

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS  
DIVISION

STATE OF KANSAS, *ex rel.*  
CARLA J. STOVALL, Attorney General,

Plaintiff,

v.

R.J. REYNOLDS TOBACCO  
COMPANY; PHILIP MORRIS,  
INCORPORATED;  
BROWN & WILLIAMSON TOBACCO  
CORPORATION;  
B.A.T. INDUSTRIES, P.L.C.;  
LORILLARD TOBACCO COMPANY;  
THE AMERICAN TOBACCO  
COMPANY; HILL & KNOWLTON,  
INC.; THE COUNCIL FOR TOBACCO  
RESEARCH-U.S.A., INC.;  
THE TOBACCO INSTITUTE, INC.;  
and JOHN DOE ENTITIES "A"  
THROUGH "Z."

Defendants.

Case No. 96-CV-919

PETITION  
(Filed Pursuant to K.S.A. Chapter 60)

COMES NOW the State of Kansas, on the relation of Carla J. Stovall,  
Attorney General (hereinafter "the State" or "Kansas")? and for its  
causes of action against the Defendants herein allege, state, and aver  
as follows:

I.

Parties

1. Plaintiff, State of Kansas is a body politic governed by the  
Constitution and laws of Kansas, and is entitled to bring this action  
pursuant to the laws of Kansas. This suit concerns significant matters  
of state-wide public interest and is brought on the relation of the  
Attorney General, pursuant the Attorney General's other  
constitutional, statutory, and common law powers to act on behalf of  
the State and certain of its agencies. The State seeks, among other  
forms of relief, the specific measures set forth below:

a. Consumer Protection Enforcement. The Attorney General has broad  
authority to institute actions under the Kansas Consumer Protection

Act to safeguard Kansas citizens from, among other things, unconscionable and deceptive acts and practices, including the use of false and misleading advertising campaigns and the marketing of dangerous products to minors. Under this authority, the Attorney General seeks civil penalties, restitution, and appropriate declaratory and injunctive relief, including but not limited to a permanent injunction to require Defendants to cease marketing tobacco products to children, to disclose their knowledge of and research into smoking, addiction, and the impact of smoking on health, to publish corrective advertising, to fund a public education campaign on the health consequences of smoking as well as smoking cessation programs for nicotine-dependent smokers, other remedial measures, investigative fees and expenses, and other appropriate relief.

b. Restraint of Trade. Kansas law (Restraint of Trade, K.S.A. 50-101 et seq.), herein referred to as the "Kansas Antitrust Act") gives the Attorney General broad powers to protect the public and foster fair and honest intrastate competition by instituting actions against persons who conspire to restrain trade and commerce or monopolize markets in Kansas. Under this authority, the Attorney General seeks civil penalties and appropriate injunctive relief, including but not limited to a permanent injunction to require Defendants to disclose their knowledge of and research into smoking, addiction and the impact of smoking on health.

c. Medical Costs. Among other things, the State seeks restitution for the smoking-related health care costs paid by the State through its various statutory medical programs, including the programs established pursuant to K.S.A. 39-701 et. seq. For example, under the Kansas Medicaid program, K.S.A. 39-708c(s) and K.S.A. 39-709, the State, in financial partnership with the federal government, provides financial assistance for a broad range of health care services to eligible low income Kansas residents. A significant portion of the monies that the State has paid out, and will continue to pay out, to recipients under the Kansas Medicaid program is for health care costs attributable to smoking-related illnesses and diseases. Additionally, the State expends large sums of money for the provision of health care to eligible citizens under various other State programs, which health care costs are attributable to smoking-related illnesses and diseases.

2. Defendant Philip Morris, Incorporated (Philip Morris U.S.A.) (hereinafter "Philip Morris") is a Virginia corporation whose principal place of business is located at 120 Park Avenue, New York, New York 10016 and may be served with process pursuant to K.S.A. 60-308(e) at that address. Defendant Philip Morris, Incorporated (Philip Morris U.S.A.) manufactures, advertises, promotes, markets and sells Philip Morris, Merit, Cambridge, Marlboro, Benson & Hedges, Virginia Slims, Alpine, Dunhill, English Ovals, Galaxy, Players, Saratoga and Parliament cigarettes throughout the United States, including in Kansas.

3. Defendant R.J. Reynolds Tobacco Company (hereinafter "R.J. REYNOLDS") is a New Jersey corporation whose principal place of business is located at Fourth and Main Streets, Winston-Salem, North

Carolina 27102 and may be served with process pursuant to K.S.A. 60-308(e) at that address. Defendant R.J. Reynolds manufactures, advertises, promotes, markets and sells Camel, Vantage, Now, Doral, Winston, Sterling, Magna, More, Century, Bright Rite and Salem cigarettes throughout the United States, including in Kansas.

4. Defendant Brown & Williamson Tobacco Corporation (hereinafter "Brown & Williamson") is a Delaware corporation, with its principal place of business at 1500 Brown & Williamson Tower, Louisville, Kentucky 40232 and may be served with process pursuant to K.S.A. 60-308(e) at that address. Defendant Brown & Williamson Tobacco Corporation is a subsidiary or division of Batus Holdings, Inc. and Defendant B.A.T. Industries, P.L.C. Defendant Brown & Williamson Tobacco Corporation manufactures, advertises, promotes, markets and sells Kool, Barclay, BelAir, Capri, Raleigh, Richland, Laredo, Eli Cutter and Viceroy cigarettes throughout the United States, including in Kansas.

5. Defendant B.A.T. Industries, P.L.C. (hereinafter "B.A.T. Industries") is a British corporation with its principal place of business at Windsor House, 50 Victoria Street, London, England SW1H 0NL and may be served with process at said address pursuant to the Hague Convention through Plaintiff's counsel. Through a succession of intermediary corporations and holding companies, Defendant B.A.T. Industries, P.L.C. is the sole shareholder of Defendant Brown & Williamson Tobacco Corporation. Through Defendant Brown & Williamson Tobacco Corporation, Defendant B.A.T. Industries, P.L.C. has placed cigarettes into the stream of commerce with the expectation and the intention that substantial sales of cigarettes would be made in the United States, including in Kansas. In addition, Defendant B.A.T. Industries, P.L.C. as a principal, or through its agents and/or co-conspirators, conducted significant and critical research for Defendant Brown & Williamson Tobacco Corporation on the issues of smoking and health in humans. Further, Defendant Brown & Williamson Tobacco Corporation is believed to have sent to England the results of research that it conducted in the United States on the issue of smoking and health in humans in an attempt to remove sensitive and inculpatory documents from the jurisdiction of United States courts in Kansas and elsewhere. These documents were and are subject to the control of Defendant B.A.T. Industries, P.L.C. Defendant B.A.T. Industries, P.L.C. has been involved in the conspiracy alleged herein and the actions of Defendant B.A.T. Industries, P.L.C. have effected and caused harm in Kansas.

6. Defendant Lorillard Tobacco Company (hereinafter "Lorillard") is a Delaware corporation whose principal place of business is located at 1 Park Avenue, New York, New York 10016 and may be served with process pursuant to K.S.A. 60-308(e) at that address. Defendant Lorillard Tobacco Company manufactures, advertises, promotes, markets and sells Old Gold, Kent, Triumph, Satin, Max, Spring, Newport and True cigarettes throughout the United States, including in Kansas.

7. Defendant The American Tobacco Company (hereinafter "American

Tobacco") is a Delaware corporation whose principal place of business is located at Six Stamford Forum, Stamford, Connecticut 06904 and may be served with process pursuant to K.S.A. 60-308(e) at that address. Defendant The American Tobacco Company is or was a subsidiary or division of American Brands, Inc. Defendant The American Tobacco Company manufactures, advertises, promotes, markets and sells Lucky Strike, Pall Mall, Tareyton, Malibu, American, Montclair, Newport, Misty, Barclay, Iceberg, Silk Cut, Silva Thins, Sobrania, Bull Durham and Carlton cigarettes throughout the United States, including in Kansas. On December 21, 1994, Defendant The American Tobacco Company was purchased by Defendant B.A.T. Industries, P.L.C. who, on information and belief, has succeeded to the liabilities of Defendant The American Tobacco Company by operation of law, or as a matter of fact.

8. Defendant Hill & Knowlton, Inc. (hereinafter "Hill & Knowlton") is a New York corporation whose principal place of business is located at 420 Lexington Avenue, New York, New York 10070 and may be served with process pursuant to K.S.A. 60-308(e) at that address. Defendant Hill & Knowlton, Inc. is an international public relations firm. Defendant Hill & Knowlton, Inc. played an active and knowing role in the conspiracy complained of herein by aiding the circulation and/or publication of many false statements of the tobacco industry attributable to the Tobacco Industry Research Committee and the Defendant Council for Tobacco Research.

9. Defendant The Council for Tobacco Research - U.S.A., Inc. (hereinafter "CTR"), successor in interest to the Tobacco Industry Research Committee ("TIRC"), is a nonprofit corporation organized under the laws of the State of New York with its principal place of business at 900 3rd Avenue, New York, New York 10022 and may be served with process pursuant to K.S.A. 60-308(e) at that address. Defendant The Council for Tobacco Research-U.S.A., Inc. was created by the tobacco company defendants to disseminate false information regarding the health risks and hazards of smoking.

10. Defendant The Tobacco Institute, Inc. (hereinafter "Tobacco Institute") is a New York corporation whose principal place of business is located at 1875 "I" Street, N.W., Suite 800, Washington, D.C. 20006 and may be served with process pursuant to K.S.A. 60-308(c) at that address. Defendant The Tobacco Institute, Inc. has since its incorporation in 1958, operated as the public relations and lobbying arm of the Tobacco Companies.

11. Defendants John Doe Entities "A" Through "Z" are business entities, both Kansas and foreign, whose identities are presently unknown to the State but who may be described as certain manufacturers and distributors, and/or certain of their trade organizations, public relations firms, law firms and other such entities that, at all pertinent times, manufactured, tested, designed, promoted, marketed, packaged, sold, distributed, and/or purposely placed into the stream of commerce in and into the State, various brands of cigarettes, or, in the course of business, materially participated with, conspired with and/or otherwise aided, abetted and assisted others in

so doing, all to the detriment of the State as alleged herein.

12. The defendants listed herein, and/or their predecessors and/or their successors in interest, are either organized under the laws of (i) Kansas or (ii) a state other than Kansas, or (iii) are partnerships or other unincorporated associations with principal places of business both within and without Kansas and are each subject to suit. All Defendants have established relationships with the State within the contemplation of the Kansas Statutes Annotated adequate to constitute a sufficient basis of personal jurisdiction under K.S.A. 60-308(b).

13. Philip Morris Incorporated (Philip Morris U.S.A.), R.J. Reynolds Tobacco Company, Brown & Williamson Tobacco Corporation, B.A.T. Industries, P.L.C., Lorillard Tobacco Company, The American Tobacco Company, Liggett Group, Inc. and certain of the "A" Through "Z" entities (Doe Defendants) collectively are referred to hereinafter as "The Tobacco Companies."

14. The Council for Tobacco Research-U.S.A. Inc., (successor to The Tobacco Institute Research Committee) and The Tobacco Institute, Inc., collectively are referred to hereinafter as "The Tobacco Trade Associations."

15. Hill & Knowlton, Inc. and certain of the "A" through "Z" entities (Doe Defendants) collectively are referred to hereinafter as "The Tobacco Consultants. "

16. Shook, Hardy & Bacon, P.C. and Jacob, Medinger & Finnegan and certain of the "A" Through "Z" entities (Doe Defendants) collectively are referred to hereinafter as "The Tobacco Attorneys."

17. At all pertinent times, Defendants acted through their duly authorized agents, servants, and employees who were then acting in the course and scope of their employment, and in furtherance of the businesses of said Defendants. At all pertinent times, the Tobacco Attorneys and the Tobacco Trade Associations were the agents, servants, and/or employees of the Tobacco Companies and acted within the scope of said agency, servitude and/or employment. At all pertinent times, the Tobacco Consultants were the agents, servants, and/or employees of the Tobacco Companies and/or the Tobacco Trade Associations and acted within the scope of said agency, servitude and/or employment.

18. The Defendants listed above, and/or their predecessors and successors in interest, did business in the State of Kansas; made contracts to be performed in whole or in part in Kansas; and/or manufactured, tested, sold, offered for sale, supplied or placed in the stream of commerce, or in the course of business materially participated with others in so doing, cigarettes which the defendants knew to be defective, unreasonably dangerous and hazardous. Defendants further knew such cigarettes would be substantially certain to cause injury to the State and to persons within the State thereby negligently and/or willfully and or intentionally causing injury to persons within Kansas and to the State, and as described herein,

committed and continue to commit tortious and other unlawful acts in and with consequences in the State of Kansas.

19. Each Defendant is sued individually as a primary violator and as a coconspirator and aider and abettor, and the liability of each arises from the fact that each Defendant entered into an agreement with the other Defendants and third parties to pursue, and knowingly pursued, the common course of conduct to commit or participate in the commission of all or part of the unlawful acts, tortious acts, plans, schemes, transactions, and artifices to defraud and/or deceive and/or mislead alleged herein.

20. Such acts of conspiracy and aiding and abetting included, among other things, falsely advertising, marketing, promoting and selling cigarettes as safe, non-addictive, and not containing levels of nicotine manipulated by Defendants to cause and maintain addiction.

