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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION-MIDDLESEX COUNTY
DOCKET NO: _____

THE STATE OF NEW JERSEY,
BY PETER VERNIERO, ATTORNEY
GENERAL OF THE STATE OF NEW
JERSEY, Plaintiff

v.

R.J REYNOLDS TOBACCO COMPANY
THE AMERICAN TOBACCO COMPANY
BROWN & WILLIAMSON TOBACCO
CORPORATION, B.A.T. INDUSTRIES

PLC, BATUS HOLDINGS INC., BRITISH AMERICAN TOBACCO COMPANY, LTD, BRITISH-AMERICAN TOBACCO (HOLDINGS), LTD, PHILIP MORRIS INCORPORATED (PHILIP MORRIS U.S.A), LIGGETT & MYERS INC., LORILLARD CORPORATION, THE COUNCIL FOR TOBACCO RESEARCH U.S.A, INC. (.successor in interest to the TOBACCO INDUSTRY RESEARCH COMMITTEE), TOBACCO INSTITUTE, INC., HILL & KNOWLTON INC., and JOHN DOE TOBACCO CORPORATIONS 'A"THROUGH"Z," Defendants.

THE STATE OF NEW JERSEY, by Peter Venero, Attorney General of New Jersey, with offices located at R.J, Efughes Justice Complex, CN 112, Trenton, New Jersey 08625, by way of complaint says:

1.The State of New Jersey brings this action pursuant to its constitutional, statutory, common law, and/or equitable authority, including without limitations N.J.S.A. 56 :8-9, for the purposes, inter alia of obtaining injunctive and equitable relief, including restitution as well as for the purposes of obtaining reimbursement for all money paid for the expense and costs that the State has incurred, and continues to incur, in providing health care and other services to the citizens of the State who suffer, or who have suffered, from tobacco-related injuries, diseases and illnesses as a result of the actions of defendants. This action sounds in equity, statutory and common law, and, unless otherwise noted, each and every count alleged applies to each and every defendant.

Parties
Plaintiffs

2.The State of New Jersey is a sovereign state of the United States. Attorney General Peter Vernicro brings this action for relief on behalf of the State of New Jersey pursuant to his common law parens patriae power, in order to discharge his obligations of protecting the public interest, and property, and of enforcing public duties, through the institution of appropriate legal proceedings on matters affecting the public interest. In addition, the Attorney General brings this action pursuant to his statutory authority to act as legal counsel for the Governor and. all State of New Jersey officers, departments, boards, bodies, commissions and instrumentalities in all legal proceedings in which they have an interest, As provided in X.J.S.A. 52:17A-4. Specifically, the Attorney General also brings this action in order to vindicate the public interest, pursuant to iv..l S.A. 26- 1- 1 el seq.; N.J.S.A. 56:8-1 el Feq., to protect the Children cif the State of New Jersey targeted by the defendants' marketing and promotional efforts, pursuant to N.J.S.A. 2C:414(b), and all other applicable State of New Jersey statutes and regulations.

Defendants

3. R.J. Reynolds Tobacco Company ("R-J. Reynolds") is a New Jersey corporation whose principal place of business is located at 4th & Main Street, Winston-Salem, North Carolina 27102. At times pertinent to the Complaint, defendant R.J. Reynolds Tobacco Company designed, tested, manufactured, marketed and sold cigarettes for use in the State of New Jersey or materially participated, conspired, assisted, encouraged and otherwise aided and abetted one or more of the defendants in doing so.

4. The American Tobacco Company ("American Tobacco") is or was a Delaware corporation whose principal place of business is or was located at 6 Stamford Forum, Stamford, Connecticut 06904. At times pertinent to the Complaint, defendant The American Tobacco Company designed, tested, manufactured, marketed and sold cigarettes for use in the State of New Jersey or willfully participated, conspired, assisted, encouraged and otherwise aided and abetted one or more of the defendants in doing so.

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

6. B.A.T. industries, PLC ("BAT") is i a British corporation whose registered office is located at Windsor House, 50 Victoria Street, London, England SW1H 0NL in the United Kingdom. Defendant B.A.T, Industries, P.L.C is or was the parent corporation of defendant Brown & Williamson Tobacco Corporation and defendant Batus Holdings, Inc. At times pertinent to the Complaint, defendant B.A.T. Industries, PLC, individually and/or through its agents, alter egos, subsidiaries and/or divisions, defendant Brown & Williamson Tobacco Corporation and defendant Batus Holdings, Inc., designed, tested, manufactured, marketed and sold cigarettes for use in the State of New Jersey or materially participated, considered, assisted, encouraged and otherwise aided and abetted one or more of the defendants in doing so.

7. Batus Holdings, Inc. ("Batus") is a Delaware corporation with its principal place of business at 1500 Brown & Williamson Tower, Louisville, Kentucky 40202. Defendant Batus Holdings, Inc. is or was an agent, alter ego, subsidiary and/or division of defendant B.A.T. Industries, PLC, defendant British-American Tobacco (Holdings), Ltd., and/or defendant British American Tobacco Company, Ltd, Defendant Batus Holdings, Inc. is a parent corporation of defendant Brown & Willi n Tobacco Corporation. At times pertinent to the Complaint, defendant Batus Holdings, Inc., individually and/or through

its agent, alter ego subsidiary and/or dimensions defendant Brown & Williamson Tobacco Corporation, designed, tested, manufactured, marketed and sold cigarettes for use in the State of New Jersey or materially participated, conspired, assisted, encouraged and otherwise aided and abetted one or more of the defendants in doing so.

8. British American Tobacco Company, Ltd., is a British corporation whose registered office is at Milbank, Knowle Green, Staines, Middlesex, England TW18 1DY in the United Kingdom. Defendant British American Tobacco Company, Ltd., is or was a parent corporation of defendant Brown & Williamson Tobacco Corporation and defendant BATUS. At times pertinent to the Complaint, defendant British American Tobacco Company, Ltd., individually and/or through its agent, alter ego, subsidiary and/or division, defendant Brown & Williamson Tobacco Corporation, designed, tested, manufactured, marketed and sold cigarettes for use in the State of New Jersey or materially participated, conspired, assisted Encouraged and otherwise aided and abetted one or more of the defendants in doing so.

9. British-American Tobacco (Holdings), Ltd., is a British corporation whose registered office is at Millbank, Knowle, Green, Staines, Middlesex, England TW18 1DY in the United Kingdom. Defendant British-American Tobacco (Holdings), Ltd., is or was a parent corporation of defendant Brown & Wilson Tobacco Corporation and defendant BATUS. At times pertinent to the Complaint, defendant British-American Tobacco (Holdings), Ltd., individually and/or through its agent, alter ego, subsidiary and/or division, defendant Brown & Williamson Tobacco Corporation, designed, tested, manufactured, marketed and sold cigarettes for use in the State of New Jersey or materially participated, conspired, assisted, encouraged and otherwise aided and abetted one or more of the defendants in doing so.

10. Philip Morris incorporated (Philip Morris U.S.A.) ("Philip Morris") is a Virginia corporation whose principal place of business is located at 120 Park Avenue, New York, New York 10016. At times pertinent to the Complaint, defendant Philip Morris Incorporated (Philip Morris U.S.A.) designed, tested, manufactured, marketed and sold cigarettes for use in the State of New Jersey or materially participated, conspired, assisted, encouraged and otherwise aided and abetted one or more of the defendants in doing so.

11. Liggett & Myers, Inc. ("Liggett") is a Delaware corporation whose principal place of business is located at 700 West Main Street, Durham, North Carolina 27701. At times pertinent to the Complaint, defendant Liggett & Myers, Inc., designed, tested, manufactured, marketed and sold cigarettes for use in the State of New Jersey or materially participated, conspired, assisted, encouraged and otherwise aided and abetted one or more of the defendants in doing so,

12. Lorillard Corporation ("Lorillard") is a Delaware corporation whose principal place of business is located at 1 Park Avenue, New York, New York 10016. At times pertinent to the Complaint, defendant Lorillard Corporation designed, tested, manufactured, marketed and sold cigarettes for use in the State of New Jersey or materially participated, conspired, assisted, encouraged and otherwise aided and abetted one or more of the

defendants in doing so.

