

MARGERY S. BRONSTER 4750  
Attorney General  
CHARLES F. FELL 1137  
Deputy Attorney General  
State of Hawaii  
425 Queen Street  
Honolulu, Hawaii 96813  
Phone: (808) 586-1301

Of Counsel:  
GALIHHER DeROBERTIS NAKAMURA ONO  
Law Corporations  
GARY O. GALIHHER 2008  
610 Ward Avenue, Suite 200  
Honolulu, Hawaii 96814-3308  
Phone: (808) 597-1400

Of Counsel:  
NESS, MOTLEY, LOADHOLDT,  
RICHARDSON & POOLE  
A Professional Association  
RONALD L. MOTLEY  
P. O. Box 1137  
Charleston, South Carolina 29402  
Phone: (803) 577-6747

Attorneys for Plaintiff

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

STATE OF HAWAII, BY MARGERY S. ) CIVIL NO. 97-0441-01  
BRONSTER, ATTORNEY GENERAL, ) (Other Civil Action)  
)  
Plaintiff, ) FIRST AMENDED COMPLAINT; DEMAND  
) FOR TRIAL BY JURY; SUMMONS  
vs. )  
)  
BROWN & WILLIAMSON TOBACCO )  
CORPORATION as successor by merger to )



about the health hazards of cigarette smoking and of being exposed to cigarette smoke. As a result, the residents of the State of Hawaii have contracted smoking-related diseases, including, without limitation, cancer, emphysema and heart disease. The care of these residents has placed a significant burden on the State of Hawaii, including, but not limited to, Medicaid, hospital and other public resources of the State of Hawaii. This burden should rightly be borne by the tobacco industry, which has been able to privatize its profits while socializing the costs of its misconduct. Additionally, the State of Hawaii has a *parens patriae* responsibility to protect the health and safety of its residents. Therefore, the State of Hawaii has filed this lawsuit in furtherance of these responsibilities.

2. Accordingly, the State of Hawaii, by its Attorney General, Margery S. Bronster, brings this action pursuant to its constitutional, statutory, common law, legal and/or equitable authority for the purposes of, *inter alia*, (1) enjoining defendants from jeopardizing our youth and misleading residents of the State of Hawaii and (2) obtaining reimbursement for public assistance, health care costs, and other costs to the State of Hawaii, as a result of the actions of defendants, as well as other relief as will afford a full and complete remedy. The defendant tobacco companies have intentionally marketed their cigarettes toward children and the smoking rate among our children has increased because of it.

3. The allegations contained herein are made on information and belief.

4. As each and every defendant, except for defendant Hawaiian Isles Distributors Ltd., is alleged to have materially participated with, conspired with, assisted, encouraged, acted in concert with and/or aided and abetted one or more of the other defendants in the conduct described herein, unless specifically noted otherwise, each and every allegation applies to each and every defendant.

5. As each and every defendant, except for defendant Hawaiian Isles Distributors Ltd., is alleged to have materially participated, conspired with, assisted, encouraged, acted in concert with and/or aided and abetted one or more of the other defendants in the conduct described herein, unless specifically noted otherwise, each and every count applies to each and every defendant.

## II. PARTIES

### A. PLAINTIFF

6. The State of Hawaii is a sovereign state of the United States. Margery S. Bronster is the duly appointed Attorney General of the State of Hawaii.

### B. DEFENDANTS

7. Brown & Williamson Tobacco Corporation as successor by merger to The American Tobacco Company (“ATC”) is a Delaware corporation whose principal place of business is located at 1500 Brown & Williamson Tower, Louisville, Kentucky 40202. Defendant The American Tobacco Company was an agent, alter ego, subsidiary and/or division of Defendant American Brands, Inc. At times pertinent to the complaint, defendant The American Tobacco Company designed, tested, manufactured, marketed and sold cigarettes for use in the State of Hawaii or materially participated with, conspired with, assisted, encouraged, acted in concert with and/or aided and abetted one or more of the other defendants in doing so.

8. American Brands, Inc. is a Delaware corporation whose principal place of business is located at 1700 East Putnam Avenue, Old Greenwich, Connecticut 06870. Defendant American Brands Inc. was the parent corporation of defendant The American Tobacco Company. At times pertinent to the complaint, defendant American Brands Inc. individually and/or through its agent, alter ego, subsidiary and/or division, defendant The American Tobacco Company, designed, tested, manufactured, marketed and sold cigarettes for use in the State of Hawaii or materially participated with, conspired with, assisted, encouraged, acted in concert with and/or aided and abetted one or more of the other defendants in doing so.

9. Brown & Williamson Tobacco Corporation is a Delaware corporation whose principal place of business is located at 1500 Brown & Williamson Tower, Louisville, Kentucky 40202. Defendant Brown & Williamson Tobacco Corporation is an agent, alter ego, subsidiary and/or division of defendant British American Tobacco Company Ltd., defendant British-American (Holdings) Ltd., defendant B.A.T. Industries PLC and defendant Batus Holdings, Inc. At times pertinent to the complaint, defendant Brown & Williamson Tobacco Corporation designed, tested, manufactured, marketed and sold cigarettes for use in the State of Hawaii or materially participated with, conspired with, assisted, encouraged, acted in concert with and/or aided and abetted one or more of the other defendants in doing so.

10. British American Tobacco Company Ltd. is a British corporation whose registered office is located at Millbank, Knowle Green, Staines, Middlesex, England TW181DY. Defendant British American Tobacco Company Ltd. is a parent corporation of defendant Brown & Williamson Tobacco Corporation. At times pertinent to the complaint, defendant British American Tobacco Company Ltd., individually and/or through its agent, alter ego, subsidiary and/or division, defendant

Brown & Williamson Tobacco Corporation, designed, tested, manufactured, marketed and sold cigarettes for use in the State of Hawaii or materially participated with, conspired with, assisted, encouraged, acted in concert with and/or aided and abetted one or more of the other defendants in doing so.

11. British-American (Holdings) Ltd. is a British corporation whose registered office is located at Millbank, Knowle Green, Staines, Middlesex, England TW181DY. Defendant British-American (Holdings) Ltd. is a parent corporation of defendant Brown & Williamson Tobacco Corporation. At times pertinent to the complaint, defendant British-American (Holdings) Ltd., individually and/or through its agent, alter ego, subsidiary and/or division, defendant Brown & Williamson Tobacco Corporation, designed, tested, manufactured, marketed and sold cigarettes for use in the State of Hawaii or materially participated with, conspired with, assisted, encouraged, acted in concert with and/or aided and abetted one or more of the other defendants in doing so.

12. B.A.T. Industries PLC is a British corporation whose registered office is located at Windsor House, 50 Victoria Street, London, England SW1H ONL. Defendant B.A.T. Industries PLC is a parent corporation of defendant Brown & Williamson Tobacco Corporation. At times pertinent to the complaint, defendant B.A.T. Industries PLC, individually and/or through its agent, alter ego, subsidiary and/or division, defendant Brown & Williamson Tobacco Corporation, designed, tested, manufactured, marketed and sold cigarettes for use in the State of Hawaii or materially participated with, conspired with, assisted, encouraged, acted in concert with and/or aided and abetted one or more of the other defendants.

13. Batus Holdings Inc. is a Delaware corporation with its principal place of business at 1500 Brown & Williamson Tower, Louisville, Kentucky 40202. Defendant Batus Holdings Inc. is a parent corporation of defendant Brown & Williamson Tobacco Corporation. At times pertinent to the complaint, defendant Batus Holdings Inc. individually and/or through its agent, alter ego, subsidiary and/or division, defendant Brown & Williamson Tobacco Corporation, designed, tested, manufactured, marketed and sold cigarettes for use in the State of Hawaii or materially participated with, conspired with, assisted, encouraged, acted in concert with and/or aided and abetted one or more of the other defendants in doing so.

14. Philip Morris Incorporated (Philip Morris U.S.A.) is a Virginia corporation whose principal place of business is located at 120 Park Avenue, New York, New York 10016. Defendant Philip Morris Incorporated (Philip Morris U.S.A.) is an agent, alter ego, subsidiary and/or division of defendant Philip Morris Companies Inc. At times pertinent to the complaint, defendant Philip Morris Incorporated (Philip Morris U.S.A.) designed, tested, manufactured, marketed and sold cigarettes for use in the State of Hawaii or materially participated with, conspired with, assisted, encouraged, acted in concert with and/or aided and abetted one or more of the other defendants in doing so.

15. Philip Morris Companies Inc. is a Virginia corporation whose principal place of business is located at 120 Park Avenue, New York, New York 10016. Defendant Philip Morris Companies Inc. is the parent corporation of defendant Philip Morris Incorporated (Philip Morris U.S.A.). At times pertinent to the complaint, defendant Philip Morris Companies Inc., individually and/or through its agent, alter ego, subsidiary and/or division, defendant Philip Morris Incorporated (Philip Morris U.S.A.), designed, tested, manufactured, marketed and sold cigarettes for use in the State of Hawaii or materially participated with, conspired with, assisted, encouraged, acted in concert

with and/or aided and abetted one or more of the other defendants in doing so.

16. R.J. Reynolds Tobacco Company is a New Jersey corporation whose principal place of business is located at 4th & Main Street, Winston-Salem, North Carolina 27102. Defendant R.J. Reynolds Tobacco Company is an agent, alter ego, subsidiary and/or division of defendant RJR Nabisco Inc. At times pertinent to the complaint, defendant R.J. Reynolds Tobacco Company designed, tested, manufactured, marketed and sold cigarettes for use in the State of Hawaii or materially participated with, conspired with, assisted, encouraged, acted in concert with and/or aided and abetted one or more of the other defendants in doing so.

17. RJR Nabisco Inc. is a Delaware corporation whose principal place of business is 1301 Avenue of the Americas, New York, New York 10015. Defendant RJR Nabisco Inc. is the parent corporation of defendant R.J. Reynolds Tobacco Company. At times pertinent to the complaint, defendant RJR Nabisco, Inc., individually and/or through its agent, alter ego, subsidiary and/or division, defendant R.J. Reynolds Tobacco Company (hereinafter "RJR"), designed, tested, manufactured, marketed and sold cigarettes for use in the State of Hawaii or materially participated with, conspired with, assisted, encouraged, acted in concert with and/or abetted one or more of the other defendants in doing so.

18. Liggett & Myers Inc. is a Delaware corporation whose principal place of business is located at 700 West Main Street, Durham, North Carolina 27701. Defendant Liggett & Myers, Inc. is an agent, alter ego, subsidiary and/or division of defendant Brooke Group Limited and defendant Liggett Group, Inc. At times pertinent to the complaint, defendant Liggett & Myers, Inc. designed, tested, manufactured, marketed and sold cigarettes for use in the State of Hawaii or materially participated with, conspired with, assisted, encouraged, acted in concert with and/or aided and abetted

one or more of the other defendants in doing so.

19. The Brooke Group Limited is a Delaware corporation whose principal place of business is located at 100 Southeast 22nd Street, Floor 32, Miami, FL 33131. Defendant Brooke Group Limited is the parent corporation of defendant Liggett & Myers, Inc. At times pertinent to the complaint, defendant Brooke Group Limited, individually and/or through its agent, alter ego, subsidiary and/or division, defendant Liggett & Myers, Inc., designed, tested, manufactured, marketed and sold cigarettes for use in the State of Hawaii or materially participated with, conspired with, assisted, encouraged, acted in concert with and/or aided and abetted one or more of the other defendants in doing so.

20. The Liggett Group, Inc. is a Delaware corporation whose principal place of business is located at 700 West Main Street, Durham, North Carolina 27701. Defendant Liggett Group, Inc. is the parent corporation of defendant Liggett & Myers, Inc. At times pertinent to the complaint, defendant Liggett Group, Inc., individually and/or through its agent, alter ego, subsidiary and/or division, defendant Liggett & Myers Inc., designed, tested, manufactured, marketed and sold cigarettes for use in the State of Hawaii or materially participated with, conspired with, assisted, encouraged, acted in concert with and/or aided and abetted one or more of the other defendants in doing so.

21. Lorillard Tobacco Company is a Delaware corporation whose principal place of business is located at 1 Park Avenue, New York, New York 10016. Defendant Lorillard Tobacco Company is an agent, alter ego, subsidiary and/or division of defendant Lorillard Incorporated and defendant Loews Corporation. At times pertinent to the complaint, defendant Lorillard Tobacco Company designed, tested, manufactured, marketed and sold cigarettes for use in the State of Hawaii or materially participated with, conspired with, assisted, encouraged, acted in concert with and/or aided

and abetted one or more of the other defendants in doing so.

22. Lorillard Incorporated is a Delaware corporation whose principal place of business is located at 1 Park Avenue, New York, New York 10016. Defendant Lorillard Incorporated is the parent corporation of defendant Lorillard Tobacco Company. At times pertinent to the complaint, defendant Lorillard Incorporated, individually and/or through its agents, alter ego, subsidiary and/or division, defendant Lorillard Tobacco Company, designed, tested, manufactured, marketed and sold cigarettes for use in the State of Hawaii or materially participated with, conspired with, assisted, encouraged, acted in concert with and/or aided and abetted one or more of the other defendants in doing so.

23. Loews Corporation is a Delaware corporation whose principal place of business is located at 1 Park Avenue, New York, New York 10016. Defendant Loews Corporation is the parent corporation of defendant Lorillard Tobacco Company. At times pertinent to the complaint, defendant Loews Corporation, individually and/or through its agent, alter ego, subsidiary and/or division, defendant Lorillard Tobacco Company, designed, tested, manufactured, marketed and sold cigarettes for use in the State of Hawaii or materially participated with, conspired with, assisted, encouraged, acted in concert with and/or aided and abetted one or more of the other defendants in doing so.

24. United States Tobacco Company is a Delaware corporation whose principal place of business is located at 100 West Putnam Avenue, Greenwich, Connecticut 06830. Defendant United States Tobacco Company is an agent, alter ego, subsidiary and/or division of defendant UST Inc. At times pertinent to the complaint, defendant United States Tobacco Company designed, tested, manufactured, marketed and sold cigarettes for use in the State of Hawaii or materially participated with, conspired with, assisted, encouraged, acted in concert with and/or aided and abetted one or more

of the other defendants in doing so.

25. UST Inc. is a Delaware corporation whose principal place of business is 100 West Putnam Avenue, Greenwich, Connecticut 06830. Defendant UST Inc. is the parent corporation of defendant United States Tobacco Company. At times pertinent to the complaint, defendant UST Inc., individually and/or through its agent, alter ego, subsidiary and/or division, defendant United States Tobacco Company, designed, tested, manufactured, marketed and sold cigarettes for use in the State of Hawaii or materially participated with, conspired with, assisted, encouraged, acted in concert with and/or aided and abetted one or more of the other defendants in doing so.

26. The Council for Tobacco Research - U.S.A. Inc. (successor in interest to the Tobacco Industry Research Committee) is a non-profit corporation organized under the laws of the State of New York with its principal place of business located at 900 3rd Avenue, New York, New York 10022. At times pertinent to the complaint, defendant Council for Tobacco Research - U.S.A. Inc. acted individually and as the agent, alter ego, aider and abettor and/or co-conspirator of the tobacco industry, materially participating with, conspiring with, assisting, encouraging, acting in concert with and/or aiding and abetting one or more of the other defendants in the design, testing, manufacture, marketing and sale of cigarettes for use in the State of Hawaii.

27. Tobacco Institute Inc. is a non-profit corporation organized under the laws of the State of New York with its principal place of business located at 1875 "T" Street NW, Suite 800, Washington, D. C. 20006. At times pertinent to the complaint, defendant Tobacco Institute Inc. acted individually and as the agent, alter ego, aider and abettor and/or co-conspirator of the tobacco industry, materially participating with, conspiring with, assisting, encouraging, acting in concert with and/or aiding and abetting one or more of the other defendants in the design, testing, manufacture, marketing and sale

of cigarettes for use in the State of Hawaii.

28. Hill & Knowlton Inc., is a Delaware corporation with its principal place of business located at 420 Lexington Avenue, New York, New York 10070. At times pertinent to the complaint, defendant Hill & Knowlton Inc. acted individually and as the agent, alter ego, aider and abettor and/or co-conspirator of the tobacco industry, materially participating with, conspiring with, assisting, encouraging, acting in concert with and/or aiding and abetting one or more of the other defendants in the design, testing, manufacture, marketing and sale of cigarettes for use in the State of Hawaii.

29. Hawaiian Isles Distributors Ltd. is a Hawaii corporation whose principal place of business is located at 2839 Mokumoa Street, Honolulu, HI 96819. At times pertinent to the complaint, defendant Hawaiian Isles Distributors Ltd. (hereinafter "HID") distributed, sold, and advertised cigarettes for use in the State of Hawaii and benefited from the acts or omissions of the other defendants. Defendant HID is included in the general term "Defendant" only in allegations relating to the distribution, sale, and advertising of cigarettes within the State of Hawaii.

