valued image. This self-image enhancement effect had

traditionally been a strong promotional theme for cigarette brands and should continue to be emphasized."

**CAUSES OF ACTION**

**COUNT I**

**(Restitution)**

**(Against all defendants)**

193. Complainant restates and incorporates herein the foregoing paragraphs 1-192 of its Complaint.

194. As a result of the defendants' actions, plaintiff has been required to expend hundreds of millions of dollars of taxpayers moneys in medical costs, insurance costs and research costs. Defendants, on the other hand, have reaped billions of dollars in profits from their illegal actions. Defendants assumed and owe a duty to pay for the harm caused by their wrongful conduct, yet have repeatedly refused to do so. Instead, defendants have engaged in a conspiracy of suppression, concealment, and deceit in order to deny responsibility, to continue to reap huge profits and to avoid paying for the consequences of the harm they have caused the State of Arkansas and its citizens.

195. Plaintiff has been and is required by statute and contractual obligations to expend substantial sums of money to pay for the harm caused by the wrongful conduct of defendants. Plaintiff intends to charge and recoup from defendants these sums of money. Plaintiff's expenditures are immediately necessary to protect the public health and safety.

196. As a result of defendants' wrongful activities, plaintiff has borne a duty that, in law, equity, and fairness, ought to have been borne by defendants.

197. As a direct and proximate result of defendants' conduct, Arkansas has suffered and will continue to suffer substantial injuries and damages in the hundreds of millions of dollars. Wherefore, plaintiff prays for full and complete restitution in an amount to be determined but in excess of that required for federal court jurisdiction in diversity cases, attorneys fees and costs, pre and post judgment interest, expenses from defendants for their wrongful actions and for the disgorgement of defendants' profits received as a result of their wrongful conduct.

## **COUNT II**

### **(Unjust Enrichment)**

### **(Against All Defendants)**

198. Complainant restates and incorporates herein the foregoing paragraphs 1-197 of its Complaint.

199. Defendants, through their wrongful conduct as described in this Complaint, have reaped substantial profits from the sale of cigarettes and tobacco products in Arkansas. These sales, in turn, have resulted in enormous increases in health care costs directly attributable to defendants' products and actions.

200. Without justification, defendants have refused and failed to pay for the consequences of their unlawful conduct. Arkansas' expenditure of substantial sums to pay for the costs of medical care and research for indigent smokers caused by the defendants' wrongful conduct and the enormous profits reaped by the defendants from their wrongful conduct is of enormous value to the defendants. Defendants have therefore been unjustly enriched at the expense of the State and its citizens.

201. As a result, plaintiff has been required to pay for the costs resulting from defendants' unlawful conduct. Plaintiff has borne a duty that, in law, equity, and fairness, ought to have been borne by defendants while defendants continue to rake in huge profits.

202. In equity and good conscience, it would be unjust for defendants to continue to enrich themselves at the expense of plaintiff.

203. As a direct and proximate result of defendants' conduct, Arkansas has suffered and will continue to suffer substantial injuries and damages. Wherefore, plaintiff prays for damages in the amount defendants have been unjustly enriched, an amount as yet undetermined but in excess of that required for federal court jurisdiction in diversity cases, attorneys fees and costs, pre and post judgment interest, and expenses from defendants for their wrongful actions, as well as a disgorgement of defendants' illicit profits reaped as a direct and proximate cause of their egregious conduct.

### **COUNT III**

#### **(Unfair and Deceptive Trade Practices in Advertising and Sale)**

#### **(Against All Defendants)**

204. Complainant restates and incorporates herein the foregoing paragraphs 1-203 of its Complaint.

205. The defendants, individually, and in concert with each other, have made or caused to be made, directly or indirectly in the advertisement and sale of their products, explicitly and/or by implication, representations which are material, unconscionable, false and likely to mislead consumers, including, but not limited to the following:

- a. That defendants would lead an effort to discover and disclose to the public the truth about the health effects of tobacco products use;
- b. That use of tobacco products had not been proven to cause and exacerbate disease;
- c. That nicotine contained in tobacco products is not addictive;
- d. That the defendants do not exploit or manipulate the nicotine levels in their tobacco products;
- e. That the defendants do not target, direct or seek to focus their tobacco products marketing efforts on minors and, in fact, actively discourage sale of those products to minors.