13. The Council for Tobacco Research - U.S.A., Inc. (successor in interest to the Tobacco

Institute Research Committee ("TIRC")) ("CTR") is a non-profit corporation organized under the laws of the State of New York with its principal place of business located at 900 3rd Avenue, New York, New York 10022. At all times pertinent to the complaint, defendant, Council for Tobacco Research - U.S.A., Inc., acted individually and as the agent and/or co-conspirator of the tobacco industry.

14. Tobacco Institute, Inc. ("TI") is a nonprofit corporation organized -under the laws of the State of New York with its principal place of business located at 1975 "I" Street NW, Suite 800, Washington, D.C. 20006. At all times pertinent to the complaint, defendant, Tobacco Institute, Inc., acted individually and as the agent and/or co-conspirator of the tobacco industry.

15. Hill & Knowlton, Inc., is a Delaware corporation with its principal place of business' located at 420 Lexington Avenue, New York, New York 10070. At all times pertinent to the coropration, defendant, Hill & Knowlton, Inc., acted individually and as the Agent and/or coconspirator of the tobacco industry.

16. John Doe Tobacco Corporations "A" through "Z" business entities, both domestic and foreign, whose identities are presently unknown to plaintiff, but who may be described as certain manufacturers, distributors, and/or trade organizations, public relations firms, law firm, and/or other .such entities which may have designed, tested, manufactured, marketed and sold cigarettes for use in the State of New Jersey or materially participated, assisted, encouraged, and/or otherwise aided and abetted one or more of the other defendants in doing so or materially participated, conspired, assisted, encouraged and otherwise aided and abetted one or more of the defendants in doing so.

Nature of the Action

17. Through this action, the Attorney General seeks to protect the public interest, and the public health of New Jersey citizens, through his request for various forms of equitable relief including, without limitation, injunctive relief prohibiting the promotion and sale of tobacco products to minors. In addition, the Attorney General seeks restitution from the defendants for the expense and costs that the State has incurred and continues to incur, in providing health care and other related services to the citizens of the State, resulting from the wrong conduct of the defendants. Such sums were expended, and continue to be "pending," in order to pay for health care costs and other related services resulting, in whole or in part, from use by New Jersey citizens Of tobacco products. The State of New Jersey has expended, and continues to expend, such sums pursuant to various State programs. The Attorney General also seeks relief pursuant to the Consumer Fraud Act and Civil RICO, N.J-S. 2C-41-1 in order to recover monies fraudulently obtained.

Conduct Allegations

A. General

18. At all pertinent times, defendants acted individually and by and through their duty 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, defendants Tobacco Institute and Council for Tobacco Research were the agents, servants, and/or employees of defendants and acted individually and/or within the scope of said agency, servitude and/or employment. At pertinent times, defendant Hill and Knowlton was the agent, servant, and/or employee of defendants and defendants Tobacco Institute and Council for Tobacco Research and acted individually and/or within the scope of said agency, servitude and/or employment.

19. Defendants, and/or their predecessors and successors in interest, themselves and/or through their agents, servants, employees and instrumentalities, performed such acts as were intended to, and did, result in, assist and/or contribute to the design, testing, manufacture, marketing or sale of cigarettes for use in the State of New Jersey. In connection with these acts, defendants, and/or their predecessors and successors in interest, transacted business within the State of New Jersey, committed the acts complained of herein within the State of New Jersey, owned, used or possessed real estate in the State of New Jersey, contracted to insure persons, property or risk located within the State of New Jersey, entered into express or implied contracts to be performed in whole or in part in the State of New Jersey, and/or caused injury and continues to cause injury to persons or property within the State of New Jersey.

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

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

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

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

24. Cigarette-related disease has killed and continues to a untold millions of Americans. The Center for Disease Control (."CDC") has estimated that over 400,000 persons die

each year from smoking. Approximately one in five deaths is attributable to smoking. Thousands of citizens of the State of New Jersey die each year as a result of smoking cigarettes. Each day, more than 3,000 young people begin to smoke--or more than one million each year. Most of the new smokers who replace the smokers who quit or die prematurely from smoking-related disease are children or teens. About 90% of smokers born since 1935 started smoking before age twenty-one (21) and almost 50 percent started before age eighteen (18).

25. The monetary consequences of smoking cigarettes are equally as staggering. In May of 1993, the Office of Technology Assessment advised the (United States Congress that in 1990 smoking-related illnesses cost United States taxpayers a total of approximately \$68 billion, broken down as follows-. \$20.8 billion in direct costs; \$6.9 billion in indirect costs for morbidity; \$40.3 billion indirect costs for mortality.

26. The State of New Jersey spends hundreds of millions of dollars each year to provide or pay for health care and other necessary facilities and services on behalf of indigents and other eligible residents whose said health care costs are caused by tobacco-induced cardiovascular disease, lung cancer, emphysema and other respiratory diseases as well as the complications of pregnancy and childbirth, including but not limited to low-weight babies.

27. The CDC recently found that there are currently over 1.1 million adult smokers within the State, with the highest percentage falling within the 25-44 year old age group. As to the health care effects of smoking by New Jersey citizens, the study indicates that, in 1990, 12,605 deaths were related to smoking, resulting in loss of 151,773 years of potential life, and total medical costs in excess of \$1.1 billion. The actual numbers of smokers in New Jersey, and the costs in medical care resulting from smoking-related conditions, are unquestionably higher as of the current date.

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

B. The Composition of the Cigarette Industry in the United States

29. Philip Morris, RJR, Brown & Williamson, B.A.T. Industries, Lorillard, Liggett and ATC (hereafter sometimes collectively the "cigarette companies") together control virtually 100% of the cigarette market in the United States and New Jersey. Philip Morris and RJR are the largest cigarette manufacturers, with market shares in the United States of 42 percent and 30 percent, respectively. The national market shares of the other defendant tobacco companies are approximately as follows: Brown Williamson - 11 percent; Lorillard - 7 percent; ATC - 7 percent; and Liggett 2 percent.

30. The cigarette industry is one of the most profitable industries in the United States,

with profit margins estimated to be in the range of 30 percent. Industry profits are in the billions of dollars annually from domestic sales alone.

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

C. 1994 Congressional Testimony by Cigarette Manufacturers

32. The basic terms of the industry strategy of deception are intact today. For example, on April 14, 1994, seven tobacco company chief executives testified under oath before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, U.S. House of Representatives, chaired by Congressman Waxman. ("Waxman Subcommittee"). Each of these executives knowingly made material Misrepresentations and/or omissions to the Waxman Subcommittee.

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

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

Mr. Tisch: I do, sir,

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

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

Mr. Tisch: I do, sir, yes.

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

Mr. Tisch: We have looked at the data and I the data that we have been able to see has all been statistical data that has not convinced me that smoking causes death.

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

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

b. "Cigarette smoking is not addictive."

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

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

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

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

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

39. Nicotine is recorded as an addictive substance by such major medical organizations as the Office of the U.S. Surgeon General, the World Health Organization, the American Medical Association, the American Psychiatric Association, the American Psychological Association, the American Society of Addiction Medicine and the Medical Research Council in the United Kingdom. All of these organizations acknowledge tobacco Use As a form of drug dependence or addiction with severe adverse health consequences.

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

D. The 1953 "Big Scare" and the Joint Industry Response

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

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

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

44. The participants in the meeting agreed that a strong public relations response from the industry was necessary. From the beginning, the emerging research linking smoking and cancer was viewed by the defendants as a public relations problem, not a public health issue. According to the Hill & Knowlton memorandum summarizing the meeting:

a. The Chief Executive officers of all the leading companies, except Liggett, "have agreed to go along with a public relations program on the health issue." Liggett decided not to participate at this point because it "feels that the proper procedure's to ignore the whole controversy."

b. "They feel that they should sponsor a public relations campaign which is positive in nature and is entirely 'pro-cigarettes,'"

c. "They are also emphatic in saying that the entire activity is a long-term, continuing program, since they feel that the problem is one of promoting cigarettes and protecting them from these and other attacks that may be expected in the future, Each of the company presidents attending emphasized the fact that they consider the program to be a long-term one."

