

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
FOR THE COUNTY OF PALM BEACH
STATE OF FLORIDA

**THE STATE OF FLORIDA, LAWTON M. CHILES,
JR., Individually and as GOVERNOR OF THE STATE
OF FLORIDA, DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATIONS, and THE AGENCY
FOR HEALTH CARE ADMINISTRATION,**
Plaintiffs,

v.

**THE AMERICAN TOBACCO COMPANY;
AMERICAN BRANDS, INC.; R.J. REYNOLDS
TOBACCO COMPANY; RJR NABISCO, INC.;
B.A.T. INDUSTRIES, PLC; BATUS HOLDINGS,
INC.; BROWN & WILLIAMSON TOBACCO
CORPORATION; PHILIP MORRIS COMPANIES,
INC.; PHILIP MORRIS INCORPORATED (PHILIP
MORRIS U.S.A.); LIGGETT GROUP, INC.; LIGGETT
& MYERS, INC.; BROOKE GROUP, LIMITED;
THE BROOKE GROUP LTD., INC.;
LOEWS CORPORATION; LORILLARD
CORPORATION; UNITED STATES TOBACCO
COMPANY; UST INC.; THE COUNCIL FOR
TOBACCO RESEARCH -- U.S.A. INC. (SUCCESSOR
TO TOBACCO INSTITUTE RESEARCH
COMMITTEE); THE TOBACCO INSTITUTE, INC.;
HILL & KNOWLTON, INC.; BRITISH AMERICAN
TOBACCO CO., LTD.; DOSAL TOBACCO CORP.,
INC.,**
Defendants.

Civil Action No. 95-1466AO

February 21, 1995

COMPLAINT

INTRODUCTION

1. Cigarette-related disease has killed and continues to kill untold millions of Americans. In the name of profits, cigarette manufacturers choose to ignore and suppress the truth about the hazards of cigarette smoking. As a result, Medicaid recipients have contracted smoking-related diseases including without limitation cancer, emphysema, and heart disease. The care of these Medicaid recipients has placed a significant burden on the State. This burden

should rightfully be borne by the cigarette manufacturers. The Governor of the State of Florida has determined that the State of Florida can no longer afford to allow cigarette manufacturers to reap this windfall. Therefore, the Governor, the State of Florida and its various agencies as set out below have filed this lawsuit to force the cigarette manufacturers to pay for the health care crises their products have caused. The defendants have significantly benefited over many years from not having to pay the medical costs of the impoverished Medicaid recipients injured by their products and behavior. The defendants have been able to privatize the profits while socializing the costs of their misconduct. The impact on the State of Florida and its taxpayers has been felt in every department as the dollars flow out.

2. The Governor, the State of Florida, the Department for Business and Professional Regulation and the Agency for Health Care Administration do hereby bring this action pursuant to Florida Statute § 409.910, *et seq.*, as well as for the purposes of obtaining reimbursement for all money paid for medical assistance to Medicaid recipients as a result of diseases or injuries caused by the foreseeable and intended use of the defendants' tobacco products, cigarettes.

3. For many years, the State has incurred significant expenses associated with the provision of necessary health care and other such necessary assistance under the Medicaid programs to Medicaid recipients numbering in the thousands who suffer, or who have suffered, from tobacco-related injuries, diseases or sickness. This civil action sounds in both equity and common law and is also brought pursuant to Florida Statute § 409.910, *et seq.*, to obtain reimbursement of the State for the expenditures made to provide medical assistance to Medicaid recipients as a result of the actions of the defendants.

4. The defendants are a cartel who promote, market, distribute and sell cigarettes, and/or materially assist others in so doing to residents in Florida, and elsewhere throughout the United States, and have done so for many years. Under the Medicaid program, the State pays out large sums of money for the provision of necessary health care and other necessary assistance to eligible residents in Florida ("Medicaid recipients"), who have been and are now being treated in Palm Beach County, Florida, and elsewhere throughout the State, for tobacco-induced disease, injury and sickness, and the State has done so for many years. Thus, venue is proper in the Circuit Court of Palm Beach County, Florida.

5. The defendants are certain cigarette

manufacturers and certain of their trade organizations and public relations firms that, at all pertinent times, manufactured, tested, designed, promoted, marketed, packaged, sold, distributed, and/or placed into the stream of commerce in and into the State numerous brands of defective, unreasonably dangerous and hazardous cigarettes, or other tobacco products, or, in the course of business, materially participated with, conspired with and/or otherwise aided, abetted and assisted others in so doing.

6. The tobacco products, cigarettes, for which these defendants are responsible are substantially interchangeable.

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

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

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

10. Plaintiffs are not, at this time, making a claim for punitive damages but expect at the appropriate time to make a showing which supports an award of punitive damages and to thereafter amend their complaint pursuant to § 768.72 of the Florida Statutes.

11. The allegations made herein on information belief are based on information now available to the plaintiffs. Further information regarding the conduct of the defendants will be sought by plaintiffs through discovery.

PARTIES

PLAINTIFFS

12. Plaintiff, the State of Florida, is a sovereign state of the United States.

13. Plaintiff, LAWTON M. Chiles, Jr. ("Chiles"), is a citizen, resident, and taxpayer of the United States and Florida. Chiles is the Governor of the State of Florida and, pursuant to Article IV of the Florida Constitution, exercises the supreme executive power of the State of Florida. The Governor is also responsible for initial preparation of the State budget which must be balanced. *See* Article VII, § 1(d), Florida Constitution; and Florida Statutes § 216.162 (1993). As such, the Governor must take responsibility for recommending to the Florida legislature that there either be cuts in other important State spending or increases in Florida taxes to cover the costs of providing essential services to Medicaid recipients. Chiles brings this action in his individual and official capacities.

14. The Department of Business and Professional Regulations ("DBPR") is a department of the State of Florida pursuant to § 20.165 Florida Statutes (1993).

15. The Agency for Health Care Administration ("AHCA") is a separate State of Florida government budget entity within the DBPR, pursuant to § 20.42 Florida Statutes (1993) and is authorized by Florida Statute § 409.910, *et seq.*, to initiate this action.

DEFENDANTS

16. The American Tobacco Company is a Delaware corporation whose principal place of business is or was located at 6 Stamford Forum, Stamford, Connecticut 06904. The American Tobacco Company is a subsidiary or division of American Brands, Inc. as of December, 1994.

17. American Brands, Inc., is a Delaware corporation whose principal place of business is located at 1700 East Putnam Avenue, Old Greenwich, Connecticut 06870. American Brands, Inc. is the parent corporation of or the successor in interest to The American Tobacco Company and has participated in the manufacture and distribution of cigarettes and other tobacco products both individually and through its agent and alter ego the defendant American Tobacco Company.

18. R.J. Reynolds Tobacco Company is a New Jersey corporation whose principal place of business is located at 4th & Main Street, Winston-Salem, North Carolina 27102. R.J. Reynolds is a wholly-owned subsidiary of RJR Nabisco, Inc.

19. RJR Nabisco, Inc. is a Delaware corporation whose principal place of business is 1301 Avenue of the Americas, New York, New York 10015. RJR Nabisco is the parent corporation of R. J. Reynolds Tobacco Company and has participated in the sale and manufacture of cigarettes and other tobacco products both individually and through its agent or alter ego defendant R J. Reynolds.

20. B.A.T. Industries PLC, is a British corporation whose registered office is located at Windsor House, 50 Victoria Street, London, England SW1H 0NL, which manufactured and sold cigarettes and other tobacco products through its agent or alter ego Brown & Williamson.

21. British American Tobacco Co., Ltd., is a British corporation whose principal place of business is Millbank, Knowle Green, Staines, Middlesex, England TW181DY. Brown & Williamson Tobacco Corporation is or was a subsidiary or division of British American Tobacco Co., Ltd.

22. Batus Holdings, Inc., is a Delaware corporation with its principal place of business at 1500 Brown & Williamson Tower, Louisville, Kentucky 40202. Batus Holding, Inc., is a subsidiary of B.A.T. Industries PLC. Batus Holdings, Inc. is or has been the parent corporation of Brown & Williamson Tobacco Corporation and has participated in the manufacture and distribution of cigarettes and other tobacco products both individually and through its agent and alter ego the defendant Brown & Williamson.

23. Brown & Williamson Tobacco Corporation is a Delaware corporation whose principal place of business is located at 1500 Brown & Williamson Tower, Louisville, Kentucky 40202. Brown & Williamson Tobacco Corporation is or was a subsidiary or division of Batus Holdings, Inc., and is a subsidiary or division of B.A.T. Industries PLC.

24. Philip Morris Companies, Inc., is a Virginia corporation whose principal place of business is located at 120 Park Avenue, New York, New York 10016. Philip Morris Companies, Inc., is the parent corporation of Philip Morris Incorporated (Philip Morris U.S.A.) and has participated in the manufacture and distribution of cigarettes and other tobacco products both individually and through its agent and alter ego the defendant Philip Morris Incorporated (Philip Morris U.S.A.)

