

1 **Allegations Common to all Claims for Relief**

2 **I. INTRODUCTION AND OVERVIEW**

3 **A. PARTIES AND CONDUCT**

4 1.

5 This action is brought by the State of Oregon against the
6 manufacturers and sellers of approximately 98% of the tobacco
7 products sold in the United States. Many of their parent or
8 affiliated corporations are also named as defendants. The
9 only significant tobacco purveyors not named as defendants are
10 Liggett & Myers, Inc. and its affiliates (hereafter "Liggett")
11 which control the other 2% of the United States tobacco market
12 and with whom the plaintiff has, or expects shortly, to enter
13 into a settlement agreement. In this Complaint, the tobacco
14 manufacturers and their affiliates, including Liggett, will be
15 referred to as the "Tobacco Companies." When intending to
16 exclude Liggett, the reference will be to the "defendant
17 Tobacco Companies."

18 2.

19 Also named as defendants are Hill & Knowlton, Inc.
20 (hereafter "Hill & Knowlton"), which is the public relations
21 firm for the Tobacco Companies, and three organizations
22 created by the Tobacco Companies which perform public
23 relations services for the Tobacco Companies or purport to do
24 or sponsor scientific research, primarily regarding tobacco
25 and health. All of the parties are described with greater
26 particularity later in this Complaint.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

3.

The defendants' conduct may be fairly summarized as follows:

a. The Tobacco Companies and their predecessors in interest sold tobacco to Oregon consumers knowing it to be addictive, to cause cancer, heart disease, emphysema and other diseases, and to result in premature death for approximately one-third of their Oregon customers. They also artificially manipulated the amount of nicotine in the tobacco in order to maintain its addictive quality.

b. The Tobacco Companies, starting in 1953 and continuing to the present, represented to the general public, including Oregon consumers, that they would undertake, sponsor, and promote objective scientific research regarding the health effects of tobacco, and that they would make known the results of that research. The Tobacco Companies, together with Hill & Knowlton, formed the other three named defendants or their predecessors (hereafter the Tobacco Researchers), representing to the general public, including Oregon consumers, that the Tobacco Researchers would perform the functions described in this subparagraph b.

c. The Tobacco Companies and the Tobacco Researchers, with the assistance or under the direction of Hill & Knowlton, actually frustrated any effort to undertake or sponsor such scientific research. They undertook and promoted scientific

1 research which was not designed and performed according to the
2 accepted scientific standards of the day; they systematically
3 ///
4 suppressed, by firing researchers and destroying or hiding
5 research results (with the assistance of their counsel),
6 scientific research and studies that tended to show that
7 tobacco had adverse health effects; they publicly denigrated
8 and cast aspersions on legitimate scientific research that
9 tended to prove tobacco's adverse health effects, knowing the
10 research to be of high quality; they publicly declared that
11 tobacco had no adverse health effects when they knew that it
12 did; and they publicly declared that there was legitimate
13 scientific dispute concerning tobacco's adverse health effects
14 when, in fact, they knew there was no such legitimate
15 scientific dispute.

16 d. The Tobacco Companies, with the assistance of Hill &
17 Knowlton and the Tobacco Researchers, acted in concert to
18 prevent the development of a "safer" cigarette, i.e, a
19 cigarette that was less addictive and had less deleterious
20 effects on human health.

21 e. The Tobacco Companies, with the assistance of Hill &
22 Knowlton and the Tobacco Researchers, acted in concert to make
23 sure that none of the Tobacco Companies promoted the products
24 of any Tobacco Company over the products of another on the
25 basis of superior health effects.

26 f. The Tobacco Companies, since at least the mid-1980s,

1 have intentionally placed advertisements designed to lure
2 minors to purchase tobacco products, notwithstanding that
3 Oregon law provides that it is a criminal violation for a
4 minor to possess tobacco and for anyone to sell tobacco to a
5 minor. The Tobacco Companies' advertisements have been
6 successful, enticing approximately 11,000 Oregon teenagers to
7 start smoking each year, one-third of whom will die premature
8 deaths, 11.3 years premature, as a result of tobacco
9 addiction.

10 **B. THE LEGAL THEORIES**

11 4.

12 The conduct of the defendants and Liggett, as summarized
13 above, constitutes violations of Oregon's Unlawful Trade
14 Practices Act, antitrust statutes, and Racketeer Influenced
15 and Corrupt Organizations Act. The conduct also gives rise to
16 remedies under the common law for civil conspiracy,
17 negligence, unjust enrichment, fraudulent misrepresentation,
18 and indemnity.

19 **C. DAMAGES**

20 5.

21 Many of the Oregon residents afflicted with tobacco-
22 related diseases are or were poor and financially unable to
23 provide for their own medical care. Pursuant to plaintiff's
24 Medicaid program, plaintiff has provided and paid for such
25 medical care, either directly or through "capitation" payments
26 under the Oregon Health Plan. These payments place an

1 extraordinary burden on Oregon taxpayers and are significantly
2 higher because of defendants' unlawful sales and advertising.

3 Plaintiff also pays for such medical care for its employees.

4 The amount expended by plaintiff to pay the medical costs
5 caused by defendants' conduct has been increasing each year
6 and, although the precise amount is unknown and will be
7 determined at trial, it is estimated to be

8 ///

9 approximately \$60 million annually in the current budget
10 biennium.

11 6.

12 In addition to actual damages described immediately
13 above, plaintiff is also entitled to additional statutory
14 damages and relief as follows:

15 a. A civil penalty of up to \$25,000 for each violation
16 of the Unlawful Trade Practices Act, consisting of each sale
17 of a tobacco product within the State of Oregon and each day
18 that the defendants falsely advertised their products within
19 the State of Oregon;

20 b. Treble plaintiff's actual damages under Oregon's
21 antitrust laws;

22 c. Forfeiture of all the defendants' property and a
23 penalty of \$250,000 pursuant to Oregon's Racketeer Influenced
24 and Corrupt Organizations Act (ORICO); and

25 d. Other legal and equitable relief as set forth in the
26 prayer of this Complaint.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

II. THE PARTIES

A. PLAINTIFF

7.

Plaintiff is the State of Oregon.

B. DEFENDANTS

8.

Defendant The American Tobacco Company (hereafter "American Tobacco") is a Delaware corporation whose principal place of business is Connecticut. At all times relevant to this Complaint, American Tobacco manufactured, advertised and sold Lucky Strike, Pall Mall, Tareyton, American, Malibu, Montclair, Newport, Misty, Iceberg, Silk Cut, Silva Thins, Sobrania, Bull Durham, and Carlton cigarettes and other tobacco products in Oregon and throughout the United States. In 1994, American Tobacco was sold to British-American Tobacco Co., parent of defendant Brown & Williamson.

9.

Defendant Brown & Williamson Tobacco Corporation (hereafter "Brown & Williamson") is a Delaware corporation whose principal place of business is Kentucky. At all times relevant to this Complaint, Brown & Williamson manufactured, advertised, and sold Kool, Raleigh, Barclay, BelAir, Capri, Richland, Laredo, Eli Cutter and Viceroy cigarettes and other tobacco products in Oregon and throughout the United States.

10.

Defendant Lorillard Tobacco Company (hereafter

1 "Lorillard") is a Delaware corporation whose principal place
2 of business is New York. At all times relevant to this
3 Complaint, Lorillard manufactured, advertised and sold Old
4 Gold, Kent, Triumph, Satin, Max, Spring, Newport, and True
5 cigarettes and other tobacco products in Oregon and throughout
6 the United States.

7
8 11.

9 Defendant Philip Morris, Inc. (hereafter "Philip Morris")
10 is a Virginia corporation whose principal place of business is
11 New York. At all times relevant to this Complaint, Philip
12 Morris manufactured, advertised and sold Philip Morris, Merit,
13 Cambridge, Marlboro, Benson & Hedges, Virginia Slims, Alpine,
14 Dunhill, English Ovals, Galaxy, Players, Saratoga, and
15 Parliament cigarettes and other tobacco products in Oregon and
16 throughout the United States.

17
18 12.

19 Defendant R.J. Reynolds Tobacco Company (hereafter
20 "Reynolds") is a New Jersey corporation whose principal place
21 of business is North Carolina. At all times relevant to this
22 Complaint, Reynolds manufactured, advertised and sold Camel,
23 Vantage, Now, Doral, Winston, Sterling, Magna, More, Century,
24 Bright Rite and Salem cigarettes and other tobacco products in
25 Oregon and throughout the United States.

26
27 13.

28 Defendant United States Tobacco Company (hereafter "U.S.
29 Tobacco") is a Delaware corporation whose principal place of

1 business is Connecticut. At all times relevant to this
2 Complaint, U.S. Tobacco manufactured, advertised and sold Sano
3 cigarettes and smokeless tobacco (snuff and chewing tobacco)
4 under various brand names including Happy Days, Skoal and
5 Copenhagen in Oregon and throughout the United States .

6
7 14.

8 Defendant British American Tobacco Company, Ltd.
9 (hereafter "BATCO") is a British Corporation whose registered
10 office is in Middelsex, England. BATCO is or was a related
11 corporation of defendant Brown & Williamson. Both are owned
12 by BAT Industries, p.l.c. At all times relevant to this
13 Complaint, BATCO, individually or through its affiliate,
14 agent, alter ego, subsidiary and/or division Brown &
15 Williamson, advertised, promoted and sold its own tobacco
16 products such as "555 Express" cigarettes in Oregon. BATCO,
17 individually, or through its associated companies, agents, or
18 subsidiaries has also conducted significant research for Brown
19 & Williamson on the topics of smoking, disease, and addiction.

20 On information and belief, Brown & Williamson also sent to
21 England research conducted in the United States on the topics
22 of smoking, disease, and addiction to remove sensitive and
23 inculpatory documents from United States jurisdiction. BATCO
24 is a participant in the conspiracy described herein and has
25 caused harm and affected commerce in the State of Oregon.

26 15.

Defendant B.A.T. Industries p.l.c. (hereafter "B.A.T.