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

E. Creation of the Tobacco Industry Research Committee

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

The grave nature of a number of recently highly publicized research reports on the effects of cigarette smoking. . . - have confronted the industry with a serious problem of public relations.

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

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

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

F. TIRC Control

47. As had been proposed at the December 15, 1953 meeting, the cigarette companies (except Liggett), through the tobacco attorneys and Hill & Knowlton, operated and effectively controlled TIRC.

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

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

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

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

G. The Industry's Response to Smokers

51. Shortly after creating TLRC, defendants made an unambiguous pledge to the public, including the people of New Jersey. Defendants represented that, through TLRC, they

would conduct and report objective and unbiased research regarding smoking and health. When they made this representation defendants intended that the public and government regulators believe and rely upon it, and knew or should have known that New Jersey consumers would consider the representation material to their decisions to purchase and smoke cigarettes and that government regulators would consider the representation material to their decisions to regulate cigarettes. At that time, and continuing to the present, defendants knew or should have known that their failure to fulfill the duty they undertook would directly increase the health care costs to New Jersey.

52. On January 4, 1954, defendants announced the formation and purpose of TIRC with a full page newspaper advertisement entitled "A Frank Statement to Cigarette Smokers." The statement appeared in newspapers across the nation, reaching a circulation of 43,245,000 in 258 cities, The advertisement ran in daily newspapers across the country including New Jersey.

53. The "Frank Statement to Cigarette Smokers" stated in pan:

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

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

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

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

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

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

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

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

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

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

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

a. It progress has been made" "The first "big scare" continues on the wane.

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

c. "Positive stories are on the ascendancy,"

H. History of Industry Knowledge that Smoking is Harmful

55. Even before defendants represented in the Frank Statement that "(there is no proof that cigarette smoking is one of the causes of lung cancer," an -industry researcher had reported the contrary.

56. As early as 1946, Lorillard chemist H.B. Pamele, who later became Vice President of Research and a member of Lorillard's Board of Directors, wrote to his company's manufacturing committee:

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

57. After the 1954 "Frank Statement." the cigarette industry's breach of its assumed duty to report objective facts on smoking and health was virtually immediate. As evidence mounted, both through industry research and truly independent studies that cigarette smoking causes cancer and other diseases, the cigarette industry continued publicly to represent that nothing was proven against smoking. Internal documents show that the truth was very different. The cigarette companies knew and acknowledged among themselves the veracity of scientific evidence of the health hazards of smoking, and at the same time suppressed such evidence where they could, and attacked it when it did appear.

58. Internal cigarette industry documents reveal, for example:

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

b. A 1958 memorandum sent to the Vice President of Research at Philip Morris who later

became a member of its Board of Directors from a company her stated the evidence. . . is building up that heavy cigarette smoking contributes to lung cancer either alone or in association with physical and physiological factors

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

"To achieve this objective will require a major research effort, because Carcinogens are found in practically every class of compounds in smoke.

This fact prohibits complete solution of the problem by eliminating one or two classes of compounds.

The best we can hope for is to reduce a particularly bad class, L.C., the polynuclear hydrocarbons, or phenols....

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

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

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

"There are biologically active materials present in cigarette tobacco, These are:

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

F. A 1963 memorandum from the Liggett consulting research firm states: "Basically, we accept the inference of a causal relationship between the chemical properties of ingested tobacco smoke and the development of carcinoma, which is suggested by the statistical association shown in the studies of Doll and Hill, Hom, and Dom with some reservations and qualifications and even estimate by how much the incidence of cancer may possibly be reduced if the carcinogenic matter can be diminished, by an appropriate filter, by a

given percentage."

59. These internal Liggett documents sharply contrast with the information Liggett provided to the Surgeon General in 1963. Liggett withheld from the Surgeon General the views of its researchers and consultants that the evidence shows cigarette smoking causes human disease. A "Draft of an Outline for a Background Paper on the Smoking Problem to be Used in Connection with a Presentation of Arguments Before the Surgeon General's Committee" states:

a. "All types of Smoking are associated with Increased Morality from all causes combined. . .

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

c. "Lung cancer extremely safe among non-smokers . . .

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

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

60. The report Liggett presented to the Surgeon General did not contain any of these conclusions, and instead, focused on alternative causes of disease, such as air pollution, coffee and alcohol consumption, diet, lack of exercise, and genetics, Liggett criticized the known statistical association between smoking and mortality and various diseases as "unreliably conducted" and "inadequately analyzed." The Liggett report concluded that the association between smoking and disease was inconclusive, and was in fact due to other factors coincidentally associated with smoking.

61. Philip Morris also concealed from the public its actual views of the research conducted outside the effluence of the industry. A 1971 memorandum written by Dr. H. Wakeham, then Vice President of Research and Development, discussed a recent study which found cigarette smoke inhalation caused lung cancer in beagles:

1970 might very properly be called the year of the beagle. Early in the year, the American Cancer Society announced that they had finally demonstrated the formation of lung cancer in beagles by smoke inhalation in the now infamous Auerbach and Hammond

study. I am sure all of you have read extensively about this in the newspapers, how the industry asked to have independent panel of pathologists review the histological sections showing cancer, how the Society refused, how generally the ACS was put on the defensive, how publication was refused by two medical journals and how the story was changed somewhat by the time it was published

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

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

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

The strong opposition in the industry to the beagle test is indicative of a new more aggressive stance on the part of the industry in the smoking and health controversy. We have gone over from what I have called the "Vigorous denial" approach, the take it in the chin and keep quiet attitude, to the strongly voiced opposition and criticism. I personally think this counter propaganda is a better stance than the former one.

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

I. Health Risks of Nicotine

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

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

67. Brown & Williamson and its British parent(s) researched the health effects of nicotine

and were aware early on, as reported at a B.A.T. Group Research Conference in November 1970, that "nicotine may be implicated in the etiology of cardiovascular disease."

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

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

70. At a 1994 research conference held in the United Kingdom, Brown & Williamson and BATCO were informed of the harmful effects of nicotine. As a report from that conference stated:

"The role of nicotine and cardiovascular disease was outlined, in particular the role of smoke in decreasing prostacyclin and increasing thromboxane levels." Researchers at the conference also recommended that the company perform additional studies on the role of nicotine in heart disease, and its effect on developing fetuses.

J. Repeated False Promises to the Public

71. Despite increasing internal knowledge of the dangers of cigarette smoking which they did not disclose, the defendants continued, renewed and repeated the representations and undertakings of the 1954 "Frank Statement to Cigarette Smokers." The cigarette industry continued to pursue its two-pronged strategy of falsely representing the objectivity of industry research to the public in order to gain credence, and then misrepresenting, distorting, and suppressing information in order to support its pro-cigarette position.

72. For example, RJR chairman Bowman Gray told Congress in 1964: "If it is proven that cigarettes are harmful, we want to do something about it regardless of what somebody else tells us to do. And we would do our level best, It's only human."

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

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

b. "[N]o particular ingredient, as it occurs in cigarette smoke, has been demonstrated as the cause of any particular disease."

c. "[A] major portion of this scientific inquiry has been financed by the people who know

the most about cigarettes and have a great desire to learn the truth . .the tobacco industry. And the industry has committed itself to this task in the most objective and scientific way possible."

d. "A \$35,000,000 program"

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

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

g. "The findings are not secret."

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

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

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

75. Yet another advertisement co-sponsored by TIRC and the TI called "A Statement about Tobacco and Health," stated:

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

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

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

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

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

That is why the entire tobacco industry. . . since 1954 has committed a total of \$40 million for smoking and health research through grants to independent scientists and institutions.

77. In 1984, RJR placed an editorial style advertisement in the "New York Times" stating:

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

78. Each of the representations to the public that defendant tobacco companies were sponsoring independent objective research, that, they were endeavoring to bring the truth to light, and that the public could therefore rely upon, the statements made, were false and deceptive. These misrepresentations were designed to gain the trust of the public in order to better distort and suppress substantive information about smoking and health.