21. The liability of each Defendant arises from the fact that each committed and/or engaged in a conspiracy to accomplish the commission of all or part of the unlawful and/or tortious conduct alleged herein, and/or intentionally, and/or willfully, knowingly, with evil motive, intent to injure, ill will and/or fraud and without legal justification or excuse, engaged in the conduct herein alleged.

22. The Defendants, and/or their predecessors and successors in interest, performed such acts as were intended to, and did, result in the sale and distribution of cigarettes and other tobacco products in the State of Kansas and the use and consumption of cigarettes and other tobacco products by residents of the State of Kansas.

23. The term "addictive" used in this Petition is synonymous and interchangeable with the term "dependence-producing"; both terms refer to the persistent and repetitive intake of psychoactive substances despite evidence of harm and a desire to quit. Some scientific organizations have replaced the term "addictive" with "dependence-producing" to shift the focus to dependent patterns of behavior and away from the moral and social issues associated with addiction. Both terms are equally relevant for purposes of understanding the drug effects of nicotine.

## II.

### Introduction and Nature of the Action

24. The diseases related to and caused by the smoking of cigarettes have killed millions of Americans over the last several decades, and the killing continues. In order to earn larger profits, cigarette manufacturers and their allied interests have chosen to ignore and actively suppress the truth concerning the hazards of smoking cigarettes. As a direct result, Kansas citizens entitled to Medicaid benefits and other medical, pharmaceutical and health care assistance from the State through a variety of State-funded programs have contracted smoking-related diseases including, without limitation,

cancer, emphysema, and heart disease. The care and treatment of these Kansas citizens has placed a significant financial burden on the State and its taxpayers. This fiscal burden on all of Kansas' citizens rightfully should be borne by the Tobacco Companies and their allied interests.

25. Under the Kansas Constitution and other laws of the State of Kansas, including, among others, the Social Welfare Act, K.S.A. 39-701, et seq., the State is responsible for the health, safety and welfare of its citizens, and the Attorney General has the duty to protect the interests of the general public. The State of Kansas, on the relation of Attorney General Stovall, brings this action under State law for money damages, civil penalties, declaratory and injunctive relief, indemnity, restitution, and investigative fees and expenses. As set forth more particularly below, the various Defendants, over a long period of time and continuing to the present day, conspired to deceive the State and its citizens about the addictive properties of nicotine and the full extent of the health risks of smoking. Every year in Kansas, several thousand addicted smokers die from using Defendants' products precisely as Defendants have designed and intended for those products to be used. Through a well-organized campaign of fraud, lies, intimidation, and deception, Defendants have avoided legal responsibility for engineering, manufacturing and selling the most deadly and harmful consumer product in history, while reaping billions of dollars in profits.

26. In carrying out their conspiracy, the Defendants have committed numerous fraudulent and unlawful acts, including, but not limited, to the following:

a. Publicly undertaking, as a "paramount" special responsibility, the duty of researching and disclosing to public health authorities and the public at large, including the State of Kansas, the full extent of the health risks of cigarette smoking, but then suppressing, concealing, distorting, and lying about the state and extent of their true knowledge of those risks;

b. Creating, controlling, directing, and/or funding fraudulent "rump" or "front" organizations, such as the Tobacco Industry Research Council (later known as the Council for Tobacco Research, a Defendant herein), which was held out to the public as an independent research organization, but which was in fact secretly controlled by lawyers and public relations firms, to prevent the public from learning what the Defendants knew about the health risks of smoking;

c. Secretly destroying, concealing, and otherwise spoliating and shipping overseas incriminating evidence of industry testing and research on the health risks of cigarette smoking and the addictive nature of nicotine, shutting down laboratories on short notice and making personal threats against their own scientists who tried to publish research revealing what the industry actually knew about the risks of smoking, and asserting false claims of attorney-client privilege and attorney work product privilege in order to conceal their own damaging scientific research;

d. Engaging in unconscionable and deceptive acts and practices by, among other things, jointly sponsoring false, deceptive, and misleading advertising, promotional and public relations campaigns intended to confuse and create doubt among governmental entities, including the State of Kansas, and the public about the health risks of cigarette smoking;

e. Jointly and collectively making false, misleading, and sham representations to Congress, other governmental entities, including the State of Kansas, and the public regarding the health risks of cigarette smoking, the addictive nature of nicotine, and the manipulation of nicotine levels in cigarettes, in order to inundate Congress and other federal and State entities with false and misleading information on the true risks of cigarette smoking, and with the intent to defraud, knowing that the State and others would reasonably rely on their representations;

f. Conspiring to use monopoly power, and using that power to suppress research into the health effects of smoking and to halt research, development, marketing and sales of so-called "safer" cigarettes that caused less biological activity in smokers; and

g. Engaging in unfair trade practices by targeting, marketing and advertising efforts to promote illegal sales of cigarettes to minors, and developing products and deceptive advertising campaigns.

27. As a direct and foreseeable result of these and other wrongful actions by the Defendants, consumers and the State of Kansas have suffered enormous damages. Over a period of many years, the State has paid hundreds of millions of dollars in medical assistance for smoking-related health care costs which would not have been incurred absent Defendants' misconduct. Defendants created an ongoing public health crisis of unrivaled proportions, all the while knowing and appreciating full well that the State of Kansas would be required to pay for the health care costs of its indigent and needy citizens who suffer from smoking-related illnesses and disease processes. Under time-honored principles of equity, the State of Kansas is entitled to restitution and indemnity for the medical assistance funds it has paid, because under the circumstances, it would be unjust and unconscionable for the Defendants to retain the benefits the State of Kansas conferred upon them or to profit in any way from their illegal course of conduct. Further, by intentionally and/or willfully concealing the risks and hazards of smoking, Defendants consciously misled, prevented and delayed the State of Kansas from taking such steps as necessary to avoid certain health care costs directly attributable to smoking-related illnesses and disease processes.

28. The Defendant Tobacco Companies are a cartel that controls nearly 100% of the market for cigarettes in the United States. Their longstanding conspiracy to mislead the public about the harmful and addictive effects of cigarette smoking has placed the Defendants among the most profitable industries in the world. The breadth and boldness of the conspiracy recently was displayed before Congress

when, in April of 1994, the Chief Executive Officers of the leading cigarette manufacturers testified under oath that they do not believe that smoking causes death or that smoking is addictive. In truth, the Defendants themselves have known for much longer than the scientific community and public health authorities, including those in the State of Kansas, that cigarettes are both addictive and deadly.

29. Despite representations to the contrary, Defendant manufacturers carefully calibrate, control and manipulate nicotine in cigarettes so that beginning smokers and others will become addicted to nicotine and develop a physical and psychological dependency that can be satisfied only by cigarette smoking. As a direct result of Defendants' knowledge of and methods chosen to manufacture cigarettes, long-term smokers find it extremely difficult and painful, and in many cases impossible, to withdraw from their physical dependency on nicotine.

30. With full knowledge that they are selling an addictive and deadly product, Defendants deliberately and willfully advertise, promote and market cigarettes in such a way as to target promising markets of new smokers, such as minors. Every day, according to reputable studies, 3,000 American youths are seduced by Defendants' unconscionable, unfair and misleading advertising and marketing ploys and start smoking, each then becoming a potential addict and life-long profit center for the Defendants.

31. Despite the particularly harmful health consequences of smoking for women, Defendants target advertising to this segment of the population. For women, smoking reduces fertility, increases the rate of miscarriages and stillbirths, retards uterine fetal growth and results in lower birth weights in infants. Yet Defendants have targeted and continue to target young women with advertising campaigns designed to appeal psychologically to this group of potential smokers.

32. These outrageous marketing strategies further the conspiracy to distort the truth about cigarette smoking. The net effect of Defendants' unlawful, deceptive, and unconscionable conduct, over the past several decades, has been to convey the message that intensive and thorough scientific and medical research has uncovered no reliable evidence about the real health effects of smoking. As described by one industry representative, Defendants' campaign of deception has been a "brilliantly conceived and executed" strategy to "creat[e] doubt about the health charge without actually denying it." Defendants knew that if smokers fully appreciated the risks of addiction and death, many would never have started smoking or would have quit, and Defendants would have lost the enormous profits they accumulated by shifting the costs of their conduct onto the State of Kansas and others.

33. Armed with coffers full from the highly profitable sale of an addictive drug, the Defendants have successfully fended off legal attacks with a litigation strategy of expense, attrition and delay. According to an attorney for Defendant R.J. Reynolds Tobacco Company, "[T]he aggressive posture we have taken regarding depositions and discovery in general continues to make these cases extremely burdensome and expensive for plaintiffs' lawyers,

particularly sole practitioners. To paraphrase General Patton, the way we won these cases was not by spending all of [Reynolds's] money, but by making that other [expletive] spend all his. "

34. Defendants' conduct has generated a terrible human tragedy. Cigarette smoking is the leading cause of premature death in the United States. According to the federal Centers for Disease Control and Prevention, each year cigarette smoking kills more than 400,000 Americans, exceeding the combined deaths caused by automobile accidents, AIDS, alcohol abuse, use of illegal drugs, homicide, suicide, and fires. Smoking-related illnesses account for one of every five deaths each year in the United States.

35. Cigarette smoking causes, among other serious illnesses, cancer, pulmonary diseases, and coronary heart disease:

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

b. Pulmonary Disease -- Smoking is the cause of more than 80% of deaths from pulmonary diseases such as emphysema and bronchitis. These diseases have a particularly profound social impact because of the prolonged and extended suffering and disability of their victims.

c. Heart Disease - Cigarette smoking is one of the major independent causes of coronary heart disease. Smoking is also responsible for thousands of deaths from cardiovascular disease, including stroke, heart attack, peripheral vascular disease and aortic aneurysm.

36. The impact of cigarette smoking on the nation is 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 indirect cost for mortality.

37. The State of Kansas greatly bears the horrible human and financial costs of cigarette smoking. Thousands of Kansas citizens die each year from smoking-related diseases, and the costs related to smoking in Kansas are in the hundreds of millions of dollars each year.

38. The State of Kansas seeks monetary damages, civil penalties, declaratory and injunctive relief, restitution, indemnity, investigative fees, costs, and other appropriate relief for the Defendants' wrongful conduct as described and alleged in this Petition. The State also seeks injunctive relief to require the Defendants to cease marketing tobacco products to children, seeks an Order requiring the Defendants to disclose their research on smoking, addiction and health, and requiring the Defendants to fund a remedial public education campaign

on the true health consequences of smoking, and requiring the Defendants to fund smoking cessation programs for nicotine dependent smokers who look to the State for provision of their health care.

### III.

#### Jurisdiction and Venue

39. This Court has jurisdiction over the subject matter of this action pursuant to, among other authority, the provisions of K.S.A. 50-101 et seq. (the Kansas Antitrust Act) and the Kansas Consumer Protection Act. The Court has personal jurisdiction over the nonresident Defendants pursuant to, among other authority, the provisions of K.S.A. 60-308(b).

40. Venue is proper in the District Court of Shawnee County, Kansas, pursuant to, among other authority, the Kansas Antitrust Act and the Kansas Consumer Protection Act.

### IV.

#### Relevant Market

41. For the purposes of this action, the sale of cigarettes is the relevant product market. The relevant geographic markets are the United States and the State of Kansas.

### V.

#### Common Factual Allegations

42. Senior tobacco industry executives have been quoted as acknowledging the addictive nature of cigarettes. F. Ross Johnson, former CEO of R.J. Reynolds was quoted in the October 6, 1994 edition of The Wall Street Journal as saying: "Of course it's addictive. That's why you smoke the stuff." In a 1963 document which was revealed in Congressional hearings in 1994, Addison Yeaman, Brown & Williamson's General Counsel, wrote: "We are, then, in the business of selling nicotine, an addictive drug...."

43. On April 14, 1994, each of the chief executives of The Tobacco Companies swore by his oath that he believed nicotine is not addictive. Testifying before the House Subcommittee on Health and the Environment of the Committee on Energy and Commerce, chaired by Congressman Henry Waxman, these executives misrepresented their companies' knowledge about the health risks of smoking, nicotine addiction, and nicotine manipulation in the cigarette manufacturing process. William I. Campbell, then President and CEO of Philip Morris stated that "Philip Morris does not manipulate nor independently control the level of nicotine in our products."; that

"Cigarette smoking is not addictive."; and "Philip Morris research does not establish that smoking is addictive." James W. Johnston, R.J. Reynolds' CEO said that "Smoking is no more addictive than coffee, tea or Twinkies." Andrew Tisch, then CEO of Lorillard, asserted that smoking does not cause death: "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."

44. In fact, research conducted by Philip Morris scientists - which Philip Morris and other Defendants attempted to suppress -- has demonstrated, in the scientists' own words, that nicotine is addictive "on a level comparable to cocaine." High-ranking executives in the tobacco industry have privately acknowledged, since the early 1960s, that nicotine is an addictive drug. For example, Addison Yeaman, General Counsel at Brown & Williamson, wrote in an internal memorandum in 1963: "Moreover, nicotine is addictive. We are, then, in the business of selling nicotine, an addictive drug effective in the release of stress mechanisms." And in 1962, the Scientific Advisor to the Board of Directors of British American Tobacco Company ("BATCO"), Brown & Williamson's parent company, stated that "smoking is a habit of addiction" and that "[n]icotine is not only a very fine drug, but the technique of administration by smoking has considerable psychological advantages...." He subsequently described Brown & Williamson as being "in the nicotine rather than the tobacco industry."