30. John Doe Entities “A” through “Z”, are business entities, both domestic and foreign, whose identities are presently unknown to plaintiff, despite a review of discovery documents produced in the national tobacco litigation and a review of documents filed with the State of Hawaii Department of Commerce And Consumer Affairs, but who may be described as certain manufacturers, distributors, and/or trade organizations, public relations firms, law firms, and/or other such entities which may have designed, tested, manufactured, marketed and sold cigarettes for use in the State of Hawaii or materially participated with, conspired with, assisted, encouraged, acted in concert with and/or aided and abetted one or more of the other defendants in doing so.

### III. JURISDICTION AND VENUE

31. Personal jurisdiction is properly obtainable over each of defendants pursuant to, *inter alia*, H.R.S. §634-35. Defendants, individually and/or through their agents, alter egos, subsidiaries, divisions or co-conspirators, designed, tested, manufactured, marketed and sold cigarettes for use in the State of Hawaii or materially participated with, conspired with, assisted, encouraged, acted in concert with and/or aided and abetted one or more of the other defendants in doing so. Said actions, detailed herein occurred within and outside of the State of Hawaii and caused injury within and to the State of Hawaii.

32. The State of Hawaii brings this action to obtain monetary, declaratory, injunctive and other equitable relief. The State of Hawaii seeks to prevent continued violations of the law and breaches of duties by defendants, to recoup its tobacco-related health care costs, to cause disgorgement of defendants’ tobacco-related profits and gains, to obtain treble damages for defendants’ violation of H.R.S. Chapter 480 which prohibits restraints of trade and unfair and deceptive trade

practices, and to recover actual and punitive damages on its own behalf and on behalf of its residents. These damages include damages for both past and future expenditures for public assistance, health care costs, and other costs to the State of Hawaii. These damages also include the provision of sick leave, health insurance benefits, temporary disability insurance benefits, and unemployment insurance benefits, provided by and through the State of Hawaii to its employees and retirees.

33. Under these Medicaid, publicly-funded health care programs, and other publicly funded programs, the State of Hawaii pays out large sums of money for the provision of necessary assistance to eligible residents in the State of Hawaii (“Medicaid and other publicly-funded health care recipients”), some of whom have been and/or are now being treated in this circuit and elsewhere throughout the State of Hawaii for tobacco-related diseases. One or more of the claims for relief in this action arose in this circuit and, thus, venue is proper in this circuit. H.R.S. §603-36.

#### IV. CONDUCT ALLEGATIONS

##### A. GENERAL

34. At all pertinent times, defendants, except for defendant HID, acted individually and by and through their duly authorized agents, servants, employees, alter egos, co-conspirators and aiders and abettors who were then acting in the course and scope of their agency, servitude, employment and the conspiracy and in furtherance of the businesses of said defendants. At all pertinent times, defendants Tobacco Institute and Council for Tobacco Research were the agents, servants, employees, alter egos, co-conspirators and aiders and abettors of defendants and acted individually and/or within the scope of their agency, servitude, employment and the conspiracy. At pertinent times, defendant Hill and Knowlton was the agent, servant, employee, alter ego, co-conspirator and aider and abettor of

defendants, including defendants Tobacco Institute and Council for Tobacco Research, and acted individually and/or within the scope of said agency, servitude, employment and the conspiracy. Upon information and belief, at pertinent times, Shook, Hardy & Bacon, P.C.; Jacob, Medinger & Finnegan; Chadbourne & Parke, L.L.P.; and other in-house attorneys for the tobacco industry were the co-conspirators, aiders and abettors, agents and servants of defendants, including defendants Tobacco Institute and Council for Tobacco Research, and acted individually and/or within the scope of said agency, servitude and the conspiracy, but outside the bounds of what constitutes proper and ethical legal representation. Said attorneys are hereinafter collectively referred to as “lawyer agents” or “tobacco industry attorneys.”

35. Defendants, and/or their predecessors and successors in interest, themselves and/or through their agents, servants, employees, alter egos, co-conspirators and aiders and abettors, performed such acts as were intended to, and did, result in, assist in and/or contribute to the design, testing, manufacture, marketing or sale of cigarettes for use in the State of Hawaii. In connection with these acts, defendants, and/or their predecessors and successors in interest, transacted business within the State of Hawaii, committed the tortious acts complained of herein within the State of Hawaii, entered into express or implied contracts to be performed in whole or in part in the State of Hawaii, and/or caused injury to persons or property within the State of Hawaii.

36. The cigarettes for which these defendants are responsible are substantially interchangeable.

37. Substantially similar issues, both legal and factual, are involved in determining liability of each of these defendants.

38. At all pertinent times, defendants purposefully and intentionally engaged in these activities, and continue to do so, knowing full and well that when the State of Hawaii residents used those cigarettes as they were intended to be used, that the State of Hawaii residents would be substantially certain to suffer injury, disease, and illness, including cancer, emphysema, heart disease and other illnesses causing disability and death and that the State of Hawaii itself would be economically injured thereby.

39. Also, at all pertinent times, defendants purposefully and intentionally engaged in these activities, and continue to do so, knowing full and well that the State of Hawaii would confer a benefit upon defendants by providing or paying for health care and other necessary medical goods and services for certain of the State of Hawaii residents thus harmed by the intended use of defendants' cigarettes, and that the State of Hawaii itself thereby would be harmed.

40. Cigarette-related disease has killed, and continues to kill, untold millions of Americans. The Center for Disease Control ("CDC") has estimated that over 400,000 persons die each year from smoking. Approximately one in five deaths is attributable to smoking. Each day, more than 3,000 young people begin to smoke -- or more than one million each year. Most of the new smokers who replace the smokers who quit or die prematurely from smoking-related disease are children or teens. About 90% of smokers born since 1935 started smoking before age 21 and almost 50 percent started before age 18. Over a thousand residents die each year as a result of smoking cigarettes here in Hawaii.

41. The monetary consequences of smoking cigarettes are equally as staggering. In May of 1993, the Office of Technology Assessment advised the United States Congress that in 1990 smoking-related illnesses cost United States taxpayers a total of approximately \$68 billion, broken down as

follows: \$20.8 billion in direct costs; \$6.9 billion in indirect costs for morbidity; \$40.3 billion in indirect costs for mortality.

42. The State of Hawaii spends millions of dollars each year to provide or pay for public assistance, health care, and other benefits and services on behalf of residents who suffer from tobacco-induced cardiovascular disease, cancer, emphysema and other respiratory diseases as well as the complications of pregnancy and childbirth, including but not limited to low-weight babies.

43. Defendants have known for decades of the lethal dangers of smoking cigarettes. By the late 1930's, based on published research, defendants had notice of the potential health hazards presented by smoking cigarettes. In 1946, defendants' chemists themselves reported concern for the health of smokers. Dr. Ernest L. Wynder, in 1953, reported to the scientific community, and to defendants, a definitive link between cigarette smoking and cancer.

#### B. THE COMPOSITION OF THE CIGARETTE INDUSTRY IN THE UNITED STATES

44. Philip Morris Incorporated, RJ Reynolds Tobacco Company, Brown & Williamson Tobacco Corporation, Lorillard Tobacco Company and Liggett & Myers Incorporated manufacture virtually 100% of the cigarettes marketed in the United States and Hawaii. Each of these companies is a wholly-owned subsidiary controlled by the defendant parent corporations named herein.

45. The tobacco industry is one of the most profitable industries in the United States, with profit margins estimated to be in the range of 30 percent. Tobacco industry profits are in the billions of dollars annually from domestic sales alone.

46. The unusual concentration of the tobacco industry has facilitated the planning, implementation and funding of a decades-long conspiracy by the tobacco companies and their trade associations and lawyer agents relating to the issues of smoking, health and addiction.

C. 1994 CONGRESSIONAL TESTIMONY  
BY CIGARETTE MANUFACTURERS

47. The basic terms of the industry strategy of deception are intact today. For example, on April 14, 1994, seven tobacco company chief executives 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”). Each of these executives knowingly made material misrepresentations and/or omissions to the Waxman Subcommittee.

48. For example, Chairman Waxman and Andrew Tisch, CEO of Lorillard, had the following exchange about smoking and cancer:

Mr. Waxman: In a deposition last year you were asked whether cigarette smoking causes cancer. Your answer was “I don’t believe so.” Do you stand by that answer today?

Mr. Tisch: I do sir.

Mr. Waxman: Do you understand how isolated you are in the belief from the entire scientific community?

Mr. Tisch: I do, sir.

Mr. Waxman: You’re the head of manufacturing of a product that’s been accused by the overwhelming scientific community to cause cancer. You don’t know? Do you have an interest in finding out?

Mr. Tisch: I do, sir.

Mr. Waxman: And what have you done to pursue that interest?

Mr. Tisch: 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.

49. Philip Morris President and CEO William I. Campbell gave the following testimony about nicotine and addiction:

a. “Philip Morris does not manipulate nor independently control the level of nicotine in our products.”

b. “Cigarette smoking is not addictive.”

c. “Philip Morris research does not establish that smoking is addictive.”

50. RJR CEO James W. Johnston told the Subcommittee that: “smoking is no more addictive than coffee, tea, or Twinkies.”

51. These assertions are contradicted by overwhelming evidence that smoking kills, and that nicotine is addictive.

52. These representations were also made despite a substantial body of evidence developed by the tobacco industry itself, dating from as early as 1962, indicating that nicotine is not only addictive, but is the reason why people smoke.

53. While the tobacco manufacturers continue to deny that nicotine is addictive and instead use various misleading euphemisms to describe the role of nicotine, such as “satisfaction”, “impact”, “strength”, “rich aroma”, and “pleasure”, there is widespread agreement in the medical and scientific communities that its primary, if not sole, function is to make tobacco products addictive.

54. 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 health consequences.

55. The testimony of the tobacco industry that smoking is not a proven cause of disease and death, and that nicotine is not addictive, is also contradicted by their own internal documents. Numerous documents, many marked confidential, describe industry studies that show that the tobacco industry has known for decades that nicotine is addicting, and that their products cause cancer, disease, and death. The tobacco industry has made every effort to hide this research from the public, and to misrepresent the facts about smoking, health and addiction. The testimony of the cigarette executives before Congress in 1994 is only a recent example of an ongoing pattern of deception and suppression that began more than 40 years ago.

#### D. THE 1953 “BIG SCARE” AND THE JOINT INDUSTRY RESPONSE

56. In December, 1953, Dr. Ernest L. Wynder of the Sloan-Kettering Institute published the results of a study where he painted the shaved backs of mice with cigarette smoke condensate residue. Malignant tumors grew in 44 percent 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.”

57. The tobacco industry responded quickly to the mounting adverse publicity of a link between smoking and cancer. The chief executive officers of the leading cigarette manufacturers met on December 15, 1953, at the Plaza Hotel in New York City. Also in attendance was the public relations firm of Hill & Knowlton which was to play a central role in formulating and executing the industry response.

58. According to a Hill & Knowlton memorandum summarizing the meeting, tobacco 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 . . . .”

59. 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 the 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, “have agreed to go along with a public relations program on the health issue.” Liggett decided not to participate at this point, because it “feels that the proper procedure is to ignore the whole controversy.”

b. “They feel that they should sponsor a public relations campaign which is positive in nature and is entirely ‘pro-cigarettes.’ ”

c. “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. Each of the company presidents attending emphasized the fact that they consider the program to be a long-term one.”

d. The role of Hill & Knowlton in executing the plan was also discussed. “The current plans are for Hill & Knowlton to serve as the operating agency of the companies, hiring all the staff and disbursing all funds.”

#### E. CREATION OF THE TOBACCO INDUSTRY RESEARCH COMMITTEE

60. Nine days later, Hill & Knowlton presented a detailed recommendation to the tobacco industry. 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.

61. As a result of the meeting of December 15, 1953, and the recommendations of Hill & Knowlton, five of the six cigarette companies 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 on smoking which concluded that cigarette smoking was a cause of lung cancer. Also in 1964, TIRC changed its name to the Council for Tobacco Research (“CTR”). A second trade group, the Tobacco Institute (“TI”), was formed by the tobacco industry in 1958.

F. TIRC CONTROL

62. As had been proposed at the December 15, 1953 meeting, the cigarette companies (except Liggett), through their lawyer agents and Hill & Knowlton, operated and effectively controlled TIRC.

63. TIRC was physically established in the Empire State building, one floor below the Hill & Knowlton offices. Internal documents confirm that Hill & Knowlton, and not the 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 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.

64. The confidential memorandum also states that Hill & Knowlton “provided assistance in selecting” the TIRC Scientific Advisory Board; “proposed” the Scientific Director; and “handles liaison, agendas, organizational plans, business affairs, reports, and materials for meetings of the Tobacco Industry Research Committee, and the Scientific Advisory Board . . . in addition to developing operating procedures for the research program . . . .”

65. 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 percent of TIRC's entire budget.

G. THE INDUSTRY'S RESPONSE TO SMOKERS

66. Shortly after creating TIRC, defendants made an unambiguous pledge to the public, including the people of Hawaii. Defendants represented that, through TIRC, they would conduct and report objective and unbiased research regarding smoking and health. When they made this representation, defendants intended that the public and federal government regulators believe and rely upon it, and knew or should have known that Hawaii consumers would consider the representation material to their decisions to purchase and smoke cigarettes and that federal government regulators would consider the representation material in their decisions to regulate cigarettes. At that time, and continuing to the present, defendants knew or should have known that their failure to fulfill the duty they undertook would directly increase the costs for public assistance, health care, and other benefits and services provided by the State of Hawaii.

67. On January 4, 1954, 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, reaching a circulation of 43,245,000 in 258 cities. The advertisement ran in daily newspapers across the country, and was prominently reported on in Hawaii in the Honolulu Star-Bulletin, the Honolulu Advertiser, and the Hilo Tribune-Herald, on January 4 and 5, 1954.

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

- a. “Recent reports on experiments with mice have given wide publicity to a theory that 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. “There 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 have always 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. The 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.”

69. 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” . . . “The first ‘big scare’ continues on the wane.”

b. “The research program of the TIRC has won wide acceptance in the scientific world as a sincere, valuable and scientific effort.”

c. “Positive stories are on the ascendancy.”

#### H. HISTORY OF INDUSTRY KNOWLEDGE THAT SMOKING IS HARMFUL

70. Even before defendants represented in the Frank Statement that “[t]here is no proof that cigarette smoking is one of the causes of lung cancer,” an industry researcher had reported the contrary.

71. 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.

72. After the 1954 “Frank Statement”, the tobacco industry’s breach of its assumed duty to report objective facts on smoking and health was virtually immediate. As evidence mounted, both through industry research and truly independent studies, that cigarette smoking causes cancer and other diseases, the tobacco industry continued publicly to represent that nothing was proven against smoking. Internal documents show that the truth was very different. The tobacco industry knew and

acknowledged among itself the veracity of scientific evidence of the health hazards of smoking, and at the same time suppressed such evidence where it could, and attacked when it did appear.

73. Internal tobacco 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 which 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. 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.

f. 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.

74. 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 shows cigarette smoking causes human disease. A “Draft of an Outline for a Background Paper on the Smoking Problem to be Used in Connection with a Presentation of Arguments Before the Surgeon General’s Committee” states:

a. “All types of Smoking are Associated with Increased Mortality from all causes combined . . . .”

b. “For cigarette smokers who smoke regularly, excess mortality increases with current number of cigarettes smoked . . . .”

c. “Lung cancer extremely rare among nonsmokers . . . .”

d. As “reported by Hammond . . . Excess Mortality [is] (1) higher for cigarette smokers than others, and (2) increases with daily cigarette consumption.”

e. “For both sexes, all chronic respiratory diseases, chronic bronchitis, irreversible obstructive lung diseases . . . increased in prevalence with increasing amount of smoking.” (Emphasis in original).

75. The report Liggett presented to the Surgeon General did not contain any of these conclusions, and instead, 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.

76. Philip Morris also concealed from the public its actual views of the research conducted outside the influence of the industry. A 1971 memorandum written by Dr. H. Wakeham, then Vice President of Research and Development, discussed 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. I am sure all of you have read extensively about this in the newspapers, how the industry asked to have independent panel of pathologists review the histological sections showing cancer, how the Society refused, how generally the ACS was put on the defensive, how publication was refused by two medical journals and how the story was changed somewhat by the time it was published . . . .

77. The memorandum goes on to describe how the industry publicly dismissed the mice cancer studies, such as the 1953 Wynder research. Dr. Wakeham explains that “mouse skin is not human lung tissue”, “smoke condensate has different chemical composition from inhaled smoke”, and “painting is not the method of application practised (sic) by human smokers.”

78. In contrast to the mice studies, however, Dr. Wakeham continued:

The logical extension of these objections is that an inhalation test in which an animal breathed smoke like a human would be a better model system. Presumably, in such a test, the formation of lung cancers in the test animal would be strong evidence for the cigarette causation hypothesis. That is why the beagle test was a critical one . . . . So the test was not conclusive. But it was a lot closer than skin painting.

The strong opposition in 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.

