

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

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RHODE ISLAND LABORERS'  
HEALTH & WELFARE FUND, BY  
AND THROUGH ITS TRUSTEES,  
ON BEHALF OF ITSELF AND ON  
BEHALF OF ALL OTHER  
SIMILARLY SITUATED HEALTH  
AND WELFARE FUNDS IN THE  
STATE OF RHODE ISLAND

FEB 22 1999

Plaintiffs

VS.

C.A. No: 97-500L

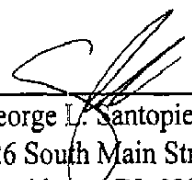
PHILIP MORRIS, INC.; R.J.  
REYNOLDS TOBACCO COMPANY;  
BROWN & WILLIAMSON TOBACCO  
CORPORATION; B.A.T. RILLARD  
TOBACCO COMPANY; LIGGETT  
GROUP, INC.; THE AMERICAN  
TOBACCO COMPANY; THE COUNCIL  
FOR TOBACCO RESEARCH--U.S.A.,  
INC.; THE TOBACCO INSTITUTE, INC.,  
and HILL & KNOWLTON, INC.

[CLASS ACTION]

Defendants

**PLAINTIFFS' AMENDED COMPLAINT**

Respectfully submitted,  
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## TABLE OF CONTENTS

I.	NATURE OF THE ACTION	1
II.	JURISDICTION AND VENUE	4
III.	THE PARTIES	4
	A. Plaintiff	4
	B. Defendants	4
IV.	CLASS ACTION ALLEGATIONS	12
V.	FACTUAL ALLEGATIONS	16
	A. The Nature of the Defendants' Wrongful Conduct and Conspiracy	16
	1. The Health Effects of Smoking	16
	2. The Health Effects of Smokeless Tobacco	17
	3. The Deadly Delusion of the Open Controversy	18
	4. Targeting, Deceiving and Exploiting Unions, Organized Labor and the Funds	21
	B. The Industry's Early And Ongoing Public Deception About Smoking And Health	25
	1. The Early Days -- Claiming Cigarettes Are Healthful	25
	2. The 1953 "Big Scare" And The Tobacco Industry's Response	28
	3. The Creation Of The Tobacco Industry Research Committee	29
	C. The Industry Promises Unbiased And Truthful Research And Information	30
	D. The TIRC (and CTR) Were Created as a Public Relations Ploy and Were Controlled by the Tobacco Industry's Lawyers	32
	E. The Tobacco Industry's Knowledge That Smoking is Harmful and Often Lethal	33

F.	The Tobacco Industry's Repeated False Promises to the Public	37
G.	Suppressing Inculpatory Research: The "Gentleman's Agreement"	39
H.	The Tobacco Industry's Suppression and Concealment of Industry-Sponsored Research	40
	1. The CTR: A Sham Front For The Industry	40
	2. The "Deadwood" Method Of Hiding Negative Research	44
	3. The Mouse House Massacre	45
I.	The Tobacco Companies Knew How But Refrained From Making A "Safer Cigarette"	45
J.	The Role of Nicotine in Cigarette Smoking and Smokeless Tobacco Use	49
	1. The Tobacco Industry's Knowledge of the Addictiveness of Nicotine	49
	2. The Tobacco Industry's Concealment of Its Research on Nicotine Addiction	51
	3. The Tobacco Industry's Interest in the Nicotine Content In Their Products	52
	4. The Tobacco Industry's Control and Manipulation of Nicotine Levels In Their Products	55
	5. Light Cigarettes: A Marketing Hoax	59
	6. The Tobacco Companies Continue To Deny They Control And Manipulate Nicotine Levels	61
K.	The Targeting of Tobacco Product Sales to Blue-Collar Workers And Minors	62
L.	The Conspiracy To Shift Medical Costs Attributable To Smoking and To Frustrate Efforts To Reduce Smoking	66
M.	Tolling Of The Applicable Statutes Of Limitation	69
VII.	CLAIMS FOR RELIEF	70
	COUNT I	70
	COUNT II	77

COUNT III	79
COUNT IV	80
COUNT V	84
COUNT VI	84
COUNT VII	89
COUNT VIII	90

PRAYER FOR RELIEF	91
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JURY DEMAND	92
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Defendants

[CLASS ACTION]

**PLAINTIFFS' AMENDED COMPLAINT**

**I. NATURE OF THE ACTION**

For years, and continuing to date, the defendant cigarette and smokeless tobacco manufacturers (the "Tobacco Companies") and their product liability lawyers, trade associations, public relations and lobbying agents, and other front organizations have engaged in a conspiracy to insulate the profits of the Tobacco Companies from the loss of sales and increased costs that would result from lawfully conducting and accepting responsibility for the results of honest scientific research and from truthfully disclosing that their products were addictive, and when used in the way intended, routinely caused serious disease and resulted in the premature death of hundreds of thousands of smokers each year.

The Tobacco Companies, instead of disclosing their knowledge of the dangers of smoking cigarettes and using smokeless tobacco, willfully and intentionally conspired and combined to engage in a unified fraudulent course of conduct and scheme to defraud including, but not limited to, the following:

- fraudulently promising to conduct objective research and disclose accurate information as to all aspects of smoking and health while abdicating to their product liability lawyers their promised and common law responsibilities to stay abreast of scientific information about the health hazards of their products, to pursue legitimate research and assure the safety of their products;
- suppressing, manipulating and destroying, and concealing under contrived claims of attorney-client and work product privileges, adverse research conducted in house or by foreign affiliates and associated contractors;
- surreptitiously sponsoring biased research intended to undercut the government's and other objective scientific findings about their products and to perpetuate a non-existent "controversy" about the adverse health effects of their products (in a memorandum of R.J. Reynolds' trial counsel this strategy was described as maintaining the "deadly delusion of an open controversy" and, according to its promoters, its purpose was to "manipulate judges, juries, politicians and public opinion");
- forming international and industry-wide organizations dedicated to investigating, vilifying and fraudulently discrediting legitimate scientists and health advocates (the "anti's") who attempted to disclose the truth about smoking;
- entering into a "gentleman's agreement" to forgo animal research and to share product innovations affecting health -- so that each tobacco company had a disincentive against developing a safer cigarette that would expose all others to defective product liability claims; and
- intentionally manipulating nicotine content and potency to maintain and ensure addiction.

Defendants specifically targeted, exploited and deceived unions, organized labor and health and welfare trust funds covered by section 302 of the Labor Management Relations Act (the "Taft-Hartley Act"), 29 U.S.C. § 186, and the Employee Retirement

Income Security Act ("ERISA"), including the plaintiff and the class (the "Funds"). Defendants through their trade association, public relations firms and front organizations conspired to and did deceive, manipulate and use union officials to undermine the effects, and discredit among union members, truthful disclosures about smoking made in Surgeon General reports and by other legitimate scientific sources; and to defeat initiatives by employers to restrict smoking at the workplace and among the Funds' participants, and to treat addicted smokers, and thereby reduce the health care costs associated with smoking and paid by the Funds. Defendants, through their trade association and public relations firms deceived, manipulated and exploited unions and organized labor to frustrate federal and state legislation, as well as regulatory action, calculated to protect trade workers and the payors of health care expenses attributable to smoking, particularly the Funds.

Defendants, through their conspiracy, forestalled the institution (and successful resolution) of widespread lawsuits by smokers and health care payors, such as those recently brought by the state attorney generals and the Funds.

The plaintiff Funds are administered by trustees appointed in equal number by employers and union officials, who consistent with their fiduciary obligations, and using monies negotiated in wage packages through collective bargaining, provide comprehensive medical coverage to unionized workers and their families (the "Participants" and "beneficiaries"). Each year, Plaintiff and the Class spend millions of dollars to provide medical and related services for their Participants and beneficiaries suffering from diseases caused by cigarette smoking and the use of smokeless tobacco, and make decisions affected by the level of those payments regarding the availability, scope, level and eligibility of benefits for both their nonsmoker and smoker Participants and beneficiaries. For years Participants and beneficiaries have been denied benefits and programs because their Funds' monies were instead used to pay for illnesses caused by smoking.

This is an action brought pursuant to the federal racketeering and anti-trust laws, and under state and common law, to recover the monies paid (and benefits lost) by Plaintiff and the Class to provide medical treatment to their Participants and beneficiaries for illnesses caused by smoking, costs which would have been avoided, reduced or

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recovered had the defendants not engaged in the wrongdoing alleged herein, and to obtain appropriate injunctive relief.

## **II. JURISDICTION AND VENUE**

This Court has federal subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1337; 15 U.S.C. § 15; and 18 U.S.C. § 1961-1964.

This Court has supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367(a).

This Court has personal jurisdiction over each Defendant. Defendants did and continue to do business in the state of Rhode Island or personally or through their agent(s) engaged in, or conspired to engage in the wrong-doing alleged herein within Rhode Island. Defendants made contracts to be performed in whole or in part in the state of Rhode Island, and performed such acts as were intended to, and did, result in the sale and distribution of cigarettes and smokeless tobacco in Rhode Island. All Defendants caused tortious injury by acts or omissions in Rhode Island or caused tortious injury in the State by acts or omissions outside the State.

Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and (c); 18 U.S.C. § 1965(a); and 15 U.S.C. 22. 15, 22.

## **III. THE PARTIES**

### **A. Plaintiff**

The Plaintiff is an "employee welfare benefit plan" and an "employee benefit plan", within the meaning of ERISA, 29 U.S.C. 1002(1), 1002(3) and 1003(a), established through collective bargaining between unions and employers. As such, the Plaintiff is a legal entity entitled to bring suit in its own name pursuant to 29 U.S.C. § 1132(d). The trustees of the Fund are all residents of Rhode Island.

### **B. Defendants**

Defendant Philip Morris Incorporated ("Philip Morris") is a Virginia corporation with its principal place of business at 120 Park Avenue, New York, New York. Philip Morris manufactures, advertises and sells Marlboro, Philip Morris, Merit, Cambridge, Benson & Hedges, Virginia Slims, Alpine, Dunhill, English Ovals, Galaxy, Players,

82486485



Saratoga and Parliament cigarettes throughout the United States, including in the state of Rhode Island.

Defendant R.J. Reynolds Tobacco Company ("Reynolds") is a New Jersey corporation with its principal place of business at North Main Street, Winston-Salem, North Carolina. Reynolds manufactures, advertises, and sells Camel, Vantage, Now, Durall, Winston, Sterling, Magna, More, Century, Bright Rite, and Salem cigarettes throughout the United States, including in the state of Rhode Island.

Defendant Brown & Williamson Tobacco Corporation ("Brown & Williamson") is a Delaware corporation with its principal place of business at 1500 Brown & Williamson Tower, Louisville, Kentucky. Brown & Williamson manufactures, advertises, and sells Kool, Raleigh, Barclay, BelAir, Capri, Richlind, Laredo, Eli Cutter, and Viceroy cigarettes throughout the United States, including in the state of Rhode Island. As a result of its acquisition of defendant The American Tobacco Company, Brown & Williamson has succeeded to the liabilities of defendant The American Tobacco Company either by operation of law, or as a matter of fact.

Defendant B.A.T. Industries P.L.C. ("B.A.T. Industries") is a British corporation with its principal place of business at Windsor House, 50 Victoria St., London. Through a succession of intermediary corporations and holding companies, B.A.T. Industries is the sole shareholder of Brown & Williamson. Through Brown & Williamson, B.A.T. Industries has placed cigarettes into the stream of commerce with the expectation that substantial sales of cigarettes would be made in the United States, including in Rhode Island. B.A.T. Industries has also conducted, by itself or through its agents, subsidiaries, associated companies, or co-conspirators, significant research for Brown & Williamson on the topics of smoking, disease and addiction. Upon information and belief, Brown & Williamson also sent to England research conducted in the United States on the topics of smoking, disease and addiction in order to remove sensitive and inculpatory documents from United States jurisdiction, and such documents were subject to B.A.T. Industries' control. B.A.T. Industries is a participant in the conspiracy described herein and has caused harm to Plaintiff and the Class and affected commerce in the state of Rhode Island.

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B.A.T. Industries was formerly named the Tobacco Securities Trust Company Limited, and, in a "scheme of arrangement" conducted in 1976, became the parent of Brown & Williamson, British-American Tobacco Company Limited ("B.A.T.C.O."), and other foreign tobacco and non-tobacco companies. Prior to the 1976 scheme of arrangement, B.A.T.C.O., which also maintains offices in London, England, had been the parent of the tobacco companies that became B.A.T. Industries' subsidiaries. In 1976, the B.A.T.C.O. Board of Directors and senior officers transferred over to B.A.T. Industries.

After 1976, B.A.T. Industries headed the "BAT Research Organization," which coordinated the research performed by itself and its subsidiaries (the "BAT group"), including B.A.T.C.O. and Brown & Williamson, and which dictated policy for its subsidiaries on "smoking and health". Because of product liability lawsuits brought in the United States and elsewhere, B.A.T. Industries directed each of its world-wide subsidiaries' operating chairmen and liaison directors to implement uniform policies at their companies about smoking and health. Particularly, B.A.T. Industries issued directives to each of its affiliated companies that its product liability lawyers had indicated were required to avoid product liability judgments against Brown & Williamson in the United States, including Rhode Island; by these directives, B.A.T. Industries instructed its affiliates to hue to the Company line that the question of whether smoking caused disease had yet to be determined and was the subject of a legitimate "scientific controversy":

It [smoking] may be responsible for the alleged smoking related diseases or it may not. No conclusive scientific evidence has been advanced and the statistical association does not amount to proof of cause and effect. Thus a genuine scientific controversy exists.

The Group's position is that causation has not been proved . . . Non-tobacco companies in the Group must particularly beware of any commercial activities or conduct which could be construed as discrimination against tobacco or tobacco manufacturers (whether or not involving companies within the Group) since this could adversely affect

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the position of Brown & Williamson in current U.S. product liability litigation in the United States.

If in doubt, companies should not hesitate to consult their in house counsel or B.A.T. Industries Legal Department . . .

Exh. A

B.A.T. Industries' legal department (Richard Baker) met in the United States, and conspired, with *inter alia*, J.K. Wells & Ernest Pepples of Brown & Williamson and their trial counsel, Shook, Hardy & Bacon, to restructure and reorganize the B.A.T. group's research to reduce the risk of creating adverse evidence in U.S. lawsuits by directly involving lawyers "in all B.A.T. activities pertaining to smoking and health from conception through every step of the activity", (Exh. B at 2); to "conduct matters so that no connection can be shown" between Brown & Williamson and its foreign affiliates' research, (Exh. C); to declare adverse research "deadwood" and ship it to B.A.T. off shore, (Exh. D); and to cease conducting foreign research that produces evidence "helpful to plaintiffs" in proving that smoking causes disease (Exh. E). The fraudulent conspiracy of the Tobacco Companies (including B.A.T. Industries), and their lawyers to control, suppress and hide research demonstrating smoking causes disease is described in depth by Special Master Mark W. Gehan in his February 10, 1998 findings made in connection with discovery motions following the Court's determination that a *prima facie* case of fraud was shown in Minnesota v. Philip Morris, File #C1-94-8565. The conspiracy described therein and throughout this complaint tainted the tobacco and health information published in Rhode Island and made available to plaintiffs in connection with the claims described in this complaint.