1 Industries" or "BAT-II") is a British corporation whose
2 principal place of business is in London, England. Through a
3 succession of intermediary corporations and holding companies,
4 B.A.T. Industries is the sole shareholder of Brown &
5 Williamson. Through Brown & Williamson, B.A.T. Industries has
6 placed cigarettes into the stream of commerce with the
7 expectation that substantial sales of cigarettes would be made
8 in the United States and in the State of Oregon. B.A.T.
9 Industries has also conducted, or through its agents,
10 subsidiaries, associated companies and/or co-conspirators has
11 conducted, significant research for Brown & Williamson on the
12 topics of smoking, disease and addiction. On information and
13 belief, Brown & Williamson also sent to England research
14 conducted in the United States on the topics of smoking,
15 disease and addiction to remove sensitive and inculpatory
16 documents from American jurisdictions, and such documents are
17 and were subject to B.A.T. Industries' control. B.A.T.
18 Industries is a participant in the conspiracy described herein
19 and has caused harm and affected commerce in Oregon.

20 16.

21 Liggett is a Delaware corporation with its principal
22 place of business in North Carolina. At all times relevant to
23 this complaint, Liggett manufactured, advertised and sold
24 various tobacco products, including Chesterfield, Decade, L&M,
25 Pyramid, Dorado, Eve, Stride, Generic and Lark cigarettes in
26 Oregon and throughout the United States. Liggett is not a

1 defendant because it has, or is shortly expected to, enter
2 into a settlement agreement with plaintiff.

3
4 17.

5 Defendant Hill & Knowlton is a New Jersey corporation
6 with its principal place of business in New York. Hill &
7 Knowlton played an active and knowing role in the conspiracy
8 complained of, and aided circulation and/or publication of the
9 false statements of the Tobacco Companies and the Council for
10 Tobacco Research. Hill & Knowlton has been the primary
11 advertising agency responsible for dissemination of the false
12 and misleading information in question in its role as the
13 advertising and public relations agency for The Tobacco
14 Institute, Inc. (hereafter "Tobacco Institute"), The Council
15 for Tobacco Research-U.S.A., Inc. (hereafter "CTR") and its
16 predecessor Tobacco Institute Research Committee (hereafter
17 "TIRC"), and several members of the tobacco industry,
18 including Liggett, Philip Morris, Reynolds, American Tobacco
19 and Lorillard. In the course of such representation, Hill &
20 Knowlton aided these defendants in creating and issuing false
21 information and concealing the truth about the link between
22 tobacco and cancer or other health hazards, the addictive
23 nature of nicotine, and the true nature of the activities of
24 the TIRC/CTR and its relationship to the industry. Hill &
25 Knowlton has been involved in the wrongful conduct and
26 conspiracy since its creation.

18.

1 Defendant CTR is the successor in interest to TIRC, and
2 is a New York nonprofit corporation with its principal place
3 of business in New York. At all times relevant to this
4 Complaint, CTR and TIRC operated as public relations and
5 lobbying arms of the Tobacco Companies and as agents and
6 employees of the Tobacco Companies. They also acted as
7 facilitating agencies in furtherance of defendants'
8 combination and conspiracy as described in this complaint. In
9 doing the things alleged, CTR and TIRC acted within the course
10 and scope of their agency and employment, and acted either at
11 the direction or with the consent, permission, and
12 authorization of each of the Tobacco Companies. All actions
13 of the CTR and TIRC alleged were ratified and approved by the
14 officers or managing agents of the Tobacco Companies. CTR and
15 TIRC have been involved continuously in the conspiracy
16 described and the actions of CTR and TIRC have affected
17 commerce and caused harm in Oregon.

18 19.

19 Defendant Smokeless Tobacco Council, Inc. (hereafter
20 "STC") is a New York non-profit corporation whose principal
21 place of business is Washington, D.C. STC ostensibly was
22 formed for reasons of supporting objective research into the
23 biologic consequences of the use of smokeless tobacco. Like
24 CTR, it was used to further the goals of the conspiracy.
25 Dominated by U.S. Tobacco, STC also included as members
26 several small producers of smokeless tobacco and was

1 financially supported by several of the Tobacco Companies,
2 including Brown & Williamson, Lorillard and Reynolds.
3 Personnel from the Tobacco Companies actively participated, as
4 agents of the Tobacco Companies, in STC activities. At all
5 relevant times, STC operated as a public relations and
6 lobbying arm of the Tobacco Companies and as agent and
7 employee of the Tobacco Companies. It also acted as a
8 facilitating agency in the furtherance of defendants'
9 combination and conspiracy as described in this complaint. In
10 doing the things alleged, STC acted within the course and
11 scope of its agency and employment, and acted with the
12 consent, permission and authorization of each of the Tobacco
13 Companies. All actions of STC alleged were ratified and
14 approved by the officers or managing agents of the Tobacco
15 Companies. STC has been involved continuously in the
16 conspiracy described and its actions have affected commerce
17 and caused harm in Oregon.

18 20.

19 Defendant Tobacco Institute is a New York nonprofit
20 corporation with its principal place of business in
21 Washington, D.C. At all relevant times, Tobacco Institute
22 operated as a public relations and lobbying arm of the Tobacco
23 Companies and was an agent and employee of the Tobacco
24 Companies. It also acted as a facilitating agency in
25 furtherance of the combination and conspiracy of the
26 defendants described in this Complaint. In doing the things

1 alleged, Tobacco Institute acted within the course and scope
2 of its agency and employment, and acted with the consent,
3 permission, and authorization of each of the Tobacco
4 Companies. All actions of the Tobacco Institute alleged were
5 ratified and approved by the officers or managing agents of
6 the Tobacco Companies. Tobacco Institute has been involved in
7 the conspiracy described in this Complaint and the actions of
8 Tobacco Institute have affected commerce and caused harm in
9 Oregon.

10 21.

11 The above named defendants are sometimes herein
12 collectively referred to as "defendants" (excluding Liggett)
13 or the "Tobacco Industry."

14 ///

15 ///

16 ///

17 **III. JURISDICTION AND VENUE**

18 22.

19 This Complaint is filed under provisions of the Oregon
20 Unlawful Trade Practices Act, ORS 646.605 et seq., the Oregon
21 Racketeer Influenced and Corrupt Organization Act (ORICO),
22 ORS 166.715 to ORS 166.735, the Oregon Antitrust Act,
23 ORS 646.705 et seq., ORS 30.310, and the common law of the
24 State of Oregon.

25 23.

26 The Governor of the State of Oregon is the chief

1 executive officer of Oregon. The Governor has authorized the
2 Attorney General to appear, commence and prosecute this
3 action. Hersh Crawford is the Director of the Office of
4 Medical Assistance Programs of the Oregon Department of Human
5 Resources, and is the state official with primary
6 responsibility for state and federal programs providing
7 medical assistance to financially needy Oregonians. Mr.
8 Crawford has authorized the Attorney General to bring this
9 action. Having concluded that this action is necessary and
10 advisable to protect the interests of the state, the Attorney
11 General is authorized by ORS 180.060(1)(d) to bring this
12 action.

13 24.

14 Further authority for the Attorney General to commence
15 this action is conferred by ORS 646.605 to 646.552;
16 ORS 646.705 to 646.805; ORS 180.060; and ORS 180.520.

17 ///

18 ///

19 25.

20 The violations alleged herein have been and are being
21 committed in whole or in part, and affect commerce in, and
22 defendants do business in Multnomah County and elsewhere
23 throughout the State of Oregon.

24 **IV. CONSPIRACY ALLEGATIONS**

25 26.

26 In committing the wrongful acts alleged, defendants and

1 Liggett, often with the assistance and knowledge of their
2 counsel, have pursued a common course of conduct, acted in
3 concert with, aided and abetted and conspired with one
4 another, in furtherance of their common plan and scheme
5 outlined herein.

6 27.

7 Various other persons, firms, and corporations, who have
8 been named as Unknown Corporations and John Does 1-100 and
9 Jane Does 1-100, participated as co-conspirators in the
10 illegal acts alleged and performed acts and made statements in
11 furtherance of the combination and conspiracy alleged in this
12 complaint.

13 **V. NATURE OF TRADE AND COMMERCE**

14 28.

15 Cigarette manufacturing has been one of the most
16 concentrated industries in the United States throughout this
17 century. Philip Morris, Reynolds, Brown & Williamson,
18 Lorillard, American Tobacco, and Liggett comprise the "Big
19 Six" cigarette manufacturers who control almost 100% of the
20 market in the United States and in Oregon. Philip Morris and
21 Reynolds are the industry leaders with national market shares
22 of approximately 46% and 25% respectively. The approximate
23 cigarette market shares of the remaining Big Six manufacturers
24 are: Brown & Williamson, 12% (19% if American Tobacco is
25 included); Lorillard, 8%; American Tobacco, 7%; and Liggett,
26 2%. The smokeless tobacco market is dominated by U.S. Tobacco

1 and is even more concentrated.

2 29.

3 In part because of its concentration, the tobacco
4 industry has long been one of America's most profitable
5 businesses, with profit margins estimated to be at least 30%.

6 The industry earns billions of dollars in profits each year
7 from domestic sales. The exact amount of gross sales and
8 profits derived from Oregon is unknown.

9 **VI. FACTUAL ALLEGATIONS**

10 30.

11 At all material times the cigarettes and other tobacco
12 products sold, manufactured or promoted by the defendants have
13 the following characteristics:

14 a. They are physically addictive;

15 b. They cause death and debilitating disease, including
16 cancer, heart disease, stroke, and emphysema to those who
17 smoke them or chew tobacco and, in some cases, to those who
18 are non-smokers but who are exposed to smoke in the
19 environment.

20 31.

21 Defendants have known since no later than 1974 that
22 tobacco has the characteristics described in the immediately
23 preceding paragraph. All defendants have had reason to know
24 of those characteristics since at least 1946, and at least one
25 of the defendants (Brown & Williamson) has known since at
26 least 1963 that tobacco has those characteristics.