79. Taken together with the internal acknowledgments of cigarette smoking as a cause of human disease, this memorandum from a senior Philip Morris researcher demonstrates that the 1954 Frank Statement representations were deceptions, and that the tobacco industry promptly breached the duties it had undertaken. Far from “accepting an interest in people’s health as a basic responsibility, paramount to every other consideration in our business” and “cooperating closely with those whose task it is to safeguard the public health,” the tobacco industry approach was to deny and attack with “counter-propaganda” the mounting evidence that smoking caused human disease -- evidence that the industry plainly viewed internally as accurate.

#### I. HEALTH RISKS OF NICOTINE

80. Not only did the tobacco industry know that cigarette smoking caused cancer and other disease, they knew that nicotine was toxic to the heart. In a 1963 memorandum Philip Morris’s Wakeham stated, “The cardiovascular effects in smoke are believed to be mainly due to nicotine and have been thoroughly explored in literature and conference. We do not believe this will be a specific area of attack. If forced to, we could produce a fairly tasty low nicotine product.”

81. As alleged in more detail below, in 1980 Philip Morris hired Dr. Victor DeNoble with the specific mission of researching and developing nicotine analogues -- compounds that would mimic nicotine's effect on the brain, but without the cardiovascular effects, such as rapid heartbeat.

82. Brown & Williamson and its British parent(s) 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 etiology of cardiovascular disease . . . ."

83. A memorandum from Dr. S. R. Evelyn of BATCO, dated May 30, 1974, reported: "Nicotine: The reported correlation of nicotine with tumorigenicity was considered to be of the utmost importance to the industry."

84. Again, in February 1979, BATCO held a group research and development conference to review the activities of its laboratories located throughout the world. Notes from the conference reveal that research found that high nicotine cigarettes are more tumorigenic and possibly more malignant. The notes also indicated that the laboratory was continuing work on nicotine analogues.

85. At a 1984 research conference held in the United Kingdom, Brown & Williamson and BATCO were informed of the harmful effects of nicotine. As a report from that conference stated: "The role of nicotine and cardiovascular disease was outlined, in particular the role of smoke in decreasing prostacyclin and increasing thromboxane levels." Researchers at the conference also recommended that the company perform additional studies on the role of nicotine in heart disease, and its effect on developing fetuses.

## J. REPEATED FALSE PROMISES TO THE PUBLIC

86. Despite increasing internal knowledge of the dangers of cigarette smoking which they did not disclose, the defendants continued, renewed and repeated the representations and undertakings of the 1954 “Frank Statement to Cigarette Smokers,” placed numerous false, misleading and deceptive advertisements in magazines and newspapers that were sold in Hawaii. The tobacco industry continued to pursue its two-pronged strategy of falsely representing the objectivity of industry research to the public in order to gain credence, and then misrepresenting, distorting, and suppressing information in order to support its pro-cigarette position.

87. For example, 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.”

88. Additional representations were made in the Washington Post on December 1, 1970, when the tobacco industry, through its lobbying group the Tobacco Institute, placed a number of advertisements similar to the 1954 “Frank Statement.” These advertisements 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. “[N]o particular ingredient, as it occurs in cigarette smoke, has been demonstrated as the cause of any particular disease.”

c. “[A] major portion of this scientific inquiry has been financed by the people who know the most about cigarettes and have a great desire to learn the truth . . . the tobacco industry. And the industry has committed itself to this task in the most objective and scientific way possible.”

d. “A \$35,000,000 program”.

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

f. “In 1954, the Industry established what is now known as CTR, the Council for Tobacco Research -- U.S.A., 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.”

g. “The findings are not secret.”

h. “From the beginning, the tobacco industry has believed that the American people deserve objective, scientific answers.”

j. “The tobacco industry stands ready today to make new commitments for additional valid scientific research that offers to shed light on new facets of smoking and health.”

89. 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.” This was printed in the Honolulu Advertiser and Star-Bulletin on Tuesday, May 5, 1970.

90. A proposed advertisement to have been co-sponsored by TIRC and the TI 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.

Scientific advisors inform us that until much more is known about such diseases as lung cancer, medical science probably will not be able to determine whether tobacco or any other single factor plays a causative role or whether such a role might be direct or indirect, incidental or important.

We shall continue all possible efforts to bring the facts to light. In that spirit we are cooperating with the Public Health Service in its plan to have a special study group review all presently available research.

91. In 1972 Tobacco Institute President Horace Kornegay testified before Congress:

Let me state at the outset that the cigarette industry is as vitally concerned or more so than any other group in determining whether cigarette smoking causes human disease, whether there is some ingredient as found in cigarette smoke that is shown to be responsible and if so what it is.

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.

92. In 1984, RJR placed an editorial style advertisement in the “New York Times” stating:

Studies which conclude that smoking causes disease have regularly ignored significant evidence to the contrary. These scientific findings come from research completely independent of the tobacco industry.

93. Each of the representations to the public that the tobacco industry and defendant tobacco companies were sponsoring independent objective research, that they were endeavoring to bring the truth to light, and that the public could therefore rely upon the statements made, were false and deceptive. These misrepresentations were designed to gain the trust of the public in order to better distort and suppress substantive information about smoking and health. These actions violate H.R.S. §708-871 and the plaintiff has standing to sue for damages and injunctive relief under H.R.S. §603-23.5 and other relevant statutes.

K. THE GENTLEMEN'S AGREEMENT

94. This industry strategy depended for its success on joint and concerted action by the defendants, except for defendant HID. Upon information and belief, each of the defendants, except for defendant HID, agreed not to reveal to the public the true nature of TIRC, and later CTR, and not to disclose adverse information on smoking and health, in order to protect continued cigarette sales.

95. Each company, except for defendant HID, 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.

96. Also in 1968, a memo addressed to the CEO of Liggett regarding a meeting of the research directors of the six cigarette companies 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.”

97. As indicated by the 1968 “gentlemen’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 smoking, including the addictive qualities of cigarettes, and restraining, concealing, and suppressing the research and marketing of safer cigarettes.

L. ROLE OF CTR AS A “FRONT”

98. 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.” The agent lawyers were integral to the orchestration and perpetuation of the fraudulent use of the CTR as a “front.”

99. A 1974 report to the CEO of Lorillard provides a retrospective look at some of the true purposes of the joint industry research effort. Contrary to the public representations of joint

industry research as designed to examine and resolve smoking and health questions, the author, a Lorillard research executive, described the actual criteria for CTR's selection of scientific projects:

Historically, the joint industry funded smoking and health research programs have 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. In general, these programs have provided some buffer to public and political attack of the industry, as well as background for litigious strategy . . . .

100. Another 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 evidence of 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.

101. A 1978 memo addressed to the CTR file from a Philip Morris official provides another description of the history and role of the joint industry research effort, a role very different from that represented to the public.

CTR began as an organization called Tobacco Industry Research Council (TIRC). It was set up as an industry “shield” in 1954. That was the year statistical accusations relating smoking to disease were leveled at the industry; litigation began; and the Wynder/Graham reports were issued. CTR has helped our legal counsel by giving advice and technical information, which was needed at court trials. CTR has provided spokesmen for the industry at Congressional hearings. The monies spent on CTR provides a base for introduction of witnesses.

. . . [T]he “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. . . .

102. A former 24-year employee of CTR confirmed in public statements that the joint industry research efforts were never objective. A woman who wrote summaries of grantee research for CTR until 1989 stated: “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.” She continued, “In the ‘60s, there was so much bad news about smoking that there really wasn’t much the CTR could put out, but anything they could find they would use.”

103. This evidence demonstrates that the role and purpose of TIRC and CTR in the cigarette companies’ strategy was to gain the public’s trust, and then to use that trust to propagate pro-cigarette propaganda. A tobacco industry official wrote in his personal notes describing a meeting which included high level officials from the various tobacco industry that:

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

M. THE EXAMPLE OF DR. FREDDY HOMBURGER

104. Most CTR sponsored research projects were directed away from research that might add to the evidence against smoking. Nonetheless, when CTR sponsored research reached negative results, the information was distorted or simply suppressed. For example, Dr. Freddy Homburger, a researcher in Cambridge, Massachusetts, received a grant from CTR to study smoke exposure on hamsters. Halfway through the study, CTR changed his funding from a grant to a contract. Dr. Homburger states that the CTR changed his funding “so they could control publication -- they were very open about that.” As a consequence, Dr. Homburger was required to send CTR a draft of his proposed publication of the research results. Dr. Homburger found that when Syrian hamsters were exposed to inhaled smoke twice a day for 59 to 80 weeks, 40 percent of those of a cancer-susceptible strain and 4 percent of a resistant strain developed malignant tumors.

105. The Scientific Director of CTR and a CTR lawyer, Edwin Jacob of Jacob, Medinger & Finnegan, then visited Dr. Homburger. Dr. Homburger has testified that “[t]hey didn’t want us to call

anything cancer.” They wanted it to be pseudo-epitheliomatous hyperplasia, and that is a euphemism for lesions preceding cancer. And we said no, this isn’t right. It is a cancer.” Dr. Homburger also stated that the lawyer told him that he would “never get a penny more” if the paper was published without making the demanded changes. Dr. Homburger compromised, and changed the paper to read “microinvasive” cancer.

106. Dr. Homburger apparently then considered making public the events leading to the change in this paper. Internal CTR documents describe how Dr. Homburger attempted to call a press conference, 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 cancelled.” “Homburger was given a cordial welcome and nicely hastened out the door.”

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

#### N. SPECIAL PROJECTS

107. Another mechanism that CTR used to suppress research results that implicated smoking in disease was to selectively involve lawyers, and then invoke the attorney/client privilege to prevent the disclosure of harmful information. CTR then 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.

108. Notes prepared at a 1981 meeting of the tobacco industry’s Committee of General Counsel state:

- a. 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.

. . . [W]e 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.

- b. Difference between CTR and Special Four (lawyers’ projects). Director of CTR reviews special projects if project was problem for CTR, use Special Four. Also, if there are work-product claims, need the lawyers’ protection, . . . e.g. motivational research that was done during the FTC investigation was done through Special Four because of possibility that CTR would be subpoenaed.

109. The memorandum addressed to CTR from a Philip Morris official characterizes CTR as a “front” for performing “special projects.”

“[S]pecial projects” are the best way that monies are spent. On these projects, CTR has acted as a “front”; however, there are times when CTR has been reluctant to serve in that capacity . . . .

110. The industry’s use of lawyers and the claim of attorney/client privilege to insulate CTR funded research projects from disclosure to the public, and to government officials, demonstrates that each of the industry representations to jointly fund objective research, and to report the results of that research to the public, was utterly false.

O. CLEARING THE “DEADWOOD”

111. Brown & Williamson went to even greater lengths to suppress and avoid disclosure of its internal research on smoking and disease. A memorandum from Brown & Williamson’s general counsel, J. Kendrick Wells, recommended 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 them. Wells stated, “I have marked with an X documents 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 deadwood.” (“Janus” was a name of a project which 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 its files.” Other defendants likewise endeavored to move potentially damaging documents and research off-shore, away from the reach of regulators and plaintiff attorneys.

P. “MOUSE HOUSE” MASSACRE

112. As indicated in an internal tobacco company memorandum, in contravention of the industry’s gentlemen’s agreement, many of the defendants began to perform biological research through their own facilities. In sharp contrast to the pro-cigarette research usually sponsored by CTR, some of this research was directed at examination of the link between smoking and disease. When this research revealed or suggested that cigarette smoking is harmful, rather than reporting it to the public as they had undertaken and represented, the tobacco industry suppressed it.

113. One example of this practice occurred at RJR. In the 1960s, RJR established a facility in Winston-Salem, North Carolina, to perform research on the health effects of smoking using mice.

Nicknamed the “Mouse House”, RJR scientists conducted research in a number of specific areas, including studies of the actual mechanism whereby smoking causes emphysema in the lungs.

114. The RJR lab made significant progress in understanding the role of substances known as pulmonary surfactants in air sacks in the lungs. RJR researchers learned that smoking damages the pulmonary surfactants, meaning the lung air sacks were damaged at the cellular level, and had made progress in learning how that led to emphysema. Despite this progress, RJR disbanded the entire research division in one day, and fired all 26 scientists without notice.

115. Several months before the 1970 closure and findings, RJR attorneys had collected dozens of research notebooks from the scientists. The notebooks have still not been disclosed.

116. One of the researchers later stated about RJR’s executives and lawyers, “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.”

117. RJR later issued a confidential report in which the Mouse House emphysema work was favorably described. The 1985 report states that the work is “the more important of the smoking and health research effort because it comes close to determining what was thought to be the underlying pathology of emphysema.” None of the work done at the “Mouse House” was disclosed to the public.

Q. “SAFER” CIGARETTES

118. One of the reasons RJR and other tobacco industry companies began to do internal biological research appears to have been to attempt to develop a cigarette with reduced health risks. In order to reduce the health risk, studies were needed to discover how cigarette smoking causes disease. Once this was known, attempts could be made to remove or modify the harmful agents. Several companies performed research of this kind by 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 kept secret and never reported to the public.

119. Even more shocking, industry documents reveal that a number of companies successfully removed certain harmful constituents from cigarette smoke, and developed prototype cigarettes with reduced health effects, but that these products were never marketed. The reason was the industry conspiracy not to reveal harmful research results that would undermine the unified position that there is no proof that smoking causes disease.

120. A memorandum written by an attorney at the firm of Shook, Hardy & Bacon, long-time lawyers for the tobacco industry, confirmed that there was an industry-wide position regarding the issue of a safer cigarette. The 1987 memorandum referred to the marketing by R.J. Reynolds of a smokeless cigarette, Premier, which heated rather than burned tobacco. The Shook, Hardy attorney wrote 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.”

121. 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 . . . .”

122. Philip Morris did perform the research and development of such a 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.

123. The research and development department at Philip Morris nonetheless continued to perform research on smoking and health, including research into safer cigarettes. The company viewed this as necessary in order to compete if another cigarette company marketed a safer cigarette. This was viewed as less likely, because work was being done through joint industry sponsored research abroad. The presentation to the Philip Morris Board of Directors continued:

In England a research laboratory sponsored by the industry has been established at Harrogate to do biomechanical research. On the Continent individual companies and monopolies have agreed to pool research on the health question, thereby reducing it as a basis for competition. Technical researchers meet to share information and to plan future work. All these efforts underscore the broad and serious attempts to eliminate what are generally believed to be harmful aspects of cigarette smoke.

In short, 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 a war comes, we aim to fight well and to win.

R. LIGGETT SAFER CIGARETTE: XA

124. 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. And unlike the Philip Morris product, Liggett officials believed the Liggett product was commercially marketable. Nonetheless, in violation of the company's representations and duty to the public, Liggett never marketed the cigarette, and suppressed the research that led to its development.

125. Liggett began its research by repeating the smoke condensate painting studies of mice performed by Dr. Wynder. Through a contract with Arthur D. Little, Inc., Liggett sought "to determine the validity of Wynder's results when the appropriate smoking conditions were used, and to determine the effect of different types of tobacco on the response level. An extensive program was also directed toward defining the nature of the material responsible for the tumorigenic effect."

126. This work began soon after Dr. Wynder's study was published in 1953, and was successful. A Liggett document discussing the history of the project states:

Wynder's findings were confirmed and all commercial cigarette types produced virtually identical mouse skin tumor incidences. The tumorigenic initiating effect was found to reside in a relatively small smoke fraction containing polycyclic aromatic hydrocarbons.

127. As a result of these discoveries, in 1968, Liggett began "a tobacco additive program designed to reduce or eliminate the tumorigenic activity of cigarette smoke." Company researchers discovered that palladium metal and magnesium nitrate, when added to cigarette tobacco, acted as catalysts in the burning process that removed carcinogenic compounds from the cigarette smoke. Liggett performed animal studies which indicated that "[c]igarette tar has been neutralized" and that there was no evidence for "new or increased hazard to the smoker."

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

- a. Briefly, as a result of 20 years effort in cooperation with Arthur D. Little, we have developed a cigarette system which produces smoke of reduced biological activity . . . tumorigenicity of smoke on the skin of the mouse.
- b. Cigarette smoke contains a number of promoters which act in concert with other true carcinogens to enhance the production of mouse skin tumors . . . .[T]here can be no argument that the use of the additives has resulted in a product with lower carcinogenic effects . . . .

129. Liggett concluded that it had isolated carcinogens in cigarette smoke and found a way to reduce them in cigarettes of commercial quality. Despite these findings, the product called "XA" was never marketed.

130. Liggett decided not to market the new product, and decided instead to abandon the XA project. On information and belief, Liggett did so for two reasons. One was the danger that disclosure that a safer cigarette was possible would also require the admission that all existing cigarettes were not

safe. One Liggett executive wrote that “[a]ny domestic activity will increase the risk of cancer litigation on existing products. US manufacture for export will be less risky.”