K. The Gentlemen's Agreement

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

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

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

81. Also in 1968, a memo addressed to the CEO of Liggett regarding a meeting of the research directors of the six cigarette companies stated on the topic of smoking and health "a general Feeling that an industry approach as opposed to an individual company

approach was highly desirable,"

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

L. Role of CTR as a "Front"

83. Internal documents demonstrate that the joint industry research efforts undertaken through TIRC, and later through CTP, were not disinterested or objective. Rather, they were designed and used to promote favorable research, to suppress negative research where possible, and to attack research where it could not be suppressed, all in order to convince the public that the "case against smoking is not closed."

84. 1974 report to the CEO of Lorillard provides a retrospective look at some of the true purposes of the joint industry research effort. Contrary to the public representations of joint industry research as designed to examine and resolve smoking and health questions, the author, a Lorillard research executive, described the actual criteria for CTR's selection of scientific projects:

Historically the joint industry funded smoking and health research programs have not been selected against specific scientific goals, but rather for various purposes such as public relations, political relations, position for litigation, etc. Thus, it seems obvious that reviews of such programs for scientific relevance and merit in the smoking and health field are not likely to produce high ratings. In general, these programs have provided some buffer to public and political attack of the industry, as well as background for litigious strategy. .

85. Another internal document from a Tobacco Institute official to the group's president described the importance of using joint industry research to maintain public doubt about evidence of smoking and disease:

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

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

--creating doubt about the health charge without actually denying it

--advocating the public's right to smoke, without actually urging them to take up the practice

--encouraging objective scientific research as the only way to resolve the question of the health hazard

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

In the cigarette controversy, the public

--especially those who are present and potential supporters (e.g, tobacco state congressmen and heavy smokers)

--must perceive, understand, and believe in evidence to sustain their opinions that smoking may not be the causal factor,

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

86. A 1979 memo addressed to the CTR file from a Philip Morris official provides another description of the history and role of the joint industry research effort, a role very different from that represented to the public.

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

[T]he "public relations" value of CTP, must be considered and continued. It is emremely important that the industry continue to spend their dollars on research to show. that we don't agree that the cast against smoking is closed. There is "CTR basket" which must be maintained for "PR purposes....,

97. A former 24-year employee of CTR confirmed in public statements that the joint industry research efforts were never objective. A woman who wrote summaries of grantee research for CTR until 1989 stated: "When CTR researchers found out that cigarettes were bad and it was better not to smoke, we didn't publicize that. "The CTR is just a lobbying thing. We were lobbying for cigarettes." She continued "In the '60s, there was so much bad news about smoking that there really wasn't much the CTR could put out but anything they could find they would use."

88. This evidence demonstrates that the role and purpose of TIRC and CTR in the cigarette company's strategy was to gain the public's trust, and then to use that trust to propagate pro-cigarette propaganda. A cigarette industry official wrote in his personal

notes-describing a meeting which included high level officials from the various cigarette Companies that:

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

M. The Example of Dr. Freddy Romburger

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

90. The Scientific Director of CTR and a CTR lawyer, Edwin Jacob of Jacob, Medinger & Finnegan then visited Dr. Homburger. Dr. Homburger has testified that "[t]hey didn't want us to call anything cancer." "They wanted it to be pseudo-epitheliomatous hyperplasia, and that is a euphemism for lesions preceding cancer. And we said no, this isn't right. It is a cancer." Dr. Homburger also stated that the lawyer told him that he would "never get a penny more" if the paper was published without making the demanded changes. Dr. Homburger 'compromised' and changed the paper to read "microinvasive" cancer.

91. Dr. Homburger apparently then considered making public the events leading to the change in his paper, Internal CTP, documents describe how Dr. Homburger attempted to call a press conference, and how CTR stopped it. He was to tell the press that the tobacco industry was attempting to suppress important scientific information about the harmful effects of smoking. He was going to point specifically at CTR." "I arranged later that evening for it to be cancelled." "Homburger was given a cordial welcome and nicely hastened out the door." "P. S. I doubt if you or Tom will want to retain this note."

N. Special Projects

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

93. Notes prepared at a 1981 meeting of the cigarette industry's Committee of General

Counsel state:

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

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

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

94. The memorandum addressed to CTR from a Philip Morris official characterizes CTP, as a "front" for performing "special projects." "[S]pecial projects" are the best way that monies are spent. On these projects, CTR has acted as a "front" --however, there are times when CTR has been reluctant to serve in that capacity....

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

O. Clearing the "Deadwood"

96. Brown & Williamson went to even greater lengths to suppress and avoid disclosure of its internal research on smoking and disease. A memorandum from Brown & Williamson's general counsel, J. Kendrick Williamson's, recommended that much of the 'company's biological research be declared "deadwood" and shipped to England. He recommended that no notes, memos or lists be made about them. Wells stated "I have marked with an X documents which I suggested were deadwood in the behavioral and biological studies area. I said that the B series are Janus series studies and should also be considered deadwood," Janus" was a name of a project which attempted to isolate and remove the harmful elements of tobacco.) Wills further recommended that the research, development and engineering department also "should undertake to remove the deadwood from its files."

P. "Mouse House" Massacre

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

represented, the cigarette companies suppressed it.

98. One example of this practice occurred at RJR. In the 1960s, RJR established a facility in Winston-Salem North Carolina, to perform research on the health effects of smoking using mice. Nicknamed the "Mouse House," RJR scientists conducted research in a number of specific areas, including studies of the actual mechanism whereby smoking causes emphysema in the lungs.

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

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

101. One of the r hen later stated about RJR's executives and lawyers, "They like to take the position that you can't prove harm because you don't know mechanism. And sitting right under their noses is evidence of mechanism. What are they going to do with this stuff. They decided to kill it."

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

O. "Safer' Cigarettes

103. One of the reasons RJR and other cigarette companies began to do internal biological research appears to have been to attempt to develop a cigarette with reduced health risks. in order to reduce the health risk, studies were needed to discover how cigarette smoking causes disease. Once this was known, attempts could be made to remove or modify the harmful agents. Several companies performed research of this kind by dividing cigarette smoke into its different chemical constituents, or "Fractions," to discover which part of the cigarette smoke caused disease. Several companies were successful in discovering which specific constituents in tobacco smoke were carcinogens, or were linked to other diseases. This research was kept secret and never reported to the public.

104. Even more shocking, industry documents reveal that a number of companies successfully removed certain harmful constituents from cigarette smoke, and developed

prototype cigarettes with reduced health effects, but flat these products were never marketed. The reason was the industry conspiracy not to reveal I research results that would undermine the unified position that 'there is no proof that smoking causes disease.

105. A memorandum written by an attorney at the firm of Shook, Hardy & Bacon, longtime lawyers for the cigarette industry, confirmed that there was an industry-wide position regarding the issue of a safer cigarette. The 1987 memorandum referred to the marketing by R.J. Reynolds of a smokeless cigarette, Premier, which heated rather than burned tobacco. The Shook, Hardy attorney wrote that the smokeless cigarette could "have significant effects on the tobacco industry's joint defense efforts" and that "[t]he industry position has always been that there is no alternatives 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."

106. As early as 1959, a memorandum from a Philip Morris researcher to the company's Vice President of Research and Development proposed that the company attempt to make a safer cigarette that could enable it to "jump on the other side of the fence ... on the issue of tobacco smoking and health. .

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

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

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

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

In England a research laboratory sponsored by the industry has been established at Harrogate to do biomechanical research. On the Continent individual companies and monopolies have agreed to pool research on the health question, thereby reducing it as a basis for competition. Technical researchers meet to share information and to plan future

work. All these efforts underscore the broad and serious attempts to eliminate what are generally believed to be harmful aspects of cigarette smoke,

In short, the Research and Development Department is working to establish a strong technological base with both defensive and offensive capabilities in the smoking and health situation. Our philosophy is not to start a war, but if a war comes, we aim to fight well and to win.