45. The Tobacco Company executives' false Congressional testimony about nicotine is but the most recent episode in the industry's campaign, spanning 50 years, to sow confusion and misinformation about the true health effects of smoking. As described in various internal memoranda of tobacco industry executives, the scheme has been "a brilliantly conceived and executed" strategy to "creat[e] doubt about the health charge without actually denying it."

#### A. The Tobacco Industry Conspiracy to Deceive the Public About Disease and Death

46. Although tobacco in various forms has been consumed by Americans for many, many years, it was not until the 19th century that an easily inhalable tobacco product, the cigarette, became widely popular. Cigarette smoking increased dramatically in the first half of the 20th century. As early as 1946, tobacco company chemists themselves reported concern for the health of smokers. A 1946 letter from a Lorillard chemist to its manufacturing committee states: "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." Neither this letter nor the information it contained was ever voluntarily released to the public.

#### 1. Claiming Cigarette's Are Healthful

47. Industry spokesmen referred to these and similar reports as "the

health scare," and throughout the 1930s through the 1950s, countered with express advertising claims and warranties as to the healthfulness of their products. These claims were knowingly and/or recklessly false, misleading, deceptive, unconscionable, and/or fraudulent. Examples of these health warranties appear in the following paragraphs 48 through 54.

48. Old Gold reacted to early medical studies with the slogan: "If pleasure's your aim, not medical claims..." and made claims such as "Old Gold -- Not a cough in a Carload."

49. R.J. Reynolds claimed that there was "Not a single case of throat irritation due to smoking Camels."

50. Philip Morris brand was held out as "The Throat-tested cigarette" on the basis of supposed studies showing that Philip Morris brand cigarettes were less irritating. An ad by the company in a 1943 issue of the National Medical Journal read: "'Don't smoke' is advice hard for patients to swallow. May we suggest instead 'Smoke Philip Morris?' Tests showed three out of every four cases of smokers' cough cleared on changing to Philip Morris. Why not observe the results yourself?"

51. In 1942, Brown & Williamson claimed that Kools would keep the head clear and/or give extra protection against colds.

52. In 1952, Liggett & Myers widely publicized the "results" of tests showing that "smoking Chesterfields would have no adverse effects on the throat, sinuses or affected organs." The tests were conducted by Arthur D. Little, Inc. for advertising purposes and were designed to have no real scientific value. These ads ran, among other places, on the nationally popular Arthur Godfrey radio and television show. Arthur Godfrey subsequently contracted lung cancer caused by smoking cigarettes.

53. Ads from the 1930s and 1940s often carried wide-ranging medical claims that placed cigarette-touting physicians in the company of endorsers such as Santa Claus ("Luckies are easy on my throat"), movie stars, sports heroes, and circus stars. Some companies hired attractive women to deliver cigarette samples to physicians and the patients in their waiting rooms.

54. In the New York State Journal of Medicine, Chesterfield ads began running in 1933 and often carried claims such as "Just as pure as the water you drink...and practically untouched by human hands."

55. During the 1950s, Defendants attempted to counter the "health scare" with campaigns like "The Filter Derby" and "Tar Wars," making false and fraudulent warranties of health claims based on tar and nicotine content.

56. Defendants sponsored cigarette ads in medical journals such as the Journal of the American Medical Association ("JAMA") from the 1930s through the 1950s. After the appearance of landmark studies

such as the 1952 JAMA article on smoking and bronchial carcinoma by Alton Ochsner, M.D., JAMA ceased running cigarette ads.

## 2. The Conspiracy is Born to Counter "The Big Scare"

57. The industry conspiracy became much more sophisticated and began in earnest in the 1950s, when the Tobacco Companies were confronted with the publication of several scientific studies which sounded grave warnings on the health hazards of cigarettes. The widespread reporting of these studies caused what Tobacco Company officials later called the "Big Scare."

58. Confronted with the studies, the presidents of the leading Tobacco Companies met at an extraordinary gathering in the Plaza Hotel in New York City on December 15, 1953. Defendant Hill & Knowlton, a public relations agency, coordinated the meeting and later prepared a memorandum summarizing the discussions of that day. According to the Hill & Knowlton memorandum:

a. The companies had not met together since two previous antitrust decrees had prohibited "many group activities." However the companies viewed the current problem "as being extremely serious and worth of drastic action."

b. Another indication of the seriousness of the problem was "that salesmen in the industry are frantically alarmed and that the decline in tobacco stocks on the stock exchange market has caused grave concern...."

c. The situation was viewed entirely in terms of a public relations problem, as opposed to a public health concern. The industry leaders "feel that the problem is one of promoting cigarettes and protecting them from these and other attacks that may be expected in the future" and that the industry "should sponsor a public relations campaign which is positive in nature and is entirely 'pro-cigarettes.'"

d. All of the leading manufacturers, except Liggett, agreed to "go along" with the public relations strategy. Liggett decided not to participate at that time "because that company feels that the proper procedure is to ignore the whole controversy."

e. The group discussed forming an association "specifically charged with the public relations function."

f. Hill & Knowlton was to play a central role in the industry association. "The current plans are for Hill and Knowlton to serve as the operating agency of the companies, hiring all the staff and disbursing all funds."

59. Thus, the Tobacco Industry Research Committee ("TIRC"), eventually renamed as The Council for Tobacco Research ("CTR"), was conceived and born with five of the largest six cigarette manufacturers as original members. Liggett finally joined in 1964, in

response to the Surgeon General's first report on smoking and health.

60. Nine days after the December 15, 1953 meeting, Hill and Knowlton presented a detailed recommendation to the cigarette manufacturers and others. The recommendation recognized the importance of gaining the public trust, and avoiding the appearance of bias, if the "pro-cigarette" industry strategy was to be successful. According to the memorandum:

a. "[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."

b. "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."

c. "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."

### 3. The "Frank Statement to Cigarette Smokers" -a Scheme to Defraud Consumers

61. The cigarette industry announced the formation of TIRC on January 4, 1954, with newspaper advertisements placed in virtually every city with a population of 50,000 or more, reaching a circulation of more than 43 million Americans. The advertisement was captioned "A Frank Statement to Cigarette Smokers" and was run under the auspices of TIRC with, among others, five of the largest six manufacturers -- American Tobacco Co., R.J. Reynolds, Philip Morris, U.S. Tobacco Co., Lorillard, and Brown & Williamson Tobacco Corporation -- listed by name. The advertisement promised that Defendants would undertake the responsibility of learning and disclosing the facts about smoking.

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

Although conducted by doctors of professional standing, these experiments are not regarded as conclusive in the field of cancer research. However, we do not believe that any serious medical research, even though its results are inconclusive, should be disregarded or lightly dismissed.

At the same time, we feel it is in the public interest to call attention to the fact that eminent doctors and research scientists have publicly questioned the claimed significance of these experiments.

Distinguished authorities point out:

1. That medical research of recent years indicates many possible

causes of lung cancer.

2. That there is no agreement among the authorities regarding what the cause is.

3. That there is no proof that cigarette smoking is one of the causes.

4. That statistics purporting to link cigarette smoking with the disease could apply with equal force to any one of many other aspects of modern life. Indeed the validity of the statistics themselves is questioned by numerous scientists.

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

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

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

For more than 300 years tobacco has given solace, relaxation, and enjoyment to mankind. At one time or another during those years critics have held it responsible for practically every disease of the human body. One by one these charges have been abandoned for lack of evidence.

Regardless of the record of the past, the fact that cigarette smoking today should even be suspected as a cause of a serious disease is a matter of deep concern to us.

Many people have asked us what we are doing to meet the public's concern aroused by the recent reports. Here is the answer:

1. We are pledging aid and assistance to the research effort into all phases of tobacco use and health. This joint financial aid will of course be in addition to what is already being contributed by individual companies.

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

3. 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.

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.

62. In this advertisement, the participating Defendant Tobacco Companies recognized their "special responsibility" to the public, and promised to learn the facts about smoking and health. The participating Defendant Tobacco Companies promised to sponsor independent research on the subject, claiming they would make health a basic responsibility, paramount to any other consideration in their business. The participating Defendant Tobacco Companies also promised to cooperate closely with public health officials. At the time these promises were made, Defendants had no intent to honor their promises. They have repeatedly breached their promises thus made to the public, including their promises made to the public health officials and citizens of Kansas.

#### 4. "Scientific Research" as a Public Relations Front: Control of TIRC by Hill & Knowlton

63. As had been proposed at the December 15, 1953 meeting, Defendant Tobacco Companies (without Liggett), through their agent Defendant Hill & Knowlton, operated and effectively controlled TIRC.

64. TIRC was physically established in the Empire State Building, one floor below the Hill & Knowlton offices. Internal documents confirm that Hill & Knowlton, and not independent scientists, actually ran TIRC. A "highly confidential" internal memo reported:

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

65. In 1954, 35 staff members of Hill and Knowlton worked full or part time for TIRC. In that year, TIRC spent \$477,955.00 on payments to Hill and Knowlton, over 50% of TIRC's entire budget.

66. After lulling the public into a false sense of security concerning smoking and health, the TIRC continued to act as a front for tobacco industry interests. Despite the initial public statements and posturing, and the repeated assertions that they were committed to full disclosure and vitally concerned, the TIRC secretly failed to make the public health a primary concern. The Tobacco Trade Associations acted at the direction of the Tobacco Companies and the Tobacco Consultants to protect tobacco industry profits, and did not act to protect the public health. In fact, there was a coordinated, industry-wide strategy designed actively to mislead and confuse the public about the true dangers associated with smoking cigarettes. Rather than work for the good of the public health as it had promised, and sponsor independent research, the Tobacco Companies and Tobacco Consultants, acting through the Tobacco Trade Associations, refuted, undermined, distorted, concealed and neutralized information coming from the scientific and medical community.

67. By the spring of 1955, the self-defense strategy recommended by Hill and Knowlton and implemented by the Defendants through the "Frank Statement" was largely successful. Hill and 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."

## 5. The True Nature of the CTR

68. Since its inception, the CTR has functioned as a remarkably effective vehicle to perpetuate the deception that the health risks of smoking and nicotine addiction have never been proven. The industry has congratulated itself on a brilliantly conceived and executed strategy to create doubt about the charge that cigarette smoking is deleterious to health without actually denying it. A 1962 memo stated that the industry had handled the "Big Scare" effectively, by treating the public health threat as a public relations problem that was solved for the self-preservation of the industry's image and profit. One Defendant's executive called the CTR the best, cheapest insurance the tobacco industry can buy, noting that with it, Defendants would have to invent CTR or would be dead.

69. In 1993, a former 24-year employee of CTR confirmed publicly that the joint industry research efforts were not objective: "When CTR researchers found out that cigarettes were bad and it was better not to smoke, we didn't publicize that. The CTR is just a lobbying thing. We were lobbying for cigarettes."

## 6. The Lawyers' Control of Scientific Research

70. The Defendants have used lawyers and fraudulent, deceptive, unconscionable, and false claims of Attorney/Client privilege and Work Product to insulate CTR-funded research projects from disclosure to the public and to government officials. This conduct demonstrates the falsity of the industry representations jointly to fund objective research and to report the results of that research to the public.

71. CTR used the term "Special Projects" to mean a project that carried a risk of a negative result that might have to be suppressed. "Special Projects" were selected and monitored by Tobacco Attorneys to prevent disclosure. One Philip Morris official characterized CTR as a "front" for performing "special projects."

72. Notes prepared at a 1981 meeting of the cigarette industry's

Committee of General Counsel state: "When we started the CTR Special Projects, the idea was that the scientific director of CTR would review a project. If he liked it, it was a CTR special project. If he did not like it, then it became a lawyers' special project.... We were afraid of discovery for FTC and Aviado, we wanted to protect it under the lawyers. We did not want it out in the open."

73. The sole purpose of this "Special Projects" division within CTR was to conceal research that was harmful to the tobacco industry and to promote and develop research and expert witnesses needed for the defense of tort litigation. Incriminating reports and documents contained within this division were passed through the Tobacco Attorneys and are now claimed by Defendants to be privileged.

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

75. An internal CTR document describes how Dr. Homburger attempted to call a press conference about the incident and how CTR stopped it: "He... was to tell the press that the tobacco industry was attempting to suppress important scientific information about the harmful effects of smoking. He was going to point specifically at CTR. I arranged later that evening for it to be canceled. Homburger was given a cordial welcome and nicely hastened out the door. P.S. I doubt if you or Tom will want to retain this note."

76. Not content with the holding strategy employed by the TIRC and the CTR, Defendants advocated a more offensive role through their lobbying arm, the Tobacco Institute. This tobacco industry-supported group actively seeks to increase doubt about the negative health effects of smoking by suggesting that there are alternative explanations to the data. One "theory" detailed how individual genetic makeups predisposed individuals to illnesses. Another, the "multi-factorial hypothesis," asserted that multiple factors should be blamed, i.e., food additives, viruses, occupational hazards, air pollution or stress, for causing cancer. The tobacco industry financed, supported and encouraged the manufacture of fraudulent science.

## 7. Tobacco Industry Concealment and Disinformation

77. On February 6, 1992, United States District Court Judge H. Lee Sarokin for the District of New Jersey issued an opinion in Haines v.