25. Philip Morris Incorporated (Philip Morris U.S.A.), a subsidiary of Philip Morris Companies, Inc., is a Virginia corporation whose

principal place of business is located at 120 Park Avenue, New York, New York 10016.

26. The Brooke Group, Limited, the parent corporation of Liggett Group, Inc. and Liggett & Myers, Inc., ("Brooke") is a Delaware corporation with its principal place of business at 300 North Duke Street, Durham, North Carolina. Brooke participated in the manufacture and sale of cigarettes and/or other tobacco products both individually and through its agents or alter egos Liggett Group and Liggett & Myers.

27. The Brooke Group LTD., Inc., is a Florida corporation doing business throughout the State of Florida during all times material herein, including Palm Beach County, Florida.

28. Liggett Group, Inc., is a Delaware corporation whose principal place of business is located at Main & Fuller Streets, Durham, North Carolina 27702, and has participated in the manufacture and distribution of cigarettes and other tobacco products both individually and through its agent and alter ego the defendant Liggett & Myers, Inc.

29. Liggett & Myers, Inc., is a Delaware corporation whose principal place of business is located at Main & Fuller Streets, Durham, North Carolina 27702. Liggett & Myers, Inc., is a wholly-owned subsidiary or division of Liggett Group, Inc.

30. Loews Corporation is a Delaware corporation whose principal place of business is located at 1 Park Avenue, New York, New York 10016. Loews Corporation participated in the manufacture and sale of cigarettes and/or other tobacco products both individually and through its agent or alter ego Lorillard Corporation.

31. Lorillard Corporation is a Delaware corporation whose principal place of business is located at 1 Park Avenue, New York, New York 10016. Lorillard Corporation is a wholly-owned subsidiary or division of Loews Corporation.

32. United States Tobacco Company and its parent UST, Inc., are Delaware corporations whose principal place of business are located at 100 West Putnam Avenue, Greenwich, Connecticut. UST participated in the manufacture and sale of cigarettes both individually and/or through its agent or alter ego United States Tobacco.

33. The Council for Tobacco Research -- U.S.A. Inc. (successor in interest to the Tobacco Institute Research Committee) is a nonprofit

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.

34. The Tobacco Institute, Inc. is a non-profit corporation organized under the laws of the State of New York with its principal place of business located at 1875 "I" Street N.W., Suite 800, Washington, D.C. 20006.

35. Hill & Knowlton, Inc., is a Delaware corporation with its principal place of business located at 420 Lexington Avenue, New York, New York 10070.

36. Dosal Tobacco Corp., Inc., is a Florida corporation with its principal place of business located at 13700 Northwest 19th Avenue, Bay 2-3-4, Miami Florida 33054 (Opalaka, Florida). Dosal Tobacco Corp., Inc. is a manufacturer of cigarettes and other tobacco products.

37. The defendants listed herein, and/or their predecessors and/or their successors in interest, are either organized under the laws of (i) Florida or (ii) a state other than Florida, or (iii) are partnerships or other unincorporated associations with principal places of business both within and without Florida, and each subject to suit under a common name, who have either obtained certificates of authority to transact business in Florida, or who transacted business in Florida without a certificate of authority, but within the contemplation of § 48.193 of the Florida Statutes.

38. The American Tobacco Company, American Brands, Inc., RJ. Reynolds Tobacco Company, RJR Nabisco, Inc., B.A.T. Industries PLC, British American Tobacco Co., Ltd., Batus Corporation, Brown & Williamson Tobacco Corporation, Philip Morris Companies, Inc., Philip Morris Incorporated (Philip Morris U.S.A.), Liggett Group, Inc., Liggett & Myers, Inc., Brooke Group LTD., Inc., Brooke Group, Limited, Loews Corporation, Lorillard Corporation, United States Tobacco Company, UST, Inc. collectively, are referred to hereinafter as the "Tobacco Companies."

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

40. Hill & Knowlton, Inc. is referred to hereinafter as the "Tobacco Consultant."

41. West Brothers, Inc., is referred to hereinafter as the "Tobacco Wholesaler."

JURISDICTION

42. Jurisdiction over all foreign corporation defendants is proper pursuant to the Long-Arm Statute of Florida, Florida Statutes § 48.139.

43. The jurisdiction of the Circuit Court over this action is set out in Florida Statutes § 26.012 (1994).

44. The damages sought by the State exceed the \$15,000 minimum amount required for Circuit Court jurisdiction.

VENUE

45. Venue is proper in the Circuit Court for Palm Beach County.

STATUTORY AUTHORITY

46. The Florida Legislature has authorized the AHCA to initiate actions to recover the full amount of medical assistance provided by Medicaid. Fl. St. § 409.910.

47. The AHCA is authorized by Florida Statutes § 409.910(9) to initiate or bring an action in order to recover in one proceeding all sums paid to provide medical assistance to all Medicaid recipients provided that (1) medical assistance has been provided to more than one recipient; and (2) AHCA is seeking recovery from liable third parties due to the actions by the third parties or circumstances which involve common issues of fact or law.

48. As the conduct allegations set out below show, the liability of the defendants involves common issues of both law and fact.

49. The Statutes further provide that in accordance with the common law the issues of causation and damages may be proven by the use of statistical analysis. Fl. St. § 409.910(9).

50. As the number of recipients for which Medicaid assistance has been provided is so large that it would be impractical to join or identify each claim, the AHCA elects, pursuant to Florida Statutes § 410.910(9)(a), to proceed to seek recovery based on payments made on behalf of the entire class of recipients whose diseases are the result of the intended and foreseeable use of the cigarettes for which the defendants are liable.

51. The defendants herein are liable as

third parties as a result of their participation in the manufacture, sale or distribution of cigarettes. These cigarettes are substantially interchangeable and a determination of the liability of each individual defendant involves the resolution of common issues of both fact and law. As a result, the State shall proceed under a market share theory.

THE BASIS OF LIABILITY

52. As enumerated below, the liability of the defendants is grounded alternatively in the common law and equity and in the Medicaid Third Party Liability Act, as amended.

CONDUCT ALLEGATIONS

53. At all pertinent times, defendants acted through their duly authorized agents, servants, and employees who were then acting in the course and scope of their employment, and in furtherance of the businesses of said defendants. At all pertinent times, the Tobacco Wholesaler was authorized retail and/or wholesale distributors, sellers, and/or dealers of and on behalf of the Tobacco Companies. At all pertinent times, the Tobacco Wholesaler and the Tobacco Trade Associations were the agents, servants, and/or employees of the Tobacco Companies and acted within the scope of said agency, servitude and/or employment. At all pertinent times, the Tobacco Consultant was the agent, servant, and/or employee of the Tobacco Companies and/or the Tobacco Trade Associations and acted within the scope of said agency, servitude and/or employment.

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

55. The defendants, and/or their predecessors and successors in interest, performed such acts as were intended to, and did, result in the sale and distribution of cigarettes in the State of Florida.

56. Cigarette-related disease has killed, and continues to kill, untold millions of Americans. The Centers for Disease Control ("CDC") has estimated that over 400,000 persons die each year from smoking. This death toll is 26 times more deaths than from illegal drugs and is more than the casualties suffered by the U. S. armed forces in the 20th Century. Approximately one in five deaths is attributable to smoking. Thousands of Florida residents die each year as a result of smoking cigarettes. Each day, more than 3,000 young people begin to smoke -- or more than 1 million each year. Most of the new smokers who replace the smokers who quit or die prematurely from smoking-related disease are children or teens. About 90% of smokers born since 1935 started smoking before age 21 and almost 50% started before age 18.

57. The economic 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 cost for mortality.

58. The State of Florida spends 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 directly caused by tobacco-induced cardiovascular disease, lung cancer, emphysema, other respiratory diseases as well as the complications of pregnancy and childbirth including but not limited to low-weight babies.

59. The defendants have known for decades of the lethal dangers of smoking their cigarettes. By the late 1930's, based on published research, the Tobacco Companies had notice of the potential health hazards presented by smoking cigarettes. In 1946 Tobacco Company chemists themselves reported concern for the health of smokers. A 1953 report by Dr. Ernst L. Wynder heralded to the scientific community, and to the Tobacco Companies, a definitive link between cigarette smoking and cancer. In these tests, researchers painted condensed, puffed smoke onto the backs of mice. As a result thereof, the mice grew cancerous tumors. While previous statistical and epidemiologic studies had indicated a relationship between smoking and cancer, Dr. Wynder's study was the first conclusive biological study in this regard.

THE MANUFACTURE OF FRAUDULENT SCIENCE

60. In response to the publication of Dr. Wynder's study in 1953, the presidents of the leading tobacco manufacturers, including American Tobacco Co., R.J. Reynolds, Philip Morris, U.S. Tobacco Co., Lorillard, and Brown & Williamson Tobacco Corporation, hired the public relations firm of Hill and Knowlton, Inc., to deal with the "health scare" presented by smoking. Acting in concert, at a public relations strategy meeting, the participants decided to organize a committee to be specifically charged with the "public relations" function. This committee was engineered to take an offensive, pro-cigarettes stance despite the then obvious health dangers presented by cigarettes. As a result of these efforts, the Tobacco Institute Research Committee ("TIRC"), an entity later known as The Council for Tobacco Research ("CTR"), was formed.