Beginning on December 15, 1953, and continuing to the present time, defendants and their predecessors in interest entered into a joint agreement to engage in a public relations campaign to counteract the growing public perception that smoking cigarettes and consumption of their tobacco products was injurious to human health. Pursuant to the joint agreement, the defendants engaged in the following activities:

a. They ceased developing and marketing a "safer" cigarette, i.e., a cigarette with health effects less injurious than those on the market at that time, even though Liggett had developed such a cigarette by 1978, and Philip Morris and Brown & Williamson and BATCO undertook research and development they abandoned by 1980. Reynolds also undertook and abandoned such research and development.

b. They ceased advertising that claimed the tobacco products of one of the Tobacco Companies was less harmful to health than the products of any competitor.

c. They proclaimed, primarily through the "Frank Statement" published in newspapers throughout the United States, including *The Oregonian* on January 4, 1954, and through other public announcements and public statements of employees and officials, that they would seek to promote, by the creation of the TIRC (which later became defendant CTR), reliable scientific research into the actual health effects of

1 tobacco consumption, and that they would make the results of
2 such research known to the general public. Other such public
3 statements were made by Dr. Clarence Cook Little, Chairman of
4 the "science advisory board" of TIRC in July, 1957; by Bowman
5 Gray, Chairman of the Board of R.J. Reynolds on behalf of the
6 Tobacco Companies in testimony before a committee of the
7 United States House of Representatives on June 25, 1964; by
8 Horace Kornegay, president of defendant Tobacco Institute, on
9 February 13, 1978; and by other statements too numerous to
10 list but which are known to defendants.

11 d. They suppressed reliable scientific research tending
12 to show that tobacco was addictive and had ill health effects;
13 promoted and publicized flawed research that either minimized
14 or raised bogus questions as to nicotine's addictive qualities
15 and tobacco's adverse health effects; and sought to denigrate
16 independent research that found nicotine was addictive and
17 tobacco had ill health effects. All instances of defendants'
18 conduct as alleged in this sub-paragraph are not known to
19 plaintiff but include: concealment of a 1974 study funded by
20 defendant Council for Tobacco Research that found "reduced
21 tar" cigarettes do not eliminate risks to health like lung
22 cancer; a project sponsored by defendant CTR on "sick building
23 syndrome" that relied on homes chosen by defendant Tobacco
24 Institute and that relied on another industry-sponsored study
25 that contained falsified data; and placement of advertisements
26 by defendant Tobacco Institute attacking a 1981 Japanese study

1 finding a connection between lung cancer and exposure to
2 tobacco smoke from another person's cigarettes.

3 33.

4 Beginning at least as early as the mid-1980s, the Tobacco
5 Companies have intentionally encouraged consumption of tobacco
6 products by minors by marketing and advertising their products
7 to minors, notwithstanding that possession of tobacco by
8 minors and sale of tobacco to minors are violations of the
9 criminal laws of the State of Oregon. Defendant Tobacco
10 Companies' conduct in this regard continues to the present.
11 Plaintiff has not yet determined all advertising campaigns and
12 placements of the defendants that are and were directed toward
13 minors, but examples are:

14 a. Philip Morris' campaign for Marlboro using the
15 "Marlboro Man;"

16 b. R.J. Reynolds' campaign for Camel beginning in
17 approximately 1988, including its payment for promotion of
18 Camel in movies such as "Who Framed Roger Rabbit," and "Honey,
19 I Shrank the Kids;"

20 c. Brown & Williamson's payment of \$500,000 to the
21 actor Sylvester Stallone to place its product in five of his
22 feature films;

23 ///

24 d. Philip Morris' payment for the promotion of Marlboro
25 in "Superman II," "Risky Business," and "Crocodile Dundee;"

26 e. American Tobacco's payment for the promotion of

1 Lucky Strike in "Beverly Hills Cop;" and

2 f. Lorillard's campaign for Salem starting in the
3 1980s.

4 Concurrently, the defendant Tobacco Companies have publicly
5 denied that they are intentionally marketing their products to
6 minors.

7 **VII. FRAUDULENT CONCEALMENT**

8 34.

9 Plaintiff was without knowledge of defendants'
10 combination or conspiracy, or of any facts from which it might
11 reasonably be concluded that defendants were illegally
12 conspiring, or which would have led to the discovery thereof
13 until 1996. Plaintiff could not have discovered such facts or
14 the alleged violations at an earlier time because defendants
15 fraudulently concealed their course of conduct.

16 35.

17 Plaintiff is not aware of all the methods used by
18 defendants and Liggett to conceal their activities, but
19 believes that the methods used in furtherance of their
20 combination and conspiracy were by nature self-concealing and
21 not of a type which could have reasonably been apparent to
22 plaintiff. For example, defendants' suppression of scientific
23 research was done covertly. Defendants also concealed their
24 activities by hiding relevant documents.

25 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

36.

Defendants' conspiracy and illegal conduct is ongoing and continues to the present.

Allegations for Particular Claims for Relief

VIII. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF--UNLAWFUL TRADE PRACTICES ACT

ORS 646.605-646.652

**(Unconscionable Tactics: Unlawful Marketing
and Targeting Minors)**

37.

Plaintiff realleges and incorporates herein the foregoing allegations of this Complaint.

38.

More than 10 days prior to the filing of this Complaint, each defendant was given notice of these violations pursuant to ORS 646.632 and in conformance with ORS 646.622, but each has failed to execute and deliver an Assurance of Voluntary Compliance in conformity with ORS 646.632.

39.

The Oregon Legislature has declared that it is the public policy of Oregon to prohibit minors' access to tobacco products. Pursuant to ORS 163.575 it is a criminal violation to give or sell tobacco products to minors, and such action constitutes endangering the welfare of a minor; pursuant to ORS 167.400, it is a criminal violation for a minor to possess tobacco products.

1 ///

2 40.

3 Defendants have engaged in a course of conduct and have
4 suppressed information with the intent that others rely on
5 such suppression in an effort to unconscionably and unlawfully
6 encourage minors to violate ORS 167.400 and to encourage
7 adults to violate ORS 163.575

8 41.

9 More specifically, and as set forth above, defendants
10 have caused the Tobacco Companies' products to be sold to
11 minors, in part, by (a) concealing that their marketing is
12 designed to encourage minors to smoke in violation of Oregon
13 law; (b) concealing that their products are addictive and
14 harmful and suppressing and omitting information on these
15 subjects, while at the same time portraying tobacco use as
16 glamorous and in a fashion that is designed to minimize the
17 risks associated with tobacco use; (c) designing their
18 marketing campaigns with the intent that minors rely on the
19 Tobacco Companies' advertisements; (d) engaging in conduct
20 with the purpose of causing minors to smoke in violation of
21 Oregon law, while publicly, falsely and hypocritically
22 claiming that they are against encouraging minors to smoke,
23 and while they have acted precisely to encourage minors to
24 smoke.

25 42.

26 Each day the defendant Tobacco Companies targeted minors

1 in Oregon in their advertising as described above, they
2 violated the expressed public policy of the State of Oregon,
3 and encouraged others to violate the criminal law of this
4 State and, so doing, they engaged in an unconscionable tactic
5 in the sale of goods in violation of ORS 646.607.

6 43.

7 The exact dates on which each defendant Tobacco Company
8 began engaging in, and continued to engage in, the
9 unconscionable tactics described above is unknown to plaintiff
10 but will be determined prior to, and proven at, trial.

11 44.

12 Defendants' violations of ORS 646.607(1) were done
13 wilfully, in that they knew or should have known that their
14 conduct was in violation of law.

15 **SECOND CLAIM FOR RELIEF**

16 **(Unlawful Trade Practice - ORS 646.607(1))**

17 45.

18 Plaintiff realleges and incorporates herein the foregoing
19 allegations of this Complaint.

20 46.

21 Each sale of a tobacco product in Oregon manufactured or
22 distributed by defendant Tobacco Companies was a sale that
23 resulted from those defendants' willful employment of
24 unconscionable tactics in connection with the sale or other
25 disposition of goods or services to Oregon consumers,
26 constituting a violation of the Oregon Unlawful Trade

1 Practices Act, ORS 646.607(1), by:

2 ///

3
4 a. Making false and misleading oral and written
5 statements that had, and have, the capacity, tendency, or
6 effect of deceiving or misleading Oregon consumers, including
7 but not limited to statements concerning the defendants'
8 knowledge of the harmful effects of smoking and the addictive
9 properties of nicotine;

10 b. Promoting and selling tobacco products that addict
11 Oregon consumers, while misleading the public as to
12 defendants' concern and knowledge about the harmful and
13 addictive nature of tobacco, the information available to them
14 regarding the health effects and addictive nature of tobacco,
15 and the purpose and independence of the TIRC/CTR;

16 c. Taking unfair advantage of Oregon consumers'
17 ignorance of the true harmful and addictive nature of tobacco
18 products, while perpetuating and fostering that ignorance
19 through a campaign of misleading and deceptive advertisements
20 some of which were conducted under the guise of scientific
21 research and findings;

22 d. Repeatedly and systematically misleading the public
23 about the extent to which there was a genuine controversy and
24 uncertainty among scientists and health officials regarding
25 whether smoking cigarettes is addictive;

26 e. Repeatedly and systematically misleading the public

1 about the extent to which there was genuine controversy and
2 uncertainty among scientists and health officials regarding

3 ///

4 whether smoking cigarettes is the cause of serious and life
5 threatening disease;

6 f. Falsely claiming the defendants were conscientiously
7 undertaking joint and individual research efforts involving
8 disinterested, independent researchers, intending to discover
9 the truth regarding the health consequences of smoking;

10 g. Suppressing research projects that "threatened" to
11 result in important discoveries regarding smoking and health,
12 which might jeopardize the profitability of cigarette sales or
13 the tobacco industry's position in litigation;

14 h. Actively concealing scientific findings of vital
15 interest to health officials and others concerned with the
16 health effects of smoking because disclosure would
17 disadvantage the tobacco industry;

18 i. Manipulating nicotine levels in order to ensure
19 delivery of that drug to smokers in quantities which ensured
20 physiological impact and promoted continuing dependency, and
21 failing to disclose and denying such manipulation; and

22 j. Manufacturing and marketing a defective product
23 (cigarettes) which is addictive and carcinogenic.

24 47.

25 Defendants' violations of ORS 646.607 were done wilfully,
26 in that they knew or should have known that their conduct was

1 in violation of law.

2 ///

3 ///

5 48.