Liggett Group, Inc., Civ. Action 84-678. After reviewing 1500 documents in camera, Judge Sarokin noted that "In 1954, the tobacco industry promised to disseminate the results of industry-sponsored, independent scientific research for the purpose of answering the question: 'Does cigarette smoking cause illness?' To fulfill its promise, the tobacco industry proffered the allegedly 'independent' research organization, the Council for Tobacco Research (the CTR), which purportedly would examine the risks of smoking and report its findings to the public." After his review of the withheld documents, Judge Sarokin concluded that Defendants had intentionally breached their promises to the public:

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

78. As a result of this finding, Judge Sarokin went on to note that Defendants' actions constituted a fraud:

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

#### 8. Continued False Promises to the Public

79. Using CTR as a "front," Defendants pursued a public disinformation strategy to confuse and mislead public health authorities and the public about the true health risks of cigarette smoking.

80. Defendants created a publication called Tobacco and Health (later, Tobacco and Health Research), distributed it to the press, doctors, and health officials, to disseminate false information and generate confusion over the causal connection between cigarette smoking and disease. The "Criteria For Selection" of articles for publication included an example of "a report in which smoking-associated diseases are questioned. "

81. The deceptions of the 1954 "Frank Statement to Cigarette Smokers" were renewed and repeated by the industry. R.J. Reynolds 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 should do our level best. It's only human."

82. The January 15, 1968 issue of True Magazine contained an article written by Stanley Frank called, "To Smoke or Not to Smoke -- That is Still the Question." The article dismissed the evidence against smoking as "inconclusive and inaccurate" and claimed that "[s]tatistics alone link cigarettes with lung cancer... it is not accepted as scientific proof of the cause and effect." A few months later, a similar but shorter article appeared in the National Enquirer entitled "Cigarette Cancer Link is Bunk" written by "Charles Golden" (a fictitious name commonly used by the Enquirer). The real author was Stanley Frank. Two million reprints of the True Magazine article were distributed to physicians, scientists, journalists, government officials, and other opinion leaders with a small card which stated, "As a leader in your profession and community, you will be interested in reading this story from the January issue of True Magazine about one of today's controversial issues." The cost for this was paid by Brown and Williamson, Philip Morris and R.J. Reynolds. It was subsequently disclosed that author Frank had been paid \$500 to write the article by Joseph Field, a public relations professor working for Brown and Williamson. Brown and Williamson reimbursed Field for that amount.

83. In 1970, the Tobacco Institute ran an advertisement captioned "A Statement about Tobacco and Health," which stated:

- a. "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."
- b. "We accepted this responsibility in 1954 by establishing the Tobacco Industry Research Committee, which provides research grants to independent scientists. We pledge continued support of this program of research until all the facts are known."
- c. "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."
- d. "We shall continue all possible efforts to bring the facts to light."

84. Also, in 1970, the Tobacco Institute ran an advertisement captioned, "The question about smoking and health is still a question." In this advertisement, the Tobacco Institute stated:

- a. "[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."
- b. "[T]he industry has committed itself to this task in the most objective and scientific way possible."
- c. "In the interest of absolute objectivity, the tobacco industry has supported totally independent research efforts with completely nonrestrictive funding."

d. "Completely autonomous, CTR's research is directed by a board of ten scientists and physicians.... This board has full authority and responsibility for policy, development and direction of the research effort."

e. "The findings are not secret."

f. "From the beginning, the tobacco industry has believed that the American people deserve objective, scientific answers. "

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

#### B. The Tobacco Industry's Knowledge That Smoking Kills

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

87. As early as 1946, Lorillard chemist H.E. 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."

88. 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."

89. 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...."

90. 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 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."

91. 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. "

92. Brown & Williamson and its parent company, British American Tobacco Company, Ltd., researched the health effects of nicotine and were aware early on, as reported at a B.A.T. Group Research Conference in November 1970, that "nicotine may be implicated in the aetiology [cause] of cardiovascular disease...."

93. 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."

94. 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 a appropriate filter, by a given percentage."

### C. Suppressing the Truth About Cigarettes and Nicotine

95. Not only have Defendants failed to disclose the information they repeatedly pledged to make public, they have, or the contrary, actively conspired to suppress research and publication concerning the health risks of cigarette smoking, and to misstate and distort published

research linking smoking to disease, even going so far as to make personal threats against the researchers themselves. A CTR director's claim that tobacco industry scientists could "freely publish what they find as they choose" was a hollow deception.

#### 1. The Gentlemen's Agreement and the Lawyers' Role in the Conspiracy

96. The actions of Defendants in suppressing and misleading the public as to the harmful effects of cigarettes stands in sharp contrast to Defendant Lorillard's 1994 assertion to Congress that the data had still not convinced its CEO that smoking causes death. The tobacco industry long ago entered into a "gentlemen's agreement" to suppress independent research on smoking and health. A 1968 internal Philip Morris draft memo refers to this conspiratorial agreement: "We have reason to believe that in spite of gentlemen's agreement from the tobacco industry in previous years that at least some of the major companies have been increasing biological studies within their own facilities." This memo also acknowledged that cigarettes are inextricably intertwined with the health field, stating, "Most Philip Morris products, both tobacco and non- tobacco, are directly related to the health field."

97. The industry believed that individual Tobacco Companies were performing certain research on their own in addition to the joint industry research. But the fundamental understanding and agreement remained intact: any harmful information and activities would be restrained, suppressed, and/or concealed. This secret agreement included restraining, suppressing, and concealing research on the health effects of smoking, including the addictive qualities of nicotine, and restraining, concealing, and suppressing the research and marketing of safer cigarettes.

98. The General Counsel of the major cigarette manufacturers, through joint meetings to review and direct proposals for scientific research for the entire industry, furthered the conspiracy of the tobacco industry, including the Tobacco Attorneys and Tobacco Consultants, to intentionally mislead and defraud the public about smoking and health. For example, Defendants have attempted wrongfully to create a privilege for various documents reflecting scientific research that they wish to conceal by routing such documents to their legal departments and law firms to support claims that such materials are protected from disclosure by the Attorney/Client or attorney Work Product privileges.

99. The Tobacco Attorneys have played a critical role in furthering the conspiracy to suppress and conceal information about the adverse health effects caused by the use of tobacco products. The Tobacco Attorneys' strategy was to attempt to protect damaging tobacco-related documents from disclosure under the Attorney/Client or Work Product privileges regardless of whether such documents were prepared in anticipation of litigation or represented confidential communications made between lawyer and client for the purpose of rendering legal

advice. Lawyers routinely provided a number of non-legal services to the Defendants such as deciding which CTR "special projects" should receive funding, dispensing funding to the "scientist" involved in such projects, and designing the scope and approach of the special project. The Tobacco Attorneys also undertook to coordinate the Tobacco Companies' CTR "special projects" subterfuge.

100. The Council for Tobacco Research holds itself out, and has been held out by the Tobacco Companies and the Tobacco Attorneys, as a research body sponsoring independent research. Tobacco Attorneys used the TIRC, predecessor to the CTR, as an industry "shield." The CTR has acted as a "front" for the Tobacco Companies' litigation and public relations goals. The Tobacco Attorneys have been instrumental in this deception.

101. In orchestrating the CTR deception, the Tobacco Attorneys became deeply involved in the screening, selection, funding, supervision and ultimate disposition of research projects, channeling sensitive research into "special projects" and "special accounts." A Tobacco Attorney quoted in a 1981 internal tobacco industry document said: "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."

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

103. For example, in 1976, a Tobacco Attorney wrote to in-house lawyers at the various Tobacco Companies that a study to measure environmental tobacco smoke should be modified in such a way that so that the study would yield more favorable results for the Tobacco Companies' position. The study was subsequently modified to de-emphasize the role of second-hand tobacco smoke relating to indoor environmental quality.

104. A 1980 letter from a Tobacco Attorney to the various General Counsel of the tobacco industry, recommends a grant to Dr. Domingo Aviado. Although Shinn states that "[t]his would be a no-strings attached grant and Dr. Aviado would be free to publish," the role of Tobacco Attorneys in supervising and ultimately controlling Dr. Aviado's research is clear: "We would anticipate a brief report toward the end of this year concerning the project. Providing the project is progressing satisfactorily, I anticipate recommending a renewal for a second year and, thereafter, with the same proviso, for a third year."

105. Indeed, "satisfactory" progress in research is always the touchstone for the Tobacco Attorneys. A telling 1981 memorandum between General Counsel J. Kendrick Wells and executive Ernest Pepples of defendant Brown & Williamson tells of a visit by a Tobacco Attorney to a researcher: "It was a cordial meeting and Tim

believes he has persuaded them to take a new thrust with their research. The new thrust will have questionable value but no negative.  
"

106. In addition, a May 19, 1981 letter from Ernest Pepples, Vice President and General Counsel of Brown & Williamson, to a Tobacco Attorney requests that the attorney evaluate the qualifications of various scientists seeking to conduct scientific studies for Brown & Williamson. The attorney responded by providing biographical sketches of potential consultants including whether they previously had taken scientific position favorable to the industry's position. He also cooperated with Pepples' request in 1984 to transfer the funding of some helpful research by a cooperative scientist from a CTR account to a law firm project: "I do not think...that we should continue burdening CTR with such programs, and instead suggest that they be handled as law firm projects.

107. In 1972, a Tobacco Attorney wrote to Tobacco Company officials that a potentially favorable study should be secretly funded by the Tobacco Companies as a "non-CTR special project" in order to make the study appear independent of the industry and thus heighten its perception as unbiased and reliable.

108. Similarly, a Tobacco Attorney wrote a letter to the General Counsel of the tobacco industry urging them to approve a grant to Dr. Henry Rothschild, who was doing a study on genetic links to lung cancer. Although CTR had rejected Dr. Rothschild's request to renew his grant, the attorney urged funding on the ground that "[h]is research has evolved to a point where his primary focus was on a possible genetic factor rather than environmental or occupational factors."

109. The breadth of the involvement of the Tobacco 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:

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 nontobacco, 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.

110. In fact, a Tobacco Attorney chaired the Research Liaison Committee, a committee comprised of representatives of the 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." In addition to Tobacco Attorney involvement in the Research Liaison Committee, Tobacco Attorneys also sat on the CTR Committee of Counsel and the CTR Ad Hoc Committee.

111. In addition, the Tobacco Attorneys 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 government regulators. For example, in notes of a 1981 CTR Committee of Counsel meeting, transmitted by Tobacco Attorneys, an attorney is quoted as stating:

"With Speilberger, 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."

112. The Tobacco Attorneys also participated in the suppression of development of a "safer" cigarette. Attempts by the tobacco industry to develop a "safer" cigarette inevitably required its researchers to engage in discussions regarding which constituents of tobacco smoke cause disease and how they might be eliminated. These discussions greatly concerned the Tobacco Attorneys because they would lead to statements constituting admissions that could be used against the Tobacco industry.

113. A 1970 letter from a Tobacco Attorney to DeBaun Bryant, General Counsel for defendant Brown & Williamson, citing to the minutes of two research conferences, stated that:

A plaintiff would be greatly benefited by evidence which tended to establish actual knowledge on the part of a defendant that smoking is generally dangerous to health, that certain ingredients are dangerous and should be removed, or that smoking causes a particular disease. This would not only be evidence that would substantially prove a case against the defendant company for compensatory damages, but could be considered as evidence of willfulness or recklessness sufficient to support a claim for punitive damages.

Hardy concludes that "employees in both companies should be informed of the possible consequences of careless statements on this subject." In short, the Tobacco Attorneys were arguing that the necessary discussions for the development of a "safer" cigarette must stop.

114. Likewise, in 1987, a Tobacco Attorney wrote a lengthy memorandum in which he expressed his concern that defendant R.J. Reynolds' announcement of a nonburning, "clean" cigarette "could immediately and significantly increase [tobacco companies'] exposure to liability for sales of conventional cigarettes." In introducing the product, particularly right before the start of two key trials, the

attorney also questioned defendant R.J. Reynolds' commitment to "joint defense efforts."

115. By becoming intimately involved in the funding and design of these scientific studies, these Tobacco Attorneys conspired with the Tobacco Companies and CTR by (1) clothing such studies in the attorney-client or work product privilege in order to protect them from disclosure if their results were unfavorable, and (2) by creating the perception that CTR and the Tobacco Companies were fairly and appropriately fulfilling their obligations and promises to the public that they would, in a vigorous and unbiased manner investigate and report to the public the link between their products and human disease.

116. In addition, Tobacco Attorneys have destroyed evidence of their internal research into smoking and health. For example, at a time when the company was resisting discovery in a number of personal injury lawsuits, Brown & Williamson's General Counsel, J. Kendrick Wells, recommended in a memorandum dated January 17, 1985, that much of the company's biological research be declared "deadwood" and shipped to England. He recommended that no notes, memos or lists be made about these documents. Wells stated, "I had marked certain of the document references with an X... which I suggested were deadwood in the behavioral and biological studies area. I said that the "B" series are "Janus" series studies and should also be considered as deadwood." ("Janus" was a name of a project that attempted to isolate and remove the harmful effects of tobacco.) Wells further recommended that the research, development, and engineering department also should undertake "to remove the deadwood from the files."

117. Thus, the Tobacco Companies and the Tobacco Attorneys have misused claims of Attorney/Client privilege to insulate CTR-funded research projects and internal documents from disclosure to the public and to government officials. This conduct demonstrates the falsity of the Tobacco Companies' representations that they would jointly fund objective research and report the results of that research to the public.

## 2. The "Mouse House" Disappears

118. In the 1960s, R.J. Reynolds established a facility in Winston-Salem, North Carolina, to perform research on the health effects of smoking using mice. Nicknamed the "Mouse House," R.J. Reynolds scientists conducted research in a number of specific areas, including studies of the actual mechanism whereby smoking causes emphysema in the lungs.