61. The TIRC immediately ran a full-page promotion in more than 400 newspapers aimed at an estimated 43 million Americans. That piece was entitled "A Frank Statement To Cigarette Smokers" and contained the following language:

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

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

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

Distinguished authorities point out:

1. That medical research of recent years indicates many possible causes of lung cancer.
2. That there is no agreement among the authorities regarding what the cause is.
3. That there is no proof that cigarette smoking is one of the causes.

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

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

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

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

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

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

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

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

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

3. In charge of the research activities

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

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

62. In this advertisement, the participating Tobacco Companies recognized their "special responsibility" to the public, and promised to learn the facts about smoking and health. The participating Tobacco Companies promised to sponsor independent research on the subject, claiming they would make health a basic responsibility, paramount to any other consideration in their business. The participating Tobacco Companies also promised to cooperate closely with public health officials. However, these promises so publicly and dramatically made to the public, the residents of the State of Florida and government regulators were breached over and over again.

63. After thus beginning to lull the public into a false sense of security concerning smoking and health, the TIRC continued to act as a front for tobacco industry interests. Despite the initial public statements and posturing, and the repeated assertions that the tobacco industry was committed to full disclosure and vitally concerned with public health, the TIRC did not make the public health a primary concern. The Tobacco Trade Associations acted at the direction of the Tobacco Companies and the Tobacco Consultant to protect tobacco industry profits, and did not act to protect the public health. In fact, there was a coordinated, industry-wide strategy designed actively to mislead and confuse the public about the true dangers associated with smoking cigarettes.

Rather than work for the good of the public health as it had promised, and sponsor independent research, the Tobacco Companies and Tobacco Consultant, acting through the Tobacco Trade Associations, refuted, undermined, and neutralized information coming from the scientific and medical community.

64. The strategy employed by the

Tobacco Companies, aided and abetted by The Tobacco Trade Associations and the Tobacco Consultant, Tobacco Wholesaler was a strategy best described as see no evil, hear no evil, and speak no evil concerning the health effects of cigarette smoking. A publication called *Tobacco and Health* (later, *Tobacco and Health Research*) was created by the Tobacco Companies, the Tobacco Trade Associations, and the Tobacco Consultant, and was used by them to disseminate false information and create confusion over the causal connection between cigarette smoking and disease. It was sent to the press, doctors, and health officials. The "Criteria For Selection" of articles for publication included an example of "a report in which smoking-associated diseases are questioned."

65. The tobacco industry repeatedly emphasized its commitment to full public disclosure of CTR-sponsored research: "*We are cooperating in efforts to learn and to make known all the facts.*" The CTR often repeated its representation that it promoted the disclosure of *all* relevant facts: "*The Tobacco Institute believes that the American public is entitled to complete, authenticated information about cigarette smoking and health.*" At the same time, the tobacco industry widely represented the "*independent*" and "*objective*" nature of the CTR, disclaiming any affiliation with or influence of the tobacco industry in the workings of the CTR. These statements extended to representations of independent decision-making regarding the funding of research proposals.

66. The Tobacco Companies, through the Tobacco Trade Associations and on the advice of the Tobacco Consultant, intentionally breached their promises to the American public, to the residents of Florida and to the State to independently and honestly study and report on the health effects of smoking. They caused the cancellation of press conferences where their scientists sought to inform the public, actively and wrongfully suppressed the publishing of reports concerning the health dangers presented by cigarette smoking, attacked research linking smoking to disease, and threatened professionally the researchers themselves. Their scientists were not allowed to "freely publish what they find as they choose" as a CTR director once claimed. Numerous scientists formerly employed by the Tobacco Companies and the Tobacco Trade Associations have spoken out against the suppression of scientific data and the practice of deception known to exist in the tobacco industry generally.

67. For example, in April of 1994, Dr. Victor DeNoble, a former research scientist for Philip Morris Incorporated, testified before the United States

House of Representatives Health & Environment Subcommittee that the Philip Morris Company in 1983 suppressed and refused to allow him or his colleague, Dr. Paul Mele, to publish or to talk publicly about the research that they had conducted with respect to nicotine tolerance in rats, the potentially addictive nature of nicotine in rats, and research with respect to synthetic nicotine substances. Dr. DeNoble testified that his research demonstrated that the animals would administer nicotine to themselves and that this fact indicated that nicotine had the potential to be addictive. Dr. DeNoble testified that the focus of his research was nicotine's effect on the brain, not nicotine's effect on the flavor of tobacco in cigarettes. He further testified that his laboratory was closed and his research was terminated following the filing of a lawsuit by Rose Cipollone against Philip Morris and other tobacco companies.

68. In a similar vein, defendant Liggett & Myers, Inc., while publicly refusing to acknowledge Dr. Wynder's tests mentioned above, hired the consulting firm of Arthur D. Little, Inc., to duplicate Dr. Wynder's tests. Defendant Lorillard Corporation also duplicated those mouse tests. The results of the duplicated tests were essentially the same as Dr. Wynder's, and both Liggett & Myers and Arthur D. Little became aware by 1954 of the cancer causing propensity of cigarettes. A Liggett & Myers researcher requested that the results of this testing be published, but Defendant Liggett & Myers would not allow it, and the results of these additional tests were never made public.

69. The vast body of evidence that identifies smoking as a leading cause of lung cancer is uncontroverted and of long standing. While reputable scientists do have questions about the specific mechanism of causality, there is virtually no disagreement that smoking is a major cause of disease. Tobacco industry scientific consultants also have accepted the causal association between smoking and disease.

70. In addition to the carcinogenic nature of tobacco itself, several thousand compounds have been found in cigarette smoke. These include, for example, carbon monoxide, nicotine, carbon dioxide, benzene, formaldehyde, Polonium-210, ammonia, nicotine sulfate, freon 11, hydrogen cyanide and certain liver toxins known collectively as "furans"; some of these have been deliberately added by the Tobacco Companies. Over forty (40) known carcinogens have been found in cigarettes as well. The defendants were aware decades ago that their cigarettes contain harmful substances and additives such as arsenic and various insecticides, yet they continue to sell and promote the sale of their cigarettes.

"SAFER" CIGARETTES - SUPPRESSED

71. The Tobacco Companies could have designed and manufactured a safer cigarette, but refused to do so. At defendant Liggett & Myers, Inc., Dr. James Mold conducted tests to divide the components of cigarette smoke into separate entities and to interrupt the process which produces carcinogens by using a catalyst. Defendant Liggett & Myers, Inc., researchers were able to produce a so-called "safer" cigarette which eliminated the carcinogenic activity on mouse skin. However, defendant Liggett & Myers, Inc., did not want to be publicly identified as the source of the research behind this non-carcinogenic "safe" cigarette.

72. Defendant Liggett & Myers instructed its researchers that any meetings held that pertained to the "safe" cigarette project were to be attended by a lawyer, and that all reports, notes or memoranda should go to the Liggett & Myers, Inc., legal department. Defendant Liggett & Myers, Inc., has denied that this project had any implications with regard to the health consequences of smoking, and a report of the project was suppressed by defendant Liggett & Myers, Inc., and was not allowed to be submitted for publication. The "safe" cigarette was never marketed.

73. Two reasons apparently led Liggett to abandon its XA project for a safer cigarette. One was fear that the marketing of a "safer" cigarette would be, in essence, a confession that its -- and the industry's -- other cigarettes were not safe. Thus, one Liggett executive wrote that, "Any domestic activity will increase risk of cancer litigation on existing products." In addition, there was an apparent threat of retaliation from industry leader Philip Morris if Liggett broke ranks.

74. James Mold, who was assistant director of research at Liggett during the development of the safer cigarette, has provided the following overview of the XA project and its abandonment:

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

b. Mold stated that after 1975, all meetings on the project were attended by lawyers, lawyers collected all notes

after the meetings, and all documents were directed to the law department to maintain the attorney-client privilege. He stated, "Whenever any problem came up on the project, the Legal Department would pounce upon that in an attempt to kill the project, and this happened time and time again."

c. Mold was asked why Liggett didn't market a safer cigarette. He stated, "Well, I can't give you, you know, a positive statement because I wasn't in the management circles that made the decision, but I certainly had a pretty fair idea why....[T]hey felt that such a cigarette, if put on the market, would seriously indict them for having sold other types of cigarettes that didn't contain this, for example." Also, "[a]t a meeting we held in...New Jersey at the Grand Met headquarters...at which the various legal people involved and the management people involved and myself were present. At one point Mr. Dey...who at that time, and I guess still is the president of Liggett Tobacco, made the statement that he was told by someone in the Philip Morris company that if we tried to market such a product that they would clobber us."