6 The number of sales of each of the defendant Tobacco
7 Companies' products in the State of Oregon is unknown to
8 plaintiff but will be determined prior to, and proven at,
9 trial.

10 **THIRD CLAIM FOR RELIEF**

11 **(Unlawful Trade Practice - ORS 646.608(1)(g)**
12 **and ORS 646.608(1)(e))**

13 49.

14 Plaintiff realleges and incorporates herein the foregoing
15 allegations of this Complaint.

16 50.

17 Each sale of a tobacco product in Oregon manufactured or
18 distributed by defendant Tobacco Companies was a sale that
19 resulted from those defendants' willful misrepresentation that
20 their tobacco products were of a particular standard, quality
21 or grade when they were not, in violation of the Oregon
22 Unlawful Trade Practices Act, ORS 646.608(1)(g), by:

23 a. Making false and misleading oral and written
24 statements that had, and have, the capacity, tendency, or
25 effect of deceiving or misleading Oregon consumers, including
26 but not limited to statements concerning the defendants'

1 knowledge of the harmful effects of smoking and the addictive
2 properties of nicotine;

3 b. Promoting and selling tobacco products that addict
4 Oregon consumers, while misleading the public as to
5 defendants' concern and knowledge about the harmful and
6 addictive nature of tobacco, the information available to them
7 regarding the health effects and addictive nature of tobacco,
8 and the purpose and independence of the TIRC/CTR;

9 c. Taking unfair advantage of Oregon consumers'
10 ignorance of the true harmful and addictive nature of tobacco
11 products, while perpetuating and fostering that ignorance
12 through a campaign of misleading and deceptive advertisements
13 some of which were conducted under the guise of scientific
14 research and findings;

15 d. Repeatedly and systematically misleading the public
16 about the extent to which there was a genuine controversy and
17 uncertainty among scientists and health officials regarding
18 whether smoking cigarettes is addictive;

19 e. Repeatedly and systematically misleading the public
20 about the extent to which there was genuine controversy and
21 uncertainty among scientists and health officials regarding
22 whether smoking cigarettes is the cause of serious and life
23 threatening disease;

24 f. Falsely claiming the defendants were conscientiously
25 undertaking joint and individual research efforts involving
26 disinterested, independent researchers, intending to discover

1 the truth regarding the health consequences of smoking;

2 g. Suppressing research projects that "threatened" to
3 result in important discoveries regarding smoking and health,
4 which might jeopardize the profitability of cigarette sales or
5 the tobacco industry's position in litigation;

6 h. Actively concealing scientific findings of vital
7 interest to health officials and others concerned with the
8 health effects of smoking because disclosure would
9 disadvantage the tobacco industry; and

10 i. Manipulating nicotine levels in order to ensure
11 delivery of that drug to smokers in quantities which ensured
12 physiological impact and promoted continuing dependency, and
13 failing to disclose and denying such manipulation.

14 51.

15 Each sale of a tobacco product in Oregon manufactured or
16 distributed by defendant Tobacco Companies was a sale that
17 resulted from those defendants' willful misrepresentation that
18 their tobacco products had sponsorship, approval,
19 characteristics, ingredients, uses, benefits, quantities or
20 qualities that they do not have, or that a person has
21 sponsorship, approval, status, qualification, affiliation, or
22 connection that the person does not have, in violation of
23 ORS 646.608(1)(e), by:

24 a. Asserting that the TIRC/CTR would be run by a
25 scientist of unimpeachable integrity and advised by a board of
26 distinguished scientists disinterested in the tobacco industry

1 when, in fact, TIRC was controlled by defendants and used to
2 promote the sale of their tobacco products;

3 b. Making false and misleading oral and written
4 statements that had, and have, the capacity, tendency, or
5 effect of deceiving or misleading Oregon consumers, including
6 but not limited to statements concerning the defendants'
7 knowledge of the harmful effects of smoking and the addictive
8 properties of nicotine;

9 c. Promoting and selling tobacco products that addict
10 Oregon consumers, while misleading the public as to
11 defendants' concern and knowledge about the harmful and
12 addictive nature of tobacco, the information available to them
13 regarding the health effects and addictive nature of tobacco,
14 and the purpose and independence of the TIRC/CTR;

15 d. Taking unfair advantage of Oregon consumers'
16 ignorance of the true harmful and addictive nature of tobacco
17 products, while perpetuating and fostering that ignorance
18 through a campaign of misleading and deceptive advertisements
19 some of which were conducted under the guise of scientific
20 research and findings;

21 e. Repeatedly and systematically misleading the public
22 about the extent to which there was a genuine controversy and
23 uncertainty among scientists and health officials regarding
24 whether smoking cigarettes is addictive;

25 f. Repeatedly and systematically misleading the public
26 about the extent to which there was genuine controversy and

1 uncertainty among scientists and health officials regarding
2 whether smoking cigarettes is the cause of serious and life
3 threatening disease;

4 g. Falsely claiming the defendants were conscientiously
5 undertaking joint and individual research efforts involving
6 disinterested, independent researchers, intending to discover
7 the truth regarding the health consequences of smoking;

8 h. Suppressing research projects that "threatened" to
9 result in important discoveries regarding smoking and health,
10 which might jeopardize the profitability of cigarette sales or
11 the tobacco industry's position in litigation;

12 i. Actively concealing scientific findings of vital
13 interest to health officials and others concerned with the
14 health effects of smoking because disclosure would
15 disadvantage the tobacco industry; and

16 j. Manipulating nicotine levels in order to ensure
17 delivery of that drug to smokers in quantities which ensured
18 physiological impact and promoted continuing dependency, and
19 failing to disclose and denying such manipulation.

20 52.

21 Defendants' violations of ORS 646.608(1)(g) and
22 646.608(1)(e) were done wilfully, in that they knew or should
23 have known that their conduct was in violation of law.

24 53.

25 The number of sales of each of the defendant Tobacco
26 Companies' products in the State of Oregon is unknown to

1 plaintiff but will be determined prior to, and proven at,
2 trial.

3 ///

4 ///

5 ///

6 ///

7 **FOURTH CLAIM FOR RELIEF**

8 **(Antitrust - Restraint of Trade)**

9 54.

10 Plaintiff realleges and incorporates herein the foregoing
11 allegations of this Complaint.

12 55.

13 Plaintiff, acting through its Attorney General, brings
14 this claim under ORS 646.770 and 646.780 for equitable relief
15 and to recover economic damages sustained by plaintiff in its
16 business or property.

17 56.

18 As described more fully below, defendants, Liggett, and
19 other unnamed co-conspirators have engaged in illegal conduct
20 involving interstate trade or commerce which is primarily of
21 an intrastate nature and over which federal jurisdiction has
22 not been exercised by the Federal Trade Commission and the
23 United States Department of Justice.

24 57.

25 Beginning as early as the 1950s, and continuing until the
26 present date, defendants, Liggett, and other unnamed co-

1 conspirators entered into a contract, combination or
2 conspiracy in unreasonable restraint of trade and commerce in
3 the market for tobacco products in Oregon.

4 58.

5 This contract, combination or conspiracy had the purpose
6 and effect of:

7 a. Restraining competition in the marketing and sale of
8 tobacco products in the State of Oregon;

9 b. Restraining competition among defendants on the
10 basis of the safety and health characteristics and/or risks of
11 defendants' tobacco products;

12 c. Restraining competition among tobacco product
13 manufacturers for the research, development, production, sales
14 and marketing of product innovations relating to the health
15 effects of tobacco use, including "safer" cigarettes; and

16 d. Shifting the costs of health care associated with
17 tobacco product use from the Tobacco Companies to the health
18 care markets and to third parties, including plaintiff, within
19 the health care markets.

20 59.

21 As part of the contract, combination or conspiracy,
22 defendants, among other things, expressly and impliedly agreed
23 to:

24 a. Restrain and suppress competition on health claims
25 and the health and safety characteristics of tobacco products
26 in the United States and in the State of Oregon;

1 health effects of tobacco product use;

2 c. Destroy, suppress and/or conceal documents,
3 research, independent research, and information relating to
4 the causal relationship between tobacco product use and
5 harmful health effects, and the addictive nature of nicotine;
6 ///

7 d. Deceive the public, public officials, and public
8 entities about the health risks of tobacco product use, the
9 true causal relationship between tobacco use and tobacco-
10 related diseases, and the addictive nature of nicotine;

11 e. Halt, limit, suppress and/or terminate the research,
12 development, sales and marketing of product innovations
13 related to the health risks associated with tobacco product
14 use, including "safer" cigarettes; and

15 f. Shift the direct and foreseeable health care costs
16 associated with the use of cigarettes and tobacco products to
17 third party payors including plaintiff.

18 61.

19 Defendants' conduct constitutes a contract, combination
20 or conspiracy in restraint of trade or commerce in violation
21 of ORS 646.725.

22 62.

23 As a result of defendants' unlawful contract, combination
24 or conspiracy:

25 a. Competition in the tobacco product market in the
26 State of Oregon has been restrained;

1 b. Competition in research, development, marketing and
2 sales of product innovations related to the health risks
3 associated with tobacco use, including "safer" cigarettes, in
4 the State of Oregon has been restrained and output has been
5 restricted;

6 ///

7 c. Oregon consumers have been deprived of the
8 availability and choice of "safer" cigarettes;

9 d. The volume of tobacco product sales to the Oregon
10 public and the prices charged by the Tobacco Companies for
11 their tobacco products have been maintained at artificial
12 levels;

13 e. Oregon consumers have been deprived of the
14 availability of accurate information material to their
15 decision about the purchase and use of tobacco products;

16 f. Oregon consumers have been misinformed and misled
17 concerning the nature and health consequences of use of
18 tobacco products;

19 g. The Tobacco Companies prevented loss of sales
20 revenues and loss of profits that would have resulted if the
21 information on the harmful effects of tobacco products and the
22 addictive effects of nicotine had been made public;

23 h. The Tobacco Companies prevented the assumption of
24 health care costs associated with the use of tobacco products
25 that they would have incurred if the information on the
26 harmful health effects of tobacco product use and the

1 addictive effects of nicotine had been made public;

2 i. The Tobacco Companies shifted the cost of health
3 care associated with tobacco product use to the health care
4 markets and to third parties within the health care markets,
5 including
6 Oregon, which costs would otherwise have been borne by
7 defendant Tobacco Companies as a cost in the tobacco product
8 market; and

9 ///

10 j. The allocation of resources within Oregon's economy
11 has been adversely affected.