B.A.T. Industries, through its meetings of its "Tobacco Strategy Review Team", ("TSRT"), chaired by Patrick Sheehy, B.A.T. Industries' Chairman of the Board, and attended by other B.A.T. Industries officials, as well as by representatives of certain subsidiaries, ensured a "coherent strategic thrust" to the B.A.T. group's world-wide marketing efforts (including those in Rhode Island) and created a "compendium of Epidemiological Studies" to perpetuate the delusion that smoking's adverse health effects remained an "unresolved debate." The TSRT also dictated the acceleration of the

program (Project Greendot) to manipulate the nicotine content of cigarettes to be marketed in the United States, by Brown & Williamson, using the nicotine enhanced "Y-1" tobacco, grown in Brazil by another member of the B.A.T. group. Chairman Sheehy represented "B.A.T." on the Board of Governors of the International Committee of Smoking Issues ("ICOSI"). ICOSI was formed to unite the major international tobacco companies in their attack on anti-smoking positions and advocates, particularly those in the United States, that sought to reduce the incidence of smoking through truthful disclosures about the adverse health effects of smoking and smoking cessation programs, and sought to avoid the shifting of smoking's "social costs" (i.e., health care costs and other economic losses attributable to smoking) to non-smokers, governments and other payors of health care costs. Finally, Chairman Sheehy also dissuaded B.A.T. Industries' Canadian affiliate from conducting research into a "safer" cigarette because of concerns that it would expose other cigarette brands to product liability claims. B.A.T. Industries is thus a leading participant in the conspiracy described herein, and has knowingly and tortiously caused harm to Plaintiff and the Class in Rhode Island and affected commerce in the state of Rhode Island.

The American Tobacco Company ("American") is a Delaware corporation with its principal place of business at 1500 Brown & Williamson Tower, Louisville, KY. American manufactured, marketed and sold Lucky Strike, Pall Mall, Tareyton, American, Malibu, Mont Clair, Newport, Misty, Iceberg, Silk Cut, Silver Thins, Sobrania, Bull Durham and Carlton cigarettes throughout the United States, including in Rhode Island. In 1994, American was purchased by Brown & Williamson which has succeeded to the liabilities of American.

Defendant Lorillard Tobacco Company, Inc. ("Lorillard") is a Delaware corporation with its principal place of business at 1 Park Avenue, New York, New York. Lorillard manufactures, advertises and sells Old Gold, Kent, Triumph, Satin, Max, Spring, Newport and True cigarettes throughout the United States, including in the state of Rhode Island.

Defendant Liggett & Myers, Inc. ("Liggett") is a Delaware corporation with its principal place of business at 700 West Main Street, Durham, North Carolina. Liggett

manufacturers, advertises and sells Chesterfield, Decade, L&M, Pyramid, Dorado, Eve, Stride, Generic and Lark cigarettes throughout the United States, including in the state of Rhode Island.

Defendant United States Tobacco Company ("UST") is a Delaware corporation with its principal place of business at 100 West Putnam Avenue, Greenwich Connecticut.

UST manufacturers, advertises and sells Sano cigarettes throughout the United States, including in the state of Rhode Island. UST also manufacturers, advertises, and sells approximately 90% of the smokeless tobacco (snuff and chewing tobacco) sold in the United States, including in Rhode Island, under various brand names including Happy Days, Skoal and Copenhagen.

Defendants Philip Morris, Reynolds, Brown & Williamson, B.A.T. Industries, American, Lorillard, Liggett and UST are sometimes referred to herein collectively as the "Tobacco Companies."

Defendant The Tobacco Institute, Inc. ("Tobacco Institute") is a New York non-profit corporation with its principal place of business at 1875 I Street N.W., Suite 800, Washington, DC. At all relevant times, the Tobacco Institute has operated as a public relations and lobbying arm of the Tobacco Companies, and as an agent and employee of the Tobacco Companies. It has also acted as a facilitating agent in furtherance of the conspiracy of the Tobacco Companies as described in this complaint. In acting as alleged herein, the Tobacco Institute has acted within the course and scope of its agency and employment, and with the consent, permission, and authorization of each of the Tobacco Companies. All actions of the Tobacco Institute were ratified and approved by the officers or managing agents of the Tobacco Companies. The Tobacco Institute has been involved in the conspiracy described in this complaint, both directly in its own name and through various front organizations it has established, funds and controls, including the Tobacco Industry Labor Management Committee, and the actions of the Tobacco Institute have affected commerce and caused harm in the state of Rhode Island.

Defendant The Council for Tobacco Research - U.S.A., Inc. ("CTR") is a New York non-profit corporation with its principal place of business at 900 3rd Avenue, New

York, New York. CTR is the successor in interest to the Tobacco Institute Research Committee ("TIRC"), which was created in 1954 to respond to the public outcry about smoking when the results of research conducted on mice indicating that tobacco might cause cancer were widely reported. As alleged below, contrary to the representations by the Tobacco Companies that these organizations were "independent" and were being created to pursue the scientific research needed to resolve the "open controversy" about whether smoking caused cancer or other disease, TIRC and CTR, from the beginning and throughout their tenure, were used by the Tobacco Companies to carry out a fraudulent course of conduct. At all relevant times, TIRC, and then CTR, operated as public relations and lobbying arms of the Tobacco Companies and as agents and employees of the Tobacco Companies. The purportedly "independent" CTR was also used by the Tobacco Companies' product liability lawyers to sponsor and selectively publish the lawyers' "special projects" -- research projects that either were too dangerous to proceed without lawyer-generated claims of "privilege", or that were selected for their obfuscation value to create the appearance of scientific evidence of a continuing "open controversy". The TIRC and CTR also acted as facilitating agencies in furtherance of the Tobacco Companies' combination and conspiracy as described in this complaint. In acting as alleged herein, TIRC and CTR acted within the course and scope of their agency and employment, and with the consent, permission and authorization of the Tobacco Companies. All actions of the TIRC and CTR alleged were ratified and approved by the officers or managing agents of the Tobacco Companies. TIRC and CTR have been involved continuously in the conspiracy described herein and the actions of the TIRC and CTR have affected commerce and caused harm in the state of Rhode Island.

Defendant Smokeless Tobacco Council, Inc. ("STC") is a Connecticut nonprofit corporation with its principal place of business at 1627 K Street Northwest, Washington, D.C. STC was ostensibly formed for reasons of supporting objective research into the biological consequences of the use of smokeless tobacco. Like CTR, it was used to further the goals of the conspiracy. Dominated by UST, STC also included as members several small producers of smokeless tobacco and was financially supported by several of the Tobacco Companies, including at least Brown & Williamson, Lorillard and Reynolds.

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Personnel from the Tobacco Companies actively participated in STC activities. At all relevant times, STC operated as a public relations and lobbying arm of the Tobacco Companies and as agent and employee of the Tobacco Companies. It also acted as a facilitating agency in furtherance of Defendants' combination and conspiracy as described in this complaint. In doing the things alleged, STC acted within the course and scope of its agency and employment, and acted with the consent, permission and authorization of each of the Tobacco Companies. All actions of the STC were ratified and approved by the officers and/or managing agents of the Tobacco Companies. STC has been involved continuously in the conspiracy described and its actions have affected commerce and caused harm in the state of Rhode Island.

Defendant Hill & Knowlton, Inc. ("H&K") is an international public relations firm with its principal place of business at 420 Lexington Avenue, New York, New York. H&K played an active and knowing role in the conspiracy complained of, aiding the circulation and/or publication of the false statements of the Tobacco Companies, the Tobacco Institute and the CTR. H&K proposed the establishment of the TIRC, and staffed the operation in its initial years. H&K, in its capacity as the advertising and public relations agency for the Tobacco Institute, CTR and several of the Tobacco Companies, including *Liggett, Philip Morris, Reynolds, American Tobacco and Lorillard*, has been one of the primary advertising agencies responsible for dissemination of the false and misleading information described in this complaint. In the course of such representation, H&K aided these Defendants in creating and issuing false information and covering up the truth concerning the tobacco industry, that smoking caused cancer and other disease, the addictive nature of smoking, and the true nature of the activities of the TIRC and CTR and their relationship to the industry. H&K has been involved in the Tobacco Companies' wrongful conduct and conspiracy since its creation, and its actions have affected commerce and caused harm in the state of Rhode Island.

The Tobacco Companies, along with the Tobacco Institute, CTR, STC and H&K are referred to herein collectively as "Defendants," the "Tobacco Industry," or the "Industry."

Each of the Tobacco Companies, the Tobacco Institute, CTR, STC and H&K is sued individually as a primary violator and as aider and abettor. In acting to aid and abet the commission of the fraudulent and other wrongful conduct complained of herein, each Defendant acted with an awareness of the fraudulent and other wrongful conduct. Each Defendant nonetheless rendered substantial assistance or encouragement to the accomplishment of that fraud and was aware of its overall contribution to the conspiracy, scheme, and common course of wrongful conduct alleged herein: the misrepresentation, concealment and suppression of research regarding the health consequences of smoking and the addictive nature of nicotine; the rejection of the development of safer products in order to avoid the legal consequences of admitting that the remaining products are unsafe; the manipulation of nicotine content in cigarettes; and the deceit, exploitation and manipulation of unions and organized labor to sustain smoking among Fund participants and defeat the avoidance and/or shifting of smoking's costs to the Industry.

As used in this complaint, the terms "tobacco products" or "products" refer to cigarettes and smokeless tobacco such as chewing tobacco and snuff.

#### **IV. CLASS ACTION ALLEGATIONS**

Plaintiff brings this action on its own behalf and on behalf of a class of similarly situated union health and welfare trust funds for the purpose of asserting the claims alleged in this complaint on a common basis. The proposed class is defined as follows: *All labor-management multi-employer health and welfare trust funds operating in the state of Rhode Island. Such funds are established pursuant to Labor Management Relations Act, Section 302(c)(5), 29 U.S.C. § 186(c)(5), to provide their participants and beneficiaries medical, surgical, or hospital care benefits, and are defined as "employee welfare benefit plans" under ERISA Section 3(1), 29 U.S.C. § 1002(1).*

This action is brought and may properly be maintained as a class action pursuant to the provisions of Federal Rule of Civil Procedure Rule 23(a)(1)-(4) and, as appropriate, subparts (b)(1), (b)(2) and/or (b)(3). This action satisfies the numerosity, commonality, typicality, adequacy, predominance and superiority requirements of those provisions.

Numerosity -- F.R.C.P. 23(a)(1). The Class is so numerous that joinder of all of its members is impracticable. There are at least 18 Health and Welfare Trust Funds in



Rhode Island representing over 22,000 participants and their families. Class members may be informed of the pendency of this action by direct mail and published notice.

Existence And Predominance of Common Questions Of Fact and Law -- F.R.C.P. 23(a)(2) and 23(b)(3). Common questions of fact and law exist as to all members of the Class and predominate over any questions affecting only individual members of the Class. Common factual and legal questions arise from Defendants' common course of conduct which does not vary from class member to class member and which may be determined without reference to the individual damages incurred by any particular class member. The same legal theories and substantive law will apply to the claims of all class members. These common factual and legal questions include, but are not limited to, the following:

- whether cigarette smoking or the use of smokeless tobacco causes disease;

- whether and when Defendants knew that smoking cigarettes and use of smokeless tobacco causes disease;

- whether Defendants individually and in conspiracy with each other concealed their knowledge that smoking cigarettes and using smokeless tobacco causes diseases;

- whether defendants individually and in conspiracy with each other fraudulently sponsored biased research and undermined legitimate research to create the appearance of an on-going "open controversy" about the hazards of smoking;

- whether defendants conspired to refrain from research of and development of less hazardous products in order to avoid product liability judgments;

- whether nicotine is addictive;

- whether and when Defendants knew that nicotine is addictive;

- whether Defendants have manipulated the levels of nicotine in their cigarettes and smokeless tobacco for the purpose of causing and sustaining dependence on their products;

- whether Defendants concealed knowledge of the effects and levels of nicotine in their products from the Plaintiff and the Class;

- whether Defendants targeted, deceived, manipulated and exploited unions and organized labor to undercut truthful information about the hazards of their products, to

undermine efforts to reduce the prevalence of smoking among Fund participants and to avoid shifting the medical costs attributable to smoking to the Industry;

whether Defendants' conduct constitutes violations of civil RICO;

whether Defendants' conduct constitutes violations of the anti-trust laws;

whether Defendants' conduct constitutes violations of common law or Rhode Island state doctrines;

whether the Class is entitled to compensatory damages, and if so, the nature of such damages;

whether Defendants are liable for punitive or exemplary damages and, if so, how much is necessary and appropriate to punish them for their conduct and deter others, and fulfill the other policies and purposes of punitive and exemplary damages.

Typicality of Claims -- F.R.C.P. 23(a)(3). Plaintiff's claims are typical of the claims of the members of the Class, all of which arise out of same misconduct on the part of Defendants. Defendants' misconduct has affected Plaintiff and each Class member in substantially the same way. Plaintiff and each Class member has participants who have purchased, smoke or used the Tobacco Companies' products and who have suffered diseases and have died as a result of Defendants' misconduct. The health benefits and programs available to all participants have been diminished through the Fund's payment of health care costs attributable to smoking. Plaintiff and each Class member have sustained and will sustain substantial monetary damages and irreparable harm arising from Defendants' misconduct in that Plaintiff and each Class member have, as a result of the wrongful conduct alleged herein, made substantial and uncovered payments for the costs of treating disease and illnesses caused by the use of the Tobacco Companies' products.

Adequacy of Representation -- F.R.C.P. 23(a)(4). Plaintiff is an adequate representative of the Class because it is a member of the Class and its interests do not conflict with the interests of the members of the Class it seeks to represent. Plaintiff has retained counsel competent and experienced in the prosecution of complex class actions, consumer actions and product liability actions. Plaintiff intends to prosecute this action

vigorously, to conclusion, for the benefit of the Class. The interests of the members of the Class will be fairly and adequately protected by Plaintiff and its counsel.

Superiority -- F.R.C.P. 23(b)(3). A class action is superior to other available methods for the fair and efficient adjudication of this litigation. Individual litigation of each class member's claim is impracticable. Individual litigation would increase the delay and expense to all parties and the court system in resolving the complex legal and factual issues of the case, and would further present the potential for inconsistent or contradictory rulings and judgments. It would be unduly burdensome on the court system if every union health and welfare trust fund in Rhode Island filed and prosecuted a separate action. By contrast, the class action device presents far fewer management difficulties than multiple lawsuits, and provides the benefit of single adjudication, economies of scale, coordinated discovery and trial and comprehensive supervision by a single court.