75. Philip Morris also explored research to develop a safer cigarette, or, in the words of one memorandum to the board of directors, cigarettes with "superior physiological performance." This memorandum noted competitive pressures to produce "less harmful" cigarettes. However, the memorandum was careful to state that, "Our Philosophy is not to start a war, but if war comes, we aim to fight well and to win." Philip Morris never marketed such a safer cigarette.

76. A memorandum authored by an attorney at the firm of Shook Hardy & Bacon, long-time lawyers for the cigarette industry, confirmed that there was an industry-wide position regarding the issue of a safer cigarette.

77. The 1987 memorandum was written in the context of the marketing by R.J. Reynolds of a smokeless cigarette, Premier, which heated rather than burned tobacco. The Shook Hardy attorney wrote that the smokeless cigarette could "have significant effects on the tobacco industry's joint defense efforts" and that "[t]he industry position has always been that there is no alternative design for a cigarette as we know them." The attorney also noted that, "Unfortunately,

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

TOBACCO AND NICOTINE

78. Cigarettes manufactured and sold by the defendants contain nicotine, a highly addictive substance. The defendants know of the difficulties that smokers experience in quitting smoking and of the tendency of addicted individuals to focus on any rationalization to justify their continued smoking. The defendants exploit this weakness and capitalize upon the known addictive nature of nicotine. Nicotine addiction is similar to the addictions of illegal drugs such as heroin, cocaine, and amphetamines. An internal tobacco industry memo acknowledged in 1972: "[w]ithout nicotine... there would be no smoking... the cigarette [is] a dispenser for a dose unit of nicotine." Nicotine addiction guarantees a market for cigarettes. The addictive nature of the nicotine in cigarettes virtually extinguishes personal choice in those who became addicted.

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

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

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

The cigarette should be conceived not as a product but as a package. The product is nicotine.

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.

80. Accordingly, the industry has developed sophisticated technology to control the levels of nicotine in order to maintain its market. David A. Kessler, M.D., Commissioner of Food and Drugs, recently testified before a congressional committee that cigarette manufacturers can manipulate precisely nicotine levels in cigarettes, manipulate precisely the rate at which the nicotine is delivered in cigarettes, and add nicotine to any part of cigarettes.

81. Dr. Kessler testified that "the cigarette industry has attempted to frame the debate on smoking as the right of each American to choose. The question we must ask is whether smokers really have that choice." Dr. Kessler stated:

a. Accumulating evidence suggests that cigarette manufacturers may intend this result -- that they may be controlling smokers' choice by controlling the levels of nicotine in their products in a manner that creates and sustains an addiction in the vast majority of smokers.

b. We have information strongly suggesting that the amount of nicotine in a cigarette is there by design.

c. The public thinks of cigarettes as simply blended tobacco rolled in paper. But they are much more than that. Some of today's cigarettes may, in fact, qualify as high technology nicotine delivery systems that deliver nicotine in precisely calculated quantities - quantities that are more than sufficient to create and to sustain addiction in the vast majority of individuals who smoke regularly.

d. The history of tobacco industry is a story of how a product that may at one time have been a simple agricultural commodity appears to have become a nicotine delivery system.

e. [T]he cigarette industry has developed enormously sophisticated methods for manipulating nicotine levels in cigarettes.

f. In many cigarettes today, the amount of nicotine present is a result of choice, not chance.

g. [S]ince the technology apparently exists to reduce nicotine in cigarettes to insignificant levels, why, one is led to ask does the industry keep nicotine in cigarettes at all?

82. In a subsequent appearance before Congress, Dr. Kessler testified that one manufacturer, Brown & Williamson, had developed a tobacco plant code-named Y-1 with perhaps twice the nicotine content of regular tobacco. Brown & Williamson manufactured and marketed cigarettes with Y-1 tobacco in the United States in 1993.

83. As a result of the industry's actions, as many as 74% to 90% of smokers are addicted. Eight out of 10 smokers say they wish they had never started smoking. Two-thirds of adults who smoke say they wish they could quit. Seventeen million try to quit each year, but fewer than one out of ten succeed. A high percentage of the smokers who have had surgery for lung cancer or heart attacks return to smoking, as do 40% of smokers who have had their larynxes removed.

84. Beyond its addictive qualities, nicotine is believed to contribute to cardiovascular disease and death -- a fact of which the cigarette industry has long been aware.

DECEIT AND FRAUD - A CONTINUING CONSPIRACY

85. The joint efforts of the industry on the issue of smoking and health also included the general counsel of the major cigarette manufacturers, sometimes referred to as the Big Six, meeting to review proposals for scientific research and the scientific directors of the Big Six meeting and acknowledging "a general feeling that an industry approach as opposed to an individual company approach was highly desirable."

86. There was also a "gentlemen's agreement" among the manufacturers to suppress independent research on the issue of smoking and health. This agreement was referenced in a 1968 internal Philip Morris draft memo, which stated, "We have reason to believe that in spite of gentlemen's [sic] agreement from the tobacco industry in previous years that at least some of the major companies have been increasing biological studies within their own facilities."

87. As indicated by this 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.

88. The defendants have employed a strategy over the years that was and is designed to confuse the medical evidence, stonewall, delay, refuse reasonably to settle claims, and to run up plaintiffs' attorneys' fees in a war of attrition. By way of example, a memo written by J. Michael Jordan, an attorney for defendant R J. Reynolds Tobacco Company, noted: "[T]he aggressive posture we have taken regarding depositions and discovery in general continues to make these cases extremely burdensome and expensive for plaintiffs' lawyers, particularly sole practitioners. To paraphrase General Patton, the way we won these cases was not by spending all of Reynolds' money, but by making that other son of a bitch spend all his."

89. Additionally, corporate officials of the Tobacco Companies, the Tobacco Trade Associations and the Tobacco Consultant have attempted wrongfully to create a privilege for various documents that they wish to conceal by sending such documents through their legal departments and law firms at every opportunity in order that they might claim the documents to be protected by the attorney-client or attorney work-product privileges. A "Special Projects" division within CTR was set up to conceal research that was harmful to the tobacco industry and to promote and develop research and expert witnesses needed for the defense of tort litigation. Incriminating reports and documents contained within this division were passed through attorneys and are now claimed by the defendants to be privileged.

90. The industry has congratulated itself on a brilliantly conceived and executed strategy to create doubt about the charge that cigarette smoking is deleterious to health without actually denying it. A 1962 memo stated that the industry had handled the "emergency" [of the Wynder report] effectively, by treating the public health threat as a public relations problem that was solved for the self-preservation of the industry's image and profit. One defendant's executive called the CTR the best, cheapest insurance the tobacco industry can buy, noting that without it the Tobacco Companies would have to invent CTR or would be dead.

91. Not content with the holding strategy employed by the TIRC and the CTR, the

Tobacco Companies advocated a more offensive role through their lobbying arm, the Tobacco Institute ("TI"). This tobacco industry backed group actively seeks to increase doubt about the negative health effects of smoking by suggesting that there are alternative explanations to the data. One "theory" detailed how individual genetic makeups predisposed individuals to illness. Another, the "multi-factorial hypothesis," asserted that multiple factors should be blamed, *i.e.*, food additives, viruses, occupational hazards, air pollution, or stress, as causing cancer. These public relations strategies have been somewhat successful in the public thinking, if not in the scientific and medical literature. In short, the tobacco industry financed, supported and encouraged the manufacture of fraudulent science.

92. However, evidence began to surface concerning defendants' illegal scheme. On February 6, 1992, United States District Court Judge H. Lee Sarokin for the District of New Jersey issued an opinion in *Haines v. Liggett Group, Inc.*, Civ. Action 84-678, after reviewing 1500 documents *in camera*. Judge Sarokin noted that "In 1954, the tobacco industry promised to disseminate the results of industry-sponsored, independent scientific research for the purpose of answering the question: 'Does cigarette smoking cause illness?' To fulfill its promise, the tobacco industry proffered the allegedly 'independent research organization, the Council for Tobacco Research (the 'CTR'), which purportedly would examine the risks of smoking and report its findings to the public.'" After his review of the withheld documents, Judge Sarokin concluded:

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

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

A jury might reasonably conclude that the industry's announcement of proposed independent research into the dangers of smoking and its promise to disclose its findings was nothing but a

public relations ploy -- a fraud -- to deflect the growing evidence against the industry, to encourage smokers to continue and non-smokers to begin, and to reassure the public that adverse information would be disclosed.

93. Undaunted by Judge Sarokin's findings, in November 1993, Tobacco Company executives asserted, under oath, that tobacco does not conclusively cause cancer, *that smoking is not addictive*, and that tobacco advertising does not target new smokers. Recently, the fight to uncover the truth has been joined by the Food and Drug Administration ("FDA").