131. The other reason was the apparent threat of retaliation by the largest cigarette company, Philip Morris, if Liggett violated the industry agreement not to disclose negative information on smoking and health. Dr. James Mold, the Assistant Research Director at Liggett during the development of the XA safer cigarette, has testified that: “Mr. Dey who was the . . . who at that time, and I guess still is the president of Liggett Tobacco, made the statement 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.”

S. LIGGETT, JAMES MOLD AND THE XA RESEARCH

132. The testimony of Dr. Mold, a central Liggett researcher on the safer cigarette project, provides additional insight into what Liggett discovered, and how the company suppressed that information from the public they had pledged to inform, and why it did not market the XA cigarette. Dr.

Mold stated:

[W]e’d been able to find specific materials or groups of materials which did produce carcinogenic effect on mouse skin. This is what we’d started out to try to do. And, in addition to that, we had found things which promoted activity. . .carcinogen activity on the mouse skins.

We produced a cigarette which was, we felt, was commercially acceptable as established by some consumer tests, which eliminated the carcinogenic activity on the mouse skin as carried out by various workers in the field, and decreased the level of a number of gaseous components which had been pointed to as problems in . . . possible problems, let's say, in cigarette smoking. We felt that the cigarette was certainly in the direction of one containing less hazardous materials.

133. During the XA project, Liggett attempted to insulate the research from disclosure by the use of company lawyers. Dr. Mold stated that, after 1975,

[a]ll meetings that we had regarding this project were to be attended by a lawyer . . . . All paper that was generated, reports, research progress reports, memoranda, were to be directed to the Law Department, someone in the Law Department.

134. Dr. Mold stated that lawyers even collected all the notes after each meeting.

In other words, the Law Department was maintaining a confidential client/lawyer privilege state on all action on the project from that point forward.

135. Dr. Mold stated that 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. Dr. Mold stated:

Whenever any problem came up in the project, the Legal Department would pounce upon that in an attempt to kill the project, and this happened time and time again. So at this point in time when they say, "Well, you can't publish a paper," we didn't ask why. We knew why. . . .that they had no intention of making this any more public than they had to.

136. Thus, despite the significance of the research, and Dr. Mold's requests to publish a scientific paper on the results, Liggett suppressed the work, and ordered Dr. Mold not to publish and not to present the findings to a scientific forum. Dr. Mold got as far as preparing a paper for publication and presentation. Dr. Mold explained that:

Before the paper was presented, I got a frantic call from Mr. Greer, our . . . at that time, the legal counsel of Liggett, not . . . to not distribute the press release and not hold a press conference, that they had changed their mind.

It was my understanding that Liggett did not want to be associated in public with this development.

137. Dr. Mold stated that he had requested permission to publish the paper in “Science” or in the “Journal of Preventive Medicine.” He stated that the Liggett legal department had ordered him not to submit the paper. Dr. Mold also stated that the legal department had instructed him not to attend a conference on smoking and health.

138. Ultimately, only an abstract of the paper was published, and Dr. Mold was not allowed to have his name on the publication. Rather, after changes by the legal department, the abstract was published by the consulting firm Arthur D. Little.

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

Well, I can't give you, you know, a positive statement because I wasn't in the management circles that made the decision, but I certainly had a pretty fair idea why . . . .

Well, my feeling was that they, as was stated in terms of our appearing on publications and our presenting the information to the Cold Springs Harbor symposium and other public pronouncements, that they 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.

T. LIGGETT SAFER CIGARETTE PATENT

140. Before deciding not to market the XA cigarette, Liggett obtained a patent for the process it had discovered to produce the safer cigarette. The patent application describes the reduction in cancer in mouse studies. Stories in the media then appeared stating that Liggett was the first cigarette company to admit that smoking caused cancer. In 1978 Liggett reacted by placing an advertisement 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 to 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.

141. At the time Liggett made these statements, including the statement that no conclusions regarding human cancer can be drawn from mouse studies, Dr. Mold estimates that Liggett, directly and through its consultant Arthur D. Little, had spent a total of \$10 million on smoking and health 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.

142. 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 again and again, in a unified stance, that there is no causal connection between cigarette smoking and adverse health effects. These representations are fraudulent, 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.

U. THE ROLE OF NICOTINE IN SMOKING

143. The other truth which the tobacco industry has made every effort to suppress, deny and misrepresent is that nicotine is a powerfully addictive substance. While carefully studying its addictive character and acting upon that knowledge to maintain cigarette sales, the tobacco industry has uniformly denied that nicotine is addictive.

144. This public deception and the tobacco industry's secret manipulations of nicotine were and are critically important to the tobacco industry. As truly objective researchers increased their warnings of the health dangers of cigarettes, nicotine addiction kept people smoking. This second front in the war against the public health allows the tobacco industry to continue to sell its dangerous products -- even to those who eventually come to doubt the industry's health claims. And if a new consumer is fooled for a time by "pro-cigarette" disinformation on health, and takes up the habit, it may well be too late. Instead of a simple decision not to purchase a product, the consumer must grapple with an addiction.

V. INDUSTRY KNOWLEDGE OF THE ADDICTIVENESS OF NICOTINE

145. The tobacco industry companies have long known of the addictive properties of the nicotine contained in the cigarettes they manufacture and sell. The following illustrates such knowledge:

a. In 1962, Brown & Williamson's parent company, British American Tobacco Company ("BATCO"), held a meeting of its worldwide subsidiaries in Southampton, England. During the course

of that meeting, Brown & Williamson and BATCO executives were told by Sir Charles Ellis, scientific advisor to the board of directors of BATCO, 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.” Sir Charles Ellis declared again in 1967 in a document from Brown & Williamson that the company “is in the nicotine rather than the tobacco industry.”

b. A research report dated May 30, 1963, prepared under contract by researchers in Switzerland for BATCO and Brown & Williamson and deliberately withheld by Brown & Williamson from the U.S. Surgeon General, explained the physiological basis of nicotine addiction. The Brown & Williamson commissioned report shows that tobacco industry research on the addictive properties of nicotine was years ahead of the research on the subject conducted outside of the industry. Brown & Williamson and other tobacco companies have never disclosed any information from such research.

c. A 1972 “confidential” company memo written by William L. Dunn, Jr. of the Philip Morris Research Center concludes: “Without nicotine, the argument goes, there would be no smoking. Some strong evidence can be marshaled to support this argument . . . . No one has ever become a cigarette smoker by smoking cigarettes without nicotine.”

d. Additional internal reports prepared by Dunn in 1972 and the Philip Morris U.S.A. Research Center in March of 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.

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.

e. Philip Morris scientists confirmed their early research findings with direct anecdotal evidence. In 1971, they interviewed people from the town of Greenfield, Iowa eight months after they had quit smoking "cold turkey." A report of the interviews, called "Bird-I A Study of the Quit-Smoking Campaign in Greenfield, Iowa in Conjunction with the Movie Cold Turkey," and distributed to top Philip Morris executives concluded:

This is not the happy picture painted by the Cancer Society's anti-smoking commercial which shows an exuberant couple leaping in the air and kicking their heels with joy because they've kicked the habit. A more appropriate commercial would show a restless, nervous, constipated husband bickering viciously with his bitchy wife, who is nagging him about his slothful behavior and growing waistline.

f. ATC also conducted its own research on nicotine. From 1940 to 1970, ATC funded over 90 studies on the pharmacological and other effects of nicotine on the body. Of the 111 biological studies funded by ATC over this period, over 80 percent were related to the effects of nicotine. ATC even test marketed a nicotine-enriched cigarette in Seattle, Washington in 1969.

W. SUPPRESSION AND CONCEALMENT OF RESEARCH ON NICOTINE ADDICTION

146. Defendants, rather than fulfilling their promise to the public to disclose material information about smoking and health, chose a course of suppression, concealment, and disinformation about the true properties of nicotine and the addictiveness of smoking.

147. Philip Morris' professed interest in discovering and disclosing the truth to the public was proven to be a lie early on. 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. 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).

148. 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.

149. 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 about killing the research or moving it outside of the company, so Philip Morris would have more freedom to disavow the results. DeNoble recalled that Philip Morris discussed several possible scenarios, including having DeNoble and Mele leaving the company payroll and continuing as contractors, and shifting their work to a lab in Switzerland.

150. 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 *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 subsequently told Jack Henington, Ph.D., Chief of the Clinical Pharmacology Branch of the National Institute on Drug Abuse's Addiction Research Center, that Philip Morris officials had rightly interpreted the suppressed nicotine studies as showing that, in terms of addictiveness, "nicotine looked like heroin."

151. In April 1984, Philip Morris, apparently to ensure that DeNoble and Mele's nicotine research remained suppressed and concealed, told DeNoble and Mele that the lab was being closed. DeNoble and Mele were forced abruptly to halt their studies, turn off all their instruments and turn in their security badges by morning. Philip Morris executives threatened them 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. DeNoble recalled, "Everything was gone. The cages were gone, the animals were all gone, all the data was gone. It was empty rooms."

152. DeNoble testified before the Waxman Subcommittee that "senior research management in Richmond, Virginia, 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 about nicotine's addictiveness.

153. Brown & Williamson also chose to suppress and conceal its own substantial body of research on nicotine. Potentially damaging and sensitive research was undertaken to a large degree by Brown & Williamson's British affiliates at a lab called Harrogate. Harrogate performed research for a

number of cigarette manufacturers, and some of this research was shared with these other companies and with the Tobacco Institute.

154. By 1963, Brown & Williamson had also chosen to conceal material information from the Surgeon General. The company 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.

155. Addison Yeaman, general counsel at Brown & Williamson, stated in a 1963 report that “[w]e are, then, in the business of selling nicotine an addictive drug . . . .” Yeaman 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.

156. 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 to the Surgeon General the company’s research findings on the addictive and other harmful effects of nicotine and the disease-causing properties of cigarettes.

## X. THE INDUSTRY’S INTEREST IN NICOTINE

157. The tobacco industry companies also understood early on that nicotine played a pivotal role in the success of the tobacco industry. A chronology of the industry’s research and development activities leaves no doubt about the tobacco industry companies’ conviction that nicotine was the key to their industry’s success.

158. The results of research undertaken by Brown & Williamson more than 30 years ago for a study called Project Hippo were finally disclosed by the company in May 1994. Documents from this study show that as far back as 1961, the tobacco industry was actively studying the physiological and pharmacological effects of nicotine.

159. In a 1968 internal report, BATCO noted that “[i]n review of its pre-eminent importance, the pharmacology of nicotine should continue to be kept under review . . . .”

160. Again in 1972, a BATCO report noted:

It has been suggested that a considerable proportion of smokers depend on the pharmacological action of nicotine for their motivation to continue smoking. If this view is correct, the present scale of the tobacco industry is largely dependent on the intensity and nature of the pharmacological action of nicotine.

161. To this day, the tobacco industry has deliberately determined not to disclose to the public or to public health officials their extensive knowledge of the addictive properties of nicotine and its critical role in smoking and not to use that knowledge to reduce or eliminate nicotine from their products. Instead, the tobacco industry companies have chosen to focus their energies and research on developing new and more sophisticated methods of hooking smokers and keeping them hooked, all to boost cigarette sales.

162. The tobacco industry’s intense interest in the pharmacology of nicotine led to industry efforts to find an artificial nicotine that would have the addictive and psychopharmacological properties of nicotine without nicotine’s dangerous effects on the heart.

163. For example, one of Dr. DeNoble’s primary functions at Philip Morris was to research and develop a nicotine analogue. DeNoble testified before the Waxman Subcommittee that he did, in

fact, discover a nicotine analogue that caused animals to behave as if they were getting a nicotine high, but without signs of the heart distress that comes with nicotine.

164. Philip Morris, however, chose to halt its effort to determine whether the nicotine analogue could be used to make a safer cigarette. On information and belief, 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.

165. Brown & Williamson also understood that for purposes of maintaining its sales, nicotine was the essential ingredient in tobacco. The company attempted to develop a "safer" cigarette which internal documents described as "a device for the controlled administration of nicotine." Project Ariel focused on heating, rather than burning tobacco, and according to company documents, was "a nicotine delivery device."

166. 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. RJR conducted human studies to determine whether the nicotine from Premier was absorbed, metabolized and excreted from blood at the same rate as a standard cigarette.

167. Former head of RJR Nabisco, F. Ross Johnson, a driving force behind the development of Premier, said about tobacco, "Of course, it's addictive. That's why you smoke the stuff."

168. RJR, like the other cigarette manufacturers concealed and suppressed its findings on the addictiveness of smoking and continued to misrepresent to the public its commitment to determining whether smoking was harmful.

169. The tobacco industry has affirmatively misrepresented to consumers and to Congress the role of nicotine in tobacco use. Even today, the tobacco industry continues to claim that nicotine is important in cigarettes solely for flavor.

170. A substantial body of evidence refutes that claim. Tobacco industry patents specifically distinguish nicotine from flavorants. An RJR book on flavoring tobacco, while listing approximately a thousand flavorants, fail to include nicotine as a flavoring agent.

171. In fact, the tobacco industry has concentrated on developing technologies to mask the flavor of increased levels of nicotine in cigarettes. According to the Merck Index, an internationally recognized listing of drugs, nicotine has “an acrid, burning taste.” U.S. Patent 4,620,554 describes the taste of nicotine as “hazardous.” The role of nicotine in the tobacco industry’s business is pure and simple -- to hook smokers on their deadly products and keep them hooked in the face of mounting evidence that smoking causes human disease. The tobacco industry has focused tremendous energy and resources on developing the technology to ensure that smokers become and remain addicted to the industry’s cigarettes.

Y. LIGHT CIGARETTES: A MARKETING HOAX

172. The tobacco industry's conspiracy to deceive the public about the dangers of smoking was not confined to suppressing and concealing their own findings and discrediting or dismissing the findings of outside researchers. The conspiracy also extended to efforts to retain that segment of the smoking market that was becoming increasingly concerned about health. The tobacco industry was well aware that low-nicotine products -- while better for the heart -- were worse for business. As one company researcher reported 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.

173. The tobacco industry's research indicated that low-tar cigarettes with correspondingly low levels of nicotine were likely to be rejected by consumers and, therefore, attempted to determine to what extent the craving for nicotine overrode other considerations, including health.

174. Brown & Williamson's parent company, BATCO, for example, commissioned a study called "Project Wheat." More than 1,000 British male smokers were questioned about their smoking habits, about nicotine, and about their attitudes toward smoking and health. Among Project Wheat's findings were that: (1) reductions in nicotine delivery caused progressive rejection of the cigarette by consumers; (2) a large group of smokers had both a high "inner need" for nicotine and a high concern for health; and (3) concern for the possible health risks of smoking influenced smokers' willingness to try low tar brands, but there is evidence of a conflict between their concern for health and their desire for a satisfying cigarette.

175. On information and belief, a restricted report on Project Wheat by Group Research & Development Centre, a subsidiary of BATCO, shows that the tobacco industry's promotion and

marketing of low-tar cigarettes was a deliberate attempt to deceive health-conscious smokers with high nicotine needs into believing that “light” cigarettes were less addictive:

Concern for the possible health risks of smoking was shown in the earlier report to have an important influence on consumers in the direction of trying low tar brands, and to be independent of Inner Need. It was also shown that, in many instances, smokers’ concerns for health evidently conflicted with their desire for a satisfying cigarette.

176. The report pointed out the substantial market potential of a cigarette with lower tar and higher nicotine delivery to those smokers with an “inner need” for nicotine but a concern for health. Brown & Williamson’s introduction of Barclay -- a low tar, high nicotine cigarette -- was a result of the findings from Project Wheat.

177. The tobacco industry has cultivated that health-conscious segment of the smoking market by promoting and selling “light” cigarettes with reduced tar and added nicotine. National Gallup polls have found that smokers believe that cigarette brands labeled “light” are less hazardous to their health and less addictive because they deliver less tar and less nicotine. However, this widely-held belief -- although false -- has been promoted by the tobacco industry through several misleading strategies.

178. First, the tobacco industry has consistently told the public and the FDA that -- in the words of Alexander Spears, Vice Chairman of Lorillard in his 1994 testimony before the Waxman Subcommittee -- “[n]icotine [level] follows the tar level,” and that the correlation between the two “is essentially perfect.”

a. Another defendant, ATC, has recently testified similarly. For example, 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.”

b. Internal company documents reviewed by the Waxman Subcommittee, however, show 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.”

c. Moreover, recent tests conducted at the direction of the FDA show that the low tar brands actually have more nicotine than the non-“light” brands. The unexpectedly high level of nicotine found in lower tar cigarettes seriously misleads consumers and renders the industry's claim of “an essentially perfect correlation” completely false.

179. Second, the nicotine deliveries, as measured by the Federal Trade Commission (“FTC”) method, published by the tobacco industry, seriously mislead consumers. The tobacco industry knows that the significant changes they have made in cigarette design make the FTC method of measuring nicotine and tar deliveries highly inaccurate. The tobacco industry knows that the machine measured deliveries understate the amounts of nicotine and tar actually ingested by human smokers. As Philip Morris senior scientist William L. Dunn, Jr., noted in a 1972 internal report:

The smoker has wide latitude in further calibration: puff volume, puff interval, depth and duration of inhalation. We have recorded wide variability in intake among smokers. Among a group of pack-a-day smokers, some will take in less than the average half-pack smoker, some will take in more than the average two-pack-a-day smoker.