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

120. Several months before the 1970 closure and firings, R.J. Reynolds attorneys collected dozens of research notebooks from the

scientists. The notebooks have still not been disclosed. One of the researchers later stated about R.J. Reynolds' executives and lawyers that "they like to take the position that you can't prove harm because you don't know mechanism....And sitting right under their noses is evidence of mechanism[.] What are they going to do with the stuff? They decided to kill it."

121. Internally, an R.J. Reynolds-commissioned report favorably described the Mouse House work as "the more important of the smoking and health research effort because it comes close to determining what was thought to be the underlying pathobiology of emphysema." None of the work done at the "Mouse House" was disclosed to the public.

122. In a similar incident, 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.

123. 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).

124. 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.

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

126. In April 1984, Philip Morris closed DeNoble's nicotine research lab. 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.

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

128. 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. He said that Philip Morris officials had rightly interpreted the suppressed nicotine studies as showing that, in terms of addictiveness, "nicotine looked like heroin."

129. Liggett & Myers also refused to disclose research by Dr. Ernest Wynder showing the cancer causing propensity of cigarettes.

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

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

132. 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 British American Tobacco Company official A.D. McCormick between June 28 and August 8, 1963, document the company's decision not to disclose its research findings to the Surgeon General. That research, some of which was later characterized in a report in the Journal of the American Medical Association as "at the cutting edge of nicotine pharmacology," preceded the main published reports from the general scientific community by several years.

#### D. "Safer Cigarettes" Suppressed

133. Defendants could have designed and manufactured a safer cigarette, but refused to do so. The need for a "safer" tobacco product results from the harmful chemical compounds occurring in tobacco products and/or formed as a result of burning. These compounds include carbon monoxide, nicotine, nickel carbon dioxide, benzene, hydrazine, formaldehyde, Polonium-210, ammonia, nicotine sulfate, Freon II, hydrogen cyanide and certain liver toxins known collectively as furans. More than forty (40) known carcinogens are found in cigarette tobacco. Defendants artificially add chemicals and flavorings to their products that increase toxicity and/or carcinogenicity.

134. Defendants have long understood that reducing or eliminating nicotine from their products would hurt sales. As one company researcher wrote in a 1978 report to Philip Morris executives: "If the industry's introduction of acceptable low-nicotine products does make it easier for dedicated smokers to quit, then the wisdom of the introduction is open to debate."

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

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

137. Dr. DeNoble did discover such an analogue, but Philip Morris chose to halt its effort to determine whether the nicotine analogue could be used to make a safer cigarette.

138. Philip Morris also explored research to develop a safer cigarette, or, in the words of one memorandum to the Board of Directors, cigarettes with "superior physiological performance." This memorandum noted competitive pressures to produce "less harmful" cigarettes. However, the memorandum was careful to state that, "[o]ur philosophy is not to start a war, but if war comes, we aim to fight well and to win." Philip Morris never broadly marketed such a "safer" cigarette. Its documents state that "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." Subsequently, taste was improved and Philip Morris attempted to promote the product. However, "The imposition of FTC rules and the industry advertising code took the starch out of the program...."

139. Brown & Williamson also understood that nicotine was the essential ingredient in maintaining tobacco sales. The company attempted to develop a "safer" cigarette which internal documents described as "a nicotine delivery device," but did not market such a cigarette in spite of promising test results. Brown & Williamson's Project "Ariel" used a heating, as opposed to burning system. Its Project "Janus" was intended to identify hazardous components of cigarette smoke so they could be removed.

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

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

142. At Liggett & Myers, Dr. James Mold conducted tests to divide the components of cigarette smoke into separate entities and to interrupt the process that produces carcinogens by using a catalyst. Liggett & Myers researchers were able to produce a so-called "safer"

cigarette, designated as the "XA Project" that eliminated the carcinogenic activity on mouse skin. However, Liggett & Myers did not want to be identified publicly as the source of the research behind this non-carcinogenic "safer" cigarette.

143. Dr. Mold has provided the following overview of the XA Project and its abandonment:

a. Dr. Mold stated that the XA project produced a safer cigarette. He stated, "We produced a cigarette which was, we felt, commercially acceptable as established by some consumer tests, which eliminated carcinogenic activity..."

b. Dr. Mold stated that after 1975, all meetings on the project were attended by lawyers. Lawyers collected notes after all meetings. All documents were directed to the law department to cloak the documents with the attorney-client privilege. He stated, "Whenever any problem came up on the project, the Legal Department would pounce upon that in an attempt to kill the project, and this happened time and time again."

c. Dr. Mold was asked why Liggett did not market a safer cigarette. He stated, "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 ...[T]hey 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... [a]t a meeting we held in... New Jersey at the Grand Met headquarters... at which the various legal people involved and the management people involved and myself were present. At one point, Mr. Dey... 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."

144. Liggett had also obtained a patent for the process it had discovered to produce its safer cigarette. The patent application described the reduction in cancer in mice studies, prompting stories in the media that Liggett was the first cigarette company to admit that smoking caused cancer. Liggett responded by issuing a press release it called a "Liggettgram" which stated: "Liggett and the cigarette industry continue to deny, as they have consistently, that any conclusions can be drawn relating such test results on mice in laboratories to cancer in human beings. It has never been established that smoking is a cause of human cancer. The laboratory experiments reported in the patent were conducted for Liggett by an independent researcher, The Life Sciences Division of Arthur D. Little, Inc."

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

146. Liggett abandoned the project in furtherance of the conspiracy. Liggett feared that the marketing of a "safer cigarette" would be, in essence, a confession that its, and the industry's other cigarettes, were not safe. Thus, one Liggett executive wrote that, "Any domestic activity will increase risk of cancer litigation on existing products." In addition, there was a threat of retaliation from industry leader Philip Morris if Liggett broke ranks.

147. The industry was aware that consumer demand would support "safer" products. Prior to adoption of the advertising Code, companies made claims of reduced tar and nicotine content for their products, which the public perceived as offering reduced health risks. However, "the smoker of a filter cigarette [claiming reduced tar] was getting as much or more nicotine and tar as he would have gotten from a regular cigarette. He had abandoned the regular cigarette, however, on the ground of reduced risk to health." The industry recognized a difference between "health-oriented" cigarettes, which were never marketed on a wide basis, and "health-image" cigarettes, such as low-tar, low-nicotine products. The latter were a marketing tool, intended to give the ill-using of a safer product.

148. The Federal Trade Commission Cigarette Advertising Guides, adopted September 22, 1955 and modified March 25, 1966, did not allow claims based on unsubstantiated health effects. However, it was clear in the industry that the Guides could be modified if justification was shown. Indeed, the 1966 modification of the Guides was based on development of a method, albeit not without difficulties of its own, of measuring tar and nicotine content. In the context of development of a potentially less hazardous product, a Brown & Williamson document by General Counsel Addison Yeaman states, "I would submit that the FTC in the face of 1) the industry's research effort, 2) the truth of our claims, and 3) the 'public interest' in our filter, cannot successfully deny us the right to inform the public." In truth, the defendants used the FTC Guides as a shield behind which it concealed its agreement not to compete. The voluntary agreement with the FTC was characterized by the Consumers Union as being "to the industry's advantage and to the public's disadvantage . "

149. The Cigarette Advertising Code, adopted by the Defendants, was another mechanism used to enforce the illegal agreement not to compete on the basis of safety or health characteristics of tobacco products. Among other provisions, it prohibits health claims in industry advertisements unless the "Code Administrator," to whom all cigarette advertisements are required to be submitted, approves of the advertisement. The Code provided a mechanism to monitor and police defendants' illegal agreement.

150. Reynolds also developed a "safer cigarette". Except for a brief test in several cities, Reynolds did not market its safer product, "Premier."

151. A memorandum authored by a Tobacco Attorney confirmed that there was an industry-wide position regarding the issue of a safer

cigarette.

152. The 1987 memorandum was written in the context of the marketing by Reynolds of its smokeless cigarette, Premier, which heated rather than burned tobacco. The 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."

153. This fundamental position of the "industry" defense had been identified much earlier. In 1970, a Tobacco Attorney wrote to DeBaun Bryant, General Counsel at Brown & Williamson, expressing concerns about some of the industry research into alternative products. In critiquing the minutes of a conference, he stated: "It is our opinion that statements such as [references to research into safer products, products which are less biologically active, and to 'healthy cigarettes'] constitute a real threat to the continued success in the defense of smoking and health litigation. Of course, we would make every effort to 'explain' such statements if we were confronted with them during a trial, but I seriously doubt that the average juror would follow or accept the subtle distinctions and explanations we would be forced to urge.... [E]mployees in both companies [Brown and Williamson and British American Tobacco] should be informed of the possible consequences of careless statements on this subject."

154. All defendants were keenly aware of the risk to the industry if any of them sought a competitive advantage by developing and marketing a safer product. The risk was avoided by agreeing to not compete on that basis. As one industry representative testified: ". . . as a company, we cannot position our products as being healthy. We've already agreed that they are a risk factor [the 'agreement' referenced is the industry's acceptance of the warning labels on cigarette packages] . . . we wouldn't run any advertising that positions any of our products as being healthier than others."

#### E. The Tobacco Industry's Knowledge of Nicotine's Addictiveness

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

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

157. In fact, Defendants have known of the difficulties smokers experience in quitting smoking and of the tendency of addicted individuals to focus on any rationalization to justify their continued smoking. Defendants exploit this weakness and capitalize upon the known addictive nature of nicotine. Nicotine addiction guarantees a market for cigarettes. The addictive nature of the nicotine in cigarettes virtually eliminates personal choice in those who become addicted. Modern cigarettes as sold in Kansas are painstakingly designed and manufactured to control nicotine delivery to the smoker.

158. Defendants have secretly known since at least the early 1960's of the addictive properties of the nicotine contained in the cigarettes they manufacture and sell. Sworn statements of former Philip Morris scientists, Jerome Rivers, Dr. Ian L. Uydess and Dr. William Farone belie the industry's denials, and industry documents are replete with evidence of Defendants' historical knowledge of nicotine's addictiveness.

159. In 1962, Sir Charles Ellis, scientific advisor to the Board of Directors of British American Tobacco Company ("BATCO"), Brown & Williamson's parent company, stated at a meeting of BATCO's worldwide subsidiaries, that "smoking is a habit of addiction" and that "[n]icotine is not only a very fine drug, but the technique of administration by smoking has considerable psychological advantages...." He subsequently described Brown & Williamson as being "in the nicotine rather than the tobacco industry."

160. A research report from 1963 commissioned by Brown & Williamson states that when a chronic smoker is denied nicotine: "A body left in this unbalanced state craves for renewed drug intake in order to restore the physiological equilibrium. This unconscious desire explains the addiction of the individual to nicotine." No information from that research has ever been voluntarily disclosed to the public; in particular it was not shared with the Committee that was preparing the first Surgeon General report and hence was not reflected in that report.

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

162. Internal reports prepared by Philip Morris in 1972 and the Philip Morris U.S.A. Research Center in March 1978, demonstrate Philip Morris' understanding of the role of nicotine in tobacco use: "We think that most smokers can be considered nicotine seekers, for the pharmacological effect of nicotine is one of the rewards that come from smoking. When the smoker quits, he forgoes his accustomed nicotine. The change is very noticeable, he misses the reward, and so he returns to smoking."

163. From 1940-1970, the American Tobacco Company conducted its own nicotine research, funding over 90 studies on the

pharmacological and other effects of nicotine on the body, 80% of all biological studies funded by the company over this period. In 1969, the American Tobacco Company even test marketed a nicotine-enriched cigarette in Seattle, Washington.

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

165. The industry's recognition of the extent to which nicotine - and not tobacco -- defines its product is illustrated in a 1972 Philip Morris report on a CTR conference, which stated:

a. "As with eating and copulating so it is with smoking. The physiological effect serves as the primary incentive, all other incentives are secondary. The majority of the conferees would go even further and accept the proposition that nicotine is the active constituent of cigarette smoke. Without nicotine, the argument goes, there would be no smoking."

b. "Why then is there not a market for nicotine per se, eaten, sucked, drunk, injected, inserted or inhaled as a pure aerosol? The answer, and I feel quite strongly about this, is that the cigarette is in fact among the most awe-inspiring examples of the ingenuity of man. Let me explain my conviction. The cigarette should be conceived not as a product but as a package. The product is nicotine."

c. "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."

166. Documents from a BATCO study called Project Hippo, uncovered only in May 1994, show that as far back as 1961, this cigarette company was actively studying the physiological and pharmacological effects of nicotine. Project Hippo reports were circulated to other U.S. cigarette manufacturers and to TIRC, demonstrating that at least some of the industry's nicotine research was shared. BATCO sent the reports to officials at Brown & Williamson and R.J. Reynolds, and circulated a copy to TIRC with a request that TIRC "consider whether it would help the U.S. industry for these reports to be passed on to the Surgeon General's Committee."

167. Similarly, an RJR-MacDonald Marketing Summary Report from 1983 concluded that the primary reason people smoke "is probably the physiological satisfaction provided by the nicotine level of the product. "

168. As recently as December 1995, the Wall Street Journal reported on an internal Philip Morris draft document analyzing the competitive

market for nicotine products for the years 1990-1992. The report describes the importance of nicotine: "Different people smoke for different reasons. But the primary reason is to deliver nicotine into their bodies.... It is a physiologically active, nitrogen containing substance. Similar organic chemicals include nicotine, quinine, cocaine, atropine, and morphine. While each of these substances can be used to affect human physiology, nicotine has a particularly broad range of influence. During the smoke act, nicotine is inhaled into the lungs in smoke, enters the bloodstream and travels to the brain in about eight to ten seconds."