12 63.

13 Plaintiff has suffered injury to its business or property
14 because:

15 a. Residents of the State of Oregon have used and
16 continue to use more dangerous tobacco products than they
17 otherwise would have;

18 b. Residents of the State of Oregon have been deprived
19 of a choice of less dangerous alternatives to the tobacco
20 products that were available to them;

21 c. Residents of the State of Oregon have suffered
22 higher rates of tobacco-related illnesses and premature deaths
23 than they otherwise would have but for defendants' unlawful
24 conduct;

25 d. Plaintiff has assumed a burden of the costs,
26 including medical costs, of tobacco-related diseases that were

1 shifted from defendants to third parties, including plaintiff,
2 that would otherwise have been assumed by defendants but for
3 defendants' unlawful conduct; and

4 e. Plaintiff has incurred higher health care costs in
5 paying for the treatment of the tobacco-related
6 illnesses and diseases than it otherwise would have but for
7 defendants' conduct.

8 64.

9 Plaintiff was in the target area of defendants' unlawful
10 contract, combination or conspiracy; defendants' unlawful
11 conduct has had and continues to have a direct and foreseeable
12 effect on plaintiff's medical costs; and defendants have
13 reaped and continue to reap enormous profits without paying
14 health care costs that they should incur by shifting the
15 health care costs of tobacco-related illnesses and diseases to
16 third parties, including plaintiff.

17 65.

18 The market for tobacco products and the market for health
19 care are inextricably intertwined.

20 66.

21 The injury to plaintiff's business or property is a
22 direct and foreseeable result of defendants' unlawful conduct
23 and is inextricably intertwined with and a necessary step in
24 effecting the ends of defendants' unlawful conduct.

25 67.

26 The unlawful contract, combination or conspiracy and the

1 effects thereof are continuing, and plaintiff has suffered
2 irreparable injury to its business or property and will
3 continue to suffer irreparable injury unless the equitable
4 relief sought by plaintiff is granted.

5 **FIFTH CLAIM FOR RELIEF**

6 **(Antitrust - Conspiracy to Monopolize)**

7 68.

8
9 Plaintiff realleges and incorporates herein the
10 allegations contained in the Fourth Claim for Relief.

11 ///

12 69.

13 At all times material herein, the Tobacco Companies
14 jointly possessed 100% of the cigarette market in the State of
15 Oregon, hereafter referred to as a joint monopoly.

16 70.

17 Defendants entered into the unlawful contract,
18 combination or conspiracy alleged in the Fourth Claim for
19 Relief which necessarily and directly resulted in defendants'
20 preserving, maintaining, expanding and exercising the Tobacco
21 Companies' joint monopoly in the cigarette market in the State
22 of Oregon in violation of ORS 646.730.

23 71.

24 As part of the unlawful contract, combination or
25 conspiracy alleged in the Fourth Claim for Relief, defendants,
26 among other things, agreed to and engaged in the conduct

1 alleged therein which was specifically intended to preserve,
2 maintain, expand, and exercise the Tobacco Companies' joint
3 monopoly in the cigarette market in the State of Oregon.
4

5 72.

6 Defendants' unlawful conduct resulted in:

7 a. Restraining and stifling entry into the cigarette
8 market by new competitors to compete with the Tobacco
9 Companies;

10 b. Stifling and suppressing the creation of new
11 products and/or new product markets that would have competed
12 with the Tobacco Companies but for defendants' unlawful
13 conduct;

14 ///

15 c. Restricting output in product innovations,
16 including the development and marketing of "safer" cigarettes;
17 and

18 d. Artificially maintaining the Tobacco Companies'
19 joint market shares and sales of more addictive cigarettes to
20 the public.

21 73.

22 As a result of defendants' unlawful contract, combination
23 or conspiracy, plaintiff has suffered the injuries to its
24 business or property as alleged in the Fourth Claim for Relief
25 and will continue to suffer irreparable injury unless the
26 equitable relief sought by plaintiff is granted.

74.

1 Plaintiff was in the target area of defendants' unlawful
2 contract, combination or conspiracy; defendants' unlawful
3 conduct has had and continues to have a direct and foreseeable
4 effect on plaintiff's medical costs; and defendants have
5 reaped and continue to reap enormous profits without paying
6 health care costs that they should incur by shifting the
7 health care costs of tobacco-related illnesses and diseases to
8 third parties, including plaintiff.

9 75.

10 The market for cigarettes and the market for health care
11 are inextricably intertwined.

12 ///

13 ///

14 ///

15
16 **SIXTH CLAIM FOR RELIEF**

17 **(Oregon Racketeer Influenced & Corrupt Organizations Act)**

18 76.

19 Plaintiff realleges and incorporates in this claim
20 allegations of every other paragraph alleged in this
21 Complaint. The Attorney General is authorized by ORS
22 166.725(5) and ORS 166.725(8) to bring the counts stated in
23 this claim for relief.

24 **THE ENTERPRISE**

25 77.

26 Beginning on January 1, 1953 and continuously at all

1 times since, an "enterprise" as defined in ORS 166.715(2)
2 existed. The enterprise consisted of an association in fact
3 between and among all defendants named in this Complaint; non-
4 defendants American Brands, Inc., RJR Nabisco, Inc., Batus
5 Corporation, Philip Morris Companies, Inc., Liggett Group,
6 Inc., Liggett, Brooke Group LTD., Inc., Brooke Group, Limited,
7 UST, Inc.; and other persons and entities as yet unknown to
8 plaintiff.

9 **THE PATTERN OF RACKETEERING ACTIVITY**

10 78.

11 Between January 1, 1953 and continuously through the
12 present, the enterprise has engaged in a pattern of
13 racketeering activity as defined in ORS 166.715(4) consisting
14 of two or more incidents of racketeering conduct, each of
15 which constituted conduct defined as racketeering activity
16 under 18 USC § 1961(1)(B). These acts are interrelated by
17 their connection to the enterprise, including having the same
18 results, accomplices, and victims, and by the fact that they
19 are all intended to increase or maintain profits from the
20 manufacture, distribution and sale of tobacco products. These
21 incidents of racketeering activity are more particularly
22 alleged in Paragraphs 79-83.

23 **SCHEME OR ARTIFICE TO DEFRAUD**

24 79.

25 Each of the incidents of racketeering conduct more
26 particularly alleged in paragraphs 80 - 83 were committed by

1 defendants as part of a scheme or artifice to defraud current
2 and would-be consumers of tobacco products, the public, and
3 plaintiff by false and misleading statements, telling half-
4 truths, and by deceitfully failing to state material facts
5 necessary to correct otherwise misleading statements. The
6 schemes and artifices to defraud formed by defendants and
7 carried out through the activities of the enterprise
8 constituted schemes or artifices to defraud in violation of 18
9 USC § 1341 and 18 USC § 1343. Schemes and artifices to
10 defraud committed by defendants as a group and as individuals
11 included:

12 a. Creating and encouraging false and misleading
13 controversies regarding the addictive qualities of tobacco
14 products containing nicotine;

15 b. Creating and encouraging false and misleading
16 controversies regarding the fact that tobacco causes injurious
17 health effects including death; and concealing and
18 misrepresenting defendants' individual and collective
19 knowledge of the addictive qualities of tobacco products
20 containing nicotine;

21 c. Concealing and misrepresenting defendants'
22 collective and individual knowledge of the fact that tobacco
23 causes injurious health effects including death;

24 d. Concealing and misrepresenting defendants'
25 collective and individual knowledge and capacity to
26 manufacture, distribute and sell less dangerous tobacco

1 products;

2 e. Concealing and misrepresenting defendants' capacity
3 and practice of manipulating the amount of nicotine contained
4 in their tobacco products;

5 f. Falsely representing to current and would-be
6 consumers, the public, and plaintiff that defendants would
7 fulfil their voluntarily assumed duty to honestly and
8 completely disclose their collective and individual knowledge
9 of all of the foregoing; and,

10 g. Falsely denying defendants knew their marketing and
11 promotional activities had the effect and intent of causing
12 children under the age of 18 to become addicted to defendants'
13 deadly products.

14 **INTENT TO DEFRAUD**

15 80.

16 The schemes and artifices to defraud, and each of the
17 incidents of racketeering conduct more particularly alleged in
18 paragraphs 79 - 83, were committed by defendants with the
19 intent to defraud current and would-be consumers of tobacco
20 products, the public, and plaintiff. Defendants acted at all
21 times with a conscious objective to mislead and confuse
22 consumers, the public, and plaintiff.

23 **INTERSTATE MAIL AND WIRE COMMUNICATIONS**

24 81.

25 As is more particularly alleged in paragraphs 82 and 83,
26 defendants used the United States mails and interstate and

1 international wire communications for the purpose and in
2 furtherance of their schemes and artifices to defraud.

3 **ACTS OF MAIL FRAUD**

4 82.

5 All of the defendants used the United States mails to
6 disseminate advertising which was part of the schemes and
7 artifices to defraud. All of the defendants also used the
8 United States mails and wire communication to communicate
9 among themselves with the purpose and effect of fostering the
10 scheme and artifices to defraud. Virtually every
11 advertisement placed by the defendants or one of them since
12 the beginning of the joint action in 1953 constituted a use of
13 the U.S. mails or wire communication as a part of the schemes
14 and artifices to defraud. a. On or al

15 advertisement which promoted its cigarette product
16 "Parliament." That advertisement was disseminated throughout
17 the State of Oregon, and contained, in

18 ///

19 part, the written statement: "THE *FIRST* FILTER CIGARETTE IN
20 THE WORLD THAT MEETS THE STANDARDS OF THE UNITED STATES
21 TESTING CO."

22 b. On or about February 21, 1964, defendant Reynolds
23 caused to be published in *Life* magazine an advertisement which
24 promoted its cigarette product "Winston." That advertisement
25 was disseminated throughout the State of Oregon, and
26 contained, in part, the written statement: "Flavor that goes

1 with fun," and the statement: "Pure white, modern filter."