R. Liggett Safer Cigarette: XA

109. Liggett also developed a safer cigarette. Company researchers believed that they had discovered which cigarette's smoke constituents were carcinogens, and found a way to remove them. And unlike the Philip Morris product, Liggett officials believed the Liggett product was commercially marketable. Nonetheless, in violation of the company's representations and duty to the public, Liggett never marketed the cigarette, and suppressed the research that led to its development.

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

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

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

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

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

a. Briefly, as a result of 20 years effort in cooperation with Arthur D. Little, we have developed a cigarette system which produces smoke of reduced biological activity.. tumorigenicity of smoke on the skin of the mouse.

b. cigarette smoke contains a number of promoters which act in concert with other true

carcinogens to enhance the production of mouse skin tumors.... [T]here can be no argument that the use of the additives has resulted in a product with lower carcinogenic effects....

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

115. Liggett decided not to market the new product, and decided instead to abandon the XA project. On information and belief, Liggett did so for two reasons. One was the danger that disclosure that a safer cigarette was possible would also require the admission that all existing cigarettes were not gas:. One Liggett executive wrote that "[a]ny domestic activity will increase the risk of cancer litigation on existing products. U.S. manufacture for export will be less risky .

116. The other reason was the apparent threat of retaliation by the largest cigarette company, Philip Morris, if Liggett violated the industry agreement not to disclose negative information on smoking and health. Dr. James Mold, the Assistant Research Director at Liggett during the development of the XA safer cigarette, has testified that: "Mr. Dey who was the . who at that time, and I guess still is the president of Liggett Tobacco, made the statement that he was told by someone in the Philip Morris Company that if we tried to market such a product that the, would clobber us,"

S. Liggett, James Mold and the XA Research

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

Dr. Mold stated:

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

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

118. During the XA project, Liggett attempted to insulate the research from disclosure by use of company lawyers, Dr. Mold stated that, after 1975, all meetings that we had regarding the project were to be attended by a lawyer All paper that was generated, reports, research progress reports, memoranda, were to be directed to the Law

Department, someone in the Law Department.

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

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

119. Dr. Mold stated that the company lawyers not only ultimately succeeded in stopping the project, but ordered him not to publish the results of the research that led to the safer cigarette, Dr. Mold stated:

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

120. Thus, despite the significance of the research, and Dr. Mold's requests to publish a scientific paper on the results, Liggett suppressed the work, and ordered Dr. Mold not to publish and not to present the findings to a scientific forum., Dr. Mold got as far as preparing a paper for publication and presentation. Dr. Mold explained that: Before the paper was presented, I got a frantic call from Mr. Greer, our ... at that time, the legal counsel of Liggett, not ... to not distribute the press release and not hold a press conference that they had changed their mind.

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

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

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

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

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

Well, my feeling was that they, as was stated in terms of our appearing on publications and our presenting the information to the Cold Springs Harbor symposium and other public pronouncements, that they felt that such a cigarette if put on the market would seriously indict them for having sold other types, of cigarettes that didn't contain this. for

example., Or that they were carrying on this biological research at the same time saying it meant nothing.

T. Liggett Safer Cigarette Patent

124. Before deciding not to market the XA cigarette, Liggett obtained a patent for the process it had discovered to produce the safer cigarette. The patent application describes the reduction in cancer in mouse studies, Stories in @ media then appeared stating that Liggett was the first cigarette company to admit that smoking caused cancer. In 1978 Liggett reacted by placing a advertisement it called a 'Liggettgram' which stated; Liggett and the cigarette industry continue to deny, as they have consistently, that any conclusions can be drawn relating to such test results on mice in laboratories to cancer in human beings. It has never been established that smoking is a cause of human cancer.

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

125. At the time Liggett made these statements, including the statement that no conclusions regarding human cancer can be drawn from mouse studies, Dr. Mold estimates that Liggett, directly and through its consultant Arthur D. Little, had spent a total of \$10 million on smoking and health research involving mice, in part to develop the safer XA cigarette. Liggett's internal reports on the benefit of the XA, and the absence of increased risk of harm from the additives used, specifically used animal studies as reliable indicators of the health effect of the product on humans.

126. Despite overwhelming scientific, evidence, and the confirmation of this evidence by their own the cigarette manufacturers and their trade associations continue to this day to repeat again and again, in a unified stance, that there is no causal connection between cigarette smoking and adverse health effects. These representations are fraudulent, misleading, deceptive and untrue, They rest at the heart of the industry's ongoing conspiracy to market and profit from a product it knows is deadly.

U. The Role of Nicotine in Smoking

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

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

grapple with an addiction.

V. Industry Knowledge of the Addictiveness of Nicotine

129. The cigarette companies have long known of the addictive properties of the 'nicotine contained in the cigarettes they manufacture and sell. The following illustrates such knowledge:

a. In 1962, Brown & Williamson's parent company, British American Tobacco Company("BATCO"), held a meeting of its worldwide subsidiaries in Southampton, England. During the course of that meeting, Brown & Williamson and. BATCO executives were told by Sir Charles Ellis, scientific advisor to the board of directors of BATCO, that smoking is a habit of addiction' and that nicotine is not only a very fine drug, but the technique of administration by smoking has considerable psychological advantages." Sir Charles Ellis declared again in 1967 in a document from Brown & Williamson that the company "is in the nicotine rather than the tobacco industry."

b. A research report dated May 30, 1963, prepared under contract by researchers in Switzerland for BATCO and Brown & Williamson and deliberately withheld by Brown & Williamson from the- U.S. Surgeon General, explained the physiological basis of nicotine addiction. The Brown & Williamson-comissioned report shows that tobacco industry research on the addictive properties of nicotine.(, was years ahead of the research

on the subject conducted outside of the industry Brown Williamson and other tobacco companies have never disclosed any information from such research. C.A 1972 "confidential" company memo written by William L. Dunn, Jr. or the Philip Morris Research Center, concludes:

"Without nicotine, the argument goes, there would be no smoking, Some strong evidence can be marshalled to support this argument.... No one has ever become a cigarette smoker by smoking cigarettes without nicotine,"

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

"The cigarette should be conceived not as a product but as a package. The product is nicotine. Think of the cigarette pack as a storage container for a day's supply of nicotine.... Think of the cigarette as a dispenser for a dose unit of nicotine."

e. Philip Morris scientists Confirmed their early research findings with direct anecdotal evidence. In 1971, they interviewed people from the town of Greenfield, Iowa eight months after they had quit smoking "cold turkey." A report of the interviews, called "Bird-I. A Study of the Quit-Smoking Campaign in Greenfield, Iowa in Conjunction with

the Movie Cold Turkey," and distributed to top Philip Morris executives concluded:

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

f. ATC also conducted its own research on nicotine. From 1940 to 1970, ATC funded over 100 studies on the pharmacological and other effects of nicotine on the body. Of the 111 biologic studies funded by ATC over this period, over 80 percent were related to the effects of nicotine, ATC even test marketed a nicotine-enriched cigarette in Seattle, Washington in 1969.

W. Suppression and Concealment of Research on Nicotine Addiction

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

131. Philip Morris' professed interest in- discovering and disclosing, the truth to was proven to be a lie early on, Philip Morris hired Victor DeNoble in 1980 to study effects on the behavior of rats and to research and test potential nicotine analogues. DeNoble, recruited Paul C. Metz, a behavioral pharmacologist. DeNoble and Metz discovered nicotine met two of the hallmarks of potential addiction - self-administration (rats would press to inject themselves with a nicotine solution) and tolerance (a given dose of nicotine over time a reduced effect).

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

133. DeNoble was later told by lawyers for the company that the data he and Metz generating could be dangerous. Philip Morris executives began talking about killing the company by moving it outside of the company so Philip Morris would have more freedom to disavow. DeNoble recalled that Philip Morris discussed several possible scenarios, including having he and Metz leaving the company payroll and continuing as contractors, and shifting their in Switzerland.