94. On February 25, 1994, David A. Kessler, M.D., Commissioner of the FDA, sent a letter to Scott D. Ballin, Esq., Chairman of the Coalition on Smoking OR Health, asserting:

Evidence brought to our attention is accumulating that suggests that cigarette manufacturers may intend that their products contain nicotine to satisfy an addiction on the part of some of their customers. The possible inference that cigarette vendors intend cigarettes to achieve drug effects in some smokers is based on mounting evidence we have received that: (1) the nicotine ingredient in cigarettes is a powerfully addictive agent and (2) cigarette vendors control the levels of nicotine that satisfy this addiction.

95. In response to Kessler's letter, on March 15, 1994, in a letter to *The New York Times*, James W. Johnston, Chairman and Chief Executive Officer of R.J. Reynolds, continued to assert that cigarettes were not addictive. Johnston based his assertion upon the success rate of American adults who had quit smoking.

96. The Chief Executive Officers of The American Tobacco Company, R.J. Reynolds Tobacco Company, Brown & Williamson Tobacco Corporation, Philip Morris Incorporated, Lorillard Corporation and Liggett Group, Inc. all testified under oath before the same Subcommittee in *April of 1994* that they believed nicotine is not addictive.

97. For many years, the defendants have engaged in a vast and misleading promotional, public relations, and lobbying blitz which has as its goal increasing the numbers of people addicted to nicotine in cigarettes and decreasing the numbers of people

who attempt or succeed in quitting. Much of their efforts in this regard have been and continue to be directed toward minors. They have done so and continue to do so in contravention of their duty not to make false statements of material fact and their duty not to conceal such true facts from the public. At the cost of countless lives, the defendants spend billions of dollars every year misleading the public and promoting the myth that smoking cigarettes does not cause cardiovascular disease, lung cancer, emphysema and other diseases and that smokers live healthy and vital lives. The defendants have at all pertinent times presented and promoted smoking as an attractive, glamorous, youthful, and relaxing pastime, associating it with movie stars, athletes, and other successful professionals, including doctors.

TARGETING MINORS

98. The defendants specifically target groups they deem susceptible to their efforts, such as minors. By way of example, the Joe Camel campaign waged by defendant R.J. Reynolds Tobacco Company is intended to and has had great appeal to children. Over one million new underage smokers are addicted in the United States each year. Such efforts by the defendants create more sales for the tobacco industry, and more resulting health care costs for the AHCA.

99. Florida Statutes § 859.06(1) states:

(1) It is unlawful to sell, deliver, barter, furnish, or give, directly or indirectly, to any person who is under 18 years of age, any cigarette or other tobacco product or cigarette wrapper. As used in this section, the word "cigarette" includes a clove cigarette or tobacco substitute.

Florida Statutes § 859.06(1).

As previously alleged, the defendants have engaged in a concerted effort to circumvent and violate the laws of the State of Florida by targeting minors with sophisticated promotional schemes designed to create successive generations of addicted customers. It is virtually impossible for parents or law enforcement resources to control the efforts of the defendants to make children the users of cigarettes.

100. 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. Children and teenagers became the main target; and as a result of the Tobacco

Companies' fraudulent and false advertising, over 3,000 of them begin smoking every day.

101. Despite the best efforts of parents, educators and the medical profession, smoking among young people has remained alarmingly constant since the late 1970's. This is because cigarette company advertising is used to create a mental image associating smoking with good health, glamorous and athletic lifestyles, with success and sexual attractiveness. This increases demand for cigarettes among young people. The ease with which children and teenagers can obtain cigarettes from vending machines assures that there is a ready supply to meet this demand. In five major trials testing minors' access to cigarette vending machines, encompassing more than 1,000 attempts by young teenagers to purchase cigarettes, these youngsters were never stopped -- not once. It has been shown repeatedly that cigarette vending machines (even those located in bars and other supposedly adult locations) are readily available to children and teenagers. Within a short period of time, the young smoker becomes physiologically and emotionally dependent, *i.e.*, addicted to tobacco. Later, as the maturing smoker begins to wish he or she could quit, advertising reinforces the practice and seeks to minimize health concerns, create doubt, confusion and mistake which are used by smokers as an excuse 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.

102. 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.

103. One of the best examples of this was the transformation of Marlboro cigarettes from a red-tipped cigarette for women to the cigarette for the macho cowboy. By changing advertising imagery, Philip Morris was able to tap into a wholly new and different market. In 1950, R.J. Reynolds was the king of the cigarette business. It sold more cigarettes than any other company. Philip Morris, though doing well on the basis of its fraudulent health-oriented advertising, was still far behind. In 1981, Philip Morris passed R.J. Reynolds, and each year has extended its lead by developing an effective marketing campaign for recruiting young new smokers to its brands. The wild

spirit of the Marlboro man captured the adolescent imagination. Also, Philip Morris' representatives fanned out to colleges across the country, giving free cigarettes to incoming freshmen to get them hooked. The children and teenagers, who started smoking Marlboro, became tenaciously loyal customers. Soon, Marlboro became the "gold standard" of cigarettes among teenagers. Up until 1988, nearly three-fourths of teenage smokers used Marlboro.

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

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

106. During the 1980's, advertising for Salem cigarettes also became more youth-oriented. Whereas the dominant advertising theme for Salem cigarettes used to be clean, fresh country air, during the 80's Salem ads were populated by muscular surfers and beach bunnies, fun loving party animals, and other attractive adolescent role models. Another successful advertising campaign targeted at young people is the Lorillard Tobacco Company campaign promoting Newport cigarettes. Newport ads frequently show men and women in sexually suggestive positions always

having fun using the slogan "Alive With Pleasure."

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

108. Many teenage girls are obsessed with their appearance and the need to perceive themselves as being attractive. In today's culture, a prerequisite to popularity is to be thin. Philip Morris and other cigarette companies capitalize upon this perception by presenting cigarette smoking is a suitable alternative to a diet for being thin. Virtually every "feminine" cigarette includes words like slim, light, thin, super slim, ultra light, etc. The photographic imagery in cigarette advertising that targets young females universally portrays gorgeous young women in glamorous outfits. Smoking is thus associated with being sexy and beautiful. In reality, however, cigarette smoking is neither: Smokers have yellow teeth, and cough up vile phlegm, and are addicted. In cigarette ads, the air is fresh and clear; magic things happen.

109. The ultimate status symbol and secret desire of almost every teenage boy is a powerful motorcycle. It is for this reason that so many cigarette brands have used motorcycle imagery to encourage teenage boys to smoke. Many cigarette ads, that target young boys, glamorize high risk activities like hang gliding, motorcycle racing, mountain climbing, etc. Cigarette makers do this deliberately to undermine awareness that smoking is dangerous. In its campaign to attract adolescent boys to become smokers, the R.J. Reynolds cigarette company has made extensive use of risk-taking and danger in its advertising. By glorifying risk-taking, these ads have a more insidious purpose. How a person estimates the magnitude and likelihood of a risk can be significantly affected by what it is compared against. By portraying extremely dangerous activities like hang-gliding, mountain climbing, and stunt motorcycle riding, R.J. Reynolds minimizes the

dangers of smoking in adolescent minds.

110. The greatest success that R.J. Reynolds had in its effort to gain on Philip Morris in the youth market is the "Joe Camel" cartoon character. This campaign was inaugurated in the United States in 1987 to commemorate the 75th anniversary of Camel cigarettes. In the first ads, the camel leered out over the saying, "75 Years And Still Smoking." The implication is obvious. It soon became evident that "Joe Camel" would strike a responsive chord among children and teenagers and has been used by R.J. Reynolds to target young persons -- even children -- to get them to start smoking at as early an age as possible, so they can be addicted to nicotine as early an age as possible. R.J. Reynolds has more than tripled its advertising expenditures for Camel cigarettes after 1988, utilizing themes like "Joe Camel" guaranteed to be attractive to young people at high risk of becoming smokers.

111. When R.J. Reynolds began the Joe Camel cartoon campaign, Camel's share of the children's market was only 0.5%. In just a few years, Camel's share of this illegal market has increased to 32.8%, representing sales estimated at \$476 million per year. Another indication of the phenomenal success of this marketing campaign is the fact that in a recent survey of six-year-olds, 91% of the children could correctly match Joe Camel with a picture of a cigarette, and both the silhouette of Mickey Mouse and the face of Joe Camel were nearly equally well recognized by almost all children surveyed.

112. Both the themes and the location of cigarette advertising betray the real target. During the decade of the 1980's, 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.

113. 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% 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. Marlboro and Camel cigarettes, produced by Philip Morris and RJR Nabisco respectively, dominate the teenage smoking market.

114. 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.