206. Contrary to defendants' public representations, defendants have

- a. Not been truthful to the public in disclosing the information developed by or otherwise known to them concerning the health hazards of tobacco use, including the addictive nature of nicotine. Instead, they have systematically suppressed and concealed material information developed by or otherwise known to them concerning the adverse health effects of tobacco use, including the addictive nature of nicotine, and have engaged in a misinformation and disinformation campaign to conceal the truth. Defendants have further systematically sought falsely to discredit or cast doubt upon scientific studies and reports which concluded that use of tobacco products caused adverse health effects, including the addictive nature of nicotine;
- b. Tobacco use causes a large variety of diseases, including debilitating diseases and diseases that result in death. In furtherance of their representations about the health

effects of tobacco use, defendants have suppressed the development and commercial production of safer tobacco products;

c. That nicotine contained in tobacco products is addictive;

d. The tobacco companies rely upon the addictive nature of nicotine in designing, marketing and selling tobacco products and manipulate nicotine levels, availability and delivery in order to achieve their design, marketing and sales strategies;

e. Defendants' market, distribute and sell tobacco products in a manner that targets children and adolescents and intentionally attracts them to begin or continue to use tobacco products.

207. Defendants' representations and actions have been and are material, unconscionable and/or false, and are likely to mislead consumers about the adverse health consequences of tobacco use and the addictive nature of nicotine, and, therefore, constitute deceptive acts or practices in violation of Ark. Code Ann. § 4-88-107(a)(1) and (a)(10).

208. Defendants' course of wrongful conduct alleged herein, individually, and in concert with each other, violates the public policy of the State of Arkansas in several respects, including by:

a. Engaging in a campaign of misrepresentation, misinformation and disinformation concerning the adverse health consequences associated with tobacco products and the addictive nature of nicotine in contravention of the public policy of the State of Arkansas preventing misrepresentations, fraudulent statements and false promises from being made to consumers in the State;

b. Conspiratorially restraining the free flow of truthful material information concerning tobacco products and conspiratorially restraining tobacco product innovation which would reduce or eliminate adverse health consequences associated with tobacco products use and reduce or elimination the addictive ingredients in tobacco products in contravention of the public policy against agreements in restraint of trade;

c. Insulating themselves from having to pay the health care costs associated with the use of tobacco products and shifting such health care costs to others in contravention of the public policy against intentional and improper interference with public obligations, the public policy of preventing unjust enrichment and the public policy of limiting the State of Arkansas' expense in paying the health care costs for its residents by requiring those that ought to pay such costs to do so.

d. Marketing, distributing and selling tobacco products in a manner that attracts children and adolescents to begin or continue to use tobacco products and which facilitates their opportunity to do so in contravention of the public policy of preventing children and adolescents from having access to and beginning or continuing to use tobacco products and discouraging their desire to do so and in contravention of the public policy to foster respect for and compliance with the law. In Arkansas, it is illegal to give, sell or deliver tobacco products to persons under the age of 18, and it is illegal for children to purchase tobacco products; and,

e. Marketing, distributing and selling tobacco products in a manner that is likely to and does cause harm to newborn infants by targeting females of pre-childbearing and childbearing age, with the knowledge that such products are addictive and that use of tobacco

products during pregnancy results in harm to newborns, in violation of the public policy of the State of Arkansas to protect and foster well-being of newborn infants.

209. The defendants' acts and practices as alleged herein have been and are unethical, oppressive and unscrupulous, unconscionable and cause substantial injury to consumers and others.

210. The defendants' acts and practices, as alleged herein, constitute unfair acts or practices in violation of Ark. Code Ann. § 4-88-107(a)(1) and (a)(10).