134. In August 1983, Philip Morris ordered DeNoble to withdraw from research paper on nicotine that had already been accepted for publication after full peer review in journal *Psychopharmacology*. According to DeNoble, the company changed its mind not want its own research showing nicotine was addictive or harmful to compromise defense in litigation recently filed against it, DeNoble subsequently told Jack Henigfield, of the Clinical Pharmacology branch of the National Institute on Drug Abuse Addiction 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.

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

140. Brown & Williamson rejected Yeaman's advice to make full disclosure to the Surgeon General. A series of six letters and telexes exchanged by Yeaman and senior BATCO official A.D. McCormick between June 28 and August 8, 1963, document the company's decision not to disclose to the Surgeon General the company's research findings on the addictive and other harmful effects of nicotine and the disease-causing properties of cigarettes.

X. The Industry's Interest in Nicotine

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

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

143. In a 1968 internal report, BATCO noted that "[I]n view of its pre-eminent importance, the pharmacology of nicotine should continue to be kept under review.

144. Again, in 1972 a BATCO report noted:

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

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

146. The cigarette industry's intense interest in the, pharmacology of nicotine to industry efforts to find an artificial nicotine that would have the addictive and psychopharmacological properties of nicotine without nicotine's dangerous effects on the

heart,

147. For example, one of Dr. DeNoble's primary functions at Philip Morris was to research and develop a nicotine analogue. DeNoble testified before the Waxman Subcommittee that he did, in fact, discover a nicotine analogue that caused animals to behave as if they were getting a nicotine high but without signs of the heart distress that comes with nicotine.

148. Philip Morris, however, chose to halt its effort to determine whether the nicotine analogue could be used to make a safer cigarette. On information and belief, Philip Morris decided not to pursue nicotine analogues in order to avoid the risk of adverse publicity and of compromising the industry's consistent position that there was no alternative design for cigarettes.

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

150. RJR's efforts to develop a safer cigarette also focused on delivering nicotine to the consumer without the harmful constituents of tobacco smoke. In the late 1980's, RJR developed and test marketed Premier, a smokeless and virtually tobacco-free cigarette which was, in essence, a nicotine delivery system. RJR conducted human studies to determine whether the nicotine from Premier was absorbed, metabolized and excreted from blood at the same rate as a standard cigarette.

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

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

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

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

155. In fact, the cigarette industry has concentrated on developing technologies to mask the flavor of increased levels of nicotine, in cigarettes. According to the Merck Index an internationally recognized listing of drugs, nicotine has "an acrid burning taste." U.S.

Patent, 4,620,554 describes the taste of nicotine as hazardous," The role, of nicotine in the tobacco industry's business is pure and simple - to hook smokers on their deadly products and keep them hooked in the face of mounting evidence that smoking causes human disease. The cigarette industry has focus tremendous energy and resources on developing the technology to ensure that smokers become and remain addicted to the industry's cigarettes.

Y. Light Cigarettes: a Marketing Hoax

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

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

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

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

159. On information and belief, a restricted report on Project Wheat by Group Research & Development Centre, a subsidiary of BATCO, shows that the cigarette industry's promotion and marketing of low-tar cigarettes was a deliberate attempt to deceive health-conscious smokers with high nicotine needs into believing that "light" cigarettes were less addictive:

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

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

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

162. First, the industry has consistently told the public and the FDA that -- in the words of Dr. Alexander Spews Vice Chairman of Lorillard, in his 1994 testimony before the Waxman Subcommittee - "[nicotine [level] follows the tar level," and that the correlation between the two "is essentially perfect."

a. Another defendant, ATC, has recently testified similarly, For example told the Waxman Subcommittee in an October 14, 1994 letter that nicotine follows 'tar' delivery i.e. high 'tar'-- high nicotine, low 'tar' --low nicotine. .

Nicotine is neither adjusted nor altered to compensate for losses inherent in the manufacturing process."

b. Internal company documents reviewed by the Waxman Subcommittee, however, show that ATC's " experimentation with adding nicotine to its tobacco was extensive - extensive enough for ATC executive John T. Ashworth to instruct employees in a confidential memorandum: "In the future, our use of nicotine should be referred to as 'Compound W' in our experimental work, reports, and memorandums, either for distribution within the Department or for outside distribution,"

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

163. Second, the nicotine deliveries, as measured by the Federal Trade Commission ("FTC" method, published by the cigarette industry, seriously mislead consumers. The cigarette manufacturers know that the significant changes they have made in cigarette design make the FTC method of measuring nicotine and tar highly inaccurate. Cigarette manufacturers know that the machine-measured deliveries understate the amounts of nicotine and tar actually ingested by human smokers. As Philip Morris senior scientist William L. Dunn, Jr.7 noted in a 1972 internal report:

The smoker has a wide latitude in further calibration: puff volume, puff interval, depth

and duration of inhalation. We have recorded wide variability in intake among smokers. Among a group of pack-a-day smokers, some will take in less than the average half-pack smoker, some will take in more than the average two-pack-a-day smoker.

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

165. Fourth, on information and beliefs the cigarette industry also misleads consumers by fortifying the tobacco used for its "lighter brands with additional nicotine in order to ensure' that the nicotine content of the low-tar cigarettes remains at addictive levels. The cigarette industry thereby maintains a continuing market for what consumers are misled to believe is a lower tar, lower nicotine and thus less addictive product. For example, a 1991 study by "essentially perfect correlation" author, Dr. Spears states explicitly that low-tar cigarettes use special blends of tobacco to keep the level of nicotine up while tar is reduced: "The lowest tar segment [product categories) is composed, of cigarettes utilizing a tobacco blend which is significantly higher in nicotine."

166. In March 1994, Dr. David Kessler summarized for the Waxman Subcommittee the Federal Trade Commission data on nicotine levels. He testified that the nicotine/tar ratio was higher in the ultralow tar group of cigarettes, even, though low tar has usually been associated with low nicotine. Dr. Kessler posed to Congress the obvious question - it has often been said that tar and nicotine travel together in the cigarette smoke. The disparities in the nicotine/tar ratios among these varieties, raise the question as to how this can occur.

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

Z. Industry Control and Manipulation of Nicotine

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

169. The cigarette companies have developed and, use highly sophisticated technologies designed to deliver nicotine in precisely calculated quantities quantities that are more than sufficient' to create and sustain addiction in the vast majority of individuals who smoke regularly.

AA. "Y-1"

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

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

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

& Williamson was involved in breeding tobacco for specific nicotine levels. Only after the FDA had learned of the development of Y-1 in its investigation and confronted company officials with the evidence did the company admit that it was growing and using the high-nicotine plant,

173. 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 for use in five Brown & Williamson cigarette brands sold in New Jersey, including three labeled "light." When the company's deception was uncovered, company officials admitted that close to four million pounds of Y-1 were stored in company warehouses in the United States.

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

BB. Other Methods of Nicotine Manipulation

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

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

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

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

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

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

178. Other revealing evidence of the cigarette companies' manipulation and control of nicotine, levels includes: the emergence of companies that specialize in manipulating nicotine and that are now doing business with tobacco manufacturers. On information and brief, Philip Morris uses or has previously used a process called tobacco' reconstitution for controlling nicotine levels. The process was patented and marketed by the Kimberly-Clark Corporation subsidiary, LTP, Industries.

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

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

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

182. The Kimberly-Clark tobacco reconstitution process is believed to be used throughout the tobacco industry in a number of countries. A Kimberly-Clark advertisement published in tobacco industry trade publications states, Nicotine levels are becoming a growing concern to the designers of modern cigarettes, particularly those with lower "tar" deliveries. The Kimberly-Clark tobacco reconstitution process used by LTR Industries permits adjustments of nicotine to your exact requirements. These adjustments will not affect the other important properties of customized reconstituted tobacco produced -at LTR Industries, low tar delivery, high filling power, high yield and the flexibility to convey organoleptic modifications. We can help you control your tobacco.

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

184. Another enterprise which does business under the name "The Tobacco Companies of the Conraf Group' quite explicitly specializes in the manipulation of nicotine and its use as an additive. An advertisement run by the Conraf Group in the international trade press states: "Don't Do Everything Yourself! Let us do it More Efficiently!". Calling itself "The Niche Market Specialists," Conraf lists among its areas of specialization "Pure Nicotine and other special additives."