Class Certification Under F.R.C.P. 23(b)(1). The various claims asserted in this action are additionally or alternatively certifiable under Rule 23(b)(1) of Federal Rules of Civil Procedure. The prosecution of separate actions by the individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual Class members, thus establishing incompatible standards of conduct for Defendants. This risk is enhanced in that Defendants' conduct is ongoing. Accordingly, individual actions would not settle the issue of whether Defendants' conduct "going forward" is lawful or not. Moreover, over the prosecution of separate actions by individual Class members would create a risk of adjudications with respect to them that would, as a practicable matter, be dispositive of the interests of the other Class members not parties to such adjudications, or would substantially impair or impede the ability of such non-party Class members to protect their interests.

Class Certification Under F.R.C.P. 23(b)(2). The various claims asserted in this action are additionally or alternatively certifiable under Rule 23(b)(2) of the Federal Rules of Civil Procedure because Defendants have acted, or have refused to act, on grounds generally applicable to the Class, thereby making injunctive relief or

corresponding declaratory relief appropriate with respect to the Class as a whole. The complaint seeks final injunctive and declaratory relief.

**V. FACTUAL ALLEGATIONS**

**A. The Nature of the Defendants' Wrongful  
Conduct and Conspiracy**

**1. The Health Effects of Smoking**

The human tragedy of smoking-caused disease is enormous. Cigarette smoking is the leading cause of premature death in the United States. According to the Federal Center for Disease Control and Prevention, each year cigarette smoking kills more than 400,000 Americans, exceeding the combined deaths caused by automobile accidents, AIDS, alcohol use, use of illegal drugs, homicide, suicide and fires. Smoking-related illnesses account for one of every five deaths each year in the United States.

At least 43 of the more than 4,000 different chemicals in the smoke inhaled by persons using the Tobacco Companies' cigarettes have been determined to be carcinogenic. Cigarette smoking causes more than 85% of all lung cancer, which has now surpassed breast cancer as the primary cause of death from cancer among women. Smoking is also linked to cancers of the mouth, larynx, esophagus, stomach, pancreas, uterus, cervix, kidney and colon, among others. Cigarette smoking is responsible for at least 30% of all deaths from cancer.

Smoking is the cause of more than 80% of deaths from pulmonary diseases such as emphysema and bronchitis. These chronic obstructive lung diseases have a profound social and economic impact because of the extended disability of their victims.

Smoking is also responsible for thousands of deaths annually from cardiovascular disease, including stroke, heart attack, peripheral vascular disease and aortic aneurysm. Smoking is also linked to a large number of other serious illnesses.

The health consequences of smoking among women are of special concern because of the deleterious effect on reproduction. Smoking reduces fertility, increases the rate of miscarriages and stillbirths, retards uterine fetal growth and results in lower birth weights in infants.

Cigarettes contain nicotine. Nicotine is an addictive drug. Nicotine is recognized as an addictive substance by the U.S. Food and Drug Administration ("FDA") and such major medical organizations as the Office of the U.S. Surgeon General, the World Health Organization, the American Medical Association, the American Psychiatric Association, the American Psychological Association, the American Society of Addiction Medicine, and the Medical Research Council in the United Kingdom. All of these organizations acknowledge tobacco use as a form of drug dependence or addiction with severe adverse health consequences. Although it is illegal to sell cigarettes to children, virtually all smokers begin before reaching maturity. Because of the nicotine in cigarettes, new smokers often become addicted to cigarettes while children.

## **2. The Health Effects of Smokeless Tobacco**

Smokeless tobacco use can cause oral cancer. The risk of oral cancer increases with increased exposure to smokeless tobacco products, particularly in those areas of the mouth where smokeless tobacco products are used. The risk of cheek and gum cancers is nearly 50 times greater in long-term snuff users than in non-users. Snuff and chewing tobacco contain potent carcinogens, including nitrosamine, polynuclear aromatic hydrocarbons and radioactive polonium.

Smokeless tobacco use can cause oral leukoplakia, a precancerous lesion of the soft tissue that consists of a white patch or plaque that cannot be scraped off. One study of 117 high school students who were smokeless tobacco users revealed that nearly 50% of these students had oral tissue alterations. There is a 5% chance that oral leukoplakias will transform into malignancies in 5 years. The leukoplakias appears to decrease or resolve upon cessation of smokeless tobacco use.

Smokeless tobacco use causes oral cancer and oral leukoplakia and may be associated with an increased risk of cancer of the esophagus. Smokeless tobacco use has been implicated in cancers of the gum, mouth, pharynx and larynx. Snuff use also causes gum recession and is associated with discoloration of teeth and fillings, dental cavities and abrasion of the teeth.

Smokeless tobacco contains nicotine. As alleged above, every reputable medical organization and society in the world recognizes nicotine as an addictive substance.

### 3. The Deadly Delusion of the Open Controversy

Smoking and Smokeless Tobacco have no countervailing utility. Over the last 4 decades, thousands of injured smokers and/or their estates have, without success, sought to impose liability for their injuries upon the Tobacco Companies in product liability lawsuits. The Tobacco Industry, and particularly its leading product liability lawyers, have long known that if the Industry disclosed research and its own scientists' agreement with prevailing scientific views acknowledging the adverse health effects of cigarettes and smokeless tobacco, including that they are addictive, the Industry would face almost certain defeat in these product liability lawsuits, and that those disclosures and litigation losses would encourage others injured by Tobacco products to bring suit. Almost 30 years ago, David Hardy of Shook, Hardy & Bacon, the Industry's then leading U.S. product liability defender, explained the need to suppress truthful statements of Tobacco Industry scientists:

Fundamental to my concern is the advantage which would accrue to a plaintiff able to offer damaging statements or admissions by persons employed by or whose work was done in whole or in part on behalf of the company defending the action. A plaintiff would be greatly benefited by evidence which tended to establish actual knowledge on the part of the defendant that smoking is generally dangerous to health, that certain ingredients are dangerous and should be removed, or that smoking causes a particular disease. This would not only be evidence that would substantially prove a case against the defendant company for compensatory damages, but could be considered as evidence of willfulness or recklessness sufficient to support a claim for punitive damages. The psychological effect on judge and jury would undoubtedly be devastating to the defendants. To be more specific:

It would certainly be difficult for a defendant to effectively contest or question the work of some particular "anti-cigarette" scientists if such work had been labelled as "valid" by defendant's own people. How, for example, would our position that "mouse-skin painting" does not provide data which can be extrapolated to humans stand up if the reference to mouse-skin painting "as the ultimate court of appeal on carcinogenic effects" from page 5 of the Kronberg minutes was offered in evidence by a plaintiff?

The testimony of outstanding and independent doctors and scientists of the type who have enabled us to win a number of cancer cases on the causation issue would be nullified or weakened by our own people's statements. Furthermore, after one experience of being disputed by statements of our own employees, it is doubtful that such independent experts would agree to testify again.

If a plaintiff's contention as to causation of a disease by cigarettes seems to be supported by statements and opinions of our own scientific employees, this important issue on which we have prevailed in the past would undoubtedly be decided against us, despite our best efforts to explain them.

Exh. F

As the Tobacco Companies (and their counsel) denied, both in the Courtroom and out, that smoking had been scientifically proven to cause disease, internal Tobacco Industry research confirmed the danger of using tobacco products and the addictiveness of nicotine. In order to avoid its attribution to the Tobacco Companies, this valid research was generally conducted offshore either by Industry affiliates or contractors, and was often channeled through Industry lawyers to hide it under claims of privilege..

In a perverse inversion of the policies underlying U.S. product liability laws, in order to avoid the legal consequences (as well as the loss of sales) that would flow from publicly acknowledging that their existing tobacco products were unsafe, Defendants have further conspired to suppress the development, testing and marketing of safer cigarettes, while fraudulently maintaining that their products are safe or that there are no less hazardous alternatives to their products.

The success of the Industry's campaign of deceit, concealment and misinformation has depended, in large part, on Defendants acting in concert. Without the agreement of each of the Tobacco Companies to suppress the truth about the health consequences and addictive nature of using tobacco products, the deception that action against their products was premature because "not enough facts are known" to indict their use would ring hollow. Defendants agreed to come together and to stay together in order to accomplish what would not have otherwise occurred -- the unified and consistent distortion of public information about the use of tobacco products, health and addiction,

with the Industry's resulting immunity from widespread product liability suits, loss of sales, prohibitory legislation and regulatory oversight. 55. While the driving force behind this campaign of deceit was the Tobacco Companies' lawyers seeking to avoid having their clients pay the health care costs of smoking in pending product liability lawsuits, these lawyers and their principals fully realized that disclosure of the truth in litigation would merely be the first step in a process to reduce the prevalence of smoking and of a wholesale tapping of Tobacco Company profits to pay for the health care costs of smoking induced diseases. In its corporate counsel's memorandum dated July 22, 1985, Brown & Williamson indeed forecast the very consequences that have in fact occurred as the truth about smoking has begun to be revealed, and substantial settlements paid, in the lawsuits brought by the attorney generals:

A judgment against a cigarette manufacturer in a smoking and health case would be an ominous, highly publicized development and would somewhat increase the probabilities of more cases and more losses. However, assuming that one case goes against a manufacturer, the forecast of subsequent events would include strikingly different scenarios. The probabilities range from low dollar amount verdicts in a small percentage of the cases tried leading to perhaps 100 cases nationwide to, on the other hand, large verdicts against manufacturers in a high percentage of the first round of cases leading to thousands of active cases (the Surgeon General claims that cigarettes cause 350,000 excess deaths per year) . . .

Pressure will develop in the Congress for superfund legislation applicable to smoking and health lawsuits if large scale plaintiff victories occur; such a fund would be financed by contributions from cigarette manufacturers amounting to a large percentage of profits . . .

The trend of private businesses to adopt smoking restrictions and cessation programs for employees will accelerate. The Federal government will adopt tight smoking restrictions for its offices. The insurance industry will broaden the application of nonsmoker discounts, which will appear as a feature of health care plans. Few smokers will complain about these events and the press will continue to publish assessments that smoking restrictions are seen by all parties concerned as working well.

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Exh. G

Many of these foreseen and deferred consequences directly increased the Funds' health care costs -- e.g., the deterrence of suit and the suppression of workplace smoking restrictions, cessation programs and non-smoker discounts in insurance health care plans.

Thus, the Industry's conspiracy of the "open controversy" successfully maintained over 4 decades was intended to and did cause injury to the business and property of plaintiff and the Class as described herein.

**4. Targeting, Deceiving and Exploiting Unions,  
Organized Labor and the Funds**

By at least 1978, the Tobacco Industry had become aware of articles appearing in the press (e.g., the *Wall Street Journal* and the legal and economics literature) linking smoking to increased "social costs" (including the cost of medical care), and efforts to impose these social costs upon the Tobacco Industry. One Reynolds document contains a review of extant literature addressing the "social costs of smoking" and describes the efforts both to require these social costs to be borne by the Industry and to encourage it to develop safer cigarettes; both of these efforts were opposed by the Industry:

"This means that society as a whole is paying the bill for tobacco-related illness and that a substantial and growing part of the economic costs of smoking are borne by non-smokers among the public who subsidize smokers' disability and death costs through government welfare payments.

This burden should be shifted to smokers and manufacturers through legal means or legislation to permit welfare agencies to recover medical costs and transfer payments from cigarette manufacturers and smokers; or through a safety tax to induce manufacturers to produce safer cigarettes while providing the means to pay for smoking-related costs.

Ultimately, the goal of public policy proposals related to this issue are to reduce health care costs by reducing smoking incidence through some combinations of increased taxation reduced cigarette advertising and more health education; to end the subsidy of smoking and its health care costs by the non-smoking public; and to induce the development of safer cigarettes."

Exh. H

Another Reynolds memo discussed another "social costs" article in the February 15, 1982 issue of *Business Week*, which indicated that economists had calculated that "about 6% of the total personal health expenditures are caused by smoking-related illnesses," and that of the smoking costs to the nation of approximately "\$40 billion in 1980, \$12 billion went directly for medical expenses and \$28 billion represented productivity losses caused by worker illness and mortality." Reynolds raised serious concerns about this article because of the "high readership among top-level business people. . . [who] have been taken in by anti-smoking allegations" and "may indulge in even stronger feelings about letting our industry and customers pay more of the growing tax bills."

Commenting upon its review of an article in the *Wall Street Journal*, Reynolds further recognized that unions, as well as employers, had a significant interest in avoiding payment of the "social costs" of its products. As Reynolds stated:

[B]usiness is indeed 'ripe' for health maintenance and prevention programs -- the kind that could eventually lead to anti-smoking efforts . . . I was also particularly interested in the reference to the 'double stake' that unions have in reducing health costs. This is the first time I have seen it spelled out so clearly, and it could be a harbinger of things to come.

Exh. I

Unions and organized labor were particularly victimized by smoking because its associated health care costs that were paid by Union health and welfare Funds both reduced wages otherwise available to workers through collective bargaining, and also made unionized workers less competitive when seeking work.

Nonetheless, the Tobacco Industry when launching its "counterattack" against social costs adherents, targeted, exploited and deceived the Unions themselves to engage in the Industry's efforts to undermine workers' health and safety, and in the name of "organized labor", to frustrate employers', legislators' and regulators' initiatives to reduce the prevalence of smoking among workers and the Funds' resulting health care costs.

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In 1984, the Tobacco Industry Labor Management Committee (the "TILMC") was founded by the Tobacco Institute as a front organization run out of the offices of the Tobacco Companies' public relations firm, Ogilvy & Mather. James Savarese of Savarese Associates ("Savarese"), another Industry public relations firm, served as the Committee's executive director. Ostensibly, the TILMC was comprised of the Tobacco Institute and the following unions: the Bakery, Confectionery & Tobacco Workers International Union, the International Association of Machinists & Aerospace Workers, the International Brotherhood of Firemen & Oilers, the United Brotherhood of Carpenters and Joiners of America, and the Sheet Metal Workers International Association. The stances of the TILMC and its agenda, bulletins, reports, Union "kits" and policy positions, however, were drafted by the Tobacco Companies' public relations firms to further the Tobacco Industry's interests. These documents were then issued and distributed to union members, federal and local legislatures and regulatory bodies under the names of the above-described unions, the AFL-CIO or under the guise of "organized labor" generally.

The TILMC directly employs, or has assigned to it by the tobacco companies or their law firms, or public relations companies, experienced individuals who have worked either with the AFL-CIO or its international unions in the TILMC or the Tobacco Institute. Currently, it employs the former legislative director of the AFL-CIO and a lobbyist who worked under his direction at the AFL-CIO. A third TILMC employee is the former lobbyist for an international union, and a former potential director of a large international union, and lobbyists and lawyers from three large international unions as well as the son of a prominent union official. Most of these individuals also work with international unions at the present time. Their employment with the TILMC front is neither advertised nor well known within the labor movement, nor are congressional or regulatory officials aware of their connection with the Tobacco Institute, the TILMC or with tobacco companies generally, but they are identified as representing "labor" on tobacco issues in which they "purport" to represent the workers. All of these lobbyists/lawyers have come from international unions characterized as multi-employer funds. Upon information and belief, other former labor lobbyists, public relations

persons and lawyers are now and have been associated at a national level with the TILMC.