180. Third, cigarette manufacturers add various ammonia compounds during the manufacturing process which increase the efficiency of nicotine delivery to the smoker and thereby increase the smoker's absorption of the drug. In April 1994, the industry disclosed the 599 ingredients added to tobacco. Among them were several ammonia compounds which, according to Dr. David A. Kessler and confirmed by the industry's own internal documents, increase the delivery of nicotine and almost double the nicotine transfer efficiency of cigarettes.

181. Fourth, on information and belief, the tobacco industry also misleads consumers by fortifying the tobacco used for its "light" brands with additional nicotine in order to ensure that the nicotine content of the low-tar cigarettes remain at addictive levels. The tobacco industry thereby maintains a continuing market for what consumers are misled to believe is a lower tar, lower nicotine and less addictive product. For example, a 1981 study by "essentially perfect correlation" author, Dr. Spears, states explicitly that low-tar cigarettes use special blends of tobacco to keep the level of nicotine up while tar is reduced: "The lowest tar segment (of product categories) is composed of cigarettes utilizing a tobacco blend which is significantly higher in nicotine."

182. In March 1994, Dr. David Kessler summarized for the Waxman Subcommittee the Federal Trade Commission data on nicotine levels. He testified that the nicotine/tar ratio was higher in the ultra low tar group of cigarettes, even though low tar has usually been associated with low nicotine. Dr. Kessler posed to Congress the obvious question:

It has often been said that tar and nicotine travel together in the cigarette smoke. The disparities in the nicotine/tar ratios among these varieties raise the question as to how this can occur.

183. Dr. Kessler's question appears to have been answered by the compelling evidence recently made public by the Waxman Subcommittee of nicotine manipulation and control by the tobacco industry.

#### Z. INDUSTRY CONTROL AND MANIPULATION OF NICOTINE

184. The tobacco industry's control and manipulation of nicotine levels in their cigarettes goes well beyond fortifying low-tar or "light" style cigarettes with nicotine. Recent evidence shows that the cigarette manufacturers are capable of and do, in fact, manipulate the amount and even the presence of nicotine in cigarettes.

185. The tobacco industry companies have developed and use 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.

186. 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 outright lies about its control and manipulation of the nicotine levels in its products.

187. On June 21, 1994, Dr. David A. Kessler testified before the Waxman Subcommittee that FDA investigators had discovered that Brown & Williamson had developed a super-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."

188. Four FDA investigators who had visited the Brown & Williamson plant in Macon, Georgia on May 3, 1994, swore in affidavits that company officials had denied that Brown & Williamson 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.

189. 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 sister company, Souza Cruz Overseas, grew Y-1 in Brazil and shipped it to the United States for use 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.

190. As part of its massive 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 Custom 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.

AA. OTHER METHODS OF NICOTINE MANIPULATION

191. The number and pattern of tobacco industry patents show that the tobacco industry has developed the capability to manipulate nicotine levels in cigarettes to an exacting degree. The following quotations from industry patents demonstrate the industry's capabilities:

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

b. "[P]rocessed tobaccos can be manufactured under conditions suitable to provide products having various nicotine levels."

c. "[T]he present invention. . . is particularly useful for the maintenance of the proper amount of nicotine in tobacco smoke."

192. David A. Kessler, M.D., Commissioner of Food and Drugs, 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.

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

194. Other revealing evidence of the tobacco industry companies' manipulation and control of nicotine levels includes the emergence of companies that specialize in manipulating nicotine and that are now doing business with tobacco manufacturers. On information and belief, Philip Morris uses or

has previously used a process called tobacco reconstitution for controlling nicotine levels. The process was patented and marketed by the Kimberly-Clark Corporation subsidiary, LTR Industries.

195. Reconstituted tobacco is made from stalks and stems and other waste that tobacco industry companies used to discard and now use to make cigarettes more cheaply. On information and belief, ordinarily, reconstituted tobacco contains 25 percent or less of the nicotine in regular tobacco. A former RJR manager who demanded anonymity told the ABC news program “Day One” that on the average, currently marketed brands contain about 22 percent reconstituted tobacco and that cut rate or generic brands typically contain about double that amount.

196. A laboratory analysis commissioned by “Day One” and conducted by the American Health Foundation confirmed the industry’s heavy use of reconstituted tobacco. One RJR brand had 25 percent and another had about 33 percent reconstituted tobacco. Yet, tested samples of the reconstituted tobacco implanted in RJR brands Winston, Salem, Magna and Now had up to 70 percent, rather than the expected 25 percent, of the nicotine that would be found in regular tobacco, thereby indicating that RJR had fortified the reconstituted tobacco with additional nicotine.

197. On information and belief, because reconstituted tobacco has inferior taste and less nicotine, the cigarette manufacturers or their agents apply a powerful tobacco extract either alone or as part of a solution of flavorings to the reconstituted tobacco. RJR and the other cigarette manufacturers have the technology to add flavorings with or without nicotine, so the addition of nicotine to reconstituted tobacco is purely at the manufacturer’s discretion.

198. The Kimberly-Clark tobacco reconstitution process is believed to be used throughout the tobacco industry in a number of countries. A Kimberly-Clark advertisement published in tobacco industry trade publications 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. These adjustments will not affect the other important properties of customized reconstituted tobacco produced at LTR Industries: low tar delivery, high filling power, high yield and the flexibility to convey organoleptic modifications. We can help you control your tobacco.

199. Furthermore, 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.

200. Another enterprise which does business under the name “The Tobacco Companies of the Contraf Group” quite explicitly specializes in the manipulation of nicotine and its use as an additive. 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.”

201. The tobacco industry has also used a process called “denaturing” to add nicotine to cigarettes. Nearly-pure nicotine is combined with alcohol and then applied to tobacco during the manufacturing process. Trucking records show that Philip Morris, for example, received thousands of gallons of this nicotine/alcohol mixture during the 1980’s.

202. Against this mounting body of evidence of the tobacco industry’s manipulation and control of nicotine levels in cigarettes, the tobacco industry companies continue to deny to the public, and recently denied to Congress under oath, that they manipulate and control nicotine levels:

- a. William I. Campbell, President and CEO of Philip Morris, told Congress on April 14, 1994 that “Philip Morris does not

manipulate nor independently control the level of nicotine in our products . . . . Cigarettes contain nicotine because it occurs naturally in tobacco.”

b. James W. Johnston, President and CEO of R.J.R. Nabisco, told Congress that “We do not add or otherwise manipulate nicotine to addict smokers.”

c. Andrew J. Schindler, President and Chief Operating Officer U.S.A., R.J. Reynolds Tobacco Company, told Congress that “We do not restore any nicotine anywhere in our process . . . . We lose nicotine, for example, in the reconstituted sheet process . . . . [N]owhere in that process is any nicotine being incrementally added into the process.” Contradicting Johnston’s and Schindler’s statements, Dr. Robert Suber, a toxicologist with RJR, admitted, however, that RJR controls the nicotine in its products. He told CNN that: “[i]n order to deliver to the consumer a product that he wants, a consistent level of nicotine, we have to blend the tobaccos accordingly. So we do control it.”

d. Andrew H. Tisch, Chairman and CEO of Lorillard, told Congress that “Lorillard does not take any steps to assure a minimum level of nicotine in our products. Lorillard does not add nicotine to cigarette tobacco for the purpose of manipulating or spiking the amount of nicotine received by the smoker.”

e. Edward A. Horrigan, Jr., Chairman and CEO of Liggett Group, Inc., told Congress: “In all my years in this business worldwide, I have never known of a product-designed objective or goal that included even the notion of spiking the amount of nicotine in a cigarette to achieve a level that would hook or addict smokers.” Horrigan, however, former Chairman and CEO of RJR through the late 1980s, participated in the development and marketing of Premier and other RJR cigarette brands whose manufacturing process included the manipulation of nicotine content and delivery.

f. On June 23, 1994, in sworn Congressional testimony, Thomas E. Sandefur, Jr., CEO of Brown & Williamson, in the face of overwhelming evidence to the contrary, denied growing Y-1 and stated that his company was being “set-up.” He admitted that the company controlled nicotine, but in a shop-worn and now familiar refrain, stated that the company did so only for “taste.”

g. T.F. Riehl, Vice President for Research and Development at Brown & Williamson, denying that the company mixed the tobacco for the Barclay cigarette to have a higher concentration of nicotine, told Congress: “No, sir. We blend for taste, not nicotine.” However, internal documents from Brown & Williamson indicate that Riehl himself has conducted research focusing on the adjustment of nicotine and tar levels without regard to taste. In fact, Riehl gave a

presentation on Project Ariel, Brown & Williamson's safer cigarette project, at the 1984 Smoking Behavior-Marketing Conference, which emphasized tar reduction and nicotine enrichment in later puffs, but never addressed the issue of taste.

203. The tobacco industry's "taste" argument is belied by the testimony of health policy expert Clifford E. Douglas, testifying before the FDA's Drug Abuse Advisory Committee, who asked "why so many smokers who have endured tracheotomies due to throat cancer find it necessary to continue to smoke through the holes in their throats, where they cannot taste a thing."

204. The newly discovered evidence of nicotine manipulation by the tobacco industry and the recent disclosures about nicotine addition and manipulation made before Congress have not deterred the industry from its campaign of concealment and misinformation. As recently as April 1994, the tobacco industry placed advertisements across the country denying that it "spikes" cigarettes with nicotine, denying that it believes cigarette smoking is addictive, and misleading the public about whether the tobacco industry companies deliberately control nicotine levels in their products.

205. An advertisement placed by Philip Morris in newspapers across the country in April 1994, denied that Philip Morris manipulates nicotine levels and stated that "the nicotine level in the finished cigarette is lower than the nicotine level of the original, natural tobacco leaf."

206. RJR placed a similar advertisement in newspapers across the United States in 1994 mischaracterizing the "recent controversy" as focusing on RJR's "various techniques that help us reduce the 'tar' (and consequently the nicotine) yields of our products."

207. These advertisements deliberately create the false impression that the "recent controversy" they refer to is about whether reconstituted and reduced-tar tobacco have less nicotine

than the original tobacco leaf. The controversy these advertisements so carefully avoid, however, is that the nicotine levels of the industry's tar-reduced and reconstituted tobacco do not follow the claimed "essentially perfect" correlation with tar levels. In fact, the nicotine levels have proven to be consistently higher than what the correlation would predict. The discrepancy is not in the correlation, but in the story the industry has told the public about how it manufactures cigarettes. That story has carefully and deliberately omitted the industry's addition of nicotine in the form of an extract to these tobaccos to keep them at addictive levels.

BB. TARGETING OF MINORS

208. Every day, more than 1,200 cigarette smokers die of cigarette-related diseases. Others manage to break their addiction to nicotine and quit. In order to prevent a precipitous decline in cigarette sales, the big tobacco industry companies must attract more than 3,000 new smokers a day. These new smokers are drawn almost entirely from the ranks of America's youth. In the words of R.J. Reynolds:

Realistically, if our Company is to survive and prosper, over the long term we must get our share of the youth market. In my opinion this will require new brands tailored to the youth market. . . .

209. Indeed, the tobacco industry companies have devoted considerable research efforts to creating and marketing brands to attract these new youthful smokers. And so, despite the best efforts of parents, educators, medical professionals and the State of Hawaii, smoking among young people persists.

210. Cigarette company products and advertising are used to create a mental image associating smoking with good health, glamorous and athletic lifestyles, success and sexual

attractiveness. An R.J. Reynolds' memo describes in detail "what qualities and image a new brand aimed at the youth market should have."

211. This type of product and advertising increases demand for cigarettes among young people. Within a short period of time, the young smoker becomes physiologically and emotionally dependent, i.e., addicted to tobacco. Later, as the maturing smoker begins to wish he or she could quit, advertising reinforces the practice and seeks to minimize health concerns and creates doubt, confusion and mistake which are used by smokers as excuses to avoid the pain and discomfort of attempting to break their addiction to nicotine. This is the vicious cycle of fraudulent tobacco industry advertising of their products.

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

213. The most frequently purchased brands by adolescents are Philip Morris' Marlboro, R.J. Reynolds' Camel and Lorillard's Newport. These brands were the three most heavily advertised brands in 1993 and all have advertising imagery appealing to young persons.

214. For instance, Philip Morris repositioned Marlboro 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. The wild spirit of the Marlboro man captured the adolescent imagination.

215. Just as Marlboro was repositioned from the women's market to the macho male market by a new advertising campaign, R.J. Reynolds has positioned its Camel brand for younger and younger audiences. When R.J. Reynolds began the "Joe Camel" cartoon campaign in 1987, Camel's share of the "children's market" was only 0.5 percent. In just a few years, Camel's share of this illegal market has increased to 32.8 percent, representing sales estimated to be approaching \$500 million per year. Another indication of the phenomenal success of this marketing campaign is the fact that in a recent survey of six-year-olds, 91 percent of the children could correctly match Joe Camel with a picture of a cigarette, and both the silhouette of Mickey Mouse and the face of Joe Camel were nearly equally well-recognized by almost all children surveyed.

216. Lorillard's campaign promoted Newport cigarettes in another "successful" advertising campaign targeted at young people. Newport ads frequently show men and women in sexually suggestive positions always having fun using the slogan "Alive With Pleasure."

217. Other brands targeted to and playing on the vulnerabilities of young smokers include R.J. Reynolds' Vantage ("The Taste of Success") and Philip Morris' Virginia Slims ("You've Come A Long Way, Baby").

218. Both the themes and the location of cigarette advertising betray the real target. During the decade of the 1980s, there was a steady migration of cigarette advertising into youth-oriented publications. Magazines with sexually-oriented themes and those concerning entertainment and sporting activities had the highest concentration of cigarette ads. For many of these magazines, teenagers comprise a quarter or more of the total readership. Cigarette ads in these youth-oriented magazines were frequently multi-page, pop-up ads which are significantly more costly but also more attention-grabbing than conventional ads. News magazines, like Time and Newsweek, which have older

audiences, had few cigarette ads, and those tended to emphasize implicit health promises concerning tar and nicotine rather than glamorous images.

219. The tobacco industry companies sell more than one billion packs of cigarettes per year to minors under the age of 18. In 1988, these sales accounted for about \$1.25 billion in sales. Approximately 3 percent of the total tobacco industry profits (\$221 million in 1988) are derived directly from the sale of cigarettes to children under the age of 18, an activity that is illegal in most, if not all, states.

220. Over the years, the Tobacco Institute, on behalf of the industry, has undertaken public relations campaigns designed to convince the public that they want to discourage young people from smoking. Several tobacco companies have also undertaken their own campaigns at the same time. These campaigns are a pro-smoking subterfuge fraud. Instead of conveying the best reason for not starting to smoke -- that it kills -- the industry portrays smoking as a permissible "adult" custom and decision -- like getting married, driving a car or having children. This message is thus part of the problem, not the solution.

221. If the youth oriented advertising and deceptive "anti"-smoking campaigns were not enough, the tobacco industry has also targeted children with its decades-long fraudulent "unresolved health controversy" campaign. In January 1990, the Manager of Public Relations of R.J. Reynolds wrote the principal of a public school that:

The tobacco industry is also concerned about the charges being made that smoking is responsible for so many serious diseases. Long before the present criticism began, the tobacco industry, in a sincere attempt to determine what harmful effects, if any, smoking might have on human health, established the Council for Tobacco Research--USA. The industry has also supported research grants directed by the American Medical Association. Over the years the tobacco industry has given in

excess of \$162 million to independent research on the controversies surrounding smoking -- more than all the voluntary health associations combined.

Despite all the research going on, the simple and unfortunate fact is that scientists do not know the cause or causes of the chronic diseases reported to be associated with smoking. The answers to the many unanswered controversies surrounding smoking -- and the fundamental causes of the diseases often statistically associated with smoking -- we believe can only be determined through much more scientific research. Our company intends, therefore, to continue to support such research in a continuing search for answers.

We would appreciate your passing this information along to your students. (Emphasis added)

222. The target of minors while unquestionably wanton, reckless and unethical and cynically denied by the industry was, and continues to be, vitally important to the tobacco industry. Cigarette smoker death rates require it. Minors enticed into smoking provide a guaranteed market for a product which kills the industry's customers by the tens of thousands.

#### CC. THE LAWYERS -- CROSSING THE LINE

223. The role of tobacco industry lawyers is reflected in the October 1964 insider report entitled "Report on Policy Aspects of the Smoking and Health Situation in U.S.A." In this once "strictly confidential" report, two high level representatives from the Tobacco Research Council, the United Kingdom equivalent of the CTR, summarize their findings following more than a month of discussions with various players in the tobacco industry in the United States:

In the U.S., by far the most important factor conditioning action by the manufacturers is the lawsuit 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 problem.