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

186. Against this mounting body of evidence of the cigarette industry's manipulation and control of nicotine levels in cigarettes, the cigarette manufacturers continue to deny to the public, and recently denied to Congress under oath, that they manipulate and control nicotine levels:

a. William I. Campbell, President and CEO of Philip Morris, told Congress on April 14, 1994 that "Philip Morris does not manipulate nor independently control the levels of nicotine in our products.... Cigarettes contain nicotine because it occurs naturally in tobacco."

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

C. Andrew J. Schindler, President and Chief Operating Officer U.S.A., R.J. Reynolds Tobacco Company, told Congress that "We do not restore any nicotine anywhere in our process. . . We lose nicotine, for example, in the reconstituted sheet process. (nowhere in that process is any nicotine being incrementally added into the process." Contradicting

Johnston's and Schindler's statements, Dr. Robert Suber, a toxicologist with RM admitted, however, that PJEL controls the nicotine in its products. He told CNN that: "[I]n order to deliver to the consumer a product that he wants, a consistent level of nicotine, we have to blend the tobaccos accordingly. So we do control it."

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

e. Edward A. Horrigan, Jr., Chairman and CEO of Liggett Group, Inc., told Congress: "In all my years in this business worldwide, I have never known of a product-designed objective or goal that included even the notion of spiking, the amount of nicotine in it cigarette to achieve a level that would hook or addict, smokers," Horrigan, however, former Chairman and CEO of RJR through the late 1990s, participated in the development and marketing of Premier and other RJR cigarette brands whose manufacturing process included the manipulate a of nicotine content and delivery.

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

g. T.F. Riehl, Vice President for Research and Development at Brown & Williamson, denying that the company mixed the tobacco for the Barclay cigarette to have a higher concentration of nicotine, told Congress- "No, sir. We blend for taste, not nicotine." However, internal documents from Brown & Williamson indicate that Riehl himself has conducted research focusing on the adjustment of nicotine and tar levels without regard taste. In fact, Riehl gave a presentation on Project Aries, Brown & Williamson's safer cigarette project, at the 1984 Smoking Behavior-Marketing Conference, which emphasized tar reduction and nicotine enrichment in later puffs, but never addressed the issue of taste.

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

188. The newly discovered evidence of nicotine manipulation by the cigarette industry and the recent disclosures about nicotine addiction and manipulation made before Congress have not deterred the industry from its campaign of concealment and disinformation. As recently as April 1994, the cigarette industry placed advertisements across the country denying the it "spikes" cigarettes with nicotine, denying that it believes cigarette smoking is addictive, and misleading the public about whether the cigarette

companies deliberately control nicotine levels in their products.

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

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

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

CC. Targeting of Minors

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

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

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

194. Cigarette company products and advertising are used to create a mental image associating smoking with good health, glamorous and athletic lifestyles, success and sexual attractiveness. A R.J. Reynolds' memo describes in detail "what qualities and image a new brand aimed at the youth market should have.

195. This type of product and advertising increases demand for cigarettes among young people., Within a short period of time, the young smoker becomes physiologically and emotionally dependent, i.e. addicted to tobacco. Later, as the maturing smoker begins to

wish he or she could quit, advertising reinforces the practice and seeks to minimize health concerns and creates doubt, confusion and mistake which are used by smokers as excuses to avoid the pain and discomfort of attempting to break their addiction to nicotine. This is the vicious cycle of fraudulent tobacco industry advertising of their products,

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

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

198. For instance, Philip Morris repositioned Marlboro from a red-tipped cigarette for women to the cigarette for the macho cowboy. By changing advertising imagery, Philip Morris was able to tap into a wholly new and different market. The wild spirit of the Marlboro man captured the adolescent imagination.

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

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

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

202. Both the themes and the location of cigarette advertising betray the real target. During the decade of the 1980s, there was a steady migration of cigarette advertising into youth-oriented publications. Magazines with sexually-oriented themes and those

concerning entertainment and sporting activities had the highest concentration of cigarette

ads. For many of these magazines, teenagers comprise a quarter or more of the total readership. Cigarette ads in these youth-oriented magazines were frequently multi-page, pop-up ads which are significantly more costly but also more attention grabbing than conventional ads. News magazines, like Time and Newsweek, which have older audiences, had few cigarette ads, and those tended to emphasize implicit health promises concerning tar and nicotine rather than glamorous images.

The cigarette companies sell more than one billion packs of cigarettes per year to minors under the age of 18.

In 1988, these sales accounted for about \$1.25 billion in sales. Approximately 3 percent of the total tobacco industry profits (\$221 million in 1988) are derived directly from the sale of cigarettes to children under the age of 18, an activity that is illegal in 43 states.

204. In tests all across the country, it has been demonstrated that children as young as 12 years old can buy cigarettes in three out of four retail outlets. A study by the Inspector General's Office of the Department of Health and Human Services concluded that, while there are laws prohibiting the sale of tobacco to minors in 43 states (47 as of mid- 1991)) these are almost uniformly unenforced. The risk of a merchant being punished for selling cigarettes to minors is about one in 33 million. Cigarettes are available in unlimited quantities to children through vending machines as well.

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

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

The tobacco industry is also concerned about the charges being made that smoking is responsible for so many serious diseases. Long before the present criticism began, the tobacco industry, in a sincere attempt to determine what harmful effects, if any, smoking might have on human health., established the Council for Tobacco Research³/₄USA. The industry by the American Medical Association. Over the years the tobacco industry has given in excess of \$162 million to independent research on the controversies surrounding smoking - more than all the voluntary health associations combined.

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

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

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

DD. Use of Tobacco Attorneys

208. CTR holds itself out, and has been held out by the tobacco-companies and the tobacco attorneys, as a research body sponsoring independent research. However, the TIRC, predecessor to the CTR, was set. up as an industry "shield," and the CTR has acted as a "front' for the tobacco companies' litigation and public relations goals.

209. The tobacco attorneys became deeply involved in the screening, selection, funding supervision and ultimate disposition of research projects, channeling sensitive research projects and "special accounts."

210. Research which was progressing "satisfactorily" that is turning up no negative results was given additional funding. Research which was troubling, either in its direction or in its results, was redirected by the tobacco attorneys or terminated.

211. The use 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 written by a tobacco attorney:

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 had 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!¼ We nay want to discuss research in a larger context, i.e. what are the industry's present needs? This, of course, invloves consideration of the role of institutional type projects (tobacco, e.g., Harvard,. and non-tobacco, e.g., Washington University), the role of CTR; and the need for specific areas of research with due regard for the politics of science the importance of developing witnesses and the need for a responsive mechanism to meet unfounded claims made about tobacco.

212. 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 or counsel and the CTR Ad Hoc Committee.

213. In addition, the tobacco attorneys used the attorney client privilege and work product protections in order to shield special projects and special accounts documents from the public and government regulators.

Causes of Action

Count 1: Unjust Enrichment Restitution

214. The State of New Jersey repeats and realleges every allegation set forth in paragraphs I through 213 of this Complaint.

215. The use of defendants' tobacco products as intended causes disease.

216. Many of the State of New Jersey's citizens who are or have been Afflicted with: tobacco, related diseases are or were poor and unable to provide for their own medical care. These citizens rely upon the State of New Jersey to provide their medical care, facilities and services reliance results in an extreme burden on the taxpayers and the financial resources of this State. Taxpayers of the State of New Jersey have thus unofficially 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 defendants' cigarettes.

217. The State of New Jersey is also responsible for the costs of medical assistance for Medicaid recipients pursuant to the State, Medicaid Plan and NJSA. 30:4D et seq.

218. While the State of New Jersey and its various agencies and institutions are struggling to pay for the health care costs of tobacco, defendants continue to reap billions of dollars in profits from the sale of their cigarettes.

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

220. In direct contradiction to and in spite of the State of New Jersey's specific statutory prohibition, N.-I S.A. 2A; 170-5 1, defendants have spent billions of dollars on targeted marketing programs designed to encourage minors to purchase and use cigarettes. Many

of these minors rely, or later rely, on the State of New Jersey to provide their medical care.