The Tobacco Industry used the TILMC, and exploited its member unions, to thwart, in the name of "organized labor", the mutual interests of both union members and their employers in reducing the health care costs attributable to smoking and paid by the Funds. Thus, the TILMC proposed that unions protest workplace smoking restrictions and smoking cessation initiatives, undermined the Surgeon General's reports on the adverse health effects of passive smoking and opposed, in labor's name, cigarette excise taxes. For example:

- In January 1986, the TILMC used its newsletter, the Tobacco Bulletin, to oppose the efforts of "anti-smoking zealots", including the Surgeon General. The Bulletin warned that the "zealots" would target and manipulate unions to gain their support for employers' initiatives to restrict smoking at the workplace. In the Bulletin, the Surgeon General's findings of the adverse health effects of passive smoke are "exposed" as "divisive tactics to weaken the labor movement." The Bulletin further describes proposed state legislation to protect workers' health (and reduce health care costs) as "schemes to harass workers and divert attention from occupational hazards." (Exh. J)

- In December 1986, Savarese drafted a "UNION STATEMENT IN RESPONSE TO THE SURGEON GENERAL'S REPORT" challenging the report's scientific validity and objectivity: "[B]ased on the Surgeon General's relentless pursuit of a political agenda on the smoking issue, much of his credibility must be called into question." The Response further states that, rather than restricting smoking, employers had an obligation to provide a "safe and healthy workplace" through "improved ventilation." (Exh. K)

- In July 1987, Savarese drafted for issuance, under the names of the presidents of the TILMC union members, a kit "designed for use by unions dealing with the question of workplace smoking restrictions." The kit is represented as benefiting union members' "health and safety." It describes employer-sponsored health promotion programs that focus on "employee lifestyles" as "diversionary tactics" and challenges the

scientific validity of the Surgeon General's conclusions about the risks of cancer from smoking in the workplace. (Exh. L)

- In November 1990, Savarese drafted "Taxes: A Labor Perspective" to be used by the Tobacco Industry in lobbying against legislation that would impose or increase excise taxes on cigarettes. (Exh. M)

TILMC has also undermined the interests of organized labor, their employers and the Funds by opposing: (i) any regulation of smoking by Congress--either in the workplace or environmentally, (ii) any efforts by the federal government to regulate smoking in any way whether by the Food and Drug Administration, Occupational Safety and Health Administration, Environmental Protection Agency, Health and Human Services, the Federal Trade Commission, or the Securities and Exchange Commission; and (iii) with another Tobacco Institute "insurance consumer" front, insurance company payor efforts to set higher rates for smokers and to curtail smoking at its workplaces including adopting smoking treatment programs and efforts to persuade policyholders to take measures to cut down on smoking such as adopting no smoking policies, instituting smoking prevention programs, and providing financial and other incentives.

## **B. The Industry's Early And Ongoing Public**

### **Deception About Smoking And Health**

#### **1. The Early Days -- Claiming Cigarettes Are Healthful**

Inhalable tobacco became widely popular in the 19th century when W. Duke and Sons introduced a mechanized cigarette-rolling machine. Through this device, cigarettes were mass-produced, distributed and sold nationwide.

In 1881, Duke's factory produced 9.8 million cigarettes, 1.5 percent of the total market share. Only five years later, W. Duke and Sons manufactured 744 million cigarettes, more than the national total in 1883. By 1890, Duke's competitors, who by now had become mechanized, joined forces with Duke to establish The American Tobacco Company. By the turn of the century, nine of every ten cigarettes were those of W. Duke and Sons. Shortly after the formation of The American Tobacco Company, the State of North Carolina initiated an antitrust suit against the company. In May, 1911, the

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Supreme Court dissolved The American Tobacco Company, which was succeeded by four large firms: Liggett & Reynolds, Lorillard and American, plus many smaller firms.

Cigarette smoking increased dramatically in the first half of the 20th century, followed by an increase in incidences of lung cancer. As early as 1945, Dr. Alton Ochsner, a New Orleans surgeon and regional medical director of the American Cancer Society, told an audience at Duke University on October 23 that "there is a distinct parallelism between the incidence of cancer of the lung and the sale of cigarettes . . . the increase is due to the increased incidence of smoking and that smoking is a factor because of the chronic irritation it produces."

In 1946, tobacco company chemists themselves reported concern for smokers' health. A 1946 letter from a Lorillard chemist to its manufacturing committee states: "Certain scientists and medical authorities have claimed for many years that the use of tobacco contributes to cancer development in susceptible people. Just enough evidence has been presented to justify the possibility of such a presumption."

In response to such medical indictments against smoking, the companies, through industry spokesmen, dismissed such reports as "the health scare." The companies also engaged in advertising campaigns to induce the public to believe that cigarette smoking was actually beneficial to one's health. The early tobacco companies made express claims and warranties as to the healthfulness of their products with reckless disregard to their falsity of their claims and the consequential adverse impact on consumers. Examples of their health warranties include the following: Old Gold, "Not a cough in a Carload"; Camel, "Not a single case of throat irritation due to smoking Camels"; Philip Morris, "The Throat-tested cigarette." Brown and Williamson also claimed that Kool cigarettes would keep the head clear and/or provide protection against colds.

These health-claim advertising campaigns were disseminated nationally in popular magazines, on the radio and television and were calculated to persuade non-smokers to begin smoking and to persuade smokers to continue in their addiction to their harm and injury. These campaigns were false and misleading. 71. Other examples of the cigarette companies' deceptive campaign are numerous and outrageous. In 1952, Liggett conducted a test for advertising purposes to demonstrate the absence of

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harmful effects of smoking Chesterfield cigarettes on the nose, throat and affected organs. The tests were conducted by Arthur D. Little, Inc., and were designed to have no real scientific value. Nonetheless, the conclusion of the test that smoking Chesterfield cigarettes had no harmful effect on the stated organs was widely publicized and the purported results were used to assure the general public that smoking Chesterfield cigarettes was harmless.

During the 1950's, Liggett sponsored the nationally popular Arthur Godfrey radio and television show wherein health claims were made based upon the alleged scientific studies assuring that "smoking Chesterfields would have no adverse effects on the throat, sinuses or affected organs." Arthur Godfrey, a smoker himself, subsequently contracted lung cancer.

Earlier consumer-oriented ads from the 1930's and 1940's often spouted wide-ranging medical claims which placed physicians holding cigarettes in the company of endorsers including Santa Claus ("Luckies are easy on my throat"), movie stars, sports heroes and circus stars. Similar ads even appeared in medical journals, in which ads were targeted directly to physicians. One, for example, touted the Camel cigarettes booth at the American Medical Association's 1942 Annual Meeting.

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

The cigarette companies sponsored cigarette ads in the New England Journal of Medicine, the Journal of the American Medical Association ("JAMA") and The Lancet from the 1930's through the 1950's.

For fifteen years, Philip Morris made various claims that its cigarettes were less irritating than other brands. An advertisement in a 1943 issue of the National Medical Journal urged: "'Don't smoke' is hard advice for patients to swallow. May we suggest instead 'Smoke Philip Morris?' Tests showed three out of every four cases of smokers' cough cleared on changing to Philip Morris. Why not observe the results for yourself?" Another ad by the company in JAMA in 1949 averred: "Why many leading nose and throat specialists suggest, 'Change to Philip Morris!' . . ."

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Other companies employed different marketing techniques aimed at physicians. For example, Camel cigarettes paid tribute to medical pioneers and concluded: "Experience is the best teacher . . . [e]xperience is the best teacher in cigarettes, too." Old Gold reacted to early negative medical studies with the slogan: "If pleasure's your aim, not medical claims . . ."

During the 1950's the companies employed another method of deception in manufacturing and advertising to boost sales and to counter the "health scare": "The Filter Derby" and "Tar Wars." The companies manufactured filtered cigarettes that were advertised with explicit and/or implicit warranties of tar/nicotine content and health claims. The manufacturers' health claims and claims as to the effectiveness of the filters in removing tar and nicotine were knowingly deceptive when made, and/or were made with reckless disregard for the health risks to the cigarette smokers.

## **2. The 1953 "Big Scare" And The Tobacco Industry's Response**

The Industry conspiracy began as early as the 1950's, when cigarette manufacturers were confronted with the publication of several scientific studies which sounded grave warnings about the health hazards of cigarettes. In December of 1953, Dr. Ernest L. Wynder of the Sloan-Kettering Institute published the results of a study in which he painted the shaved backs of mice with cigarette smoke condensate residue. Malignant tumors grew in 44% of the mice in Dr. Wynder's study, providing biological evidence that cigarette smoke caused cancer. The previous year, a British researcher, Dr. Richard Doll, published a statistical analysis showing that lung cancer was more common among people who smoked and that the risk of lung cancer was directly proportional to the number of cigarettes smoked. The widespread reporting of these studies caused what cigarette company officials later called the "Big Scare."

The manufacturers responded quickly to the mounting adverse publicity of a link between smoking and cancer. The Chief Executive Officers of the leading cigarette manufacturers met on December 15, 1953, at the Plaza Hotel in New York City. The public relations firm of H&K, which was to play a central role in formulating and



executing the industry response, coordinated the meeting and prepared a memorandum summarizing the day's discussions.

According to the H&K memorandum, cigarette industry executives viewed the problem as "extremely serious and worthy of drastic action." The document continues: "Officials stated that salesmen in the industry are frantically alarmed and that the decline in tobacco stocks on the stock exchange market has caused grave concern . . . ."

The participants in the meeting agreed that a strong public relations response from the manufacturers was necessary. From the beginning, these companies viewed the emerging research linking smoking and cancer as a public relations and, shortly thereafter, a product liability, problem, not a public health issue. According to the H&K memorandum summarizing the meeting:

The Chief Executive Officers of all the leading companies, except Liggett, "agreed to go along with a public relations program on the health issue";

"They are also emphatic in saying that the entire activity is a long-term, continuing program, since they feel that the problem is one of promoting cigarettes and protecting them from these and other attacks that may be expected in the future"; and

"The current plans are for Hill and Knowlton to serve as the operating agency of the companies, hiring all the staff and disbursing all funds."

### **3. The Creation Of The Tobacco Industry Research Committee**

Nine days later, H&K presented a detailed recommendation to the cigarette manufacturers and others. The recommendation recognized the importance of gaining the public trust and avoiding the appearance of bias if the "pro-cigarette" industry strategy was to be successful. According to the memorandum:

"[T]he grave nature of a number of recently highly publicized research reports on the effects of cigarette smoking have confronted the industry with a serious problem of public relations.

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

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

As a result of the meeting of December 15, 1953, and the recommendations of H&K, five of the six cigarette manufacturers -- Philip Morris, Reynolds, American, Lorillard and Brown & Williamson -- agreed to create the Tobacco Industry Research Committee, or TIRC. Liggett joined the industry trade group in 1964, the same year the U.S. Surgeon General's office issued its first report linking cigarette smoking to lung cancer. Also in 1964, TIRC changed its name to the Council for Tobacco Research, or CTR. The Tobacco Companies formed a second trade group, the Tobacco Institute, in 1958.

**C. The Industry Promises Unbiased And  
Truthful Research And Information**

Shortly after creating the TIRC, the member cigarette manufacturers made an unambiguous pledge to the public. These Defendants represented that they would, through the TIRC, conduct and report objective and unbiased research regarding smoking and health. When they made this representation, these Defendants knew or should have known that consumers throughout the country, including in Rhode Island, would consider the representation material to their decisions to purchase and smoke cigarettes. Defendants also knew or should have known that responsible agencies and authorities would fail to take or delay taking public health measures they otherwise would have taken had Defendants fulfilled their pledge. At that time, and continuing to the present, these Defendants knew or should have known that their failure to fulfill the duty they undertook, and other conduct as alleged herein, would result in increased health care costs to health care providers and payers, including Plaintiff and the Class.

On January 4, 1954, the Tobacco Companies (except Liggett) announced the formation and purpose of TIRC, with a full page newspaper advertisement entitled, "A Frank Statement to Cigarette Smokers." The statement appeared in 448 newspapers across the nation, reaching a circulation of 43,245,000 in 258 cities.

The "Frank Statement to Cigarette Smokers" stated, in part:

"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."

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

"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."

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

"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."

"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."

By the spring of 1955, the self-defense strategy recommended by H&K and implemented by the industry through the "Frank Statement" was largely successful. H&K reported to TIRC:

"[P]rogress has been made . . . . The first 'big scare' continues on the wane."

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

"Positive stories are on the ascendancy."

**D. The TIRC (and CTR) Were Created as a Public Relations Ploy and Were Controlled by the Tobacco Industry's Lawyers**

As had been proposed at the December 15, 1953 meeting, the Tobacco Companies (except Liggett), through their agent U&K created the TIRC.

TIRC was physically established in the Empire State Building in New York City, one floor below the H&K offices. Internal documents confirm that H&K and not independent scientists, initially actually ran TIRC. A "highly confidential" internal memo reported:

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

In 1954, 35 staff members of H&K worked full or part-time for TIRC. In that year, TIRC spent \$477,955 on payments to H&K, more than 50% of TIRC's entire budget.

The usefulness of CTR/TIRC in fending off incipient efforts to impose the health care costs of tobacco use on the Tobacco Industry through product liability lawsuits, quickly became apparent.

As emissaries from the Tobacco Research Counsel, the TIRC/CTR's analog in the United Kingdom found during their trip to the CTR in October 1964, the "most important factor conditioning action by the manufacturers is the lawsuit situation and the dangers of costly damages being awarded against the manufacturers in a flood of cases. . . . The leadership in the U.S. smoking and health situation therefore lies with the powerful Policy Committee of senior lawyers advising the industry."

Thus, the policies of the CTR, the supposedly independent "research" entity created to scientifically and objectively determine and disclose to the public the health effects of smoking, were set by an all powerful "Policy Committee of Lawyers" consisting of the corporate counsel of Reynolds, Brown & Williamson, Philip Morris, Lorillard, Liggett and CTR and American Tobacco Co. who reported directly to the

Presidents of each of the major tobacco companies. And the daily operations of the CTR were controlled by an ad hoc "Committee of Counsel" consisting in significant part, of the Industry's product liability trial lawyers. These lawyers assured that the figurehead group of scientists ostensibly running the CTR, the "Scientific Advisory Board", awarded CTR funding to perform only research irrelevant to the issue of whether smoking caused disease, and that the Committee of Counsel itself selected scientists sympathetic to tobacco's concerns to perform studies which might be useful in challenging legitimate adverse scientific studies on smoking, CTR's "special projects". Where this latter group of scientific studies commissioned by the CTR Committee of Counsel did not turn out as planned, the results were hidden from public view under claims of attorney-client and/or work product privilege. See Exhibit F.