169. Recently disclosed handwritten notes dated 1965 from Ronald A. Tamol, who until 1993 was Philip Morris' director of research and brand development, refer to "minimum nicotine... to keep the normal smoker hooked."

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

171. As part of its cover-up, Brown & Williamson even went so far as to instruct the DNA Plant Technology Corporation of Oakland, California, which had developed Y-1, to tell FDA investigators that Y-1 had "never [been] commercialized." Only after the FDA discovered two United States Customs Service invoices indicating that "more than a 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.

172. In addition, cigarette manufacturers add several ammonia compounds during the manufacturing process which increase the delivery of nicotine and almost double the nicotine transfer efficiency of cigarettes.

173. Brown & Williamson publicly denies that the use of ammonia in the processing of tobacco increases the amount of nicotine absorbed by the smoker. Nevertheless, the company's own internal documents reveal that it is and its rivals use ammonia compounds to increase nicotine delivery. As John Kreisher, a former associate scientific director for CTR, conceded, "[a]mmonia helped the industry lower the tar and allowed smokers to get more bang with less nicotine. It solved a couple of problems at the same time."

174. The cigarette industry's manipulation of nicotine is particularly harmful in view of its deceptive marketing of "light" or low-tar and low-nicotine cigarettes to retain the health conscious segment of the

smoking market. Recent studies demonstrate that cigarettes advertised as low tar and low nicotine have higher concentrations of nicotine, by weight, than high-yield cigarettes. The Tobacco Companies manipulate nicotine delivery levels in supposedly reduced tar and reduced nicotine cigarettes through various strategies. For example:

a. Industry studies show that smokers tend to obtain close to the same amount of nicotine from each cigarette despite differences in yield as measured by the FTC smoking machine. Cigarette manufacturers have designed "light" cigarettes in a deliberate attempt to circumvent FTC methods of measuring tar and nicotine levels. By drilling nearly invisible holes in the filter paper, the cigarette manufacturers have prevented FTC smoking machines from accurately measuring the actual tar and nicotine delivery to smokers, who naturally block the tiny, laser-generated perforations with their fingers or lips, and thereby receive greater tar and nicotine yields than indicated by FTC measurements.

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

175. The cigarette industry maintains that nicotine levels follow tar levels. In the words of Dr. Alexander Spears, Vice Chairman of Lorillard, in his 1994 testimony before the Waxman Subcommittee -- "[n]icotine [level] follows the tar level," and the correlation between the two "is essentially perfect," and "shows that there is no manipulation of nicotine." Dr. Spears neglected to mention to Congress that in a 1981 study, not intended for public release, he stated explicitly that low-tar cigarettes use special blends of tobacco to keep the level of nicotine up while tar is reduced: "[T]he lowest tar segment [of product categories] is composed of cigarettes utilizing a tobacco blend which is significantly higher in nicotine."

176. R.J. Reynolds, Lorillard, the American Tobacco Company, and the Tobacco Institute have similarly represented to the public and to the FDA that the nicotine levels in their products are purely a function of setting the tar levels of such products. Internal company documents show, however, that the American Tobacco Company's experimentation with adding nicotine to its tobacco was extensive -- extensive enough for American Tobacco Company 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."

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

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

nicotine into tobacco smoke."

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

c. A 1991 R.J. Reynolds patent application states that "processed tobacco can be manufactured under conditions suitable to provide products having various nicotine levels."

#### F. The Targeting of Children

178. Across the nation, the overwhelming majority of cigarette use and addiction begins when users are children or teenagers. Eighty-two (82%) percent of daily smokers had their first cigarette before age 18, sixty-two (62%) percent of daily smokers had their first cigarette before age 16, thirty-eight (38%) percent before the age of 14. Thus a person who does not begin smoking in childhood or adolescence is unlikely ever to begin. The younger a person begins to smoke, the more likely he or she is to become a heavy smoker. Sixty-Seven (67%) percent of children who start smoking in the sixth grade become regular adult smokers and forty-six (46%) percent of teenagers who start smoking in the eleventh grade become regular adult smokers.

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

180. Although young people frequently believe they will not become addicted to nicotine or become long-term users of tobacco products, they often find themselves unable to quit smoking. Among smokers aged 12 to 17 years, a 1992 Gallup survey found that 70% said if they had it to do over again, they would not start smoking and 66% said that they want to quit. Fifty-one percent of the teen smokers surveyed had made a serious effort to stop smoking -- but had failed.

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

182. For many years, the defendants have engaged in a vast and misleading promotional, public relations, and lobbying blitz which has as its goal increasing the numbers of people addicted to nicotine in cigarettes and decreasing the numbers of people who attempt or succeed in quitting. Much of their efforts in this regard have been and continue to be directed toward children. They have done so and continue to do so in contravention of their duty not to make false statements of material fact and their duty not to conceal such true facts from the public. At the cost of countless lives, the defendants spend

billions of dollars every year misleading the public and promoting the myth that smoking cigarettes does not cause cardiovascular disease, lung cancer, emphysema and other diseases and that smokers live healthy and vital lives. The Tobacco Defendants have at all pertinent times presented and promoted smoking as an attractive, glamorous, youthful, and relaxing pastime, associating it with movie stars, athletes, and successful professionals.

183. Cigarettes are among the most promoted consumer products in the United States. The Federal Trade Commission reported to Congress that domestic cigarette advertising and promotional expenditures rose from close to \$4 billion in 1990 to more than \$6 billion in 1993. Tobacco product brand names, logos, and advertising messages are all-pervasive, appearing on billboards, buses, trains, in magazines and newspapers, on clothing and other goods. The effect is to convey the message to young people that tobacco use is desirable, socially acceptable, safe, healthy, and prevalent in society. Additionally, young people buy the most heavily advertised cigarette brands, whereas many adults buy more generic or value-based cigarette brands which have little or no image-based advertising. Cigarette manufacturers, knowing that their advertising appeals to young people, continue to use these same marketing techniques to sell their products.

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

185. This same report also found that stores within 1,000 feet of a school had significantly more tobacco advertising and promotions than stores that were not near schools. Stores near schools were also more likely to have at least one tobacco advertisement placed next to candy or displayed at three feet or below. A significantly higher average number of tobacco advertisements also were found on the exterior of stores located in young neighborhoods - communities in which at least one-third of the population in that zip code were 17 years of age or less.

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

from, adjacent to, or in the general vicinity of high schools or college campuses.

187. Despite these disturbing statistics, each of the Tobacco Companies maintain that the effect of its pervasive advertising and promotion of cigarettes is limited to maintaining brand loyalty and that is has no role in encouraging adolescents to experiment with smoking.

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

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

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

191. Defendants used this information in devising advertising to create a mental image associating smoking with health, glamorous and athletic lifestyles, and with success and sexual attractiveness. Their advertising and marketing campaigns increase demand for tobacco products among young people. The ease with which children and teenagers can obtain cigarettes from vending machines, assures that there is a ready supply to meet this demand. It has been shown repeatedly that cigarette vending machines (even those located in bars and other supposedly adult locations) are readily available to children and teenagers. 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, create doubt and confusion, which are used by smokers as an excuse to avoid the pain and discomfort of attempting to break their addiction to nicotine.

192. One of the best examples of this was the transformation of Marlboro cigarettes, from a red-tipped cigarette for women to the cigarette for the "macho cowboy." By changing advertising imagery, Philip Morris was able to tap into a wholly new and different market. In 1950, R.J. Reynolds was the king of the cigarette business. It sold more cigarettes than any other company. Philip Morris, though doing well on the basis of its fraudulent health oriented advertising, was still far behind. In 1981, Philip Morris overtook R.J. Reynolds, and each year has extended its lead, by developing an effective marketing campaign for recruiting young new smokers to its brands. The image created by the Marlboro man captured the adolescent imagination, leading to experimentation with that particular cigarette and eventual addiction due to the manipulation by Philip Morris of the nicotine and other ingredients in the cigarette. The children and teenagers who started smoking Marlboro became tenaciously loyal customers. Soon, Marlboro became the "gold standard" of cigarettes among teenagers. Through the year 1988, nearly three-fourths of teenage smokers used Marlboro.

193. At about the time it lost market leadership to Philip Morris, R.J. Reynolds dedicated itself to a ruthless advertising campaign encouraging children and teenagers to smoke. One of the key elements of the R.J. Reynolds' strategy for attracting children was to reposition many of its cigarette brands to younger audiences. Just as Marlboro was repositioned from the women's market to the male market, by a new advertising campaign, R.J. Reynolds has positioned its cigarette advertising campaigns to younger and younger audiences using a succession of advertising images of men engaged in extraordinary feats of physical and athletic achievements.

194. R.J. Reynolds' Vantage cigarettes entered the 1980s as a brand targeted at the health conscious adult smoker. Advertisements were intended to assuage fears of lung cancer and other diseases and give the concerned smoker arguments for rationalizing their continuation of the addiction. Through multiple-advertising transmogrifications, Vantage cigarettes have been progressively repositioned to ever-younger audiences. During the mid-1980s, this advertising campaign featured young, successful professionals (including architects, fashion designers, lawyers, etc.) with the slogan "The Taste of Success." These ads promoted the implication that smoking is helpful -- if not essential-- to success or prominence. In the late 1980s, the advertising theme for Vantage cigarettes began to feature professional-caliber athletes and auto racers. These advertisements depict physical activity requiring strength or stamina beyond that of everyday activity. The obvious implication is that smoking does not harm you.

195. During the 1980s, advertising for Salem cigarettes also became

more youth-oriented. Whereas the dominant advertising theme for Salem cigarettes used to be clean, fresh country air, during the 1980s, Salem ads were populated by muscular surfers and bikini clad women, partiers, and other attractive, adolescent role models. Another successful advertising campaign targeted at young people is the Lorillard Tobacco Company campaign promoting Newport cigarettes. Newport ads frequently show men and women in sexually suggestive positions always having fun, using the slogan "Alive With Pleasure."

196. Another successful advertising campaign has been the "You've Come A Long Way Baby" campaign, promoting Virginia Slims cigarettes. One of the most important psychological needs of most adolescent girls is to become independent from their parents. By associating smoking with women's liberation, Philip Morris intended to create in the minds of teenage girls, the vision of smoking as a symbol of autonomy and independence. Ads for Virginia Slims and other "feminine" cigarettes prey upon the natural and common insecurity experienced by adolescents, by portraying the cigarette as a crutch and a symbol of superiority. Perhaps the most acute psychological need of adolescence is to fit in, to be accepted, and to be popular. Ads for Philip Morris' Benson & Hedges cigarettes developed an image of smoking as a happy pleasure to be shared in the company of others and the easy road to instant acceptance within a group.

197. In today's culture, many teenage girls perceive that a prerequisite to popularity is to be thin. Philip Morris and other cigarette companies capitalize upon this perception by presenting cigarette smoking as a suitable alternative to diet for being thin. Virtually every "feminine" cigarette includes words like slim, light, super slim, ultra light, etc. The photographic imagery in cigarette advertising that targets young females universally portrays attractive young women in glamorous outfits. Smoking is thus associated with being sexy and beautiful.

198. Many teenage boys fantasize about owning a powerful motorcycle. For this reason many cigarette brands have used motorcycle imagery to encourage teenage boys to smoke. Many cigarette ads that target young boys glamorize high risk activities like hang gliding, motorcycle racing, and mountain climbing. Cigarette makers do this deliberately to undermine awareness that smoking is dangerous. In its campaign to attract adolescent boys to become smokers, the R.J. Reynolds Tobacco Company has made extensive use of risk taking and danger in its advertising. By glorifying risk-taking, these ads have a more insidious purpose. How a person estimates the magnitude and likelihood of a risk can be significantly affected by what it is compared against. By portraying dangerous activities like hang-gliding, mountain climbing, and stunt motorcycle riding in tobacco advertising, R.J. Reynolds minimizes the dangers of smoking in adolescent minds.

199. The great success that R.J. Reynolds has had in its effort to overtake Philip Morris in the youth market is principally due to the "Joe Camel" cartoon character. This campaign was inaugurated in the United States in 1987 to commemorate the 75th anniversary of Camel

cigarettes. In the first ads, the camel leered out over the ad saying "75 Years and Still Smoking." The implication is obvious. It soon became evident that "Joe Camel" would strike a responsive chord among children and teenagers and has been used by R.J. Reynolds to target children to get them to start smoking as early as possible, so they can become addicted to nicotine at the earliest age possible. R.J. Reynolds has more than tripled its advertising expenditures for Camel cigarettes since 1988, utilizing themes like "Joe Camel" that are guaranteed to be attractive to young people at high risk of becoming smokers.

200. When R.J. Reynolds began the Joe Camel cartoon campaign, Camel's share of the children's market was only 0.5%. In just a few years, Camel's share of this illegal market has increased to 32.8%, representing sales estimated at \$476 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% 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.

201. The themes within cigarette advertising are not the only feature of tobacco marketing that betray the real target. The location and placement of those ads further reveal that children are the intended 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 health promises concerning tar and nicotine rather than glamorous images.