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

222. There is no adequate remedy at law which will protect the State of New Jersey from continued irreparable injury or fully compensate the State for the damage caused to the State by the defendants' conduct.

Count 2: Indemnity

223. The State of New Jersey repeats and realleges each and every allegation as set forth in paragraph 1 through 222 of this Complaint.

224. As a direct and proximate result of the breaches of duty and omissions of the defendants as alleged above, the State of New Jersey was obligated to pay and has paid hundreds of millions of dollars in the past for the provision of necessary medical care, facilities and services for certain of those aforementioned citizens of the State of New Jersey injured by defendants' cigarettes.

225. The State of New Jersey 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.

226. Defendants have been unjustly enriched as a result.

227. In all fairness and justice and to prevent unjust enrichment, defendants should indemnify the State of New Jersey for the provision of necessary medical care, facilities and services, for those aforementioned citizens injured by defendants' cigarettes.

Count 3: Consumer Protection

228. The State of New Jersey repeats and realleges every allegation as set forth in paragraph 1 through 227 of this Complaint.

229. N.J.S.A. 17:27 provides:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or

advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any Person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice.

230. Defendants, by engaging in the conduct described above, violated and continue to violate N.J.S.A. 56:8-2. Defendants' wrongful conduct includes, by way of example:

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

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

c. Defendants' fraudulent concealment of information relating to the issue of smoking and health and failure to disclose material facts, including intentional concealment and failure to disclose.

231. As a direct and proximate result of defendants' wrongful activity, the State of New Jersey and its citizens have suffered and shall continue to suffer substantial injuries and damages.

Count 4: Civil RICO

232. The State of New Jersey repeats and realleges every allegation as set forth in paragraphs I through 231 of this Complaint

233. The defendants are persons within the meaning of N.J.S.A. 2C:4-1-1.

234. At all relevant times the defendants and their co-conspirators have participated in and/or constituted an "enterprise" within the meaning of N.J.S.A. 2C:4-1c. The enterprise is an ongoing organization whose constituent elements function as a continuing unit in maximizing the sales of tobacco products, misleading the public and regulators as to the health hazards of tobacco, suppressing the truth concerning the addictive properties of nicotine and of the defendants' manipulation of nicotine levels, and carrying out other elements of defendants' scheme. The enterprise has an ascertainable structure and purpose beyond the scope of the defendants, predicate acts and their conspiracy to commit such acts. The enterprise has engaged in and its activities have affected, interstate and foreign commerce. The enterprise continues to date and is expected to continue in the future through concerted activities of the defendants actively to disguise the nature of their wrongdoing, to conceal the proceeds thereof and to conceal the defendants' participation in the enterprise in order to avoid and/or minimize their exposure to criminal and civil

penalties and damages.

235. Each defendant has been associated with this enterprise. Moreover, each defendant participated, directly or indirectly, in the conduct of the affairs of the enterprise. Each defendant helped to direct the enterprises actions and, manage its affairs.

236. The conduct described in paragraphs 17 through 218 of this Complaint constitutes a continuing pattern of racketeering as defined in N.J.S.A. 2C:41.2c and 2C:41-1d, and therefore a continuing violation of N.J.S.A. 2C:41.1 et seq.

237. The defendants have conspired, as defined by N.J.S.A. 2C:5-2, to violate N.J.S.A.

2C:41-1 et seq.

238. As a result of defendants' continuing violation of N.J.S.A. 2C:41-1, et seq., the defendants have amassed profits in the hundreds of millions of dollars while costing the taxpayers of the State of New Jersey hundreds of millions for medical care.

239. The money spent on health care by the State of New Jersey could have been spent and should have been spent on providing goods and services to the residents and taxpayers of the State of New Jersey.

240. The State of New Jersey was injured in its property by reason of these violations of N.J.S.A. 2C:41-1 et seq., because in administering the state health care programs, it has been required to incur the significant costs and expenses attributable to tobacco-related diseases. In the absence of the defendants' violations, the costs would have been substantially reduced and the State would have been able to spend those moneys for more appropriate goods and services for the residents of the State of New Jersey.

Demand for Relief

Wherefore, the Plaintiffs request that this Court enter judgment against these defendants as follows:

1. Finds there is no adequate remedy at law which will protect the State of New Jersey from continued irreparable injury, or fully compensate the State for its injuries.
2. Finds that the defendants' conduct constitutes a violation of N.J.S.A. 56:8-2.
3. Finds that the defendants' conduct constitutes a violation of N.J.S.A. 2C:41-1 et seq.
4. Permanently enjoining defendants from continuing or engaging in any act or practice in violation of N.J.S.A. 56:8-2 or doing any acts or practices in violation of these laws as authorized by N.J.S.A. 56:8-2 of the Act.
5. Assessing civil penalties for each violation of the Act that the Court finds to have been committed by them as is authorized by N.J.S.A. 56:8-13.

6. Permanently enjoining the defendants from the marketing and distribution and sale tobacco products to minors.
7. Directing the manufacturing defendants to disgorge any moneys acquired by any practice found to be unlawfw pursuant to N.J.S.A. 56.8-8.
8. Directing the defendants to pay costs for the use of this State as authorized by NJSA. 56-.8-1 I.,
9. Directing 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 issue of smoking and health.
10. Directing defendants to fund a corrective public education campaign relating to the issue of smoking and health, administered and controlled by an independent third party.
11. Directing defendants to take reasonable and necessary affirmative and effective steps to prevent the distribution and sale of cigarettes to minors under the age of 18,
12. Directing defendants to fund clinical smoking cessation programs in the State of New Jersey to be administered and controlled by an independent third party,
13. Directing defendants to dissolve The Council for Tobacco Research and the Tobacco Institute, or, in the alternative, to divest their ownership, sponsorship, and/or membership in defendants The Council for Tobacco Research and The Tobacco Institute.
14. Ordering defendants to disgorge to the State of New Jersey all profits from sales of cigarettes in the State of New Jersey.
15. Ordering defendants to pay restituion to the State of New Jersey for all costs and related services borne by the State of New Jersey as the result of the defendants' wrongful conduct.
16. Establishing a constructive trust over all future profits of the defendants in order to fund any future health care costs of the State of New Jersey.
17. Awarding to the State of New Jersey an amount equal to three times the damages the State has sustained as a result of the defendants' conduct which constitutes violation of NJSA. 2C:4 1.1 et seq.
18. Awarding to the State of New Jersey punitive damages.
19. Awarding reasonable attorneys' fees, together with costs and disbursements to the State of New Jersey.

20. Awarding to the State of New Jersey the cost of this suit including reasonable attorney fees, costs of investigations and litigations pursuant to N.J.S.A. 2C:41-4c.

21. Granting such other legal or equitable relief to the State of New Jersey as the Court deems just and equitable.

ATTORNEY GENERAL OF NEW JERSEY

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4.4:5-1 CERTIFICATION

The undersigned counsel for Plaintiffs do hereby certify as follows:

1. To the best of my knowledge, this nutter is the subject of only one other action in any court or any pending arbitration proceeding.
2. To the best of my knowledge, the only other action in this matter Was filed in August 1996 in the Superior Court of New Jersey, Chancery Division o f Mercer County, assigned Docket Number MER-C-000 1 14-96, and consists of a suit filed by Philip

Morris incorporated, Brown Williamson Tobacco Corporation, Lorillard Tobacco Company, and R.I. Reynolds Tobacco Company as plaintiffs versus Peter Verniero, Attorney General of the State of New Jersey, and Williein Waldman, Commissioner of Human Services of the State of New Jersey as defendants,

3. To the best of my knowledge, apart from the action named above, this matter is not the subject of any other action pending in any court or of any arbitration proceeding.

4. To the best of my knowledge, there are no additional parties who should be joined at this time in this litigation.

5. Plaintiff's reserve the right to modify this certification should now or additional information come to my attention.

Dated: September 9, 1996.

BY: Donald A. Caminiti