**E. The Tobacco Industry's Knowledge That  
Smoking is Harmful and Often Lethal**

Even before the sponsors of the "Frank Statement" represented that "there is no proof that cigarette smoking is one of the causes" of lung cancer, an industry researcher had reported the contrary. As early as 1946, Lorillard chemist H.B. Parmele, who later became vice president of research and a member of Lorillard's board of directors, wrote to his company's manufacturing committee:

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

In the years following the 1954 "Frank Statement," and continuing to the present, the Tobacco Companies have repeatedly breached their assumed duty to report objective facts on smoking and health. As evidence mounted both through industry research and truly independent studies that cigarette smoking causes cancer and other diseases, the Tobacco Industry continued publicly to represent that there was no proof of a link between tobacco use and illness -- that causation remained an "Open Controversy". Internal documents show that the truth was very different. The Tobacco Companies knew and acknowledged internally the veracity of scientific evidence of the health

hazards of smoking, and at the same time suppressed such evidence when they could, and attacked it when it did appear.

Internal cigarette industry documents reveal, for example:

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

A 1958 memorandum sent to the vice president of research at Philip Morris, who later became a member of its board of directors, from a company researcher stated "the evidence . . . is building up that heavy cigarette smoking contributes to lung cancer either alone or in association with physical and physiological factors . . . ."

A 1961 document presented to the Philip Morris Research and Development Committee by the company's vice president of research and development included a section entitled "Reduction of Carcinogens in Smoke." The document stated, in part:

To achieve this objective will require a major research effort, because carcinogens are found in practically every class of compounds in smoke. This fact prohibits complete solution of the problem by eliminating one or two classes of compounds. The best we can hope for is to reduce a particularly bad class, i.e. the polynuclear hydrocarbons, or phenols . . . .

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

A 1963 memorandum to Philip Morris' president and CEO from the company's vice president of research describes a number of classes of compounds in cigarette smoke which are "known carcinogens." The document goes on to describe the link between smoking and bronchitis and emphysema:

Irritation problems are now receiving greater attention because of the general medical belief that irritation leads to chronic bronchitis and emphysema. These are serious diseases involving millions of people. Emphysema is often fatal either directly or through other respiratory complications. A number of

experts have predicted that the cigarette industry ultimately may be in greater trouble in this area than in the lung cancer field.

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

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

There are biologically active materials present in cigarette tobacco.

These are:

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

A 1963 memorandum from the Liggett consulting research firm states:

Basically, we accept the inference of a causal relationship between the chemical properties of ingested tobacco smoke and the development of carcinoma, which is suggested by the statistical association shown in the studies of Doll and Hill, Horn, and Donn with some reservations and qualifications and even estimate by how much the incidence of cancer may possibly be reduced if the carcinogenic matter can be diminished, by an appropriate filter, by a given percentage.

These internal Liggett documents sharply contrast with the information Liggett provided to the Surgeon General in 1963. Liggett withheld from the Surgeon General the views of its researchers and consultants that the evidence showed cigarette smoking causes human disease. The report Liggett presented to the Surgeon General omitted all of these views. Instead, it focused on alternative causes of disease, such as air pollution, coffee and alcohol consumption, diet, lack of exercise, and genetics. Liggett criticized the known statistical association between smoking and mortality and various diseases as "unreliably conducted" and "inadequately analyzed." The Liggett report concluded that

the association between smoking and disease was inconclusive and was in fact due to other factors coincidentally associated with smoking.

Philip Morris also concealed from the public its actual views of the research conducted outside the influence of the industry. In a 1971 memorandum, Dr. H. Wakeham, then vice president of research and development, referring to a recent study which found cigarette smoke inhalation caused lung cancer in beagles, stated: "1970 might very properly be called the year of the beagle. Early in the year, the American Cancer Society announced that they had finally demonstrated the formation of lung cancer in beagles by smoke inhalation in the now infamous Auerbach and Hammond study." Although Dr. Wakeham criticized the mice cancer studies, he conceded that "the beagle test was a critical one . . . for the cigarette causation hypothesis."

Dr. Wakeham's memorandum demonstrates Philip Morris' approval of the industry's public dismissals of these independent studies: "The strong opposition of the industry to the beagle test is indicative of a new, more aggressive stance on the part of the industry in the smoking and health controversy. We have gone over from what I have called the 'vigorous denial' approach, the take it on the chin and keep quiet attitude, to the strongly voiced opposition and criticism. I personally think this counter-propaganda is a better stance than the former one."

Similarly, B.A.T. Co.'s internal view of the validity of mouse skin painting experiments differed markedly from the view expressed in public statements. Minutes from a 1969 research conference stated: "Historically, bioassay experiments were undertaken by the industry with the object of clarifying the role of smoke constituents in pulmonary carcinogenesis. The most widely used of these methods [was] mouse-skin painting . . . (a) In the foreseeable future, say five years, mouse-skin painting would remain as the ultimate court of appeal on carcinogenic effects." Indeed, these minutes were part of the "admissions" that had so concerned David Hardy, Esq., when he prepared his memo in 1970 to Brown & Williamson's corporate counsel. Despite the knowledge of the significance of the mouse tests to establishing the link between smoking and cancer, two years later a Brown & Williamson public relations document stated: "Much of the experimental work involves mouse-painting or animal smoke inhalation

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experiments . . . [T]he results obtained on the skin of mice should not be extrapolated to the lung tissue of the mouse, or to any other animal species. Certainly such skin results should not be extrapolated to the human lung."

**F. The Tobacco Industry's Repeated False**

**Promises to the Public**

The Tobacco Companies renewed and repeated the deceptions of the 1954 "Frank Statement to Cigarette Smokers." Reynolds' chairman, Bowman Gray, told Congress in 1964: "If it is proven that cigarettes are harmful, we want to do something about it regardless of what somebody else tells us to do. And we would do our level best. It's only human."

Another advertisement co-sponsored by TIRC and the Tobacco Institute called "A Statement about Tobacco and Health" stated:

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

We shall continue all possible efforts to bring the facts to light.

The companies made similar representations in 1970 when its lobbying group, the Tobacco Institute, placed a number of advertisements similar to the 1954 "Frank Statement." One advertisement stated in part:

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

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

"In 1954, the Industry established what is now known as CTR, the Council for Tobacco Research--USA, to provide financial support for research by independent scientists into all phases of tobacco use and health. Completely autonomous, CTR's research activity is directed by a board of ten scientists and physicians who retain their affiliations with their

respective universities and institutions. This board has full authority and responsibility for policy, development and direction of the research effort."

"The findings are not secret."

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

In 1972, Tobacco Institute president Horace Kornegay testified before Congress and stated: "[T]he cigarette industry is as vitally concerned or more so than any other group in determining whether cigarette smoking causes human disease . . . . That is why the entire tobacco industry . . . since 1954 has committed a total of \$40 million for smoking and health research through grants to independent scientists and institutions."

In March of 1983, Sheldon Sommers, MD, scientific director of CTR, testified before Congress: "*Cigarette smoking has not been scientifically established to be a cause of chronic diseases, such as cancer, cardiovascular disease, or emphysema. Nor has it been shown to affect pregnancy outcome adversely.*"

In 1984, Reynolds placed an advertisement in The New York Times stating: "Studies which conclude that smoking causes disease have regularly ignored significant evidence to the contrary."

In 1994, the chief executive officers of the Tobacco Companies testified under oath before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, U.S. House of Representatives, chaired by Congressman Waxman ("Waxman Subcommittee"). These executives knowingly made material misrepresentations and omissions to the Waxman Subcommittee about smoking, health and addiction, and in particular, stated that nicotine is not addictive. The Tobacco Company executives made these statements knowing that they would be communicated to the American public, including users of tobacco products in New York. These statements included the following:

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Andrew Tisch, then CEO of Lorillard, asserted that smoking does not cause cancer. "We have looked at the data and the data that we have been able to see has all been statistical data that has not convinced me that smoking causes death."

Philip Morris President and CEO William Campbell, testified:

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

"Cigarette smoking is not addictive";

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

Reynolds CEO James Johnston said that, "smoking is no more addictive than coffee, tea or Twinkies."

The Tobacco Company executives made these representations, among others, despite the substantial body of evidence, including information developed by the manufacturers themselves, dating back at least 40 years, indicating that nicotine is not only addictive, but is the main reason why people smoke and continue to smoke, and that cigarettes are potentially lethal to smokers when used as intended.

The Tobacco Companies continue to deny that nicotine is addictive and instead use various misleading euphemisms to describe the role of nicotine, such as "satisfaction," "strength," "rich aroma," and "pleasure." Nonetheless, there is now widespread agreement in the medical and scientific communities that the primary, if not sole, function of nicotine is to provide a pharmacological effect on the smoker that leads to addiction. According to the U.S. Surgeon General: "The pharmacologic and behavioral processes that determine tobacco addiction are similar to those that determine addiction to drugs such as heroin and cocaine."

Each of Defendants' representations to the public about sponsoring independent objective research and bringing the truth to light were false and deceptive. These misrepresentations were made to assure that smokers continued to smoke and that someone other than the Tobacco Companies footed the bill for the resulting medical costs.

**G. Suppressing Inculpatory Research:  
The "Gentleman's Agreement"**

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The Tobacco Companies' financial success depended upon their collective agreement not to reveal to the public the true nature of TIRC, and later CTR, and not to disclose adverse information on smoking, addiction and health. In 1968, a memorandum addressed to the CEO of Liggett regarding a meeting of the research directors of the six cigarette manufacturers described on the topic of smoking and health, "a general feeling that an industry approach as opposed to an individual company approach was highly desirable."

Each company agreed not to perform animal research on smoking and health and to share with others in the Industry innovations permitting the fabrication of "safer" cigarettes -- so that no tobacco company had any economic incentive to research and develop less hazardous cigarettes that would put the remainder of the industry in jeopardy of product liability judgments. This agreement was referred to as the "Gentleman's Agreement." A 1968 internal Philip Morris draft memorandum entitled "Need for Biological Research by Philip Morris Research and Development," and prepared by the company's vice president of research and development, states: "We have reason to believe that in spite of the gentlemen [sic] agreement for the tobacco industry in previous years that at least some of the major companies have been increasing biological studies with their own facilities."

As indicated by the 1968 "Gentleman's Agreement" memorandum, 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 concealed. This included restraining, concealing, and suppressing 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.

**H.     The Tobacco Industry's Suppression and Concealment  
          of Industry-Sponsored Research**

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# **1. The CTR: A Sham Front For The Industry**

The joint industry research efforts undertaken through TIRC, and later, through CTR, were never intended to objectively answer the questions of whether smoking caused cancer and other disease and was addictive. Instead, the TIRC and CTR "grants" were intended merely as a holding strategy, while their "special projects" were proactively selected by Industry lawyers to create a scientific record that causation remained an "open controversy".

A 1974 report to the CEO of Lorillard from a research executive described CTR's scientific projects as "hav[ing] not been selected against specific scientific goals, but rather for various purposes such as public relations, political relations, position for litigation, etc. Thus, it seems obvious that reviews of such programs for scientific relevance and merit in the smoking and health field are not likely to produce high ratings."

A 1972 internal document from a Tobacco Institute official to the group's president described the importance of using joint industry research to maintain public doubt about the link between smoking and disease:

For nearly twenty years, this industry has employed a single strategy to defend itself on three major fronts -- litigation, politics, and public opinion. While the strategy was brilliantly conceived and executed over the years helping us win important battles, it is only fair to say that it is not -- nor was it ever intended to be -- a vehicle for victory. On the contrary, it has always been a holding strategy, consisting of -- creating doubt about the health charge without actually denying it -- advocating the public's right to smoke, without actually urging them to take up the practice -- encouraging objective scientific research as the only way to resolve the question of the health hazard.

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

In the cigarette controversy, the public -- especially those who are present and potential supporters (e.g. tobacco state congressmen and heavy smokers) -- must perceive, understand, and believe in evidence to sustain their opinions that smoking may not be the causal factor.

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

Exh. N

A 1978 memo addressed to the CTR file from a Philip Morris official characterized CTR as "an industry shield". The memorandum goes on to state: "[T]he public relations value of CTR must be considered and continued . . . . It is extremely important that the industry continue to spend their dollars on research to show that we don't agree that the case against smoking is closed . . . . There is a 'CTR basket' which must be maintained for 'PR' purposes . . . ."

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

The role and purpose of TIRC and CTR in the Tobacco Companies' strategy was to keep smokers smoking and to defeat efforts to impose the resulting medical costs on the Tobacco Companies, particularly, in the first instance, through strict liability lawsuits. An industry official described in his personal notes a meeting which included high level officials from various cigarette manufacturers: "CTR is best & cheapest insurance the tobacco industry can buy and without it the industry would have to invent CTR or would be dead."

Nonetheless, in its annual reports published between 1985 and 1992, CTR stated that its scientific advisory board funded peer-reviewed research projects, "judging them solely on the basis of scientific merit and relevance." In 1994, Dr. James F. Glenn, CEO of CTR, submitted testimony to the Waxman Subcommittee:

a. "The Council . . . sponsors research into questions of tobacco use and health and makes the results available to the public."

b. "Council grantees are assured complete scientific freedom in conducting their studies . . . . Publication of research results is encouraged in all instances."

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CTR-sponsored research projects were directed away from research that might add to the evidence against smoking. In November 1977 CTR scientists hosted a meeting of the Tobacco Companies and their lawyers to discuss a proposed CTR program to fund studies of the central nervous systems ("CNS"), studies which might prove how nicotine caused addiction. Philip Morris's representative at the meeting was appalled and prepared the following report:

It is my strong feeling that with the progress that has been claimed, we are in the process of digging our own grave. I believe that the program as set up has the potential of great damage to the Industry and I strongly urge that the whole relationship of our company to CTR be reviewed. I am very much afraid that the direction of the work being taken by CTR is totally detrimental to our position and undermines the public posture we have taken to outsiders.

Exh. O

CNS grant applications to CTR were thereafter routed to the Industry's lawyers and "held."

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

An internal CTR document describes how Dr. Homburger attempted to call a press conference about the incident and how CTR stopped it:

He . . . was to tell the press that the tobacco industry was attempting to suppress important scientific information about the harmful effects of smoking. He was going to point specifically at CTR.

I arranged later that evening for it to be canceled.

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Homburger was given a cordial welcome and nicely hastened [sic] out the door.

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

Another mechanism the CTR used to manipulate research results that implicated smoking in disease was to selectively involve lawyers, and then invoke the attorney/client privilege to prevent the disclosure of harmful information. The CTR's Committee of Counsel used the term "special projects" to mean a project that could, but might not, be useful for litigation, legislative testimony or public relations purposes. Where helpful, the results were published under CTR sponsorship; where the results were not, they were hidden under claims of privilege. The Committee of Counsel selected and monitored "special projects" to further the Industry's positions on smoking and health. One Philip Morris official characterized CTR as a "front" for performing "special projects."