115. In late 1990, the Tobacco Institute, on behalf of the industry, inaugurated a public relations campaign designed to convince the public that they want to discourage young people from smoking. Several Tobacco Companies began their own campaigns at the same time. In fact, these programs are just a continuation of the defendants' ongoing fraud and conspiracy. While these programs call for age 18 as the national standard for tobacco sales to minors, and for requiring "adult supervision" of cigarette vending machines, in fact, the Institute and Tobacco Companies hope to freeze the status quo with regard to minors' access to tobacco as most states already have a minimum age of 18 or older. Brochures, like "Tobacco: Helping Youth Say No", are being distributed by the Institute and tobacco industry. In reality, this is a pro-smoking subterfuge. The brochure presenting smoking as a permissible "adult" decision and smoking as something an "adult" can safely do. The only reason given kids for not smoking is that -- like getting married or driving a car -- smoking is for grownups, i.e., which only makes the activity more desirable to kids. An R.J. Reynolds' brochure even tells parents to tell their children that they smoke "because they enjoy it." None of these brochures disclose that smoking is highly addictive and harmful to human life.

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

117. The likely effect of these ads is that, rather than discouraging children from smoking, they

plant in impressionable young girls' minds the notion that smoking is something to do to show one's independence, to act grown up. This notion is, of course, reinforced by the ubiquitous cigarette ads depicting glamorous young adult women smoking as a way of demonstrating their independence.

118. This despicable conduct has gone on for 40 years and continues into this decade. In January 1990, the Manager of Public Relations of R.J. Reynolds wrote the principal of a public school that:

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

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

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

119. 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.

**THE IMPACT OF DEFENDANTS'
ACTIONS ON FLORIDA**

120. During all or part of the exposure period, many residents of Florida were exposed, through inhalation, to the smoke created when the defendants' cigarettes were burned.

121. When inhaled, cigarette smoke causes a variety of diseases including but not limited to:

- a. Emphysema.
- b. Pulmonary or bronchogenic carcinoma.
- c. Impaired pulmonary capacity.
- d. Obstructive lung disease.
- e. Cardiac and circulatory disease.
- f. Increased susceptibility to one of the foregoing as well as asbestos-related diseases such as lung cancer.
- g. Exacerbated or increased the risk of and/or the physical burdens caused by other respiratory ailments including pneumoconiosis, asbestosis, bronchitis, pneumonia and others.
- h. Complications of pregnancy and childbirth as well as low-birth weight babies and related pediatric health problems.
- i. Premature death.

122. Each of the defendants knew, or should have known, about the adverse impact of the inhalation of cigarette smoke on the health of both users and bystanders. Instead of warning intended users, the general public, the State of Florida or government regulators about these dangers, the defendants ignored, or actively and fraudulently concealed such information or condoned such concealment, and commanded, directed, advised, encouraged, aided and abetted, or conspired with others, or each other, in so doing in order to sell cigarettes and avoid litigation by those who were injured by inhalation of cigarette smoke. Additionally, the defendants not only concealed the hazards of

cigarette smoking but also actively advertised cigarettes as safe and beneficial to the health of smokers. Said actions or inactions constitute gross negligence and show a callous disregard for the rights and safety of residents of Florida and other states.

123. As a direct and proximate contributing result of having inhaled cigarette smoke during the exposure period, certain residents of Florida have contracted diseases or suffered certain injuries which resulted in the expenditure by the State of substantial sums of money in order to provide medical care for.

124. Plaintiffs further charge that, as a direct and proximate result of having inhaled cigarette smoke, residents of Florida will continue to suffer from the above-referenced conditions, and the State will continue to expend substantial sums of money to care for them.

125. Because of the latency period of the above diseases and the active concealment by the defendants of the causes and effects of exposure to cigarette smoke, the State has only recently discovered the liability of the defendants to the State for medical expenses expended for medical care.

126. The defendants collectively sold or aided and abetted in the sale of cigarettes containing tobacco, which cigarettes were and are defective and unreasonably dangerous.

127. The Tobacco Companies' cigarettes are designed, manufactured, marketed and sold by the defendants to be smoked by the consuming public.

128. The smoking of cigarettes was not only a foreseeable use, it was the very purpose for which these defendants manufactured, sold or distributed cigarettes.

129. At all pertinent times, the defendants knew, or should have known, that the smoking of cigarettes was and is hazardous to human health.

130. The Tobacco Companies, the Tobacco Trade Associations, and Hill & Knowlton through their funding and control of certain studies concerning the effects of smoking on human health, their control over trade publications, promoting, marketing, and/or through other agreements, understandings and joint undertakings and enterprises, conspired with, cooperated with and/or assisted each other in the wrongful suppression, active concealment and/or misrepresentation of the true relationship between smoking cigarettes and various diseases, all to the detriment of the public health, safety and welfare

and thereby causing harm to the State.

131. Cigarettes are inherently, abnormally, and unreasonably dangerous. The health risks and costs of cigarette smoking to the residents of the State and to the State greatly outweigh any claimed utility of cigarettes. The defendants knew, or should have known, of the dangers inherent in the use of their cigarettes, and that the public and the State would be harmed by the intended and foreseeable use of their cigarettes.

132. For many years, the defendants have been engaged in the business of manufacturing, testing, designing, promoting, marketing, packaging, selling, distributing, and/or placing into the stream of commerce in and into the State numerous defective, unreasonably dangerous and hazardous cigarettes, or, in the course of their business, materially have participated with, conspired with and/or otherwise aided, abetted and assisted other defendants in so doing.

133. As a direct and proximate result of the defective design, testing, manufacturing, marketing, and assembly choices and practices of the defendants, the defendants' cigarettes were and are themselves defective and unreasonably dangerous.

134. The defendants' cigarettes reached the users, consumers and bystanders thereof in substantially the same condition which they were in when originally manufactured, distributed and sold by the defendants. At the time the defendants' cigarettes were sold or placed on the market, they were in a defective condition, unreasonably dangerous to users and consumers, and to bystanders in the vicinity of the users and consumers.

135. The defective condition of the defendants' cigarettes directly and proximately caused thousands of Florida residents to suffer various tobacco-related diseases, injuries and sicknesses, and directly and proximately caused the State to expend millions of dollars in order to provide necessary health care to these residents, thereby damaging the State.

136. At all pertinent times, it was foreseeable by the defendants that certain of the Florida residents who used the defendants' cigarettes would become ill and suffer injury, disease and sickness as a result of using the cigarettes as the defendants intended, and it was further foreseeable by the defendants that the State would be required to expend millions of dollars each year in order to provide necessary medical treatment and facilities to those residents so injured.

137. The Tobacco Companies, the Tobacco Trade Associations, and Hill & Knowlton have conspired together, sometimes acting through a clandestine "Special Projects" program of the Tobacco Institute Research Committee, later called the Council for Tobacco Research--U.S.A. Inc., said conspiracy being for the purpose of fraudulently misleading the public, including Florida residents, the State and government regulators, with regard to the health risks of smoking, all for the purpose of furthering the defendants' profits from the sale of their cigarettes.

138. Specifically, and in addition to the allegations above, the Tobacco Companies, the Tobacco Trade Associations, and Hill & Knowlton knew of the hazards of cigarette smoking. The defendants affirmatively and actively concealed information which clearly demonstrated the dangers of smoking and affirmatively mislead the public with regard to the material and clear risks of smoking. The defendants knowingly engaged in these activities with the intent that the public would continue to purchase the defendants' cigarettes. The defendants knew that the public would not be in a position to know the true risks of smoking and knew that the public would rely upon the misleading information that the defendants promulgated to their detriment.

139. At all pertinent times, the defendants purposefully and intentionally engaged in these activities, and continue to do so, knowing full well that when the State's residents use their cigarettes as those cigarettes were and are intended to be used, that the State's residents would be substantially certain to suffer disease, injury and sickness, including cancer, emphysema, heart disease and other illnesses, and that the State would be injured thereby, as described above.

140. At all pertinent times, the defendants purposefully and intentionally engaged in these activities, and continue to do so, knowing full well that the State, as a result of these efforts by the defendants, would be obligated to, and would, provide health care and other necessary facilities and services for certain of the State's residents thus harmed by the intended use of the defendants' cigarettes, and that the State itself thereby would be harmed.

141. At all pertinent times, these defendants, individually and collectively, had a duty not to deceive or mislead government regulators as well as the American public which they intentionally breached by their individual and collective activities.

142. The statements and representations made and promotional schemes used by the

defendants were deceptive, false, incomplete, misleading and untrue. The defendants knew, or should have known, that the said statements, representations and advertisements were deceptive, false, incomplete, misleading and untrue at the time of making such statements. The defendants had an economic interest in making such statements. The residents of Florida who purchased and used the defendants' cigarettes had no knowledge of the falsity, misleading or deceptive nature of the defendants' statements, representations and advertisements when they purchased the defendants' cigarettes; moreover, those residents had a right to rely on such statements, representations and advertisements. Each of the defendants' misleading and deceptive statements, representations and advertisements were material to those residents' purchasing the defendants' cigarettes in that Florida's residents would not have purchased the defendants' cigarettes if they had known that said statements, representations and advertisements were deceptive, false, incomplete, misleading and untrue.

143. The residents of the State of Florida, the State and government regulators had a right to rely upon the representations of the Tobacco Companies, the Tobacco Trade Associations, the Tobacco Consultant, and the Tobacco Wholesaler.