2 c. On or about February 28, 1964, defendant Lorillard
3 caused to be published in *Life* magazine an advertisement which
4 promoted its cigarette product "Kent." That advertisement was
5 disseminated throughout the State of Oregon, and contained, in
6 part, the written statement: "When pleasure is important," and
7 the statement: "Kent with the MICRONITE filter gives you the
8 best combination of filter-action and satisfying taste."

9 d. On or about June 30, 1972, defendant Lorillard
10 caused to be published in *Life* magazine an advertisement which
11 promoted its cigarette product "True." That advertisement was
12 disseminated throughout the State of Oregon, and contained, in
13 part, the written statement: "Latest U.S. Government tests of
14 all leading cigarettes show True lowest in both tar and
15 nicotine of the 20 best-selling brands."

16 e. On or about November 24, 1972, defendant American
17 Tobacco caused to be published in *Life* magazine an
18 advertisement which promoted its cigarette product "Tareyton
19 100's." That advertisement was disseminated throughout the
20 State of Oregon, and contained, in part, the written
21 statement: "Filter for better taste the Tareyton way with
22 activated charcoal." The advertisement continued: "Enjoy the
23 mild taste of Tareyton with the Activated Charcoal Filter."

24 f. On or about June 9, 1980, defendant Philip Morris
25 caused to be published in *Sports Illustrated* magazine an
26 advertisement which promoted its cigarette product "Marlboro

1 Lights." That advertisement was disseminated throughout the
2 State of Oregon, and contained, in part, the written
3 statement: "The spirit of Marlboro in a low tar cigarette."

4 g. On or about August 25, 1980, defendant American
5 Tobacco caused to be published in *Time* magazine an
6 advertisement which promoted its cigarette product "Tareyton
7 lights." That advertisement was disseminated throughout the
8 State of Oregon, and contained, in part, the written
9 statement: "Only Tareyton has the *best filter!*" The statement
10 continues underneath a depiction of a man and a woman: "We'd
11 rather light than fight!"

12 h. On or about August 25, 1980, defendant Philip Morris
13 caused to be published in *Time* magazine an advertisement which
14 promoted its cigarette product "Merit." That advertisement
15 was disseminated throughout the State of Oregon, and
16 contained, in part, the written statement: "Low tar/good taste
17 combination scores impressive 3-to-1 victory over leading high
18 tar brands."

19 i. On or about August 25, 1980, defendant American
20 Tobacco caused to be published in *Time* magazine an
21 advertisement which promoted its cigarette product "Carlton."
22 That advertisement was disseminated throughout the State of
23 Oregon, and contained, in part, the written statement: "10
24 packs of Carlton have less tar than 1 pack of [eleven (11)
25 other cigarette brands]."

26 j. On or about September 1, 1980, defendant Brown &

1 Williamson Tobacco caused to be published in *U. S. News &*
2 *World Report* magazine an advertisement which promoted
3 cigarette product "Kool SUPER LIGHTS." That advertisement was
4 disseminated throughout the State of Oregon, and contained, in
5 part, the written statement: "the coolest taste around," and
6 the statement: "Long famous for coolness in smoking."

7 k. On or about February 1, 1983, defendant Tobacco
8 Institute caused to be published in *Time* magazine an
9 advertisement which discounted the effects of cigarette
10 advertising as a major reason why kids smoke. That
11 advertisement was disseminated throughout the State of Oregon,
12 and contained, in part, the written statement: "Answers to the
13 most asked questions about cigarettes. IS CIGARETTE
14 Advertising A MAJOR REASON WHY KIDS SMOKE? NO." The
15 advertisement contains text and a bar graph, purporting to
16 support the position that advertising does not impact youth
17 smoking and discussing a decrease in teenage smokers between
18 1974 and 1979. The advertisement concludes with the
19 statement: "WEIGH BOTH SIDES BEFORE YOU TAKE SIDES."

20 l. On or about August 1, 1987, defendant Reynolds
21 caused to be published in *Family Circle* magazine an
22 advertisement which promoted defendant's "Now 100's." That
23 advertisement was disseminated throughout the State of Oregon
24 and contained, in part, the written statement: "NOW IS LOWEST
25 BY U.S. Gov't testing method" in comparison to the tar and
26 nicotine contained in three other listed brands of cigarettes

1 with their respectively higher listed amounts of tar and
2 nicotine to the tar and nicotine amounts contained in
3 defendant's subject cigarette.

4 m. On or about July 11, 1991, defendant Reynolds caused
5 to be published in *Rolling Stone* magazine an advertisement
6 which promoted its cigarette product "Camel." That
7 advertisement was disseminated throughout the State of Oregon,
8 and contained, in part, the written statement: "The Hard Pack"
9 accompanying an artist's rendering of four Joe Camel look-
10 alikes as musicians with instruments, and showing the words
11 "Smooth Taste Low Tar" on a large pack of Camel cigarettes.

12 n. On or about August 19, 1991, defendant American
13 Tobacco caused to be published in *Sports Illustrated* magazine
14 an advertisement which promoted its cigarette product
15 "Carlton." That advertisement was disseminated throughout the
16 State of Oregon, and contained, in part, the written
17 statement: "U.S. Gov't Test Method confirms of all king soft
18 packs: *Carlton is lowest* [in tar]."

19 83.

20 Plaintiff does not certify the evidentiary basis for the
21 remaining allegations of this paragraph, but plaintiff
22 reasonably believes further investigation and discovery will
23 sustain the allegations of each subparagraph below.

24 a. During June and July, 1963, letters were exchanged
25 through the mails and wire communications were made in which
26 representatives of British American Tobacco and Brown &

1 Williamson discussed nicotine research being done by Battelle,
2 agreed to withhold research from the Surgeon General of the
3 United States, and forwarded research to attempt to protect
4 their position.

5 b. In 1971, an advertisement, "The Question about
6 Smoking and Health is still a Question," was sent through the
7 mails from the Tobacco Institute.

8 c. In December, 1977, a letter was sent through the
9 mails from Addison Yeaman, President of defendant CTR to
10 Thomas Ahrensfield, Joseph Greer, Arnold Henson, Ernest Pepples
11 and H.C. Roemer; and, on or about December 28, 1977, a second
12 letter was sent through the mails from W. Hoyt to American
13 Brands Inc., and defendants Brown & Williamson, Philip Morris,
14 and Reynolds. Both letters detailed the billing of the
15 Tobacco Companies to fund the 1978 budget of CTR based upon
16 market share.

17 d. In 1978, a letter was sent through the mails from
18 William Shinn of Shook, Hardy & Bacon to, *inter alia*, Thomas
19 Ahrensfield, Ernest Pepples and Arthur Sevens, insisting that
20 future activities of the Research Liaison Committee should
21 first be reviewed by the Committee of Counsel for the Tobacco
22 Companies.

23 e. In early 1980, a letter was sent through the mails
24 from the President of the Tobacco Institute to various
25 insurance companies to protest discounts being offered to non-
26 smokers and to falsely attack the credibility of any

1 scientific research showing the hazards of smoking.

2 f. On or about March 31, 1980, a letter was sent
3 through the mails from Bob Seligman of defendant Philip Morris
4 to Alex Spears of defendant Lorillard, specifying certain
5 subjects which should be avoided for tobacco industry
6 research, including *inter alia*, "attempt[s] to relate human
7 disease to smoking," although the defendants previously
8 represented that they would cooperate with public health
9 officials.

10 g. On or about May 7, 1982, letters were exchanged
11 through the mails between Daniel Milway of the Tobacco
12 Institute and various presidents of the Tobacco Companies
13 regarding the level of funding to support independent
14 biomedical research in order to support the pretense of
15 commitment to independent research as communicated to public
16 officials and others.

17 h. In 1984, the CTR Annual Report was distributed using
18 the mails to persons throughout the country based upon a
19 distribution list drafted by Leonard Zahn and Associates, the
20 public relations consultant for CTR. The report does not
21 disclose that lawyers for CTR and the Tobacco Companies had
22 been involved in the design of the research program.

23 i. On or about October 25, 1984, a letter was sent
24 through the mails from J. Kendrick Wells, III, corporate
25 counsel for defendant Brown & Williamson to H. A. Morini of
26 defendant BATCO, setting out Mr. Wells' "comments" and

1 suggested changes to a paper written by Dr. L.C.F. Blackman
2 entitled "The Controversy on Smoking and Health: Some Facts
3 and Anomalies." Wells' letter states:

4 "Recent developments have reaffirmed the
5 need for the attention we customarily have
6 given to proposed BAT publications. The
7 smoking and health litigation in the U.S.
8 has demonstrated that plaintiffs' lawyers
9 are aggressive in questioning tobacco CEOs
10 about published company statements, as we
11 had predicted they would be. Peter
12 Taylor's *Smoke Ring* demonstrated that BAT
13 publications which may be intended for
14 limited distribution can be obtained and
15 scrutinized by our most articulate
16 adversaries."

17 The purpose of this editing was to protect the tobacco
18 companies cigarette market and to further the tobacco
19 industry's continuing conspiracy to create and maintain the
20 false controversy regarding cigarette smoking and disease.

21 j. In November, 1984, defendants distributed a study
22 entitled "Chronic Exposure of Mice to Cigarette Smoke" using
23 the mails. This study was earlier described in the February,
24 1984 Tobacco Institute journal, *The Tobacco Observer*, and in
25 press releases issued by CTR and carried by the wire services,
26 as a determined effort to develop a suitable animal model to
learn if tobacco caused cancer. However, CTR knew the study
was flawed in design and execution.

k. In 1989, Gary Miller, a spokesperson for the Tobacco
Institute, appeared on various radio programs throughout the
country to promote the false controversy of science

1 promulgated by the Racketeering Enterprise. There, Miller
2 asserted the Tobacco Institute had no knowledge that smoking
3 cigarettes is harmful or that it was aware of any proof of
4 cancer causing effects from smoking cigarettes.