202. The Tobacco Companies sell more than one billion packs of cigarettes per year to children under the age of 18. In 1988, the tobacco industry reaped \$221 million in profits from \$1.25 billion in sales to children under the age of 18. Marlboro and Camel cigarettes dominate the teenage smoking market.

203. In late 1990, the Tobacco Institute, on behalf of the industry, inaugurated a public relations campaign designed to convince the public that the cigarette companies wished to discourage young people from smoking. Several Tobacco Companies began their own campaigns at the same time. In fact, these programs are just a continuation of the Defendants' ongoing fraud and conspiracy. While these programs call for age 18 as the national standard for tobacco sales to children, and for requiring "adult supervision" of cigarette vending machines, in fact, Defendants hope to freeze the status quo with regard to children's access to tobacco as most states already have a minimum age of 18 or older. Brochures, like "Tobacco: Helping Youth Say No", are being distributed by the Tobacco Institute and tobacco industry. In reality, this is a pro-smoking subterfuge. The

brochure presents smoking as a permissible "adult" decision and smoking as something an "adult" can safely do. The only reason given children for not smoking is that -- like getting married or driving a car - smoking is for grown ups. Of course, this message really makes smoking more desirable to children. An R.J. Reynolds brochure even tells parents to tell their children that the parents smoke "because they enjoy it." None of these brochures disclose that smoking is highly addictive and harmful to human life.

204. Perhaps the most vicious element of this advertising campaign has been advertising aimed at young girls. Nearly every issue of magazines for young girls, like Teen and Young Miss, includes an advertisement by R.J. Reynolds urging children not to smoke. But the reasons given for refraining are not that smoking is addictive, that it can harm or kill infants or pregnant woman, or that it causes cancer and other lethal diseases; rather, the reason given is that it is an "adult decision."

205. The likely effect of these ads is that, rather than discouraging children from smoking, they plant the notion that smoking is something to do to show one's independence or to act grown-up. This notion is, of course, reinforced by the ubiquitous cigarette ads depicting glamorous young adult women smoking, as a way of demonstrating their independence.

206. This conduct has gone on for 40 years and continues into this decade. 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 the harmful effects, if any, smoking might have on human health, established the Council for Tobacco Research -USA. The industry has also supported research grants 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 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 many unanswered controversies surrounding smoking -- and the fundamental causes of the diseases often statistically associated with smoking -- we do 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....

207. The targeting of children, while unquestionably wanton, reckless, and unethical, and cynically denied by the industry, was and

continues to be, vitally important to the tobacco industry. Children enticed into smoking provide a guaranteed future market for a product that each year kills the industry's best customers by the hundreds of thousands.

#### G. Concentration in the Tobacco Industry

208. Cigarette manufacturing has been one of the most concentrated industries in the United States throughout this century. Together, Philip Morris, R.J. Reynolds, Brown & Williamson, Lorillard, American Tobacco, and Liggett comprise the six largest cigarette manufacturers, and control virtually 100% of the market in the United States and in Kansas. Philip Morris and R.J. Reynolds are the industry leaders, with national market shares of approximately 42% and 29%, respectively. The approximate market shares of the other major manufacturers are: Brown & Williamson, 12%; Lorillard, 7%; American Tobacco Company, 7%; and Liggett, 3%.

209. In part because of its concentration, the cigarette industry has long been one of America's most profitable businesses, with profit margins estimated in at least the 30% range. The industry continues to take in billions of dollars in profits each year from domestic sales alone.

210. In addition, the concentration of the industry has allowed the manufacturers and their trade associations to engage in a decades-long conspiracy relating to the suppression of accurate information related to the issues surrounding smoking and its health effects and to direct their considerable profits to further that end.

211. The industry's combination and conspiracy included a commitment jointly to conduct research because of "a general feeling that an industry approach as opposed to an individual company approach was highly desirable."

#### H. Discovery of Violations by Attorney General

212. Defendants have fraudulently concealed the existence of the violations alleged below. The Attorney General has exercised due diligence to learn of the state's legal rights, and despite such diligence, failed to uncover the existence of the violations alleged below until very recently. Defendants affirmatively concealed the existence of the violations alleged below through the following actions, among others:

- a. Testifying falsely under oath before the United States Congress.
- b. Providing false explanations to customers and to governmental entities regarding the health hazards of tobacco and the addictive qualities of nicotine.
- c. Conducting activities in furtherance of the conspiracy in secret, including clandestine meetings, using tobacco company attorneys to

secure documents that might reveal the dangers of cigarettes and the addictive nature of nicotine, closing down research projects and moving research facilities and information to locations outside the United States.

d. Requiring employees to keep secret all information about the dangers of cigarette smoking and the addictive nature of nicotine under threats of severe consequences.

VI.

#### COUNT ONE

(Violations of Kansas Consumer Protection Act)

213. The State restates, realleges and incorporates by reference herein paragraphs 1 through 212 of its Petition as if fully set forth herein.

214. K.S.A. 50-628 authorizes the Attorney General to seek declaratory judgment, injunctive relief, consumer damages, civil penalties and reasonable investigative fees and expenses against persons who have engaged in or are engaging in violations of the Kansas Consumer Protection Act.

215. The residents of Kansas are consumers within the meaning of K.S.A. 50-624.

216. The marketing and selling of tobacco products to residents of Kansas by Defendants is a "consumer transaction" within the meaning of K.S.A. 50-624.

217. By engaging in the conduct described above, Defendants have committed deceptive and/or unconscionable acts and practices in violation of K.S.A. 50-626 and K.S.A. 50-627 by, among other things:

a. Defendants willfully used exaggeration, falsehood, innuendo, or ambiguity as to material facts in violation of K.S.A. Section 50-626(b)(2), including, but not limited to the following: statements concerning the Defendants' knowledge of the harmful health effects of smoking and the addictive properties of nicotine;

b. Defendants made representations that their products had sponsorship, approval, characteristics, etc. that they did not have in violation of K.S.A. Section 50-626(b)(1)(A), including but not limited to their statements concerning the harmful health effects of smoking and the addictive properties of nicotine;

c. Defendants made misrepresentations regarding the sponsorship, approval, status, affiliation or connection of the Tobacco Industry Research Committee/Council for Tobacco Research and other of their agents, in violation of K.S.A. Section 50-626(b)(1)(13), including, but not limited to representations that TIRC would be run by a scientist of unimpeachable integrity and be advised by a board of

distinguished scientists disinterested in the tobacco industry when, in fact, the TIRC was controlled by the Tobacco Companies and used to promote the sale of their tobacco products;

d. Defendants willfully failed to state material facts and/or willfully concealed material facts to consumers in violation of K.S.A. Section 50-626(b)(3), including but not limited to facts relating to the harmful health effects of smoking and the addictive properties of nicotine;

e. Defendants willfully used exaggeration, falsehood, innuendo, or ambiguity as to material facts in violation of K.S.A. Section 50-626(b)(2), including, but not limited to their deception, fraud, misrepresentation, and knowing concealment, suppression, and omission of material facts relating to the harmful health effects of smoking and the addictive properties of nicotine;

f. Defendants engaged in unconscionable acts and practices in violation of K.S.A. 50-627(b), including but not limited to, promoting and selling tobacco products to minors, promoting and selling harmful tobacco products that addict consumers, and misleading the public as to Defendants' concern and knowledge about the harmful health effects and addictive nature of their products, and the purpose and independence of the Tobacco Industry Research Committee/Council for Tobacco Research.

g. Defendants knew or had reason to know that Defendants took advantage of the inability of the consumer reasonably to protect the consumer's interest because of the consumer's physical infirmity, ignorance, illiteracy, inability to understand the language of an agreement or similar factor in violation of K.S.A. Section 50-627(b)(1) including but not limited to, promoting and selling tobacco products to minors, promoting and selling harmful tobacco products that addict consumers, and misleading the public as to Defendants' concern and knowledge about the harmful health effects and addictive nature of their products, and the purpose and independence of the Tobacco Industry Research Committee/Council for Tobacco Research;

h. Defendants knew or had reason to know that the transaction the supplier induced the consumer to enter into was excessively one-sided in favor of the supplier in violation of K.S.A. Section 50-627(b)(5), including but not limited to promoting and selling tobacco products to minors, promoting and selling harmful tobacco products that addict consumers, and misleading the public as to Defendants' concern and knowledge about the harmful health effects and addictive nature of their products, and the purpose and independence of the Tobacco Industry Research Committee/Council for Tobacco Research; and

i. Defendants knew or had reason to know that Defendants made misleading statements of opinion on which consumers were likely to rely to the consumer's detriment in violation of K.S.A. 50-627(b)(6), including but not limited to promoting and selling tobacco products to minors, promoting and selling harmful tobacco products that addict consumers, and misleading the public as to Defendants' concern and knowledge about the harmful health effects and addictive nature of

their products, and the purpose and independence of the Tobacco Industry Research Committee/Council for Tobacco Research.

218. To remedy these violations of the Kansas Consumer Protection Act, the State requests that the Court, pursuant to the provisions of K.S.A. 50-632, determine that the above acts and practices by defendants be declared deceptive and/or unconscionable and in violation of the Kansas Consumer Protection Act, award damages in an amount to be proven at trial and enter an order for damages on behalf of consumers, for civil penalties, for reasonable investigative fees and expenses, for the costs of the action, and for injunctive relief as further requested below.

COUNT TWO  
(Restraint of Trade)

219. The State restates, realleges and incorporates by reference herein paragraphs 1 through 218 of its Petition as if fully set forth herein.

220. This count is brought under Kansas' Restraint of Trade law (herein referred to as the "Kansas Antitrust Act"), K.S.A. 50-101 et. seq., for civil penalties, injunctive and other equitable relief as appropriate, damages, interest on the damages from the date of the Petition, taxable costs, and reasonable attorneys' fees.

221. Beginning at least as early as the 1950s, and continuing until the present date, Defendants entered into a contract, combination and conspiracy in unreasonable restraint of trade and commerce in the market for cigarettes in Kansas in violation of Kansas law, K.S.A. 50-101 et. seq.

222. This contract, combination or conspiracy had the purpose and effect of:

- a. Restraining competition in the market for cigarettes in the United States, including in Kansas;
- b. Restraining and suppressing research on the health effects of smoking;
- c. Restraining and suppressing the dissemination of information on the harmful effects of smoking;
- d. Restraining and suppressing the research, development, production and marketing of so-called "safer" cigarettes that resulted in reduced harmful biological activity in humans;
- e. Preventing loss of sales revenues that would have resulted if information on the harmful effects of cigarettes and the addictive effects of nicotine had been made public; and
- f. Preventing expensive and costly competition among the defendant Tobacco Companies for sales and marketing of so-called "safer"

cigarettes.

223. In furtherance of their conspiracy, Defendants did the following that they conspired to do including, without limitation:

- a. Creation by the Defendant Tobacco Companies of the Tobacco Industry Research Committee (later known as the Council for Tobacco Research), charged with the task of disseminating false and misleading information regarding the health risks of cigarette smoking;
- b. Agreement among Defendants to suppress independent research regarding the health risks of cigarette smoking and the addictive nature of nicotine;
- c. Destruction and concealment of evidence by Defendant Tobacco Companies of research and information revealing the health dangers of cigarette smoking and the addictive nature of nicotine;
- d. Joint sponsorship by Defendant Tobacco Companies of mass media articles and advertisements intended to deceive governmental entities and the public about the health risks of cigarette smoking;
- e. False representations concerning the commitment of Defendant Tobacco Companies to sponsor and make public "objective" scientific information regarding these risks;
- f. The joint and collective making of false and misleading representations to Congress, other governmental entities and the public regarding the addictive nature of nicotine and the manipulation of nicotine levels in cigarettes by Defendant Tobacco Companies; and,
- g. Agreements, some obtained by coercion, among Defendant Tobacco Companies to halt research, development, marketing and sales of so-called "safer" cigarettes.

224. The aforesaid combination and conspiracy consisted of an agreement, understanding and concert of action among Defendants, the substantial terms of which were:

- a. Withholding of information to governmental entities and the citizens of Kansas about the harmful effects of cigarettes and the addictive effects of nicotine;
- b. Support of public relations campaigns that falsely promoted cigarettes as harmless;
- c. Suppression of sponsorship of independent research on the issues of smoking and health;
- d. Destruction or concealment of documents relating to the health effects of cigarettes and the addictive nature of nicotine;
- e. Intimidation of persons with information about the negative health effects of cigarettes, and the addictive qualities of nicotine;

f. Termination of research and development programs seeking to develop so-called "safer" cigarettes; and

g. Suppression of sales and marketing of so-called "safer" cigarettes.

225. This unlawful conspiracy and the effects thereof are continuing and will continue unless the injunctive relief sought by the State is granted. Plaintiff has no adequate remedy at law.

226. For purposes of Kansas law, K.S.A. 50-101 et. seq., the State has been injured and has suffered damages as a result of the unlawful conspiracy. Cigarette smoking and health are inextricably intertwined. Defendants' actions have resulted in substantially higher illness and death than would have occurred absent their unlawful conduct. Tobacco Companies knew and expected that their actions would require the State to pay higher health care costs for citizens of Kansas requiring public assistance. These increased costs, which were paid by the State, flow directly from the Tobacco Attorneys unlawful conduct.

### COUNT THREE

(Restitution based Upon Unjust Enrichment)

227. The State restates, realleges and incorporates by reference herein paragraphs 1 through 226 of its Petition as if fully set forth herein.