144. The defendants' decision to mislead and deceive the residents of Florida, the State and government regulators directly, proximately and foreseeably caused the damage suffered by the State.

COUNT ONE

RESTITUTION-UNJUST ENRICHMENT

145. The plaintiffs reallege and incorporate herein the foregoing allegations of this Complaint.

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

147. The State is also responsible for the costs of medical assistance for Medicaid recipients pursuant to the State Medicaid Plan and §§ 409.903-409.906 of the Florida Statutes.

148. While the State and its various agencies and institutions are struggling to pay for the health care costs of tobacco, the tobacco industry and its co-conspirators continue to reap billions of dollars in profits from the sale of cigarettes and other tobacco products.

149. The defendants have avoided regulations and have been and are able legally to promote the sale of their cigarettes and other tobacco products to the residents of Florida by continuing to misinform the federal and State authorities about the true carcinogenic, pathologic and addictive qualities of cigarettes and other tobacco products.

150. In direct contradiction to and in spite of this State's specific statutory prohibition, Florida Statute § 859.06, the Tobacco Companies have spent billions on targeted marketing programs designed to encourage minors to purchase and smoke cigarettes.

151. In equity and fairness, it is the defendants, not the taxpayers of Florida, 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 and other tobacco products, the defendants wrongfully have forced the State of Florida to perform such duties and to pay the health care costs of tobacco related disease. As a result, the defendants have been unjustly enriched to the extent that Florida's taxpayers have had to pay these costs.

152. Wherefore, premises considered, the plaintiffs pray for relief and judgment against the defendants, jointly and severally, as follows:

a. for damages in an amount which is sufficient to provide restitution and repay the plaintiffs for the sums the plaintiffs have expended on account of the defendants' wrongful conduct including, without limitation, costs for medical care with said amount to be determined at trial;

b. for damages in restitution for the sums of money currently being paid and to be paid by the plaintiffs in the future on account of the defendants' wrongful conduct including, without limitation,

costs for medical care;

c. for prejudgment interest, as well as the plaintiffs' reasonable attorneys' fees, expert witness fees and other costs of this action;

d. for such other and further extraordinary equitable, declaratory and/or injunctive relief as permitted by law as necessary to assure that the plaintiffs have an effective remedy; and

e. for such other and further relief, as the Court deems just and proper, to which the plaintiffs may be entitled.

COUNT TWO

INDEMNITY

153. The plaintiffs reallege and incorporate herein the foregoing allegations of this Complaint.

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

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

156. The defendants have been unjustly enriched as a result.

157. In all fairness and justice, the defendants should indemnify the plaintiffs for the provision of necessary medical care, facilities and services for those aforementioned residents injured by the defendants' cigarettes.

158. Wherefore, premises considered, the plaintiffs pray for relief and judgment against the defendants, jointly and severally, as follows:

a. for damages in an amount which is sufficient to provide restitution and repay the State for the sums the plaintiffs have expended on account of the

defendants' wrongful conduct, with said amount to be determined at trial;

b. for damages in restitution for the sums of money currently being paid and to be paid by the plaintiffs in the future on account of the defendants' wrongful conduct;

c. for prejudgment interest, as well as the plaintiffs' reasonable attorneys' fees, expert witness fees and other costs of this action;

d. for such other and further extraordinary equitable, declaratory and/or injunctive relief as permitted by law as necessary to assure that the plaintiffs have an effective remedy; and

e. for such other and further relief, as the Court deems just and proper, to which the plaintiffs may be entitled.

COUNT THREE

NEGLIGENCE

159. The plaintiffs reallege and incorporate herein the foregoing allegations of this Complaint.

160. The defendants had a duty to exercise reasonable care in the manufacture, sale and/or distribution of defendants' cigarettes.

161. The defendants breached that duty by the conduct alleged above.

162. As a result of defendants' breach, cigarettes were manufactured, sold and distributed in the State of Florida, and the Medicaid recipients contracted diseases as a result of the intended and foreseeable use of defendants' cigarettes. The State was required to provide medical assistance to these Medicaid recipients.

163. Wherefore, premises considered, the plaintiffs pray for relief and judgment against the defendants, jointly and severally, as follows:

a for damages in an amount which is sufficient to provide restitution and repay the plaintiffs for the sums the plaintiffs have expended on account of the defendants' wrongful conduct, with said amount to be determined at trial;

b. for damages in restitution for the sums of money currently being paid and to be paid by the plaintiffs in the future on account of the defendants' wrongful conduct;

c. for prejudgment interest, as well as the plaintiffs' reasonable attorneys' fees, expert witness fees and other costs of this action;

d. for such other and further extraordinary equitable, declaratory and/or injunctive relief as permitted by law as necessary to assure that the plaintiffs have an effective remedy; and

e. for such other and further relief, as the Court deems just and proper, to which the plaintiffs may be entitled.

COUNT FOUR

STRICT LIABILITY FOR DEFECTIVE AND UNREASONABLY DANGEROUS PRODUCT

164. The plaintiffs reallege and incorporate herein the foregoing allegations of this Complaint.

165. The residents of the State of Florida have, for many years, consumed and used the defendants' cigarettes in the manner in which the cigarettes were intended to be used, without any substantive alteration or change in the product.

166. The defendants' cigarettes were delivered to the residents of the State of Florida in a condition that was unreasonably dangerous to the user. The defendants expected and intended for the product to be used by residents of the State of Florida without substantial change affecting the unreasonably dangerous condition.

167. The defendants' cigarettes were unreasonably dangerous due to their design in that:

a. The cigarettes failed to perform as safely as an ordinary consumer would expect when used as intended; and

b. The risk of danger in the design of the cigarettes outweighed any benefits associated with the use of cigarettes.

168. In breaching their duties to the

plaintiffs, as described above, the defendants acted intentionally, recklessly, maliciously and wantonly in that each defendant knew or should have known through information available exclusively to them and otherwise that their cigarettes were defective and unreasonably dangerous if used in the manner intended by the defendants. The defendants further knew or should have known that their aforesaid breach of duty would be substantially certain to result in the injuries complained of herein.

169. Wherefore, premises considered, the plaintiffs pray for relief and judgment against the defendants, jointly and severally, as follows:

a. for damages in an amount which is sufficient to provide restitution and repay the plaintiffs for the sums the plaintiffs have expended on account of the defendants' wrongful conduct, with said amount to be determined at trial;

b. for damages in restitution for the sums of money currently being paid and to be paid by the plaintiffs in the future on account of the defendants' wrongful conduct;

c. for prejudgment interest, as well as the plaintiffs' reasonable attorneys' fees, expert witness fees and other costs of this action;

d. for such other and further extraordinary equitable, declaratory and/or injunctive relief as permitted by law as necessary to assure that the plaintiffs have an effective remedy; and

e. for such other and further relief, as the Court deems just and proper, to which the plaintiffs may be entitled.

COUNT FIVE

BREACH OF EXPRESS AND/OR IMPLIED WARRANTIES

170. The plaintiffs reallege and incorporate herein the foregoing allegations of this Complaint.

171. The Tobacco Companies made affirmations or promises through extensive advertising and promotion relating to their products regarding the health effects of their products to the public. The Tobacco Companies affirmed or promised through their

"Frank Statement" in 1954 to study the health effects of their products and fully disclose the results of this research to the residents of the State of Florida.

172. These affirmations, as well as the extensive advertising of the industry, became the basis of the bargain for many individuals, both in beginning to use tobacco or continuing to use tobacco. The residents of the State of Florida, including Medicaid recipients, relied on these continuing affirmations in buying and using the Tobacco Companies' products. The residents of Florida relied on the Tobacco Companies' skill or judgment in manufacturing a product fit for human consumption.

173. The Tobacco Companies' products are unmerchantable and are unfit for safe use when sold and consumed as intended. The Tobacco Companies have breached their implied warranty of merchantability because their products are not fit for their intended purposes. The Tobacco Companies had reason to know that the particular purposes for which their products are intended are unreasonably dangerous.

174. The Tobacco Companies have breached both the express and implied warranties described above and should be held accountable for the damages inflicted as a result.

175. As a direct result of the defendants' breach of express and implied warranties of merchantability, the plaintiffs have been damaged because they have been forced to incur medical expenses under the Medicaid program in the treatment of sickness, disease or injury caused by the defendants' conduct.

176. Wherefore, premises considered, the plaintiffs pray for relief and judgment against the defendants, jointly and severally, as follows:

a. for damages in an amount which is sufficient to provide restitution and repay the plaintiffs for the sums the plaintiffs have expended on account of the defendants' wrongful conduct, with said amount to be determined at trial;

b. for damages in restitution for the sums of money currently being paid and to be paid by the plaintiffs in the future on account of the defendants' wrongful conduct;

c. for prejudgment interest, as well as the plaintiffs' reasonable attorneys' fees,

expert witness fees and other costs of this action;

d. for such other and further extraordinary equitable, declaratory and/or injunctive relief as permitted by law as necessary to assure that the plaintiffs have an effective remedy; and

e. for such other and further relief, as the Court deems just and proper, to which the plaintiffs may be entitled.