224. The organizational structure of the tobacco industry that has allowed the orchestration and perpetration of the tobacco industry fraud is laid out in the report in detail. The organizational structure is thoroughly dominated by in-house and outside lawyers:

In consequence of the importance of the lawsuits, the main power in the smoking and health situation undoubtedly rests with the lawyers, and more particularly with the Policy Committee of lawyers. The members of this Committee are:

Henry Ramm	(Reynolds) (Chairman)
Cy. Hetsko	(A.T. Co.)
Add. Yeaman	(Brown & Williamson)
Paul Smith	(P.M.)
Fred Haas	(L. & M.)
John Russell	(Lorillard)

This Committee is extremely powerful; it determines the high policy of the industry on all smoking and health matters, for example, as well as legal matters -- and it reports directly to the Presidents. The Committee is particularly concerned with possible Congressional legislation and it drew up the Cigarette Advertising Code. We understand that the Code was largely the work of Mr. Ramm. As Chairman of the Committee and the representative of the largest manufacturer, Mr. Ramm is probably the most influential member of the U.S. Tobacco industry, apart from the Presidents, in forming industry policy in the field of smoking and health.

The Policy Committee set up another Committee of lawyers, known as the Ad Hoc Group, to assist them. The members of the Ad Hoc Group are: --

Dave Hardy	(PM) (Chairman)
Janet Brown	(A.T. Co.)
Ed. Cook	(RJR)
Ed. Jacob	(RJR & B & W)
John Russell	(Lorillard)
Fred Haas	(L & M)

Alex Holzman (PM)

The Ad Hoc Group is concerned with --

- (1) Medical - legal matters.
- (2) Scrutinizing proposed action by other tobacco organizations.
- (3) Clearing papers (e.g. Dr. Little's annual report).
- (4) Watching the Inter-State and Foreign Commerce Committee of the House of Representatives.
- (5) Making certain that no assurances of any kind relating to the safety of smoking are given by any manufacturers (e.g. in advertisements).

In addition, there are two other Committees of lawyers -- one for dealing with Federal Trade Commission matters and a Litigation Committee consisting of New York Counsels of the larger Companies - - e.g. Mr. Chandler Cook (R.J.R.) Mr. Coleman, Mr. Jacob and about 14 others.

The lawyers are thus the most powerful group in the smoking and health situation. . . .

225. The lengthy report continues with an indictment of the CTR and its research:

The Scientific Advisory Board of CTR continues to meet and decide on applications for grants to carry out research on what appeared to us to be projects of no more than remote relevance to current problems. . . .

There was either no interest in or indeed mention of CTR research amongst the Companies or active criticism of varying degrees. Although L & M have now joined CTR, this was solely in order to present a united front, and L & M's scientific staff are as highly critical of CTR's research policy as ever.

\* \* \*

While CTR is supposed to be relegated to a back room role, the lawyers' Policy Committee recently decided that Dr. Little should act on behalf of the Industry in dealing with requests from the U.S.

Dept. of Agriculture (Dr. Tso) for information about benzpyrene, etc., in cigarette smoke.

226. Similarly, the Tobacco Research Council representatives found lawyer-control of the Tobacco Institute:

There is a need for a voice to speak on behalf of the industry on all matters -- not merely those of health -- and T.I. is that voice, but its activities are minimal. The impression that we obtained is that T.I. is largely a voice at the end of a telephone line from the lawyers, and speaks only when as directed.

227. Moreover, as noted previously, CTR holds itself out, and has been held out by the tobacco industry and the tobacco attorneys, as a research body sponsoring independent research. In the words of Shook, Hardy & Bacon partner Bill Shinn, however, the TIRC, predecessor to the CTR, was set up as an industry “shield,” and the CTR has acted as a “front” for the tobacco companies’ litigation and public relations goals.

228. A 1978 memorandum from Shook, Hardy & Bacon captures the intentional manipulation of the CTR:

After some further discussion, Janet [Brown of Chadbourne & Parke] and Arnie Henson expressed American Tobacco Company’s view that CTR must be maintained but needed new people. It must be more politically oriented. They felt that CTR must look at what is happening and what others are doing to see what questions can be raised, etc. The approach must be steady, slow and conservative. They must find skeptical scientists. . . . The staff at CTR also needed to be more tobacco oriented with a skeptical view.

229. The defendants’ lawyers became deeply involved in the screening, selection, funding, supervision and ultimate disposition of research projects, channeling sensitive research into “special projects” and “special accounts.” An attorney of Jacob, Medinger & Finnegan is quoted in a 1981 internal tobacco industry document as saying:



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.

230. As to research which was progressing "satisfactorily" -- that is turning up no negative results -- the lawyer agents recommended it receive additional funding. Research which was troubling, either in its direction or in its results, was redirected or terminated.

231. The breadth of the involvement of the defendants' attorneys in the selection of research projects to be funded, including those funded by and through CTR, is reflected in the excerpts from the following letter written by Shinn:

The Research Liaison Committee has not had a meeting since July 1976. I have had discussion with individual members of the committee about calling a meeting. It has been suggested that the views of the companies with respect to the future activities of this committee should first be explored through the Committee of Counsel. . . . We may want to discuss research in a larger context, i.e., what are the industry's present needs? This, of course, involves consideration of the role of institutional type projects (tobacco, e.g., Harvard, and non-tobacco, e.g., Washington University); the role of CTR; and the need for specific areas of research with due regard for the politics of science, the importance of developing witnesses and the need for a responsive mechanism to meet unfounded claims made about tobacco.

232. In fact, a defendant's lawyer chaired the Research Liaison Committee, a committee comprised of representatives of major manufacturers "to study the research programs funded by our industry, both through CTR and independent projects that are brought to us from time to time." This committee "directed its primary attention to the question of how industry research should be recommended, decided upon, and supervised in order to accomplish the

objective of an efficient and coordinated program which would best serve the needs and objectives of the industry.

233. The attorneys also attended Committee of Counsel and the Ad Hoc Committee meetings. All of these committees worked to further the fraud.

234. In addition, the lawyer agents abused the attorney-client privilege and work product protections in order to shield special projects and special accounts documents and cover-up the CTR fraud from the public and federal government regulators. For example, in notes of a 1981 Committee of Counsel meeting, transmitted by Shook, Hardy & Bacon, Jacob is quoted as stating:

With Spielberg, 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.

235. And another set of notes from this meeting states:

E.J. [Ed Jacob] Difference between CTR and Special Four (lawyers' projects). Director of CTR reviews special projects -- if project was problem for CTR, use Special Four. Also, if there are work-product claims, need the lawyers' protection, e.g., CTR's past director, Bill Gardiner, didn't think much of Rowe's work; Special Four financed him and he is now published, e.g., motivational research that was done during the FTC investigation was done through Special Four because of possibility that CTR would be subpoenaed. e.g., Joe Janus' current study of cohort effect (those born in 1890-1910) is a full CTR project -  
- Special Four gave interim support.

V. CLAIMS FOR RELIEF

COUNT 1: UNJUST ENRICHMENT/RESTITUTION

236. The State of Hawaii realleges and incorporates herein the foregoing allegations of this complaint and further alleges, upon information and belief, as follows:

237. Use of defendants' tobacco products as intended causes and has caused disease.

238. Many of the State of Hawaii residents who are or have been afflicted with tobacco-related diseases rely or relied upon the State of Hawaii to provide their medical care, facilities and services, which reliance results in an extreme burden on the taxpayers and the financial resources of this State. Taxpayers of the State of Hawaii have thus expended hundreds of millions of dollars in caring for their fellow residents who have and are suffering from lung cancer, cardiovascular disease, emphysema, chronic obstructive pulmonary disease and a variety of other cancers and diseases that are and were caused by defendants' cigarettes.

239. The State of Hawaii is also responsible for the costs of medical assistance for Medicaid recipients and others pursuant to the state Medicaid plan and *inter alia* Chapters 346 and 346D of the Hawaii Revised Statutes.

240. While the State of Hawaii and its various agencies and institutions have been struggling to pay for the public assistance, health care costs, and other costs to the State caused by tobacco, defendants continue to reap billions of dollars in profits from the sale of their cigarettes.

241. Defendants have avoided regulations and have been and are able legally to promote the sale of cigarettes to the residents of the State of Hawaii by continuing to misinform federal and state authorities about the true carcinogenic, pathologic and addictive qualities of cigarettes.

242. In contradiction to and in spite of the State of Hawaii statutory prohibition, H.R.S.

§709-908, defendants have spent billions of dollars on targeted marketing programs designed to encourage minors to purchase and use cigarettes. Many of these minors rely, or later rely, on the State of Hawaii to provide them with public assistance, health care, and other benefits and services.

243. In equity and fairness, it is defendants and their agents, aiders and abettors and co-conspirators, not the taxpayers of the State of Hawaii, who should bear the costs of tobacco-related diseases. By avoiding their own duties to stand financially responsible for the harm done by their cigarettes, defendants have wrongfully forced the State of Hawaii to perform such duties and to pay the public assistance, health care costs, and other costs to the State of tobacco-related disease. As a result, defendants have been unjustly enriched to the extent that taxpayers of the State of Hawaii have had to pay these costs.

244. As a result of defendants' conduct, the State of Hawaii has suffered and will continue to suffer substantial injuries and damages for which the State of Hawaii is entitled to relief.

#### COUNT 2: EQUITABLE INDEMNITY

245. The State of Hawaii realleges and incorporates herein the foregoing allegations of this complaint and further alleges, upon information and belief, as follows:

246. As a direct and proximate result of the breaches of duty and omissions of the defendants as alleged above, the State of Hawaii has been obligated to pay and has in fact paid millions of dollars in the past for the provision of necessary public assistance, health care, and other benefits and services for certain of those aforementioned residents of the State of Hawaii injured by defendants' cigarettes.

247. The State of Hawaii was legally obligated to pay the aforementioned sums and did not conduct itself in any wrongful manner in being so obligated to pay and in paying the aforementioned sums.

248. Defendants have been unjustly enriched as a result.

249. In all fairness and justice and to prevent unjust enrichment, defendants should indemnify the State of Hawaii for the provision of necessary public assistance, health care, and other benefits and services for those aforementioned residents injured by defendants' cigarettes.

250. As a result of defendants' conduct, the State of Hawaii has suffered and will continue to suffer substantial injuries and damages for which the State of Hawaii is entitled to relief.

### COUNT 3: COMMON LAW PUBLIC NUISANCE

251. The State of Hawaii realleges and incorporates herein the foregoing allegations of this complaint and further alleges, upon information and belief, as follows:

252. As a direct and proximate result of their wrongful conduct as alleged above, 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, the public safety and the general welfare of the residents of the State of Hawaii, and thereby have wrongfully caused the State of Hawaii to expend millions of dollars in support of the public health and welfare by their actions which include:

- a. Exposure to secondhand or sidestream smoke and
- b. Focusing billions of dollars of advertising which target youth and pander cigarettes to children.

253. As a result of defendants' conduct, the State of Hawaii has suffered and will continue to suffer substantial injuries and damages for which the State of Hawaii is entitled to relief.

COUNT 4: INJUNCTIVE RELIEF

254. The State of Hawaii realleges and incorporates herein the foregoing allegations of this complaint, and further alleges, upon information and belief, as follows:

255. The State of Hawaii will suffer irreparable injury as a direct and proximate result of the wrongful conduct detailed in the foregoing allegations in that the children of the State of Hawaii will start using cigarettes without adequate knowledge of these products' harmful and addictive effects. Thus, the children will become addicted to cigarettes and subsequently become ill and need to be treated for tobacco-related illnesses and diseases. Many of these addicted children will become recipients of public assistance, health care, and other benefits and services provided by the State of Hawaii, thereby causing the State of Hawaii to have to bear the massive costs of these illnesses and diseases.

256. There is no adequate remedy at law which will protect the State of Hawaii from this irreparable injury.

257. As a result of defendants' conduct, the State of Hawaii has suffered and will continue to suffer substantial injuries and damages for which the State of Hawaii is entitled to relief.

COUNT 5: NEGLIGENCE

258. The State of Hawaii realleges and incorporates herein the foregoing allegations of this complaint, and further alleges, upon information and belief, as follows:

259. Defendants were under a duty to exercise reasonable care in the research, manufacture, distribution, marketing and sale of cigarettes.

260. Defendants breached this duty by the conduct alleged in this complaint.

261. As a direct and proximate cause of the negligence by defendants and their agents, aiders and abettors and co-conspirators, federal regulators were unable to undertake appropriate regulatory action and residents of the State of Hawaii have suffered injuries in the form of addiction, cancer and other illness and disease. Many of these residents of Hawaii are recipients of public assistance, health care, and other benefits and services provided by the State of Hawaii. The State of Hawaii thus has borne the massive costs of these illnesses and diseases by providing necessary public assistance, health care, and other benefits and services for certain of those aforementioned residents of the State of Hawaii injured by defendants' cigarettes.

262. As a result of this conduct of defendants and their agents, aiders and abettors and co-conspirators, the State of Hawaii has suffered and will continue to suffer substantial injuries and damages for which the State of Hawaii is entitled to relief.

#### COUNT 6: STRICT LIABILITY

263. The State of Hawaii realleges and incorporates herein the foregoing allegations of this complaint, and further alleges, upon information and belief, as follows:

264. At all relevant times, defendants manufactured, distributed, marketed and/or sold cigarettes.

265. Defendants' cigarettes were expected to and did reach the residents of the State of Hawaii without substantial change in condition from their manufacture, distribution, marketing and/or sale by defendants.

266. At the time of their manufacture, distribution, marketing and/or sale, defendants' cigarettes were in a condition that is unreasonably dangerous, because they were designed in a defective manner. Defendants' cigarettes were defective, because they, when used in the manner in which they were intended to be used or for the purpose that it was reasonably foreseeable they may have been used, caused addiction and/or cancer or other disease.

267. The addictive, carcinogenic and pathologic nature of defendants' cigarettes was beyond the reasonable expectations of the ordinary consumer who purchased them, with the ordinary common knowledge to the community as to their characteristics. Additionally and/or alternatively, the addictive, carcinogenic and pathologic nature of defendants' cigarettes was beyond the reasonable expectations of the youthful and inexperienced ordinary consumer to whom they were illicitly marketed, supplied and/or sold.

268. The risk of danger in the design of the cigarettes manufactured, distributed, marketed and/or sold by defendants outweigh any possible benefit.

269. Defendants have the ability to design, test, manufacture, market and/or sell non-or-less-addictive, non-or-less-carcinogenic and non-or-less-pathologic cigarettes.

270. Defendants thus are liable for tobacco-related injuries under Hawaii law.

271. As a direct and proximate cause of defendants' manufacture, supply and/or sale of their defectively designed cigarettes, residents of the State of Hawaii have suffered injuries in the form of addiction, cancer and other illness and disease. Many of these residents of the State of Hawaii are

recipients of public assistance, health care, and other benefits and services provided by the State of Hawaii. The State of Hawaii thus has borne the massive costs of these illnesses and diseases by providing necessary public assistance, health care, and other benefits and services for certain of those aforementioned residents of the State of Hawaii injured by defendants' cigarettes.

272. As a result of defendants' conduct, the State of Hawaii has suffered and will continue to suffer substantial injuries and damages for which the State of Hawaii is entitled to relief.

#### COUNT 7: FRAUDULENT MISREPRESENTATION AND OMISSION

273. The State of Hawaii realleges and incorporates herein the following allegations of this complaint, and further alleges, upon information and belief as follows:

274. Defendants, through their own public pronouncements and communications as well as through the public pronouncements and communications of their agents, aiders and abettors and co-conspirators, made material misrepresentations and omissions of fact, opinion, intention and/or law to federal regulators and residents of the State of Hawaii regarding:

- a. The addictive, carcinogenic and pathologic qualities of cigarettes;
- b. Their strategy and efforts to market cigarettes to minors;
- c. Their manipulation of pharmacologically active nicotine in cigarettes;
- d. The development, manufacture and sale of less hazardous cigarettes;
- e. The status, purpose and activities of the Council for Tobacco Research;
- f. The state of scientific knowledge about the health hazards of smoking; and
- g. The control by tobacco industry's lawyer agents of the affairs of the tobacco industry.

275. Defendants and their agents, aiders and abettors and co-conspirators knew that these material misrepresentations of fact, opinion, intention and/or law were false when made to federal regulators and residents of the State of Hawaii.

276. Defendants and their agents, aiders and abettors and co-conspirators intended that federal regulators and residents of the State of Hawaii rely upon these material misrepresentations of fact, opinion, intention and/or law, and residents of the State of Hawaii actually did justifiably rely upon these material misrepresentations of fact, opinion, intention and/or law.

277. Indeed, defendants and their agents, aiders and abettors and co-conspirators made these material misrepresentations of fact, opinion, intention and/or law for the purposes of inducing the residents of the State of Hawaii to purchase and smoke cigarettes and of inducing federal regulators from taking appropriate regulatory action.