## **2. The "Deadwood" Method Of Hiding Negative Research**

At least one company used similar tactics to suppress and avoid disclosure of its own internal research on smoking and disease. At a time when the company was resisting discovery in a number of personal injury lawsuits, Brown & Williamson's general counsel, J. Kendrick Wells, recommended, in a memorandum dated January 17, 1985, that much of the company's biological research be declared "deadwood" and shipped to England. He recommended that no notes, memos or lists be made about these documents. Wells stated,

"I had marked certain of the document references with an X . . . which I suggested were deadwood in the behavioral and biological studies area. I said that the "B" series are "Janus" series studies and should also be considered as deadwood." ("Janus" was a name of a project that attempted to isolate and remove the harmful elements of tobacco.) Wells further recommended that the research, development and engineering department also should undertake "to remove the deadwood from the files."

Exh. D

The recent sworn statements of Brown & Williamson's former Chief of Research, Jeffrey Wigand, confirm that Brown & Williamson's Wells concealed sensitive documents. Wigand stated that Wells sent sensitive research documents to London to avoid production in litigation, stamped scientific documents "attorney/client, work

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product," even though the documents were not specifically created for litigation, and edited and suppressed the minutes of scientific meetings to remove references to topics which might be used by plaintiffs in product liability litigation.

### **3. The Mouse House Massacre**

In the 1960's, Reynolds established a facility in Winston-Salem, North Carolina, to research the health effects of smoking using mice. In the facility nicknamed the "Mouse House," Reynolds scientists researched a number of specific areas, including studies of the actual mechanism whereby smoking causes emphysema in the lungs. The Reynolds lab made significant progress in understanding the mechanism. Despite this progress, Reynolds disbanded the entire research division in one day in 1970 and fired all 26 scientists without notice.

Several months before the 1970 closure and firings, Reynolds attorneys collected dozens of research notebooks from the lab's scientists. One of the researchers later stated about Reynolds executives and lawyers that "they like to take the position that you can't prove harm because you don't know mechanism . . . . And sitting right under their noses is evidence of mechanism[.] What are they going to do with this stuff? They decided to kill it."

Internally, a Reynolds-commissioned report favorably described the Mouse House work as "the more important of the smoking and health research effort because it comes close to determining what was thought to be the underlying pathology of emphysema."

#### **I. The Tobacco Companies Knew How But Refrained From Making A "Safer Cigarette"**

Several Tobacco Companies' biological research appears to have been directed toward developing a cigarette with reduced health risks. These companies performed research which involved dividing cigarette smoke into its different chemical constituents, or "fractions," to discover which part of the cigarette smoke caused disease. Several companies were successful in discovering which specific constituents in tobacco smoke were carcinogens, or were linked to other diseases. These companies kept the research secret. A number of companies also successfully removed certain harmful constituents

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from cigarette smoke and developed prototype cigarettes with reduced health effects. These products were never marketed.

A memorandum written by an attorney at the firm of Shook, Hardy & Bacon, articulated the industry-wide position regarding the issue of a safer cigarette. The 1987 memorandum, referring to the marketing by Reynolds of a smokeless cigarette, Premier, stated 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: "[U]nfortunately, the Reynolds announcement . . . seriously undercuts this component of [the] industry's defense."

As early as 1958, a memorandum from a Philip Morris researcher to the company's vice president of research and development proposed that the company attempt to make a safer cigarette that could enable it to "jump on the other side of the fence . . . on the issue of tobacco smoking and health . . . ."

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

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

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

The research and development department at Philip Morris nonetheless viewed continued research into safer cigarettes as necessary to compete in the event that another cigarette company marketed a safer cigarette. The presentation to the Philip Morris

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

B.A.T. Industries, at its TSRT meeting of November 10, 1989, acknowledged that the B.A.T. group, like Philip Morris, had the technology to produce a low nicotine cigarette but because of its failure to deliver the "satisfaction" demanded by consumers, it was not worthwhile to do so. Instead B.A.T. Industries chose the alternative of developing a product which reduced tar and boosted the nicotine needed to sustain its customers' addiction.

Liggett also developed a safer cigarette. Company researchers believed that they had discovered which cigarette smoke constituents were carcinogens and found a way to remove them. Despite Liggett officials' belief that the product was commercially marketable, the company never promoted the safer cigarette and suppressed the research that led to its development.

Liggett contracted with a consulting firm to repeat the smoke condensate studies of mice performed by Dr. Wynder. The consulting firm confirmed Dr. Wynder's findings, and, as a result, in 1968, Liggett began "a tobacco additive program designed to reduce or eliminate the tumorigenic activity of cigarette smoke."

By 1979, Liggett had declared the work a success. Company documents state: "Briefly, as a result of 20 years effort in cooperation with [the consulting firm], we have developed a cigarette system which produces smoke of reduced biological activity . . . . [T]here can be no argument that the use of the additives has resulted in a product with lower carcinogenic effects."

Liggett never marketed the safer cigarette, a product called "XA," and ultimately abandoned the XA project. On information and belief, Liggett did so for two reasons. First, disclosing the feasibility of a safer cigarette would imply that all existing cigarettes were not safe. Second, Philip Morris apparently threatened Liggett with retaliation if Liggett violated the industry agreement not to disclose negative information on smoking and health. Liggett's assistant research director, Dr. James Mold, reported that Liggett's

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President said 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."

During the XA project, Liggett attempted to insulate the research by the use of company lawyers. According to Dr. Mold, after 1975, "all meetings that we had regarding this project were to be attended by a lawyer . . . . All paper that was generated . . . [was] to be directed to the Law Department." Dr. Mold stated that lawyers even collected all the notes after each meeting.

Dr. Mold stated that despite its significance, the company lawyers not only ultimately succeeded in stopping the project, but ordered him not to publish the results of the research that led to the safer cigarette. The consulting firm published only an abstract of the paper, modified by the legal department, without Dr. Mold's name.

When asked why Liggett never marketed the safer XA cigarette, Dr. Mold explained: "[Management circles] felt that such a cigarette if put on the market would seriously indict them for having sold other types of cigarettes that didn't contain this, for example. Or that they were carrying on this biological research at the same time saying it meant nothing."

Liggett had also obtained a patent for the process it had discovered to produce its safer cigarette. The patent application described the reduction in cancer in mouse studies, prompting stories in the media that Liggett was the first cigarette company to admit that smoking caused cancer. Liggett responded by issuing a press release it called a "Liggettgram" which stated:

Liggett and the cigarette industry continue to deny, as they have consistently, that any conclusions can be drawn relating such test results on mice in laboratories to cancer in human beings. It has never been established that smoking is a cause of human cancer.

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

At the time Liggett made this statement, Dr. Mold estimates that Liggett had spent a total of \$10 million on research involving mice, in part to develop the safer XA cigarette. Liggett's internal reports on the benefit of the XA, and the absence of increased

risk of harm from the additives used, specifically used animal studies as reliable indicators of the health effect of the product on humans.

Despite overwhelming scientific evidence and the confirmation of this evidence by their own internal research, the Tobacco Companies and their trade associations continue to this day to repeat over and over, in a unified stance, that there is no causal connection between cigarette smoking and adverse health effects. These representations are misleading, deceptive and untrue. They rest at the heart of the Tobacco Industry's ongoing conspiracy to market and profit from a product it knows is deadly--and to assure that others, including the plaintiffs, bear the medical costs of their products.

**J. The Role of Nicotine in Cigarette**

**Smoking and Smokeless Tobacco Use**

The Tobacco Industry has made every effort to conceal and deny that nicotine is a powerfully addictive substance. While carefully studying its addictive character and acting upon that knowledge to maintain cigarette sales, each of the Tobacco Companies has denied that nicotine is addictive. This public deception and the Tobacco Companies' secret manipulation of nicotine were and are critically important to the success of the Tobacco Industry. As objective researchers increased their warnings of the health dangers of cigarettes, nicotine addiction kept (and keeps) people smoking. The Tobacco Companies continue to sell their dangerous products even to those who eventually come to doubt the Industry's health claims. And if a new consumer is fooled for a time by "pro-cigarette" disinformation on health, and takes up smoking, it may well be too late. Instead of a simple decision not to purchase a product, the consumer must fight his or her addiction.

**1. The Tobacco Industry's Knowledge of the**

**Addictiveness of Nicotine**

The Tobacco Companies have known since at least the early 1960's of the addictive properties of the nicotine contained in the cigarettes and smokeless tobacco they manufacture and sell. Industry documents are replete with evidence of such knowledge. In 1962, Sir Charles Ellis, scientific advisor to the board of directors of B.A.T. Co., stated at a meeting of B.A.T. Co.'s worldwide subsidiaries, that "smoking is a habit of

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addiction" and that "[n]icotine is not only a very fine drug, but the technique of administration by smoking has considerable psychological advantages. . . ." He subsequently described Brown & Williamson as being "in the nicotine rather than the tobacco industry."

A research report from 1963 commissioned by Brown & Williamson states that when a chronic smoker is denied nicotine, "[a] body left in this unbalanced state craves for renewed drug intake in order to restore the physiological equilibrium. This unconscious desire explains the addiction of the individual to nicotine." No information from that research has ever been voluntarily disclosed to the public.

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

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

From 1940-1970, American conducted its own nicotine research, funding more than 90 studies on the pharmacological and other effects of nicotine on the body, 80% of all biological studies funded by American during over this period. In 1969, American even test marketed a nicotine-enriched cigarette in Seattle, Washington.

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

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And, as recently as November 1989, B.A.T. Industries decided to forgo the development of a low nicotine cigarette because of its inability to satisfy its customers' nicotine cravings.

**2. The Tobacco Industry's Concealment of Its Research  
on Nicotine Addiction**

The Tobacco Companies, rather than fulfilling their promise to the public to disclose material information about smoking and health, chose a course of suppression, concealment, and disinformation to the public, including Plaintiff and the Class and their participants, about the true properties of nicotine and the addictiveness of smoking and smokeless tobacco use.

Philip Morris hired Victor DeNoble in 1980 to study the effects of nicotine on the behavior of rats and to research and test potential nicotine analogues. DeNoble, in turn, recruited Paul C. Mele, a behavioral pharmacologist. DeNoble and Mele discovered that nicotine met two of the hallmarks of potential addiction -- self-administration (rats would press levers to inject themselves with a nicotine solution) and tolerance (a given dose of nicotine over time had a reduced effect).

Philip Morris instructed DeNoble and Mele to keep their work secret, even from fellow Philip Morris scientists. Test animals were delivered at dawn and brought from the loading dock to the laboratory under cover. Lawyers for the company told DeNoble that the data he and Mele were generating could be dangerous. Philip Morris executives began talking of killing the research or moving it outside of the company so Philip Morris would have more freedom to disavow the results.

In August 1983, Philip Morris ordered DeNoble to withdraw from publication a research paper on nicotine that had already been accepted for publication after a full peer review, by the journal "Psychopharmacology." According to DeNoble, the company changed its mind because it did not want its own research showing nicotine was addictive or harmful to compromise the company's defense in litigation recently filed against it. He said that Philip Morris officials had correctly interpreted the suppressed nicotine studies as showing that, in terms of addictiveness, "nicotine looked like heroin."

In April 1984, Philip Morris closed DeNoble's nicotine research lab. DeNoble and Mele were forced abruptly to halt their studies, turn off all their instruments and turn in their security badges by morning. Philip Morris executives threatened them with legal action if they published or talked about their nicotine research. According to DeNoble, the lab literally vanished overnight. The animals were killed, the equipment was removed, and all traces of the former lab were eliminated.

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

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

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

Brown & Williamson rejected Yeaman's advice to make full disclosure to the Surgeon General. A series of six letters and telexes exchanged by Yeaman and senior B.A.T. Co. official A.D. McCormick between June 28 and August 8, 1963, document the company's decision not to disclose its research findings to the Surgeon General. That research, some of which was later characterized in a report in JAMA as "at the cutting edge of nicotine pharmacology," preceded the main published reports from the general scientific community by several years.

**3. The Tobacco Industry's Interest in the Nicotine  
Content In Their Products**

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A chronology of the Industry's research and development activities confirms that the Tobacco Companies understood early on that nicotine was the key to their success. The Tobacco Companies conducted extensive research establishing that smokers require a certain level of nicotine from their cigarettes and that tobacco "satisfaction" is attributable to nicotine's effect on the body after absorption.

Philip Morris internal reports from 1972 and 1978 characterize the role of nicotine in tobacco use: "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."

Documents from a B.A.T. Co. study called Project Hippo, uncovered only in May 1994, show that as far back as 1961, this cigarette company was actively studying the physiological and pharmacological effects of nicotine. Project Hippo reports were circulated to other U.S. cigarette manufacturers and to TIRC, demonstrating that at least some of the Industry's nicotine research was shared. B.A.T. Co. sent the reports to officials at Brown & Williamson and Reynolds, and circulated a copy to TIRC with a request that TIRC "consider whether it would help the U.S. industry for these reports to be passed on to the Surgeon General's Committee."

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

To this day, the Tobacco Companies have concealed from the public and public health officials their extensive knowledge of the addictive properties of nicotine and its critical role in smoking. As recently as December 1995, the Wall Street Journal reported on an internal Philip Morris draft document analyzing the competitive market for nicotine products for the years 1990 - 1992. The report describes the importance of nicotine:

Different people smoke for different reasons. But the primary reason is to deliver nicotine into their bodies. . . . It is a physiologically active, nitrogen containing substance. Similar organic chemicals include nicotine, quinine, cocaine, atropine and morphine. While each of these substances can be used to affect human physiology, nicotine has a particularly broad range of influence. During the smoking act, nicotine is inhaled into the

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lungs in smoke, enters the bloodstream and travels to the brain in about eight to ten seconds.

The Tobacco Companies have long understood that reducing or eliminating nicotine from their products would hurt sales. As one company researcher wrote in a 1978 report to Philip Morris executives: "If the industry's introduction of acceptable low-nicotine products does make it easier for dedicated smokers to quit, then the wisdom of the introduction is open to debate." Instead, the Industry attempted to develop ostensibly safer ways of delivering adequate doses of nicotine to create and sustain addiction in the smoker.

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

DeNoble did discover such an analogue, but Philip Morris chose to halt his effort to determine whether the nicotine analogue could be used to make a safer cigarette. On information and belief, Philip Morris decided not to pursue nicotine analogues in order to avoid risking adverse publicity and compromising the industry's consistent position that there was no alternative design for cigarettes.

Brown & Williamson also understood that nicotine was the essential ingredient in maintaining tobacco sales. The company attempted to develop a "safer" cigarette which internal documents described as "a nicotine delivery device." By the end of the 1970's, however, Brown & Williamson, in a pattern that was repeated throughout the industry, closed its research labs and halted all work on a safer cigarette.

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

The Tobacco Companies have misrepresented the role of nicotine in tobacco use to the public, continuing to claim that nicotine is important in cigarettes for taste and "mouth-feel." However, Tobacco Company patents specifically distinguish nicotine from

flavorants. A Reynolds book on flavoring tobacco, for example, while listing approximately a thousand flavorants, fails to include nicotine as a flavoring agent. The Tobacco Companies have actually concentrated on developing technologies to mask the acrid flavor of increased levels of nicotine in cigarettes.