211. Defendants' unfair and/or deceptive acts or practices have limited the ability of numerous consumers to obtain or evaluate information material to their decision about the purchase of tobacco products and to obtain safer tobacco products at the lowest possible competitive price.

212. As a further result of the defendants' unfair and/or deceptive acts or practices, numerous residents of the State of Arkansas have suffered and will, in the future, suffer adverse health consequences due to use of tobacco products, resulting in substantial health care costs. The State of Arkansas has paid and will continue to be required to pay such health care costs resulting from such adverse health consequences.

213. As a further result of defendants' unfair and/or deceptive acts or practices, children and adolescents have had easy access to and have begun to use, tobacco products, have been encouraged to do so, and their opportunity to do so has been facilitated. The Attorney General is entitled to an injunction under Ark. Code Ann. § 4-88-104 prohibiting defendants from further engaging in any deceptive or unlawful practice and suspending defendants from doing business in the state absent their compliance with this act.

214. As a result of defendants' unfair and/or deceptive acts or practices, the defendants have reaped hundreds of millions of dollars in ill-gotten profits and gains in Arkansas which they otherwise would not have received and which, in equity, they should be required to disgorge to the state.

215. Additionally, complainant is entitled to restitution under Ark. Code Ann. § 4-88-113 for defendants' wrongful actions, penalties of \$10,000 for each violation, an injunction prohibiting their unlawful activities, attorneys' fees, interest, expenses and costs in an amount exceeding that required for federal court jurisdiction in diversity cases.

#### **COUNT IV**

#### **(Deceptive Trade: Targeting Consumers**

#### **Unable To Protect Their Interest)**

#### **(Against All Defendants)**

216. Arkansas restates and incorporates herein the foregoing paragraphs 1-215 of its Complaint.

217. The Defendants, individually and in concert with each other, have made or caused to be made, directly or indirectly, in the sale and advertisement of their products, statements and taken action intended to knowingly take advantage of consumers who are reasonably unable to protect their interest because of physical infirmity, ignorance, illiteracy, the ability to understand the language of the agreement or similar factor, i.e., specifically, knowingly taking advantage of and targeting Arkansas youths in their sale, distribution and advertisements of their products by targeting underage and susceptible minors as described in paragraphs 172 through 192 above. As stated by one manufacturer and agreed to by the others by their actions

"if younger adults turn away from smoking the industry must decline, just as a population which does not give birth will eventually dwindle. Thus, the companies must obtain and retain the youth market to replace the older diseased and dying consumers." Their imaged based advertisements and marketing techniques are geared toward hooking this susceptible group.

218. Said actions by defendants is a deceptive and unconscionable trade practice in violation of Ark. Code Ann. § 4-88-107(a)(8).

219. As a result of defendants' unfair and deceptive acts and unfair and/or deceptive and unconscionable practices, the defendant companies have reaped hundreds of millions of dollars in ill-gotten profits and gains in Arkansas which they should not have otherwise received and which, in equity, they should be required to disgorge.

220. Also in addition to the disgorgement of their ill-gotten profits and gains, the Attorney General is entitled to restitution to the State of Arkansas, penalties of \$10,000 for each violation, to an injunction prohibiting defendants from further engaging in any deceptive or unlawful practice pursuant to Ark. Code Ann. § 4-88-104, attorneys' fees, interests, and expenses in an amount exceeding that required for federal jurisdiction in diversity of citizenship cases.

**COUNT V**

**(Concealment, Suppression or Omission of Material Facts**

**in Violation of the Deceptive Trade Law)**

**(Against All Defendants)**

221. Complainant restates and incorporates herein the foregoing paragraphs 1-220 of its Complaint.

222. Defendants' actions as outlined above have been utilized in connection with the sale and advertisement of their products. As such, defendants have utilized deceptions, frauds and false pretense in the sale and advertisement of their products to the Arkansas public.

223. The above actions of the defendants have also resulted in the concealment, suppression and omission of material facts in the sale, distribution and advertisement of their products with the intent that consumers in Arkansas rely upon the concealment, suppression and omission.