278. Additionally, defendants and their agents, aiders and abettors and co-conspirators had sole access to material facts regarding the addictive, carcinogenic and pathologic qualities of cigarettes, their strategy and efforts to market cigarettes to minors, their manipulation of pharmacologically active nicotine in cigarettes, the development, manufacture and sale of less hazardous cigarettes, the status, purpose and activities of the Council for Tobacco Research, the state of scientific knowledge about the health hazards of smoking and the control by lawyer agents of the affairs of the tobacco industry. Yet, defendants and their agents, aiders and abettors and co-conspirators affirmatively concealed these material facts from federal regulators and residents of the State of Hawaii.

279. These acts by defendants, their agents, aiders and abettors and co-conspirators constitute fraudulent misrepresentations and omissions.

280. As a direct and proximate cause of the fraudulent misrepresentations and omissions by defendants and their agents, aiders and abettors and co-conspirators, federal regulators were unable to undertake appropriate regulatory action and residents of the State of Hawaii have suffered injuries in the form of addiction, cancer and other illness and disease. Many of these residents of the State of Hawaii are recipients of public assistance, health care, and other benefits and services provided by the State of Hawaii. The State of Hawaii thus has borne the massive costs of these illnesses and diseases by providing necessary public assistance, health

care, and other benefits and services for certain of those aforementioned residents of the State of Hawaii injured by defendants' cigarettes.

281. As a result of this conduct of defendants and their agents, aiders and abettors and co-conspirators, the State of Hawaii has suffered and will continue to suffer substantial injuries and damages for which the State of Hawaii is entitled to relief.

#### COUNT 8: NEGLIGENT MISREPRESENTATION AND OMISSION

282. The State of Hawaii realleges and incorporates herein the foregoing allegations of this complaint, and further alleges, upon information and belief, as follows:

283. Defendants and their agents, aiders and abettors and co-conspirators had a duty to federal regulators and residents of the State of Hawaii to disclose their knowledge, and to be otherwise truthful and accurate, regarding:

- a. The addictive, carcinogenic and pathologic qualities of cigarettes;
- b. Their strategy and efforts to market cigarettes to minors;
- c. Their manipulation of pharmacologically active nicotine in cigarettes;
- d. The development, manufacture and sale of less hazardous cigarettes;
- e. The status, purpose and activities of the Council for Tobacco Research;
- f. The state of scientific knowledge about the health hazards of smoking; and
- g. The control by the lawyer agents of the affairs of the tobacco industry.

284. Defendants and their agents, aiders and abettors and co-conspirators, prompted by pecuniary concerns, breached this duty to federal regulators and residents of the State of Hawaii by negligently making material misrepresentations and omissions regarding these aforementioned matters.

285. Defendants and their agents, aiders and abettors and co-conspirators knew or should have known that federal regulators and residents of the State of Hawaii would reasonably and justifiably rely upon these material misrepresentations, and federal regulators and residents of the State of Hawaii actually did reasonably and justifiably rely upon these material misrepresentations.

286. Additionally, defendants and their agents, aiders and abettors and co-conspirators had sole access to material facts regarding these aforementioned matters. Yet, prompted by pecuniary concern, defendants and their agents, aiders and abettors and co-conspirators negligently concealed these materials facts from federal regulators and residents of the State of Hawaii.

287. The acts of defendants and their agents, aiders and abettors and co-conspirators constitute negligent misrepresentations and omissions.

288. As a direct and proximate cause of the negligent misrepresentations and omissions by defendants and their agents, aiders and abettors and co-conspirators, federal regulators were unable to undertake appropriate regulatory action and residents of the State of Hawaii have suffered injuries in the form of addiction, cancer and other illness and disease. Many of these residents of the State of Hawaii are recipients of public assistance, health care, and other benefits and services provided by the State of Hawaii. The State of Hawaii thus has borne the massive costs of these illnesses and diseases by providing necessary public assistance, health care, and

other benefits and services for certain of those aforementioned residents of the State of Hawaii injured by defendants' cigarettes.

289. As a result of defendants' conduct, the State of Hawaii has suffered and will continue to suffer substantial injuries and damages for which the State of Hawaii is entitled to relief.

COUNT 9: VOLUNTARY ASSUMPTION OF A SPECIAL UNDERTAKING

290. The State of Hawaii realleges and incorporates herein the foregoing allegations of this complaint, and further alleges, upon information and belief, as follows:

291. Defendants voluntarily assumed the duty and responsibility to report honestly and completely on all research regarding smoking and health by and through the Frank Statement and other public pronouncements.

292. Defendants not only breached their duty and responsibility to report on such research, but also intentionally created and perpetrated a false scientific "controversy" and spurious, unsubstantiated and irrelevant "doubt" about the health dangers of smoking cigarettes and the addictive qualities of nicotine.

293. Defendants, moreover, voluntarily assumed the duty and responsibility to refrain from undertaking strategies and efforts to market cigarettes to minors by and through the Cigarette Advertising Code and other publicized programs and pronouncements.

294. Defendants not only breached their duty and responsibility to refrain from such strategies and efforts, but also developed as a crucial component of its marketing strategy the systematic and intentional targeting of minors.

295. Defendants knew or should have known that the residents of Hawaii and federal

regulators would rely on the tobacco industry's public pronouncements regarding research and marketing.

296. Defendants knew or should have known that such reliance would result in injury.

297. As a direct and proximate cause of defendants' negligent performance of their voluntary undertakings, federal regulators were unable to undertake appropriate regulatory action and residents of the State of Hawaii have suffered injuries in the form of addiction, cancer and other illness and disease. Many of these residents of the State of Hawaii are recipients of public assistance, health care, and other benefits and services provided by the State of Hawaii. The State of Hawaii thus has borne the massive costs of these illnesses and diseases by providing necessary public assistance, health care, and other benefits and services for certain of those aforementioned residents of the State of Hawaii injured by defendants' cigarettes.

298. As a result of defendants' conduct, the State of Hawaii has suffered and will continue to suffer substantial injuries and damages for which the State of Hawaii is entitled to relief.

COUNT 10: DECEPTIVE ACTS OR PRACTICES IN VIOLATION OF THE  
HAWAII ANTITRUST ACT AND HAWAII DECEPTIVE TRADE PRACTICES ACT

299. The State of Hawaii realleges and incorporates herein the foregoing allegations of this complaint and further alleges, upon information and belief, as follows:

300. Defendants have in the course of their business willfully engaged in conduct which created a likelihood of confusion or misunderstanding or the capacity to mislead or deceive.

301. By way of example and without limitation, defendants' conduct which creates a likelihood of confusion or misunderstanding or the capacity or tendency to mislead or deceive includes:

a. Defendants' fraudulent, misleading and deceptive statements and practices on issues relating to youth targeting, including intentional and/or knowing misrepresentation that the tobacco industry does not target minors in the marketing of cigarettes and that the tobacco industry does not want minors to smoke until they are of legal age when in fact they have intentionally used a multi-billion dollar advertising campaign that targets youth for the use and sale of cigarettes;

b. Defendants' fraudulent, misleading and deceptive statements and practices on issues relating to smoking and health, including intentional and/or knowing misrepresentation that there is no causal connection between cigarette smoking and adverse health effects and that cigarette smoking is not addictive;

c. Defendants' fraudulent, misleading and deceptive statements and practices relating to defendants' false promises to conduct and disclose objective research on the issue of cigarette smoking and health; and

d. Defendants' fraudulent, misleading and deceptive concealment and misrepresentation of information and documents relating to the issue of cigarette smoking and health and their failure to disclose this information and these documents.

302. Defendants have thus willfully engaged in deceptive trade practices in violation of Chapters 480 and 481A of the Hawaii Revised Statutes.

303. Because of these violations, residents of the State of Hawaii have started using, and continue to use, cigarettes without adequate knowledge of these products' harmful and addictive effects and have subsequently become, or will become, ill and will need to be treated for tobacco-related diseases. Many of these residents are, or will become recipients of public assistance, health care, and other benefits and services provided by the State of Hawaii. The State of Hawaii thus has borne, and will continue to bear, the massive costs of these illnesses and diseases by providing necessary public assistance, health care, and other benefits and services for certain of those aforementioned residents of the State of Hawaii injured by defendants' cigarettes.

304. As a direct and proximate result of defendants' conduct, the State of Hawaii has suffered and will continue to suffer substantial injuries and damages for which the State of Hawaii is entitled to relief.

COUNT 11: UNFAIR ACTS OR PRACTICES IN  
VIOLATION OF THE HAWAII ANTITRUST ACT

305. The State of Hawaii realleges and incorporates herein the foregoing allegations of this complaint and further alleges, upon information and belief, as follows:

306. Defendants have engaged in unfair acts or practices in the conduct of design, testing, manufacture, distribution, marketing and sale of cigarettes.

307. As detailed above, and without limitation,

a. Defendants have immorally, unethically, oppressively or unscrupulously engaged in fraudulent, misleading, deceptive and unfair acts and practices by their systematic and

intentional use of a multi-billion dollar advertising campaign that targets youth for the use and sale of cigarettes;

b. Defendants have immorally, unethically, oppressively or unscrupulously engaged in fraudulent, misleading, deceptive and unfair acts and practices by their suppression of the development, manufacture and sale of less hazardous cigarettes;

c. Defendants have immorally, unethically, oppressively or unscrupulously engaged in fraudulent, misleading, deceptive and unfair acts and practices by their intentional manipulation of pharmacologically active nicotine and/or free-base nicotine in cigarettes;

d. Defendants have immorally, unethically, oppressively or unscrupulously engaged in fraudulent, misleading, deceptive and unfair acts and practices by their intentional creation and perpetuation of a false scientific “controversy” and spurious, unsubstantiated and irrelevant “doubt” about the health dangers of smoking cigarettes and the addictive qualities of nicotine;

e. Defendants have immorally, unethically, oppressively or unscrupulously engaged in fraudulent, misleading, deceptive and unfair acts and practices by their illicit use of their lawyer agents;

f. Defendants have immorally, unethically, oppressively or unscrupulously engaged in fraudulent, misleading, deceptive and unfair acts and practices by wrongfully holding themselves out as a legitimate industry when in fact the tobacco industry is dedicated to the marketing and sale of a deadly product irrespective of the consequences to its users; and

g. Defendants have immorally, unethically, oppressively or unscrupulously engaged in fraudulent, misleading, deceptive and unfair acts and practices on issues relating to smoking and health, and moreover, made intentional and/or knowing misrepresentation that there is no causal connection between cigarette smoking and adverse health effects and that cigarette smoking is not addictive.

308. Defendants have thus willfully engaged in unfair trade practices in violation of Chapter 480 of the Hawaii Revised Statutes.

309. Because of these violations, residents of the State of Hawaii have started using, and continue to use, cigarettes without adequate knowledge of these products' harmful and addictive effects and have subsequently become, or will become, ill and will need to be treated for tobacco-related diseases. Many of these residents of the State of Hawaii are, or will become, recipients of public assistance, health care, and other benefits and services provided by the State of Hawaii. The State of Hawaii thus has borne, and will continue to bear, the massive costs of these illnesses and diseases by providing necessary public assistance, health care, and other benefits and services for certain of those aforementioned residents of the State of Hawaii injured by defendants' cigarettes.

310. As a direct and proximate result of defendants' conduct, the State of Hawaii has suffered and will continue to suffer substantial injuries and damages for which the State of Hawaii is entitled to relief.

COUNT 12: UNFAIR METHODS OF COMPETITION AND  
UNLAWFUL COMBINATION IN RESTRAINT OF TRADE  
IN VIOLATION OF THE HAWAII ANTITRUST ACT

311. The State of Hawaii realleges and incorporates herein the foregoing allegations of this complaint, and further alleges, upon information and belief, as follows:

312. Defendants have engaged in unfair methods of competition in the conduct of design, testing, manufacture, distribution, marketing and sale of cigarettes for use in the Hawaii market.

313. Furthermore, defendants and their co-conspirators have, since at least the 1950's, unlawfully combined to control and restrain the design, testing, manufacture, distribution, marketing and sale of cigarettes in order to guarantee a market for their cigarettes, maintain a market price for their cigarettes, protect their enormous profits from their cigarettes and maintain their ability to shift the direct and foreseeable health care costs of smoking to the State of Hawaii and others.

314. These unfair methods of competition and this unlawful combination include, without limitation, the following methods:

- a. Controlling and restraining research on the harmful effects of smoking;
- b. Controlling and restraining the dissemination of information on the harmful effects of smoking;
- c. Controlling and restraining the design, testing, manufacture, distribution, marketing and sale of less hazardous cigarettes;
- d. Controlling and restraining the disclosure of information relating to the marketing of cigarettes to minors; and
- e. Controlling and restraining the disclosure of information relating to the manipulation of pharmacologically active nicotine and free-base nicotine in cigarettes.

315. These unfair methods of competition and this unlawful combination has resulted in millions of persons beginning and continuing to smoke cigarettes, causing residents of the State of Hawaii to suffer injuries in the form of addiction, cancer and other illness and disease. Many of these residents of the State of Hawaii are recipients of public assistance, health care, and other benefits and

services provided by the State of Hawaii. The State of Hawaii thus has borne the massive costs of these illnesses and diseases by providing necessary public assistance, health care, and other benefits and services for certain of those aforementioned residents of the State of Hawaii injured by defendants' cigarettes and unable to afford and otherwise obtain such necessary medical care, facilities and services.

316. The State of Hawaii was within the target area of defendants' unfair methods of competition and unlawful combination.

317. Defendants have thus willfully engaged in unfair methods of competition and an unlawful combination in restraint of trade in violation of Chapter 480 of the Hawaii Revised Statutes.

318. As a result of defendants' violations, the State of Hawaii has suffered and will continue to suffer substantial injuries and damages, direct and indirect, for which the State of Hawaii is entitled to relief.

#### COUNT 13: CIVIL CONSPIRACY

319. The State of Hawaii realleges and incorporates herein the foregoing allegations of this complaint, and further alleges upon information and belief, as follows:

320. Defendants, knowingly, willingly and wantonly, combined and agreed with one another for the purposes of accomplishing the unlawful ends complained of and/or for the

purposes of unlawfully accomplishing the lawful ends. Moreover, defendants undertook overt acts in furtherance of these purposes, including, without limitation:

- a. Designing, testing, manufacturing, marketing, supplying and selling defective cigarettes;
- b. Misrepresenting and omitting material information regarding the addictive, carcinogenic and pathologic qualities of cigarettes;
- c. Misrepresenting and omitting material information and by consciously creating misleading and false attractive impressions and imagery to attract and bait young users as part of the tobacco industry's strategy and efforts to market cigarettes to minors;
- d. Misrepresenting and omitting material information regarding the tobacco industry's manipulation of pharmacologically active nicotine and/or free-base nicotine in cigarettes;
- e. Misrepresenting and omitting material information regarding the development, manufacture and sale of less hazardous cigarettes;
- f. Misrepresenting and omitting material information regarding the status, purpose and activities of the Council for Tobacco Research;
- g. Misrepresenting and omitting material information regarding the state of scientific knowledge about the health hazards of smoking;
- h. Misrepresenting and omitting material information regarding the control by the lawyer agents of the affairs of the tobacco industry;
- i. Engaging in deceptive acts or practices in violation of the Hawaii Antitrust Act and Hawaii Deceptive Trade Practices Act;
- j. Engaging in unfair acts or practices in violation of the Hawaii Antitrust Act;
- k. Engaging in unfair methods of competition in violation of the Hawaii Antitrust Act;

- l. Engaging in racketeering activities in violation of H.R.S. Chapter 842; and
- m. Engaging in false or misleading advertising in violation of H.R.S. §708-871.

321. As a direct and proximate cause of defendants' civil conspiracy, federal regulators were unable to undertake appropriate regulatory action and residents of the State of Hawaii have suffered injuries in the form of addiction, cancer and other illness and disease. Many of these residents of the State of Hawaii are recipients of public assistance, health care, and other benefits and services provided by the State of Hawaii. The State of Hawaii thus has borne the massive costs of these illnesses and diseases by providing necessary public assistance, health care, and other benefits and services for certain of those aforementioned residents of the State of Hawaii injured by defendants' cigarettes.

322. As a result of defendants' conduct, the State of Hawaii has suffered and will continue to suffer substantial injuries and damages for which the State of Hawaii is entitled to relief.