COUNT SIX

NEGLIGENT PERFORMANCE OF A VOLUNTARY UNDERTAKING

177. The plaintiffs reallege and incorporate herein the foregoing allegations of this Complaint.

178. The Tobacco Companies and their trade organizations voluntarily assumed the duty and responsibility to report honestly and completely on all research regarding cigarette smoking and health via their public pronouncements referenced above.

179. The defendants breached this duty not only by failing to report on such research but also by knowingly and actively publishing and publicizing fraudulent science.

180. The defendants further breached this duty by suppressing negative research data regarding cigarettes and health.

181. The defendants knew or should have known that smokers, the plaintiffs, government regulators and others would rely on their pronouncements.

182. The defendants knew or should have known that such reliance would result in injury.

183. Wherefore, premises considered, the plaintiffs pray for injunctive relief and judgment against the defendants, jointly and severally, as follows:

a. for damages in an amount which is sufficient to provide restitution and repay the plaintiffs for the sums the plaintiffs has expended on account of the defendants' wrongful conduct, with said amount to be determined at trial;

b. for damages in restitution for the sums

of money currently being paid and to be paid by the plaintiffs in the future on account of the defendants' wrongful conduct;

c. for prejudgment interest, as well as the plaintiffs' reasonable attorneys' fees, expert witness fees and other costs of this action;

d. for such other and further extraordinary equitable, declaratory and/or injunctive relief as permitted by law as necessary to assure that the plaintiffs have an effective remedy; and

e. for such other and further relief, as the Court deems just and proper, to which the plaintiffs may be entitled.

COUNT SEVEN

FRAUD, INTENTIONAL MISREPRESENTATION

184. The plaintiffs reallege and incorporate herein the foregoing allegations of this Complaint.

185. The defendants intentionally suppressed material facts about the hazards of cigarette smoking.

186. The defendants knowingly and intentionally lied to and deceived the government regulators who sought to investigate the hazards of cigarettes and control those hazards through regulations.

187. The defendants participated in advertising of cigarettes which portrayed them as, at least, harmless and, at best, healthy; such a portrayal was an intentional misrepresentation of the hazardous nature of cigarettes.

188. The purpose of the suppression of damaging research data and the manufacture of fraudulent science was to confuse potential consumers about the hazards of cigarettes thereby encouraging them to smoke and to allay the fears of smokers thereby encouraging them to continue to smoke.

189. The residents of the State of Florida, including Medicaid recipients, relied on said advertising, purchased cigarettes and smoked them.

190. As a result, certain residents of the State of Florida, including the Medicaid recipients,

became ill and required medical care which the State was required to provide.

191. Wherefore, premises considered, the plaintiffs pray for injunctive relief and judgment against the defendants, jointly and severally, as follows:

a. for damages in an amount which is sufficient to provide restitution and repay the plaintiffs for the sums the plaintiffs have expended on account of the defendants' wrongful conduct, with said amount to be determined at trial;

b. for damages in restitution for the sums of money currently being paid and to be paid by the plaintiffs in the future on account of the defendants' wrongful conduct;

c. for prejudgment interest, as well as the plaintiffs' reasonable attorneys' fees, expert witness fees and other costs of this action;

d. for such other and further extraordinary equitable, declaratory and/or injunctive relief as permitted by law as necessary to assure that the plaintiffs have an effective remedy; and

e. for such other and further relief, as the Court deems just and proper, to which the plaintiffs may be entitled.

COUNT EIGHT

CONSPIRACY AND CONCERT OF ACTION

192. The plaintiffs reallege and incorporate herein the foregoing allegations of this Complaint.

193. The Tobacco Companies entered into an agreement to suppress and conceal scientific and medical information relating to cigarette smoking and the resulting diseases.

194. The Tobacco Companies participated in and cooperated with each other in the above conspiracy enabling each and every manufacturer and distributor of cigarettes to take the position that the association between cigarette smoking and disease had not been established.

195. In order to carry out their conspiracy, the Tobacco Companies formed The Tobacco Institute

("TI") and the Council for Tobacco Research ("CTR").

196. The TI and the CTR actively participated in the conspiracy to conceal and suppress the hazards of cigarette smoking.

197. The TI and the CTR, acting on behalf of the Tobacco Companies monitored research and literature in the scientific and medical communities regarding cigarette smoking and actively attempted to suppress any negative reports.

198. When TI and CTR were unsuccessful in suppressing negative reports regarding cigarette smoking, the two organizations acted to challenge, dilute and diminish the influence of such reports.

199. As a result of the conspiracy, the Tobacco Companies were able to continue selling tobacco cigarettes to an unsuspecting and confused public including the Medicaid recipients.

200. As a result of the conspiracy, government regulators were misled and deceived; thereby making it impossible for such regulators to properly assess and control the hazards presented by cigarette use.

201. As a direct and proximate result of the defendants' actions, the Medicaid recipients became ill and required medical care paid for by the State.

202. Wherefore, premises considered, the plaintiffs pray for injunctive relief and judgment against the defendants, jointly and severally, as follows:

a for damages in an amount which is sufficient to provide restitution and repay the plaintiffs for the sums the plaintiffs have expended as a proximate and foreseeable result of the defendants' wrongful conduct, with said amount to be determined at trial;

b. for damages in restitution for the sums of money currently being paid and to be paid by the plaintiffs in the future as a direct and proximate result of the defendants' wrongful conduct;

c. for prejudgment interest, as well as the plaintiffs' reasonable attorneys' fees, expert witness fees and other costs of this action;

d. for such other and further

extraordinary equitable, declaratory and/or injunctive relief as permitted by law as necessary to assure that the plaintiffs have an effective remedy; and

e. for such other and further relief, as the Court deems just and proper, to which the plaintiffs may be entitled.

COUNT NINE

AIDING AND ABETTING LIABILITY

203. The plaintiffs reallege and incorporate herein the foregoing allegations of this Complaint.

204. The actions of the defendants, individually and collectively, provided substantial support and encouragement and aid to the Tobacco Companies in the sale of cigarettes and other tobacco products.

205. All of the defendants, individually and collectively, aided and abetted the fraud perpetuated on the State of Florida, government regulators and the residents of Florida.

206. All of the defendants, individually and collectively, in aiding and abetting the sale of a product containing tobacco including cigarettes which they knew to be hazardous and defective.

207. As a result, all of the defendants, individually and collectively, are liable for the fraud upon the State of Florida, government regulators and the residents of Florida, as well as the sale of a hazardous and defective product, cigarettes.

208. Wherefore, premises considered, the plaintiffs pray for injunctive relief and judgment against the defendants, jointly and severally, as follows:

a for damages in an amount which is sufficient to provide restitution and repay the plaintiffs for the sums the plaintiffs have expended as a proximate and foreseeable result of the defendants' wrongful conduct, with said amount to be determined at trial;

b. for damages in restitution for the sums of money currently being paid and to be paid by the plaintiffs in the future as a direct and proximate result of the defendants' wrongful conduct;

c. for prejudgment interest, as well as the plaintiffs' reasonable attorneys' fees, expert witness fees and other costs of this action;

d. for such other and further extraordinary equitable, declaratory and/or injunctive relief as permitted by law as necessary to assure that the plaintiffs have an effective remedy; and

e. for such other and further relief, as the Court deems just and proper, to which the plaintiffs may be entitled.

COUNT TEN

INJUNCTIVE RELIEF

209. The plaintiffs reallege and incorporate herein the foregoing allegations of this Complaint.

210. Plaintiffs will suffer irreparable injury as a result of the conduct detailed in the foregoing allegations in that the children of Florida will start using tobacco products without adequate knowledge of its harmful and addictive affects. Thus, the children will become addicted to tobacco products and subsequently become ill and need to be treated for tobacco-related illnesses. Many of these addicted children will become Medicaid recipients thereby causing the State to have to bear the costs of these illnesses.

211. There is no adequate remedy at law which will protect the plaintiffs from this irreparable injury.

212. Wherefore, premises considered, the plaintiffs pray for injunctive relief which:

a. Enjoins defendants and their respective agents, servants, officers, directors, employees, and all persons acting in concert with them, directly or indirectly, from engaging in consumer fraud in violation of the laws of the State of Florida;

b. Orders 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;

c. Orders defendants to fund a corrective public education campaign relating to the issue of smoking and health, administered and controlled by an independent third party;

d. Orders defendants to take reasonable and necessary affirmative steps to prevent the distribution and sale of cigarettes to minors under the age of 18;

e. Orders defendants to fund clinical smoking cessation programs in the State of Florida;

f. Orders the Tobacco Companies to dissolve the Council for Tobacco Research and the Tobacco Institute, or, in the alternative, to divest their ownership, sponsorship, and/or membership in the Council for Tobacco Research and the Tobacco Institute; and,

g. Orders the defendants to disgorge all profits from sales of cigarettes in Florida.

Respectfully submitted:

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