228. Many of the State's citizens who are afflicted with tobacco-related diseases are indigents and unable to provide for their own medical care. These citizens rely upon the State to provide their medical care, which reliance results in an extreme burden on the taxpayers and the financial resources of this State. Yet, these very citizens, along with our youth, are targeted by tobacco promotional techniques. Kansas taxpayers have thus expended hundreds of millions of dollars in caring for their fellow citizens who have and are suffering from lung cancer; cardiovascular disease; emphysema; chronic obstructive pulmonary disease; and a variety of other cancers and diseases that were and are caused by cigarettes.

229. While the State and its various agencies and institutions are struggling to avoid a health care crisis and to pay for the health care costs of tobacco, these Defendants continue to reap billions of dollars in profits from the sale of cigarettes. Tax revenues generated by cigarette smokers help defray but a tiny fraction of the health care costs resulting from tobacco use in this state.

230. The Defendants are promoting the sale of their cigarettes to the citizens of Kansas by continuing to misinform the federal and State authorities about the true carcinogenic, pathologic and addictive qualities of cigarettes. Instead of honestly disclosing the genuine health risks of smoking cigarettes, the Tobacco Companies have spent billions in sophisticated marketing tactics designed to make smoking appear to be glamorous to our youngsters.

231. In equity and fairness, it is the Defendants, not the taxpayers of Kansas, who should bear the costs of tobacco inflicted diseases. By avoiding their own duties to stand financially responsible for the harm done by their cigarettes, the defendants wrongfully have forced the State to perform such duties and to pay the health care costs of tobacco-related disease. As a result, the defendants have been unjustly enriched to the extent that Kansas taxpayers have had to pay these costs.

232. Defendants knew of and appreciated the benefits that the State's payment of increased health care costs conferred on them.

233. Defendants' fraudulent and wrongful conduct, and its perpetuation, make it inequitable, unjust, and unconscionable for Defendants to retain the benefits conferred upon them by the State of Kansas.

234. The State of Kansas is therefore entitled to restitution from the Defendants for the benefits the State of Kansas conferred upon the Defendants, and to the extent required by equity to prevent Defendants' unjust enrichment as a result of their fraudulent and wrongful conduct.

#### COUNT FOUR (Indemnity)

235. The State restates, realleges and incorporates by reference herein paragraphs 1 through 234 of its Petition as if fully set forth herein.

236. As a direct and proximate result of the breaches of duty and omissions of the Defendants as alleged above, the State was obligated to pay and has paid millions of dollars in the past for the provision of necessary medical care, facilities and services for certain of those aforementioned Kansas residents and citizens injured by the Defendants' cigarettes and unable to afford and otherwise obtain such necessary medical care, facilities and services.

237. The State 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.

238. In all fairness and justice and to prevent an unjust enrichment, the Defendants should indemnify the State for the provision of necessary medical care, facilities and services for those aforementioned Kansas residents and citizens injured by the Defendants' cigarettes.

#### COUNT FIVE (Breach of Voluntarily Undertaken Duty)

239. The State restates, realleges and incorporates by reference herein

paragraphs 1 through 238 of its Petition as if fully set forth herein.

240. The Tobacco Company Defendants and The Council for Tobacco Research - U.S.A, Inc. represented that they would undertake a special responsibility and duty, expressly or impliedly, to citizens of the State of Kansas and those who advance and protect the public health, including, among others, the State and the Department of Social and Rehabilitation Services, to accept an interest in the public's health as a basic and paramount responsibility; to cooperate closely with those who safeguard the public health; to aid and assist the research effort into all aspects of tobacco use and human health; to continue to research and otherwise undertake all possible efforts to learn all the facts and to discover the truth about smoking and health; and finally, to disclose to the State of Kansas and its citizens complete and accurate information about the effects of cigarette smoking on human health.

241. Defendants undertook to render such services recognizing that they were necessary for the protection of the public health, including the health of millions of Kansas citizens.

242. Defendants have breached and continue to breach their special responsibility and duty by failing to exercise reasonable care to perform and to conduct their undertaking. Defendants' failure to use due care in performing the duty that they voluntarily undertook to perform increased the risk of harm to the public, including the risk that Kansas citizens would become addicted to smoking and suffer illness and death from smoking-related causes, and thereby increase the costs of health care paid by the State of Kansas above and beyond what it would have been had Defendants not publicly represented that they were going to engage in the undertaking at all.

243. As a direct and proximate result of Defendants' wrongful conduct, the State has suffered and will continue to suffer substantial injuries and damages for which the State is entitled to recovery.

#### COUNT SIX

(Civil Conspiracy To Commit Breach of Voluntarily Undertaken Duty)

244. The State restates, realleges and incorporates by reference herein paragraphs 1 through 243 of its Petition as if fully set forth herein.

245. Tobacco Company Defendants and the Council for Tobacco Research - U.S.A., Inc. represented that they would undertake a special responsibility and duty to citizens of the State of Kansas, and those who advance and protect the public health, including, among others, the State and the Department of Social Services, to accept an interest in the public's health as a basic and paramount responsibility; to cooperate closely with those who safeguard the public health; to aid and assist the research effort into all aspects of tobacco use and human health; to continue to research and otherwise undertake all possible efforts to learn all the facts and to discover the truth about smoking

and health; and finally, to disclose to the State of Kansas and its citizens complete and accurate information about the effects of cigarette smoking on human health.

246. Tobacco Company Defendants and the Council for Tobacco Research U.S.A., Inc. undertook to render such services recognizing that they were necessary for the protection of the public health, including the health of millions of Kansas citizens.

247. Tobacco Company Defendants and the Council for Tobacco Research U.S.A., Inc. have breached and continue to breach their special responsibility and duty by failing to exercise reasonable care to perform and to conduct their undertaking. Defendants' failure to use due care in performing the duty that they voluntarily undertook to perform increased the risk of harm to the public, including the risk that Kansas citizens would become addicted to smoking and suffer illness and death from smoking-related causes, and thereby increase the costs of health care paid by the State of Kansas above and beyond what it would have been had Defendants not publicly represented that they were going to engage in the undertaking at all.

248. Defendants and each of them, did act in concert and with a common purpose, in assisting, encouraging and participating with every other Defendant for the purpose of breaching certain Defendants' voluntarily undertaken duty to provide information to the public and the State of Kansas.

249. Defendants Hill & Knowlton, Inc. and The Tobacco Institute, Inc. along with the Tobacco Attorneys did advise and encourage one or more of the Tobacco Company Defendants and Defendant CTR to breach their respective duties as stated herein, with knowledge that such advice and encouragement would cause, if followed, a breach of said duties.

250. Defendants Hill & Knowlton, Inc. and The Tobacco Institute, Inc. along with the Tobacco Attorneys did actively participate with one or more of the Tobacco Company Defendants and Defendant CTR to effectuate a breach of their respective duties as stated herein, with knowledge that such advice and encouragement would cause, if followed, a breach of said duties.

251. As a direct and proximate result of Defendants' wrongful conduct, the State has suffered and will continue to suffer substantial injuries and damages for which the State is entitled to recovery.

#### COUNT SEVEN (Injunctive and Declaratory Relief)

252. The State restates, realleges and incorporates by reference herein paragraphs 1 through 251 of its Petition as if fully set forth herein.

253. The Tobacco Company Defendants have, for many years, engaged in, encouraged, and aided and abetted each other in an

intentional and unconscionable campaign to promote the distribution and sale of cigarettes to children, thereby creating successive generations of addicted customers who ultimately become the victims of smoking-related illnesses. Such conduct is a violation of the laws of the State of Kansas which prohibit the sale of cigarettes to minors, imposes untold human suffering on the citizens of the State of Kansas, and has created a health care burden for the State totaling hundreds of millions of dollars.

254. It is necessary and essential to stop the Tobacco Company Defendants from promoting the sale of their cigarettes to minors, a remedy which can only be effectively accomplished by enjoining the tobacco company Defendants from not only promoting the sale of their cigarettes to minors, but additionally from engaging in the aiding, abetting or encouraging others to engage in the sale or distribution of cigarettes to minors.

255. Enjoining the tobacco company Defendants from promoting the sale of their cigarettes to minors is necessary to prevent substantial injury to the effected minors, such substantial injury being the danger that the minors would become addicted to cigarettes and thereby have their health and their lives placed in danger from smoking cigarettes.

256. If such injunction enjoining the Tobacco Company Defendants from promoting the sale of their cigarettes to minors is not granted, the minors who are allowed to and who will continue to purchase cigarettes will be irreparably harmed in that they will likely become addicted to cigarettes and they will be substantially certain to suffer adverse health consequences.

257. The State is entitled to an injunction enjoining the Tobacco Company Defendants from promoting the sale of their cigarettes to minors, and is entitled to declaratory relief adjusting the respective rights, obligations, and duties of the parties.

#### COUNT EIGHT

##### (Interference With Obligation)

258. The State restates, realleges and incorporates by reference herein paragraphs 1 through 257 of its Petition as if fully set forth herein.

259. The State of Kansas has undertaken an obligation to pay certain health care costs of its indigent residents. The State of Kansas' obligation is a matter of public record and known to Defendants in 1953 and/or at all times thereafter.

260. Through the conduct alleged herein, the Defendants individually and in concert, have intentionally and improperly interfered with the State of Kansas' obligation by making its performance of that obligation more expensive and burdensome than it otherwise would have been.

261. Defendants' interference with the obligation of the State of

Kansas to pay such health care and other costs was carried out through the use of fraud, misrepresentation and deceit and with malicious intent. Defendants engaged in the conduct herein alleged to mislead and confuse the residents of Kansas about the health consequences of the use of tobacco products and the addictive nature of nicotine. The purpose and effect of Defendants' conduct was to shift to others, including the State of Kansas, the health care and other costs resulting from the health consequences of tobacco products use.

262. Defendants' intentional and improper conduct increased the degree and extent of tobacco-related disease and death among Kansas residents over that which otherwise would have existed. Defendants knew with substantial certainty that their conduct would increase the burden and obligation of the State of Kansas to pay for the health care costs caused by such tobacco-related disease and death.

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

## VII.

### Relief Requested

264. WHEREFORE, the State of Kansas, on the relation of the Attorney General, requests that this Honorable Court issue an Order and Judgment against the Defendants, jointly and severally, as follows:

A. Ordering Defendants to disclose, disseminate, and publish all research previously conducted directly or indirectly by themselves and their respective agents, affiliates, servants, officers, directors, employees, and all persons acting in concert with them, that relates to the public health issues of smoking and nicotine addiction; and

B. Ordering Defendants to fund a corrective public education campaign relating to the public health issues of smoking and nicotine addiction, administered and controlled by an independent third party; and

C. Ordering Defendants to make corrective statements regarding the health risks of smoking and the addictive properties of nicotine in future advertising, marketing and promotion of their cigarettes and enjoining them from continuing to make false, misleading or deceptive statements or representations concerning their cigarettes; and

D. Ordering Defendants to fund smoking cessation programs including the provision of medically approved nicotine replacement therapy for dependent smokers; and to fund an educational campaign devoted to prevention of smoking by children; and

E. Awarding damages to the State resulting from violations of K.S.A. 50-101 et seq. in an amount in excess of \$50,000.00; and

F. Awarding damages to the State resulting from violations of K.S.A. 50-623 et seq. in an amount in excess of \$50,000.00, awarding the State reasonable attorneys' fees, investigative fees, expenses, costs; and other appropriate relief; and

G. Ordering Defendants to pay restitution in an amount to be proven at trial, in excess of Fifty Thousand Dollars (\$50,000.00) together with interest and costs; and

H. Awarding damages and compensation to the State for past and future damages, including but not limited to health care expenditures, caused by Defendants' actions in violation of the laws of the State of Kansas, in excess of Fifty Thousand Dollars (\$50,000.00), together with interest and costs; and

I. Declaring that the Defendants use now, and did use in the past, marketing and advertising campaigns that unlawfully target and/or encourage children to purchase and consume tobacco products in violation of Kansas law; and

J. Enjoining the Defendants from using marketing or advertising campaigns that target and/or encourage children to purchase and consume tobacco products in violation of Kansas law;

K. Awarding the State such other extraordinary, declaratory and/or injunctive relief as permitted by law as necessary to assure the State has an effective remedy; and

L. Such other and further relief as the Court deems equitable, just and proper.

Respectfully Submitted,

CARLA J. STOVALL  
ATTORNEY GENERAL OF KANSAS  
Kansas Judicial Center, 2nd Floor  
Topeka, Kansas 66612  
(913)296-2215  
(913)296-6296 (fax)

/s/

Carla J. Stovall, #11433

ENTZ & CHANAY, P.A.  
3300 S.W. Van Buren  
Topeka, Kansas 66611  
(913) 267-5004  
(913) 267-7106 (fax)

By /s/

Stewart L. Entz, #06173  
Jeffrey A. Chanay, #1205

SCRUGGS, MILLETTE, LAWSON,  
BOZEMAN & DENT, P.A.  
734 Delmas Avenue  
P.O. Box 1425  
Pascagoula, Mississippi--39568-1425  
(601) 762-6068  
(601) 762- 207 (fax)

NESS, MOTLEY, LOADHOLT,  
RICHARDSON & POOLE, P.A.  
151 Meeting Street, Suite 600  
P.O. Box 1137  
Charleston, South Carolina 29402-1137  
(803) 577-6747  
(803) 577-7513 (fax)

Attorneys for Plaintiff

DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands trial by jury of all issues properly triable  
before a jury under the common law.

/s/

Stewart L. Entz