COUNT 14: AIDING AND ABETTING

323. The State of Hawaii realleges and incorporates herein the foregoing allegations of this complaint, and further alleges, upon information and belief, as follows:

324. Defendants, knowing at the time that their actions were part of the overall illegal or tortious undertakings complained of herein, knowingly and substantially assisted one another in these undertakings by:

- a. Designing, testing, manufacturing, marketing, supplying and selling defective cigarettes;
- b. Misrepresenting and omitting material information regarding the addictive, carcinogenic and pathologic qualities of cigarettes;
- c. Misrepresenting and omitting material information and by consciously creating

misleading and false attractive impressions and imagery to attract and bait young users as part of the tobacco industry's strategy and efforts to market cigarettes to minors;

d. Misrepresenting and omitting material information regarding the tobacco industry's manipulation of pharmacologically active nicotine in cigarettes;

e. Misrepresenting and omitting material information regarding the development, manufacture and sale of less hazardous cigarettes;

f. Misrepresenting and omitting material information regarding the status, purpose and activities of the Council for Tobacco Research;

g. Misrepresenting and omitting material information regarding the state of scientific knowledge about the health hazards of smoking;

h. Misrepresenting and omitting material information regarding the control by tobacco industry lawyers agents of the affairs of the tobacco industry;

i. Engaging in deceptive acts or practices in violation of the Hawaii Antitrust Act and Hawaii Deceptive Trade Practices Act;

j. Engaging in unfair acts or practices in violation of the Hawaii Antitrust Act;

k. Engaging in unfair methods of competition in violation of the Hawaii Antitrust Act;

l. Engaging in racketeering activities in violation of H.R.S. Chapter 842; and

m. Engaging in false or misleading advertising in violation of H.R.S. §708-871.

325. As a direct and proximate cause of defendants' aiding and abetting one another, federal regulators were unable to undertake appropriate regulatory action and residents of the State of Hawaii have suffered injuries in the form of addiction, cancer and other illness and disease. Many of these residents of the State of Hawaii are recipients of public assistance, health care, and other benefits and

services provided by the State of Hawaii. The State of Hawaii thus has borne the massive costs of these illnesses and diseases by providing necessary public assistance, health care, and other benefits and services for certain of those aforementioned residents of the State of Hawaii injured by defendants' cigarettes.

326. As a result of defendants' conduct, the State of Hawaii has suffered and will continue to suffer substantial injuries and damages for which the State of Hawaii is entitled to relief.

COUNT 15: MARKET SHARE LIABILITY

327. The State of Hawaii realleges and incorporates herein the foregoing allegations of this complaint, and further alleges, upon information and belief, as follows:

328. Defendants' cigarette brands are substantially similar and commercially fungible.

329. The adverse health effects caused by defendants' cigarette brands are essentially indistinguishable.

330. The passage of time and the lack of information of the cigarette brand(s) smoked in many instances may make it impossible to identify defendant(s) responsible for the collective loss to the State of Hawaii caused by tobacco-related disease in their exact proportions.

331. Defendants, individually and collectively, accounted for virtually the entire production of cigarettes at all times relevant to this action.

332. As a result, each defendant is severally liable under market share liability for its respective proportionate share of the cigarette market.

#### COUNT 16: ALTERNATIVE LIABILITY

333. The State of Hawaii realleges and incorporates herein the foregoing allegations of this complaint, and further alleges, upon information and belief, as follows:

334. Defendants' cigarette brands are substantially similar and commercially fungible.

335. The adverse health effects caused by defendants' cigarette brands are essentially indistinguishable.

336. The passage of time and the lack of information of the cigarette brand(s) smoked in many instances make it impossible to identify defendant(s) responsible for the collective loss to the State of Hawaii caused by tobacco-related disease.

337. Defendants, individually and collectively, accounted for virtually the entire production of cigarettes at all times relevant to this action.

338. As a result, each defendant is jointly and severally liable under alternative liability.

#### COUNT 17: ENTERPRISE OR INDUSTRY-WIDE LIABILITY

339. The State of Hawaii realleges and incorporates herein the foregoing allegations of this complaint, and further alleges, upon information and belief, as follows:

340. Defendants, acting collectively, followed an industry course of action, developed collectively by them, of refusing to acknowledge, disseminate or advise the public, including the State of Hawaii and the residents of the State of Hawaii of the health hazards of cigarettes, including, without limitation, the addictive carcinogenic and pathologic qualities of cigarettes.

341. Defendants had a joint awareness of the health hazards of cigarettes and had the capacity, jointly and individually, to reduce, minimize or affect these health hazards, but chose instead, for economic gain, to suppress, manipulate and misrepresent research and information concerning the health hazards of cigarettes.

342. The cigarettes sold in Hawaii are manufactured by a small number of defendants who comprise the industry. The defendants had a joint capacity to reduce the risks of the products and the disease and death caused by their cigarette products and each of them failed to take steps to reduce the risks at a substantially concurrent time by purporting to delegate their responsibility to defendant Council for Tobacco Research.

343. As a result, each defendant is jointly and severally liable under enterprise or industry-wide liability.

#### COUNT 18: VIOLATIONS OF H.R.S. §842-2

344. The State of Hawaii realleges and incorporates herein the foregoing allegations of this complaint, and further alleges, upon information and belief, as follows:

345. At all relevant times, defendants and their co-conspirators have participated in and/or

constituted an “enterprise” within the meaning of H.R.S. §842-1. The enterprise is an ongoing organization whose constituent elements function as a continuing unit to maximize the sale and use of tobacco products.

346. Defendants and their co-conspirators, as “persons” within the meaning of H.R.S. Section 842-1, and as persons employed by and/or associated with said enterprise, conducted and participated in the conduct of the affairs of the enterprise through racketeering activity in violation of H.R.S. §842-2(3).

347. Defendants and their co-conspirators, as demonstrated by the conduct detailed in paragraphs 34 through 235 of this complaint, have repeatedly and continually employed widely dangerous means in a manner which recklessly place residents of the State of Hawaii who smoke cigarettes and residents of the State of Hawaii exposed to cigarette smoke in danger of death or serious bodily injury. Defendants’ acts are chargeable as a violation of H.R.S. §707-713 for reckless endangering in the first degree, and are therefore “racketeering activities” within the meaning of H.R.S. Section 842-1.

348. As a result of their repeated and continuing violations of H.R.S. §842-2(3), defendants and their co-conspirators have amassed profits in the billions of dollars while costing the State of Hawaii and its taxpayers hundreds of millions of dollars.

349. As a direct and proximate cause of defendants’ repeated and continuing violations of H.R.S. §842-2(3), federal regulators were unable to undertake appropriate regulatory action and residents of the State of Hawaii have suffered injuries in the form of addiction, cancer and other illness and disease. Many of these residents of the State of Hawaii are recipients of public assistance, health care, and other benefits and services provided by the State of Hawaii. The State of Hawaii thus has

borne the massive costs of these illnesses and diseases by providing necessary public assistance, health care, and other benefits and services for certain of those aforementioned residents of the State of Hawaii injured by defendants' cigarettes.

350. The State of Hawaii has therefore been injured in its property as defined in H.R.S. Section 842-8.

351. The State of Hawaii by its Attorney General will seek all civil remedies available to it as authorized by H.R.S. §842-8, including but not limited to: (a) the entry of such appropriate orders necessary to prevent and restrain defendants and their co-conspirators' repeated and continuing violations of H.R.S. §842-2(3), including targeting advertisement to minors, (b) an award of damages equal to the amount of monies expended and to be expended by the State of Hawaii in the provision of public assistance, health care, and other benefits and services for tobacco-related disease and illnesses, (c) an award of costs of suit and an award of attorneys' fees, and (d) an award requiring defendants to divest their ill-gotten gains, and (e) an award requiring defendants to disgorge their profits from cigarette sales in the State of Hawaii.

COUNT 19: FALSE ADVERTISING;  
VIOLATION OF H.R.S. §708-871 AND §603-23.5

352. The State of Hawaii realleges and incorporates herein the foregoing allegations of this complaint, and further alleges, upon information and belief, as follows:

353. The series of false advertisements and misrepresentations to the public constitute a violation of H.R.S. §708-871 and the plaintiff Attorney General has standing to enjoin said

false and misleading advertisements and misrepresentations and recover damages therefrom pursuant to H.R.S. §603-23.5.

354. The defendants caused to be published numerous false, deceptive and misleading advertisements in magazines and newspapers that were circulated and sold in Hawaii, including, but not limited to,

(a) An advertisement entitled , “Just what the Doctor ordered” on January 11, 1954, in the Honolulu Advertiser;

(b) A Chesterfield advertisement on January 15, 1954 in the Honolulu Advertiser stating: “The doctor’s examination shows . . . no adverse effects to the nose, throat and sinuses from smoking Chesterfield”; and

(c) In the PARADE section of the Sunday Advertiser-Star Bulletin on July 15, 1979, an advertisement entitled “A word to smokers (about people who build walls)”; in the PARADE section of the Sunday Advertiser-Star Bulletin an advertisement entitled “A word to non-smokers (about working together)”; on February 11, 1979, in the Honolulu Advertiser an advertisement entitled “A word to smokers (about non-smokers and anti-smokers)”, and numerous advertisements in national magazines such as Time, Life, Sports Illustrated, Rolling Stone, and others. These false, misleading and deceptive advertisements were part of the decade-long conspiracy by the tobacco companies and their trade associations and their lawyer-agents to mislead the public and residents of the State of Hawaii on the dangers of smoking cigarettes, suppress awareness of said dangers, conceal the dangers of smoking, target minors to begin and continue smoking to assure a continuing market for their product, and distort and suppress information on smoking and health.

VI. REQUESTS FOR RELIEF

WHEREFORE, the State of Hawaii requests that this Court issue an order and judgment as follows:

a. Ordering defendants to provide restitution and repay the State of Hawaii for the sums the State of Hawaii has expended, and will in the future expend, on account of defendants' wrongful conduct;

b. Ordering defendants to pay damages to the State of Hawaii for the sums the State of Hawaii has expended, and will in the future expend, on account of defendants' wrongful conduct;

c. Ordering defendants to disclose, disseminate and publish all research and studies previously conducted directly and indirectly by themselves and their respective agents, affiliates, servants, officers, directors, employees and all persons acting in concert with them that relate to the issue of smoking and health;

d. Ordering defendants to disclose all documents referring or relating to tobacco and health;

e. Ordering defendants to fund a corrective public education campaign relating to the issue of smoking and health to be administered and controlled by the State of Hawaii or such other third-party as the Court may deem appropriate;

f. Ordering defendants to take all reasonable and necessary affirmative and effective steps to eliminate all advertising that targets or attracts children and youth and prevent the distribution and sale of cigarettes to minors in the State of Hawaii;

g. Ordering defendants to cease all marketing, supply and sales practices that encourage minors to begin or continue to use cigarettes;

- h. Ordering defendants to fund clinical smoking cessation programs in the State of Hawaii;
- i. Ordering defendants to dissolve the Council for Tobacco Research and the Tobacco Institute;
- j. Ordering defendants to disclose publicly the nicotine delivery levels of each of their respective products based upon scientific standards as determined appropriate by the State of Hawaii or such other third-party as the Court may deem appropriate;
- k. Ordering defendants to disclose publicly the specific ingredients of each of their respective products;
- l. Declaring that defendants have engaged in deceptive acts or practices in violation of the Hawaii Antitrust Act and the Hawaii Deceptive Trade Practices Act;
- m. Declaring that defendants have engaged in unfair acts or practices in violation of the Hawaii Antitrust Act;
- n. Declaring that defendants have engaged in unfair methods of competition and an unlawful combination in restraint of trade in violation of the Hawaii Antitrust Act;
- o. Enjoining defendants, their respective agents, servants, officers, directors, employees and all others acting in concert with them, directly or indirectly, from engaging in deceptive acts or practices, unfair acts or practices and unfair methods of competition and unlawful combination in restraint of trade in violation of the laws of the State of Hawaii;

p. Awarding treble damages and compensation to the State of Hawaii for past and future tobacco-related health care expenditures caused by defendants' deceptive acts or practices, unfair acts or practices and unfair methods of competition and unlawful combination in restraint of trade in violation of the laws of the State of Hawaii;

q. Awarding to the State of Hawaii costs of investigation, costs of this action and reasonable attorneys' fees;

r. Awarding punitive damages to the State of Hawaii;

s. Ordering defendants to disgorge to the State of Hawaii all profits from sales of cigarettes in the State of Hawaii;

t. Ordering defendants to divest themselves from their ill-gotten gains; and

u. Granting such other and further relief as this Court deems just and proper to which the State of Hawaii may be entitled.

DATED: Honolulu, Hawaii, February \_\_\_\_\_, 1997.

---

MARGERY S. BRONSTER  
CHARLES F. FELL  
GARY O. GALIHER  
RONALD L. MOTLEY  
Attorneys for Plaintiff

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

STATE OF HAWAII, BY MARGERY S. ) CIVIL NO. 97-0441-01  
BRONSTER, ATTORNEY GENERAL, ) (Other Civil Action)  
)  
Plaintiff, ) DEMAND FOR TRIAL BY JURY  
)  
vs. )  
)  
BROWN & WILLIAMSON TOBACCO )  
CORPORATION as successor by merger to )  
THE AMERICAN TOBACCO COMPANY; )  
AMERICAN BRANDS INC.; BROWN & )  
WILLIAMSON TOBACCO )  
CORPORATION; BRITISH AMERICAN )  
TOBACCO COMPANY LTD.; BRITISH- )  
AMERICAN HOLDINGS LTD.; B.A.T. )  
INDUSTRIES, PLC; BATUS HOLDINGS )  
INC.; PHILIP MORRIS INCORPORATED )  
(PHILIP MORRIS U.S.A.); PHILIP )  
MORRIS COMPANIES INC.; R.J. )  
REYNOLDS TOBACCO COMPANY; RJR )  
NABISCO INC.; LIGGETT & MYERS )  
INC.; THE BROOKE GROUP LIMITED; )  
LIGGETT GROUP INC.; LORILLARD )  
INCORPORATED; LORILLARD )  
TOBACCO COMPANY; LOEWS )  
CORPORATION; UNITED STATES )  
TOBACCO COMPANY; UST INC.; THE )  
COUNCIL FOR TOBACCO RESEARCH- )  
U.S.A. INC. (successor in interest to the )  
TOBACCO INDUSTRY RESEARCH )  
COMMITTEE); TOBACCO INSTITUTE )  
INC.; HILL & KNOWLTON INC.; )  
HAWAIIAN ISLES DISTRIBUTORS LTD.; )  
and JOHN DOE ENTITIES "A" through "Z", )  
)  
Defendants. )  
)  
)

\_\_\_\_\_ )

DEMAND FOR TRIAL BY JURY

Plaintiff above-named hereby demands trial by jury as to each and every cause of action herein and pursuant to Rule 38(b) of the Hawaii Rules of Civil Procedure.

DATED: Honolulu, Hawaii, February \_\_\_\_\_, 1997.

---

MARGERY S. BRONSTER  
CHARLES F. FELL  
GARY O. GALIHER  
RONALD L. MOTLEY  
Attorneys for Plaintiff

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

STATE OF HAWAII, BY MARGERY S. ) CIVIL NO. 97-0441-01  
BRONSTER, ATTORNEY GENERAL, ) (Other Civil Action)

Plaintiff, ) SUMMONS

vs. )

BROWN & WILLIAMSON TOBACCO )  
CORPORATION as successor by merger to )  
THE AMERICAN TOBACCO COMPANY; )  
AMERICAN BRANDS INC.; BROWN & )  
WILLIAMSON TOBACCO )  
CORPORATION; BRITISH AMERICAN )  
TOBACCO COMPANY LTD.; BRITISH- )  
AMERICAN HOLDINGS LTD.; B.A.T. )  
INDUSTRIES, PLC; BATUS HOLDINGS )  
INC.; PHILIP MORRIS INCORPORATED )  
(PHILIP MORRIS U.S.A.); PHILIP )  
MORRIS COMPANIES INC.; R.J. )  
REYNOLDS TOBACCO COMPANY; RJR )  
NABISCO INC.; LIGGETT & MYERS )  
INC.; THE BROOKE GROUP LIMITED; )  
LIGGETT GROUP INC.; LORILLARD )  
INCORPORATED; LORILLARD )  
TOBACCO COMPANY; LOEWS )  
CORPORATION; UNITED STATES )  
TOBACCO COMPANY; UST INC.; THE )  
COUNCIL FOR TOBACCO RESEARCH- )  
U.S.A. INC. (successor in interest to the )  
TOBACCO INDUSTRY RESEARCH )  
COMMITTEE); TOBACCO INSTITUTE )  
INC.; HILL & KNOWLTON INC.; )  
HAWAIIAN ISLES DISTRIBUTORS LTD.; )  
and JOHN DOE ENTITIES "A" through "Z", )

Defendants. )

\_\_\_\_\_ )

S U M M O N S

STATE OF HAWAII

To the above-named Defendants:

You are hereby summoned and required to serve upon GARY O. GALIHER, Plaintiff's attorney, whose address is 610 Ward Avenue, Suite 200, Honolulu, Hawaii 96814, an answer to the First Amended Complaint which is herewith served upon you, within twenty (20) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the First Amended Complaint.

This summons shall not be personally delivered between 10:00 p.m. and 6:00 a.m. on premises not open to the general public, unless a judge of the above-entitled court permits, in writing on this summons, personal delivery during those hours.

A failure to obey this summons may result in an entry of default and default judgment against the disobeying person or party.

DATED: Honolulu, Hawaii, \_\_\_\_\_.

---

CLERK OF THE ABOVE-ENTITLED COURT