5 1. On or about January 11, 1990, Jo Spach of defendant
6 Reynolds sent a letter through the mails to the principal of
7 Willow-Ridge School in Amherst, New York, asserting that the
8 tobacco industry had made "a sincere attempt to determine what
9 harmful effects ... smoking might have on human health" by
10 establishing defendant CTR. Defendant Reynolds failed to
11 disclose that CTR was organized by the Tobacco Companies as
12 part of their public relations efforts to promote the false
13 controversy about smoking and disease to children. Spach
14 asked that the information in the letter be distributed to
15 fifth grade school students.

16 m. On or about February 15, 1995, James Glenn,
17 President of CTR, sent a letter through the mails to James
18 Todd, Executive Vice-President of the American Medical
19 Association, and all deans of United States medical schools.
20 Glenn's letter failed to disclose that CTR was conceived as a
21 public relations effort to solely support the sale and
22 marketing of cigarettes, failed to disclose that the Special
23 Projects funded through CTR were, in part, used to develop
24 witnesses to defend the Tobacco Companies; and failed to
25 disclose that the Tobacco Companies' lawyers helped in the
26 design, funding and public discussions relating to research by

1 scientists funded by CTR.

2 ///

3 n. On or about March 27, 1994, Brennan Dawson, Vice-
4 President of the Tobacco Institute, appeared on the "Face the
5 Nation" television program and stated, *inter alia*, "that
6 cigarettes are not addictive," that "[n]ot only do they [the
7 tobacco industry] not add nicotine, but that they don't
8 manipulate nicotine," and that "[t]here is no process that
9 adds nicotine to the cigarette ... Nicotine is not added
10 during the manufacturing process. It's that simple."

11 o. On or about April 1, 1994, Brennan Dawson, Vice-
12 President of the Tobacco Institute, appeared on the
13 "MacNeil/Lehrer News Hour" television program and stated,
14 *inter alia*, that the Tobacco Companies "do not add nicotine,"
15 that "[t]here's no manipulation done by the manufacturers"
16 concerning production of cigarettes, that nicotine is not an
17 addictive drug and that tobacco manufacturers are not
18 targeting and marketing the sale of cigarettes to minors.

19 p. On or about April 8, 1994, Brennan Dawson, Vice-
20 President of the Tobacco Institute, appeared on the "CBS
21 Evening News" program and stated, *inter alia*, that there is
22 nothing in cigarettes to worry about, "In the amounts that are
23 used, the ingredients that are used to make cigarettes are
24 safe for smokers."

25 **COUNT ONE: UNLAWFUL PARTICIPATION IN AN ILLEGAL ENTERPRISE**

1 participants in the enterprise, and with persons whose
2 identity is as yet unknown to plaintiff, to engage in and
3 cause the performance of the racketeering activity alleged in
4 paragraphs 77 - 83. Between January 1, 1953 and continuing to
5 the present, defendants agreed with one another, with the
6 other participants in the enterprise, and with persons whose
7 identities are as yet unknown to plaintiff, to use and to
8 invest the proceeds of the racketeering activity alleged in
9 paragraphs 78 - 83.

10 **SEVENTH CLAIM FOR RELIEF**

11 (Fraudulent Misrepresentation and Omission)

12 88.

13 Plaintiff realleges and incorporates herein the foregoing
14 allegations of this Complaint.

15 89.

16 Defendants, through their public pronouncements and
17 communications, made material representations intended to be
18 received and actually received by state regulators and
19 citizens of the State of Oregon that cigarettes are not
20 addictive, carcinogenic and pathologic, and that there is and
21 was legitimate scientific dispute regarding those issues, that
22 defendants were undertaking independent scientific research to
23 determine the true health effects of tobacco and that the
24 results of such research would be made known to the public,
25 including Oregonians. Such statements are referenced in
26 Paragraph 32c.; paragraph 83, at subparagraphs b, e, h, u, l,

1 m, n, o, p, and q.; and were also made by defendant Reynolds
2 in a 1984 statement to *The New York Times*, and in a 1979
3 public statement by Dr. Sheldon Sommers, and in other
4 statements not yet identified by plaintiff.

5 90.

6 Defendants knew that these material representations to
7 state regulators and citizens of the State of Oregon were
8 false when made, and plaintiffs were ignorant of the falsity
9 of the material representations when made.

10 91.

11 Defendants intended that state regulators and citizens of
12 the State of Oregon rely upon these material representations,
13 and state regulators and citizens of the State of Oregon had a
14 right
15 to rely on these material representations, and actually did
16 rely upon the truthfulness of these material representations.

17 92.

18 Defendants' acts constitute fraudulent misrepresentations
19 and omissions.

20 93.

21 As a direct result of defendants' fraudulent
22 misrepresentations and omissions, plaintiff's regulators did
23 not undertake appropriate regulatory action and citizens of
24 the State of Oregon have suffered injuries in the form of
25 addiction, cancer and other illness and disease. Many of
26 these citizens of Oregon are Medicaid or publicly-funded

1 health care recipients. Plaintiff thus has borne the massive
2 costs of these illnesses and diseases by providing necessary
3 medical care, facilities and services for certain of those
4 aforementioned citizens of the State of Oregon injured by the
5 Tobacco Companies' cigarettes and

6 ///

7 unable to afford and otherwise obtain such necessary medical
8 care, facilities and services.

9 94.

10 As a result of defendants' conduct, plaintiff has
11 suffered and will continue to suffer substantial injuries and
12 damages for which plaintiff is entitled to relief.

13 **EIGHTH CLAIM FOR RELIEF**

14 (Negligence)

15 95.

16 Plaintiff realleges and incorporates herein the foregoing
17 allegations of this Complaint.

18 96.

19 Defendant Tobacco Companies and their trade organizations
20 voluntarily assumed the duty and responsibility to conduct and
21 report objective medical research regarding cigarette smoking
22 and health via their public pronouncements referenced above.

23 97.

24 Defendants breached this duty by failing to exercise
25 reasonable care in conducting and reporting that research.

26 98.

1 Defendants further breached this duty by suppressing
2 negative research data regarding cigarettes and health, and by
3 publishing only those materials that cast doubt on tobacco's
4 adverse health effects.

5 ///

6 ///

7 99.

8 Defendants knew or should have known that smokers,
9 plaintiff, government regulators and others would rely on
10 their pronouncements.

11 100.

12 Defendants knew or should have known that such reliance
13 would result in injury, and that such injury was foreseeable.

14 101.

15 As a direct and foreseeable result of defendants'
16 negligent breach of assumed duty, plaintiff suffered and
17 continues to suffer substantial injuries and damages.

18 **NINTH CLAIM FOR RELIEF**

19 (Unjust Enrichment)

20 102.

21 Plaintiff realleges and incorporates herein the foregoing
22 allegations of this Complaint.

23 103.

24 Use of defendant Tobacco Companies' tobacco products as
25 intended causes disease.

26 104.

1 millions of dollars on targeted marketing programs designed to
2 encourage minors to purchase and use their tobacco products.

3 108.

4 In equity and fairness, defendants and their agents,
5 aiders and abettors and co-conspirators, not plaintiff, should
6 bear the costs of tobacco-related diseases. By avoiding their
7 own duties to stand financially responsible for the harm done
8 by their tobacco products, defendant Tobacco Companies
9 wrongfully have forced plaintiff to perform such duties and to
10 pay the health care costs of tobacco-related disease. As a
11 result, defendants have been unjustly enriched to the extent
12 that taxpayers of the State of Oregon have had to pay these
13 costs which rightfully should be borne by defendants.

14 109.

15 As a direct result of defendants' conduct, plaintiff has
16 suffered and will continue to suffer substantial injuries and
17 damages for which it is entitled to relief.

18 **TENTH CLAIM FOR RELIEF**

19 **(Civil Conspiracy)**

20 110.

21 Plaintiff realleges and incorporates herein the foregoing
22 allegations of this Complaint.

23 111.

24 Defendants entered into a conspiracy to violate the
25 statutes set forth in Claims for Relief 1 - 6; and the common
26 law as set forth in the balance of the Claims for Relief. As

1 part of the conspiracy, defendants agreed to: (1) suppress
2 information concerning the adverse effects of tobacco use and
3 the addictive effect of nicotine; (2) create doubt about the
4 scientific studies linking tobacco use to adverse health
5 consequences and/or the addictive nature of nicotine; (3)
6 conceal their manipulation of the level of nicotine in tobacco
7 products; and (4) unreasonably restrain trade based on health
8 claims and "safer" cigarettes.

9 ///

10 112.

11 A part of this conspiracy was a plan to cause
12 governmental officials to believe that immediate action on
13 their part to curb tobacco use was not needed. As the
14 evidence mounted as to the hazards of smoking, governmental
15 entities considered and/or began to legislate various controls
16 on tobacco use and advertising. Defendants' resistance to
17 these efforts was an integral part of the conspiracy, and was
18 designed to lull plaintiff, among others, into avoiding the
19 implementation and/or passage of such regulations.

20 113.

21 Defendants' conspiracy not only served to forestall
22 increased government regulation but contributed to plaintiff's
23 increased health care costs because the conspiracy caused
24 tobacco users, including Medicaid recipients and minors in the
25 State of Oregon, to take up or continue smoking.

26 114.

1 Defendants combined to use unlawful means to deceive the
2 plaintiff and its citizens as to the true nature of
3 defendants' products, and to shift health costs associated
4 with tobacco products to others.

5 115.

6 By combining to use unlawful means, including without
7 limitation misrepresentation, deception, and fraud to maintain
8 their markets and profits, defendants engaged in a conspiracy
9 in violation of the common law of Oregon.

10 116.

11 Defendants' overt acts in furtherance of the conspiracy
12 include without limitation:

13 a. Engaging in deceptive acts and practices in the
14 course of business in violation of Oregon's Unlawful Trade
15 Practices Act;

16 b. Fraudulently misrepresenting and omitting material
17 information regarding the human health dangers of smoking;

18 c. Restraining and suppressing research and information
19 concerning the adverse effects of tobacco product use and the
20 addictive effect of nicotine;

21 d. Creating doubt about the scientific studies linking
22 tobacco product use to adverse health consequences and/or
23 addictive nature of nicotine;

24 e. Affirmatively misrepresenting the addictive effects
25 of nicotine and the harmful effects of tobacco product use;

26 f. Concealing their manipulation of the level of

1 nicotine in tobacco products;

2 g. Restraining the development, production, and
3 marketing of a safer cigarette;

4 h. Avoiding competition based on health claims and
5 safer cigarettes;

6 i. Passing on health care costs associated with tobacco
7 products to others;

8 j. Designing, testing, manufacturing, marketing,
9 supplying and selling defective cigarettes;

10 k. Targeting minors for the marketing, supply, sale and
11 use of their cigarettes; and

12 l. Suppressing the design, test, manufacture, marketing
13 and/or sale of non- or less-addictive, carcinogenic and
14 pathologic cigarettes.