#### **4. The Tobacco Industry's Control and Manipulation of Nicotine Levels In Their Products.**

The Tobacco Companies have developed and used highly sophisticated technologies designed to deliver nicotine in precisely calculated quantities -- quantities that are more than sufficient to create and sustain addiction in the vast majority of individuals who smoke regularly. The Tobacco Companies control the nicotine content of their products through selective breeding and cultivation of plants for nicotine content and careful tobacco leaf purchasing plans. The Tobacco Companies control nicotine delivery (i.e., the amount absorbed by the smoker) with various design and manufacturing techniques.

The story of Brown & Williamson's development of a new tobacco plant dubbed "Y-1" is one of the more egregious examples of the Tobacco Companies' concealment of its control and manipulation of the nicotine levels in their products.

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

When four FDA investigators visited the Brown & Williamson plant in Macon, Georgia on May 3, 1994, Brown & Williamson officials denied that the company was involved in breeding tobacco for specific nicotine levels. Only after the FDA learned of the development of Y-1 in its investigation and confronted company officials with the evidence did the company admit that it was growing and using the high-nicotine plant.

In fact, in a decade-long project, Brown & Williamson secretly developed a genetically-engineered tobacco plant with a nicotine content more than twice the average found naturally in flue-cured tobacco. Brown & Williamson took out a Brazilian patent

for the new plant, which was printed in Portuguese. Brown & Williamson and a Brazilian sister company, Souza Cruz Overseas, grew Y-1 in Brazil and shipped it to the United States where it was used in five Brown & Williamson cigarette brands, including three labeled "light." When the company's deception was uncovered, company officials admitted that close to four million pounds of Y-1 were stored in company warehouses in the United States.

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

B.A.T. Industries gave Brown & Williamson's program of development and marketing in the United States of cigarettes using Y-1 the code name "Project Greendot" and explicitly authorized Brown & Williamson's efforts.

Y-1 is one example of an overall trend among the Tobacco Companies to increase the nicotine content of their tobacco products. American tobaccos of all types have undergone cumulative increases in total nicotine levels since the 1950's. Nicotine levels in the most widely grown American tobaccos increased between 10-50% between 1955 and 1980. On information and belief, this increase is the result of the Tobacco Companies' active and controlling participation in efforts to breed and cultivate tobacco for high nicotine levels.

The nicotine content of the raw tobacco is not the only variable manipulated by the Tobacco Companies to deliver a pharmacologically active dose of nicotine to the smoker. Cigarettes are not simply cut tobacco rolled into a paper tube. Modern cigarettes are painstakingly designed and manufactured to control nicotine delivery to the smoker.

For example, cigarette manufacturers add several ammonia compounds during the manufacturing process which increase the delivery of nicotine and almost double the nicotine transfer efficiency of cigarettes. In 1995, Brown & Williamson publicly denied

that the use of ammonia in the processing of tobacco increases the amount of nicotine absorbed by the smoker. Nevertheless, the company's own internal documents reveal that it and the other cigarette manufacturers use ammonia compounds to increase nicotine delivery. A 1991 Brown & Williamson confidential blending manual states:

Ammonia, when added to a tobacco blend, reacts with the indigenous nicotine salts and liberates free nicotine . . . . As the result of such change the ratio of extractable nicotine to bound nicotine in the smoke may be altered in favor of extractable nicotine. As we know, extractable nicotine contributes to impact in cigarette smoke and this is how ammonia can act as an impact booster.

According to the Brown & Williamson manual, all American cigarette manufacturers except Liggett use ammonia technology in their cigarettes.

Tobacco Company patents also show that the manufacturers have developed the capability to manipulate nicotine levels in cigarettes to an exacting degree. For example: A Philip Morris patent application discusses an invention that "permits the release . . . in controlled amounts and when desired, of nicotine into tobacco smoke."

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

A 1991 Reynolds' patent application states that "processed tobaccos can be manufactured under conditions suitable to provide products having various nicotine levels."

Dr. Kessler testified in detail before the Waxman Subcommittee about the various forms of nicotine manipulation practiced by the Tobacco Companies: manipulating the rate at which nicotine is delivered in the cigarette; transferring nicotine from one material to another; increasing the amount of nicotine in cigarettes; and adding nicotine to any part of a cigarette.

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

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The Tobacco Companies' manipulation and control of nicotine levels is further evidenced by the emergence of companies that specialize in manipulating nicotine and that are now offering their services to the Tobacco Companies. On information and belief, a process called tobacco reconstitution, patented and marketed by the Kimberly-Clark Corporation subsidiary, LTR Industries, is widely used throughout the industry.

Reconstituted tobacco is made from stalks and stems and other waste that the Tobacco Companies formerly discarded and now use to make cigarettes more cheaply. In the reconstitution process, pieces of tobacco material undergo treatment that results in the extraction of some soluble components, including nicotine. The pieces are then physically formed into a sheet of tobacco material, to which the extracted nicotine is re-added. Although denied by tobacco executives, it is publicly reported that this process adjusts nicotine levels in the products, and that one manufacturer "readily admits to setting levels of nicotine . . . for the tobacco sheet."

An advertisement in Tobacco Industry trade publications for the Kimberly-Clark tobacco reconstitution process states:

Nicotine levels are becoming a growing concern to the designers of modern cigarettes, particularly those with lower 'tar' deliveries. The Kimberly-Clark tobacco reconstitution process used by LTR Industries permits adjustments of nicotine to your exact requirements . . . . We can help you control your tobacco.

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

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

##### 5. Light Cigarettes: A Marketing Hoax

The Tobacco Companies' manipulation of nicotine is particularly deceptive in its marketing of "light" or low-tar and low-nicotine cigarettes to retain the health conscious segment of the smoking market. Recent studies demonstrate that cigarettes advertised as low tar and low nicotine have higher concentrations of nicotine, by weight, than high yield cigarettes. Nevertheless, the Tobacco Companies have successfully identified "light" cigarettes to consumers as a reduced tar and reduced nicotine product. The Tobacco Companies have accomplished this deception through several strategies.

First, the Tobacco Companies designed their "light" products so that advertised tar and nicotine levels understate the amounts of tar and nicotine actually ingested by human smokers. Such design features include a technique called filter ventilation in which nearly invisible holes are drilled in the filter paper, or the filter paper is made more porous. Predictably, many smokers of advertised low tar and nicotine cigarettes block the tiny, laser generated perforations in ventilated filters with their fingers or lips, thereby resulting in greater tar and nicotine yields to those smokers than those measured by the Federal Trade Commission ("FTC") smoking machine.

The Tobacco Companies know that the ability to block ventilation holes allows smokers to "compensate" for nicotine losses that would otherwise be caused by tar-reducing modifications. *The industry has studied smoker compensation in order to design cigarettes that allow smokers to compensate for lower nicotine yields.* One such design feature is known as "elasticity." This refers to the ability of a cigarette, whatever its FTC measured nicotine yield, to deliver enough smoke to permit a smoker to obtain the nicotine he needs, *e.g.*, through more or longer puffs, or by covering ventilation holes.

Industry studies show that smokers tend to obtain close to the same amount of nicotine from each cigarette despite differences in yield as measured by the FTC smoking machine. During a 1974 B.A.T. Co. conference, researchers described the result of one such study: "The Kippa study in Germany suggests that whatever the characteristics of cigarettes as determined by smoking machines, the smoker adjusts his pattern to deliver his own nicotine requirements (about 0.8 mg per cigarette)." Smokers' compensation to

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obtain adequate nicotine also results in the delivery of more tar than the FTC test measure.

Second, the use of the more potent "free" nicotine that ammonia helps release, as opposed to the slower acting salt-bound nicotine, also serves to increase the amount of nicotine delivered to smokers of "light" cigarettes. An ammoniated cigarette that delivers more potent nicotine to smokers measures the same as a cigarette with no such additives.

The use of ammonia is another method used by the Tobacco Companies to reduce the FTC-measured tar and nicotine levels in their cigarettes over the past two decades while still furnishing smokers with sufficient nicotine delivery. According to John Kreisher, a former associate scientific director for CTR, "[a]mmonia helped the industry lower the tar and allowed smokers to get more bang with less nicotine. It solved a couple of problems at the same time."

Third, the Tobacco Companies maintain that nicotine levels follow tar levels. In the words of Dr. Alexander Spears, vice chairman of Lorillard, in his 1994 testimony before the Waxman Subcommittee: "Nicotine [level] follows the tar level," and the correlation between the two "is essentially perfect," and "shows that there is no manipulation of nicotine." Dr. Spears neglected to mention to Congress that in a 1981 study, not intended for public release, he stated explicitly that low-tar cigarettes use special blends of tobacco to keep the level of nicotine up while tar is reduced: "[T]he lowest tar segment [of product categories] is composed of cigarettes utilizing a tobacco blend which is significantly higher in nicotine." Reynolds, Lorillard, American, and the Tobacco Institute have similarly represented to the public and to the FDA that the nicotine levels in their products are purely a function of setting the tar levels of such products.

American told the Waxman Subcommittee in an October 14, 1994 letter that "nicotine follows 'tar' delivery, i.e. high 'tar' -- high nicotine, low 'tar' -- low nicotine . . . . Nicotine is neither adjusted nor altered to compensate for losses inherent in the manufacturing process." Internal company documents reviewed by the Waxman Subcommittee show, however, that American's experimentation with adding nicotine to its tobacco was extensive -- extensive enough for American executive John T. Ashworth

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to instruct employees in a confidential memorandum: "In the future our use of nicotine should be referred to as 'Compound W' in our experimental work, reports, and memorandums, either for distribution within the Department or for outside distribution."

Recent tests conducted at the direction of the FDA show that the low-tar brands actually have more nicotine by weight than the non-"light" brands. The high level of nicotine found in lower tar cigarettes seriously misleads consumers and renders the Tobacco Industry's claim of an "essentially perfect" correlation between reduced tar and nicotine levels false. According to the FDA, the Tobacco Companies use a combination of the methods described above for boosting nicotine delivery to compensate for nicotine losses from the application of tar-reducing design modifications. The Industry thereby maintains a continuing market for a product that consumers are misled to believe contains less of each of the harmful ingredients in regular cigarettes.

**6. The Tobacco Companies Continue To Deny They  
Control And Manipulate Nicotine Levels**

Against this mounting body of evidence of the Tobacco Companies' manipulation and control of nicotine levels in their products, the Tobacco Companies continue to deny to the public, and recently denied to Congress under oath, that they manipulate and control nicotine levels. Top executives from Philip Morris, Reynolds, Lorillard, American, Liggett and Brown & Williamson testified in April 1994 that their respective companies do not manipulate nicotine, add it, independently control it, restore it during the manufacturing process, or otherwise achieve a minimum level of nicotine in their products. Thomas E. Sandefur, Jr., CEO of Brown & Williamson, admitted that the company controlled nicotine, but in a now familiar refrain, stated that the company did so only for "taste." A primary purpose and effect of these decades-old denials and the suppression of scientific testing have been that governmental entities did not act earlier and more aggressively to reduce cigarette smoking and limit sales of cigarettes. Actions which would have reduced smoking and limited sales were not taken because Defendants concealed and suppressed information that would have formed the basis for action.

The Tobacco Companies' attempt to deceive the public, government officials, and Plaintiff the Class and their participants, continues. As recently as April 1994, the

Tobacco Companies placed advertisements across the country, denying that cigarette smoking is addictive and making misleading statements about whether the manufacturers deliberately control nicotine levels in their products. An advertisement placed by Philip Morris in newspapers across the country, in April 1994, for example, represented that the company does not "manipulate" nicotine levels in its cigarettes, and that "Philip Morris does not believe that cigarette smoking is addictive."

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

These and other similar statements mislead the consuming public because, as alleged above, the Tobacco Companies use various sophisticated techniques to control and manipulate the nicotine content in their products and the actual nicotine delivery to the cigarette smokers and users of smokeless tobacco.

**K. The Targeting of Tobacco Product Sales  
to Blue-Collar Workers And Minors**

As part of their conspiracy, fraud, and market manipulation, as alleged above, Defendants also have used deceptive advertising, have aggressively marketed addictive tobacco products, and succeed in addicting populations such as the blue-collar and trade workers and minors.

In an article entitled "Targeting of Cigarette Advertising in U.S. Magazines 1959-86," investigators from the University of Michigan showed that the Tobacco Companies target blue-collar workers. As a result, the blue-collar trades, including workers covered by Plaintiff and the Class, have higher smoking rates than the general public.

According to the National Health Interview Survey 1987-90, 47.1 percent of construction workers were reported to be current smokers, compared to 24.2 percent for white collar occupations, and 39.2 percent for all blue collar occupations combined, including construction workers.

A study entitled "Occupational Mortality in California 1979-81" found that construction laborers have the highest overall mortality rates and the highest rates for smoking-related diseases. Overall mortality for laborers was 4 to 6 times higher than for white collar occupations like physicians and teachers. A study entitled "Occupational Mortality in Washington State 1950-1989" found similar differences between construction workers and white collar workers in Washington.

As part of its overall scheme the Tobacco Industry intentionally replaces hundreds of thousands of tobacco users who die each year by unfairly and illegally targeting marketing and promotional efforts at minors. 82% of daily smokers in the United States had their first cigarette before the age of 18, 62% before the age of 16, and 38% before the age of 14. Thus, a person who does not begin smoking in childhood or adolescence is unlikely ever to begin. The younger a person begins to smoke, the more likely he or she is to become a heavy smoker. 67% of children who start smoking in the sixth grade become regular adult smokers and 46% of teenagers who start smoking in the eleventh grade become regular adult smokers.

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

Although young people frequently believe they will not become addicted to nicotine or become long-term users of tobacco products, they often find themselves unable to quit smoking. Among smokers age 12 to 17 years, a 1992 Gallup survey found that 70% said if they had to do it over again, they would not start smoking and 66% said that they want to quit. 51% of the teen smokers surveyed had made a serious effort to stop smoking -- but had failed.

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

Cigarettes are among the most promoted consumer products in the United States. The FTC reported to Congress that domestic cigarette advertising and promotional expenditures rose from close to \$4 billion in 1990 to more than \$6 billion in 1993.

Tobacco product brand names, logos, and advertising messages are all-pervasive, appearing on billboards, buses, trains, in magazines and newspapers, on clothing and other goods. The effect is to convey the message to young people that tobacco use is desirable, socially acceptable, safe, healthy, and prevalent in society. Additionally, young people buy the most heavily advertised cigarette brands, whereas many adults buy more generic or value-based cigarette brands which have little or no image-based advertising. The Tobacco Companies, knowing that their advertising appeals to young people, continue to use these same marketing techniques to sell their products.