224. Said actions result in violation of the Arkansas Deceptive Trade Practices Act pursuant to Ark. Code Ann. § 4-88-108.

225. As a result, the defendants should be required to disgorge any ill-gotten profits and gains as a result of their unlawful practices.

226. Also in addition to the disgorgement of their ill-gotten profits and gains, the Attorney General is entitled to restitution to the State of Arkansas, to an injunction prohibiting defendants from further engaging in any deceptive or unlawful practice pursuant to Ark. Code Ann. § 4-88-104, penalties of \$10,000 for each violation, attorneys' fees, interests, and expenses in an amount exceeding that required for federal jurisdiction in diversity of citizenship cases.

**COUNT VI**

**(Common Law Public Nuisance)**

**(Against All Defendants)**

227. Complainant restates and incorporates herein the foregoing paragraphs 1-226 of its Complaint.

228. By their wrongful conduct as alleged above, the defendants have intentionally and unreasonably interfered with the public's right to be free from unwarranted injury, disease and sickness, and have caused damage to the public health, public safety and general welfare of the citizens of Arkansas such that their actions arise to the level of a public nuisance, and have wrongfully caused the State to expend millions of dollars in support of public health, welfare, and research.

229. The acts by the defendants have been intentional, wanton, willful and needlessly reckless entitling plaintiff to punitive damages.

230. As such, the state is entitled to an injunction prohibiting defendants' actions and to all damages, including punitive, incurred as a result of defendants' creation of a nuisance in an amount exceeding that required for federal court jurisdiction in diversity of citizenship cases.

**COUNT VII**

**(Breach of Special Duty)**

**(Against all defendants)**

231. Complainant restates and incorporates herein the foregoing paragraphs 1-230 of its Complaint.

232. Defendants represented that they would undertake a special responsibility and duty to the citizens of Arkansas, and those who advance and protect the public health, to accept an interest in the public's health as a basic and paramount responsibility; to cooperate closely with those who safeguard the public health; to aid and assist the research effort into all aspects of tobacco use and human health; to continue to research and otherwise undertake all possible efforts to learn all the facts and to discover the truth about smoking and health; and finally, to disclose to Arkansas and its citizens complete and accurate information about the effects of tobacco use on human health.

233. Defendants undertook these duties to render such services recognizing that they were necessary for the protection of the public health, including the health of millions of Arkansas citizens.

234. Defendants have breached and continue to breach their special responsibility and duty by failing to exercise reasonable care to protect their undertaking. Defendants' failure to use due care in performing the duty that they voluntarily undertook to perform has increased the risk of harm to the public and the cost of health care for the State of Arkansas above and beyond what it would have been had defendants not publicly represented that they were going to engage in the undertaking at all.

235. As a direct and proximate result of defendants' conduct, Arkansas has suffered and will continue to suffer substantial injuries and damages in an amount in excess of that required for federal court jurisdiction in diversity of citizenship cases for which the State is entitled to recovery. Wherefore, plaintiff prays for restitution in an amount in excess of federal court jurisdiction in diversity of citizenship cases, attorneys fees and costs, pre and post judgment interest and expenses from defendants for their wrongful actions.

WHEREFORE, the State of Arkansas prays for an injunction against the defendants, jointly and severally, and as follows: for damages in an amount which is sufficient to provide restitution and repay the State of Arkansas for the sums the state has expended on the account of the defendants' wrongful conduct; for damages and restitution for sums of money to be paid by the State of Arkansas in the future on account of the defendants' wrongful conduct; for pre-judgment interest, as well as attorneys' fees, expenses, pre and post-judgment interest and costs and for other costs of this action; penalties under the Arkansas Deceptive Trade Practices Act and disgorgement of profits; and for punitive damages in such an amount as will sufficiently deter the defendants and punish the defendants for their conduct, all in amount in excess of that required for federal court jurisdiction in diversity of citizenship cases; and for such other just and equitable relief as allowed by law.

Respectfully submitted,

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