15 117.

16 As a direct result of defendants' conspiracy, plaintiffs
17 suffered and will continue to suffer substantial injuries and
18 damages.

19 **ELEVENTH CLAIM FOR RELIEF**

20 **(Indemnity)**

21 118.

22 Plaintiff realleges and incorporates herein the foregoing
23 allegations of this Complaint.

24 119.

25 As a direct result of defendants' violations of law and
26 breaches of duty and omissions alleged above, plaintiff has

1 paid millions of dollars to provide necessary medical care,
2 facilities and services for certain of the aforementioned
3 Oregon residents injured by defendant Tobacco Companies'
4 tobacco products and unable to afford and otherwise obtain
5 such necessary medical care, facilities and services.

6 120.

7 Defendants were liable to pay the medical expenses for
8 the aforementioned Oregon residents injured by defendants'
9 tobacco products.

10 121.

11 Plaintiff was legally obligated to pay the aforementioned
12 sums and did not conduct itself in any wrongful manner in
13 being so obligated to pay and in paying these sums.

14 122.

15 The conduct of defendants was willful and in reckless
16 disregard of the rights of plaintiff and its citizens.

17 123.

18 Defendants are legally obligated to indemnify plaintiff
19 for the provision of necessary medical care, facilities and
20 services for those aforementioned Oregon residents injured by
21 defendants' tobacco products.

22 **IX. PRAYER FOR RELIEF**

23 WHEREFORE, plaintiff prays for judgment against
24 defendants, jointly and severally, as follows:

25 **With respect to all claims for relief:**

26 a. For an Order enjoining and restraining defendants

1 and their officers, agents, servants and employees, and those
2 in active concert or participation with them, from continuing
3 or engaging in the conduct alleged above or other conduct
4 having similar purpose or effect;

5 b. For an Order compelling defendants to publicly
6 disclose, disseminate, and publish all research previously
7 conducted directly or indirectly by themselves and their
8 respective agents, affiliates, servants, officers, directors,
9 ///
10 employees, and all persons acting in concert with them, that
11 relates to the issue of smoking and health;

12 c. For an Order compelling defendants to fund
13 corrective public education campaigns relating to the issue of
14 smoking and health, administered and controlled by an
15 independent third party;

16 d. For an Order compelling defendants to take
17 reasonable and necessary steps to prevent the distribution and
18 sale of tobacco products to minors in violation of Oregon law;

19 e. For an Order compelling defendants to fund clinical
20 smoking cessation programs in the State of Oregon;

21 f. Except as to Claims for Relief 1, 2 and 3, that
22 plaintiff be awarded damages in an amount not yet determined
23 but estimated to range up to \$60 million per year for each
24 year of defendants' unlawful conduct;

25 g. For such other and further relief as the Court deems
26 just, necessary, and appropriate; and

1 h. For plaintiff's costs and disbursements incurred
2 herein.

3 **In addition, with respect to the First, Second and Third**
4 **Claims for Relief under the Oregon Unlawful Trade Practices**
5 **Act (ORS 646.605-646.652):**

6 a. That pursuant to ORS 646.642, the Court assess civil
7 penalties against each defendant of \$2,000 for each violation
8 committed by that defendant or its predecessor between
9 September 8, 1971 and September 11, 1975, inclusive, and of
10 \$25,000 for each violation committed by that defendant or its
11 predecessor from September 12, 1975 to the date of trial;

12 b. That pursuant to ORS 646.632 and ORS 646.636, the
13 Court issue an Order permanently enjoining, barring,
14 restraining and prohibiting defendants from engaging directly
15 or indirectly in any violation of the Unlawful Trade Practices
16 Act, or alternatively, in any business in Oregon; and

17 c. That pursuant to ORS 646.632, the Court award
18 plaintiff its reasonable attorney fees.

19 **In addition, with respect to the Fourth and Fifth Claims for**
20 **Relief under Oregon's antitrust statutes (ORS 646.705 et seq):**

21 a. For an Order in which the Court adjudges and decrees
22 that defendants have engaged in the conduct alleged herein and
23 that such conduct is unlawful in violation of ORS 646.725; and

24 b. That pursuant to ORS 646.780, the Court award
25 plaintiff treble damages in a total amount unknown but
26 estimated to range up to \$180 million per year from the

1 beginning of the unlawful activity.

2 **In addition, with respect to the Sixth Claim for Relief under**
3 **the Oregon Racketeer Influenced & Corrupt Organizations Act**
4 **(ORS 166.715-.735):**

5 a. Pursuant to ORS 166.725(1) and ORS 166.725(1)(a),
6 ordering defendants immediately to divest themselves of all
7 right, title and interest in any business entity or
8 association in which any of the other defendants also hold any
9 right, title

10 ///

11 or interest, including but not limited to CTR, Hill &
12 Knowlton, and the Tobacco Institute;

13 b. Pursuant to ORS 166.725(1) and ORS 166.725(1)(b),
14 imposing reasonable restrictions on defendants' collective and
15 future activities and investments, including but not limited
16 to:

17 (1) Prohibiting defendants from claiming that a
18 scientific controversy exists concerning the addictive
19 character of tobacco products containing nicotine;

20 (2) Prohibiting defendants from claiming that a
21 scientific controversy exists concerning the fact that
22 consumption of tobacco products causes adverse health
23 consequences, including death;

24 (3) Requiring defendants to honestly and fully disclose
25 to the public defendants' collective and individual knowledge
26 of the addictive qualities of tobacco products containing

1 nicotine;

2 (4) Requiring defendants to honestly and fully disclose
3 to the public defendants' collective and individual knowledge
4 of the fact that tobacco causes injurious health effects
5 including death;

6 (5) Requiring defendants to honestly and fully disclose
7 to the public defendants' collective and individual knowledge
8 and capacity to manufacture, distribute and sell less
9 dangerous tobacco products;

10 (6) Prohibiting defendants from employing any marketing
11 or promotional activity which reaches more than five percent
12 of

13 ///

14 Oregonians under the age of 16, with the determination of
15 whether the activity violates this standard to be made as
16 follows:

17 (a) Each defendant shall monthly conduct a valid market
18 survey in accordance with accepted market survey standards;

19 (b) The survey shall measure the percentage of children
20 under the age of 16 who recognize the character, logo, or
21 theme of each marketing or promotional activity conducted by
22 the defendant;

23 (c) The results of each monthly survey shall be
24 published monthly in newspapers of general circulation in
25 Oregon; and,

26 (d) Each defendant shall immediately and permanently

1 cease any marketing or promotional activity whose character,
2 logo, or theme is recognized by more than five percent of
3 Oregonians under the age of 16.

4 (7) Requiring defendants to honestly and completely
5 disclose defendants' individual and collective knowledge of
6 the extent to which their past marketing and promotional
7 activities have had the intent and effect of causing children
8 under the age of 18 to become addicted to and injured by
9 defendants' tobacco products.

10 (8) Requiring defendant Tobacco Companies to require
11 every distributor of defendant Tobacco Companies' respective
12 tobacco products to:

13 (a) Refrain from any point of sale advertising in any
14 location in which it is lawful for a child to be present;

15 ///

16 (b) Keep all tobacco products kept in any location in
17 which it is lawful for a child to be present secure under lock
18 and key behind opaque barriers;

19 (c) Strictly comply with all applicable federal, state,
20 and local laws and regulations pertaining to the sale of
21 tobacco products to children;

22 (d) Refrain from renewing or entering into agreements
23 resulting in the advertising of tobacco products on
24 billboards;

25 (e) Refrain from selling or distributing non-tobacco
26 products containing tobacco brand names, logos or other

1 tobacco advertising information;

2 (f) Refrain from sponsoring cultural, athletic, or other
3 events in the tobacco product brand name; and

4 (g) Refrain from any advertising in any medium except
5 black-on-white text;

6 c. Pursuant to ORS 166.725(1) and ORS 166.725(1)(c),
7 ordering the dissolution of CTR, Hill & Knowlton, and the
8 Tobacco Institute;

9 d. Pursuant to ORS 166.725(2), ordering defendants to
10 forfeit to plaintiff all real and personal property, including
11 money used in the course of, derived from, or realized through
12 the conduct alleged in this claim for relief;

13 e. Pursuant to ORS 166.725(5), ordering defendants to
14 pay to the Attorney General of Oregon reasonably incurred
15 costs of investigation and litigation;

16 ///

17 f. Pursuant to ORS 166.725(5), ordering defendants to
18 reimburse plaintiff's governmental departments and agencies
19 for reasonably incurred costs or expenses in connection with
20 the investigation and prosecution of this litigation;

21 g. Pursuant to ORS 166.725(1), ordering defendants to
22 pay to plaintiff the costs incurred by plaintiff in providing
23 health care to Oregonians whose good health was impaired or
24 whose ill health was aggravated by defendants' conduct;

25 h. Pursuant to ORS 166.725(8), ordering each defendant
26 to pay a civil penalty of \$250,000; and

1 i. Pursuant to ORS 166.725(15)(a), for plaintiff's
2 reasonable attorney fees.

3 DATED this _____ day of _____, 1997.

4 HARDY MYERS
5 Attorney General for the
6 State of Oregon

7 _____
8 Hardy Myers #64077
9 Attorney General

10 _____
11 Mark Gardner #74111
12 Special Counsel to the Attorney
13 General

14 _____
15 Drew A. Lianopoulos #92083
16 Trial Attorney
17 Assistant Attorney General
18 Department of Justice
19 1162 Court Street NE
20 Salem, OR 97310
21 (503) 378-4732
22 Of Attorneys for Plaintiff
23
24
25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Document - Complaint
State v. American Tobacco Company EW00FF28