Despite these disturbing facts and statistics, the Tobacco Companies maintain that the effect of their pervasive advertising and promotion of cigarettes and smokeless tobacco is limited to maintaining brand loyalty and that it has no role in encouraging adolescents to experiment with tobacco use. In fact, the targeting of the minors is designed to addict minors to nicotine and thereby replace the hundreds of thousands of tobacco users who die each year due to use of the Tobacco Companies' products.

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

The actor who portrayed the "Winston Man" for Reynolds' Winston brand cigarettes testified before Congress: "I was clearly told that young people were the market that we were going after." He further testified that "it was made clear to us that this image was important because kids like to role play, and we were to provide the

attractive role models for them to follow . . . . I was told I was a live version of the GI Joe. . . . ."

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

The Tobacco Companies have focused their advertisements in stores in close proximity to the youth market. For example, Reynolds' division manager for sales wrote all Reynolds sales representatives in 1990 regarding the "Young Adult Market" and asked them to identify what stores were in proximity to colleges or high schools. A follow-up letter by the sales division called for a resubmitted list of Y.A.S. (Young Adult Smoker) accounts using new criteria, focusing on all accounts located across from, adjacent to, or in the general vicinity of high schools or college campuses.

Tobacco products advertising is becoming increasingly concentrated in youth-oriented publications. Moreover, tobacco product ads in these youth-oriented magazines are frequently multi-page, pop-up ads which are significantly more costly, but also more attention-grabbing than conventional ads. By way of example, Rolling Stone magazine ran an ad in which the opening page featured the Joe Camel character in a leather jacket and T-shirt looking down at the reader saying "Wanna See a Show?" When the reader turns the page, the Joe Camel character pops out of the magazine to hand the reader two tickets with the caption, "Go ahead, it's on me."

Another strategy the Tobacco Companies use to appeal to children and adolescents is distributing promotional items, such as T-shirts, baseball caps and pocket knives through the mail and at promotional events. Some are distributed based upon proof of purchase while others are given away. These items encourage adolescents, to whom such items have great appeal, to accumulate merchandise by buying more

cigarettes. More importantly, the items, which do not generally display warning labels, turn the children into walking advertisements that penetrate into schools and other areas where advertising would otherwise be restricted. A 1992 Gallup poll found that about half of adolescent smokers and one quarter of non-smoking adolescents had received at least one of these items.

The Tobacco Companies have also marketed to youth by inserting advertisements for their products into movies that have appeal to children. Such movies include, for example, Superman II, Supergirl and James Bond. A 1983 letter signed by the actor Sylvester Stallone documents one such agreement. Mr. Stallone writes, "I guarantee that I will use Brown & Williamson tobacco products in no less than five feature films. It is my understanding that Brown & Williamson will pay a fee of \$500,000.00." Such "stealth" advertisements are particularly disturbing in that the child and adolescent are particularly susceptible to such role models and is wholly unaware that he or she is the subject of the marketing.

**L.     The Conspiracy To Shift Medical Costs Attributable To Smoking and To Frustrate Efforts To Reduce Smoking**

As described earlier, in its simplest form, the Tobacco Companies and their lawyers conspired through their domination of TIRC/CTR and by other means to manipulate, suppress and deny smoking and health research to continue the delusion of an open controversy about the adverse health affects of smoking and thereby avoid the imposition upon them of strict liability for health care costs attributable to smoking.

Plaintiffs also conspired to use their combined commercial, marketing and financial clout to prevent interference with their customer base of smokers. Plaintiffs intimidated drug companies from creating and effectively marketing smoking cessation products, opposed initiatives of health care insurance companies to offer financial incentives for non-smokers and, through the TILMC, exploited unions to frustrate employers' efforts to restrict or reduce smoking or initiate smoking preventive or cessation programs on the job.

In memoranda attached as Exh. P, Philip Morris describes its "suspension" of purchases of chemicals from Merrell Dow to punish Dow for:

- a. Encouraging its employees to give up cigarettes.
- b. Sponsoring a study that calculated the incremental lifetime medical costs resulting from smoking.
- c. Marketing to doctors Dow's "Nicorette" smoking cessation gum.
- d. Supporting an initiative by a doctors' clinic to discourage smoking by offering Nicorette gum.

As a result of Philip Morris' pressure, Dow cancelled its "Smoking Cessation Newsletter", restricted its outreach to doctors, narrowed its marketing programs and agreed to forward its new advertising copy to Philip Morris to assure it contained no "anti-smoking" bias.

The Tobacco industry's strong-arming of Dow and health insurance providers inhibited the development of effective programs available to the plaintiff Funds for reducing smoking among their membership.

In addition to the actions to directly involve unions and organized labor in their fraudulent schemes, the Industry set up organizations, committees, project teams, and "working parties" created by the Tobacco Industry internationally and in the United States to organize what is termed a "counterattack" by the Industry. These organizations included ICOSI (the International Committee on Smoking Issues, later renamed INFOTAB) and its subcommittee SAWP (Social Acceptability Working Party). An April 1979 report by ICOSI, which states the reasons and objectives of this organization, is strong evidence of a conspiratorial "agreement":

No one industry in one country nor any one company can wage and win the battle against this sort of organized world-wide attack . . . The whole industry, companies and Trade Associations alike must unite with common targets and common approaches. This report states that within SAWP, "a new group has been formed with the sole purpose of developing new countermeasures. Mr. R.M. Corner of Philip Morris is the Project Leader and this program will be presented and discussed at the Zurich conference . . . SAWP, under George Berman as Project Consultant, is also preparing an important new Social Costs/Social Benefits Study."

At this May 1979 conference in Zurich, industry consultant George Berman presented a paper called "Social Costs, Social Values," which identified the four main themes of their "attack":

- (1) These social concepts are bad economics.
- (2) They do not fit into a philosophy of personal freedom and civil liberty.
- (3) Smoking benefits society and its members in many complex ways.
- (4) Anti-smoking programs and groups are harmful to our society.

Interestingly, Reynolds itself had no question that efforts to implement theme (3), to promote the supposed "benefits of smoking", were a deception; a 1979 Reynolds memo stated:

In the long run, the economic costs of reducing disease and delaying death could well outweigh the alleged benefits (what are they, by the way?)

In each of the areas of SAWP's countermeasures, action plans were drafted and implemented. One action plan included hiring "outside consultants", *i.e.*, developing "experts" to "attack" those who suggest that social costs should be borne by the Tobacco Industry, as well as "discrediting the antis." For instance, a document written on May 12, 1980, by ICOSI consultant George Berman to Mary Covington of Philip Morris International establishes the purpose of hiring the consultants and experts to counterattack with a consistent line of defense:

We said in Zurich [at the ICOSI meeting referred to above] that the third countermeasure would be a consistent line of defense. That line is clear in Chapter I: We will defend against this issue entirely on the concepts, and through the use of experts, cutting off the flow of new attacks at the origin by attacking them in the academic literature, and developing a sequence of papers which will percolate down from the academic to the professional to the popular literature."

As part of the Industry's efforts to portray "any smoking programs and groups" as "harmful to our society," SAWP retained and paid a political scientist, Aaron Wildavsky to write a 300-page analysis of the "The Political Culture of Anti-Smoking Groups." This progress report states:

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Our primary objective in this area was to demonstrate clearly that anti-smoking activists have a special agenda which serves their own purposes, but not necessarily the majority of smokers . . . Dr. Wildavsky's report does provide insights into the motivation of anti-smoking leaders; into the origins of such groups, their patterns of development, and their relationships with each other.

The report was completed sometime in 1980 and was disseminated to ICOSI member organizations, including B.A.T. Industries. Needless to say, the effort to portray anti-smoking forces as "harmful to society" was in furtherance of the "Big Lie" technique perfected by the Tobacco Industry.

A later document details the history of ICOSI in hiring consultants, in getting articles published, and in conducting the counterattack against the "social costs" adherents. Two of the consultants were Richard Wagner and Robert Tollison, who toured the country doing radio and television shows to promote the Tobacco Industry's "consistent line of defense." Wagner was identified to the listening audience only as an "economist" and not as a paid consultant for the Tobacco Institute or the Industry.

The above and other Industry statements make it clear that the Industry opposed each of the laudable goals -- i.e., reducing smoking induced pre-mature death, disease and health care costs -- of the "social costs" adherents. The Industry's reasons for its opposition were simply stated:

The ultimate objective of the industry and its various endeavors, including ICOSI, appears to be to preserve its ability to profitably manufacture and sell cigarettes.

The Industry's efforts described in this Complaint had the desired effect -- maintaining smoking sales while insulating Tobacco Company profits from the medical costs resulting from the sales of their products.

**M. Tolling Of The Applicable Statutes  
Of Limitation**

Any applicable statutes of limitation have been tolled by Defendants' affirmative and intentional acts of fraudulent concealment, suppression and denial of the facts as alleged above. Such acts of fraudulent concealment included intentionally covering up and refusing to disclose internal documents, suppressing and subverting medical and

scientific research, and failing to disclose and suppressing information concerning the health consequences of smoking, the addictive properties of nicotine and the Tobacco Companies' manipulation of the levels of nicotine in their products -- specifically the acts outlined by Special Master Gehan in his February 10, 1998, findings. Through such acts of fraudulent concealment, Defendants have successfully concealed from Plaintiff and members of the Class and their participants and beneficiaries the true nature of the intentional torts perpetrated by the Tobacco Companies, including the Tobacco Companies' long-standing knowledge of the harmful health effects and addictive nature of cigarettes, the Tobacco Companies' manipulation of nicotine levels in their products, and their deceptive research and marketing campaigns. Plaintiff and members of the Class and their participants and beneficiaries could not reasonably have discovered the true facts until very recently, the truth having been fraudulently and knowingly concealed by Defendants for decades.

In the alternative, Defendants are estopped from relying on any statutes of limitation because of their fraudulent scheme to maintain the open controversy about the health effects of their products and the concealment of their own knowledge of the research that in fact confirmed that their products caused disease and were addictive. The Tobacco Companies were under a duty to conduct honest research of the dangers to health of their products, and to disclose their knowledge as a matter of common law, pursuant to obligations imposed upon them during product liability lawsuits and as result of express warranties they made to the public. Plaintiffs are further estopped from raising the statute of limitations as a result of the fraud perpetrated by their trial attorneys that inhibited the timely filing of suit.

## **VII. CLAIMS FOR RELIEF**

### **COUNT I**

**[Violation of the Federal Racketeer Influenced and Corrupt**

**Organizations Act -- 18 U.S.C. §§ 1962(c) and 1962(d)]**

**[Against All Defendants Except the Council for Tobacco**

**Research, the Tobacco Institute, Smokeless Tobacco Council, Inc.]**

Plaintiffs restate and incorporate herein the previously alleged paragraphs of this Complaint.

This claim for relief is asserted against each of the Defendants except, the Tobacco Institute, CTR and STC and arises under 18 U.S.C. § 1962(c) and (d) of the Federal Racketeer Influenced and Corrupt Organizations Act (RICO), which provide:

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity . . . .

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection [ ] . . (c) of this section.

At all relevant times, each of the Defendants was a "person" within the meaning of 18 U.S.C. § 1961(3), as each of the Defendants was "capable of holding a legal or beneficial interest in property."

At all relevant times, the Tobacco Institute and CTR (formerly TIRC) have each constituted an "enterprise" within the meaning of 18 U.S.C. §1961(a), and have together constituted an "enterprise" ("the Public Relations Enterprise"), within the meaning of 18 U.S.C. § 1961(4). Each enterprise, including the Public Relations Enterprise, is an ongoing organization whose constituent elements function as a continuing unit in maximizing the sales of tobacco products, misleading the public and regulators as to the health hazards of tobacco products, suppressing the truth concerning the addictive properties of nicotine and of the Tobacco Companies' manipulation of nicotine levels, and carrying out other elements of Defendants' scheme, including targeting and exploiting unions to interfere with employer efforts to reduce smoking on the job and to implement preventive and treatment programs, to neutralize the health disclosures in the Surgeon General reports and to blunt regulatory and legislative action against smoking and shifting the costs of health care for smoking related injury, disease and illness onto others. Each enterprise, including the Public Relations Enterprise, has an ascertainable structure and purpose beyond the scope of Defendants' predicate acts and their conspiracy to commit such acts. Each enterprise, including the Public Relations Enterprise, exists

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separate and apart from Defendants. Each enterprise, including the Public Relations Enterprise, has engaged in, and its activities have affected, interstate and foreign commerce.

The Public Relations Enterprise was born at an industry strategy meeting on December 15, 1953, at the Plaza Hotel in New York. The participants included representatives of American, Reynolds, Philip Morris, Lorillard, Brown & Williamson, UST and H&K. The participants agreed to form an organization to orchestrate a public relations campaign to protect their cigarette market from the perceived threat posed by adverse medical reports. This committee was designed to promote an offensive, pro-cigarette stance to counter reports of health dangers caused by cigarettes and to thwart product liability lawsuits that sought to impose on the Tobacco Company defendants the medical costs resulting from their products. The public disinformation campaign continued over the next four decades and threatens to continue into the future.

Each Defendant has been associated with each of the enterprises, including the Public Relations Enterprise. Each Defendant helped to direct the each enterprise's actions and manage their affairs. Each Defendant conducted or participated, directly or indirectly, in the conduct of each enterprise's affairs through a pattern of racketeering activity in violation of 18 U.S.C. § 1962(c). Defendants' pattern of racketeering activity dates from at least 1953 and continues to the present, and threatens to continue in the future.

Defendants' multiple predicate acts of racketeering include:

a. Mail and wire fraud in violation of 18 U.S.C. §§ 1341 and 1343. Defendants engaged in schemes to defraud members of the public, including Plaintiff and members of the Class and their participants and beneficiaries. Those schemes have involved suppression of information regarding the health consequences associated with smoking, and defendants' knowledge of those consequences, as well as fraudulent misrepresentations and omissions reasonably calculated to deceive persons of ordinary prudence and comprehension. Defendants also engaged in schemes to exploit unions to interfere with efforts to reduce smoking among their membership and to fraudulently present the Industry's interests as those of the organized labor movement. Defendants'

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misrepresentations and fraudulent concealment of material facts include but are not limited to: misrepresentations and fraudulent concealment of the addictive nature of nicotine and adverse health consequences of tobacco products; misrepresentations and fraudulent concealments that such health effects and addictiveness were known to the defendants and not unproven; misrepresentations and nondisclosures as to defendants' manipulation of nicotine levels to sustain addiction to their products; misrepresentations that objective and disinterested scientists were conducting research into smoking and health; and fraudulent concealment that smoking and health research was being directed, manipulated and suppressed by Tobacco Company lawyers for litigation and public relations purposes; and that development and availability of safer cigarettes and less-addictive cigarettes was being suppressed and concealed to buttress the Tobacco Companies' defense in product liability litigation. Defendants executed or attempted to execute such schemes through the use of the United States mails and through transmissions by wire, radio and television communications in interstate commerce.

i. Numerous documents were disseminated or transmitted by the Defendants and their agents as part of a fraudulent scheme to defraud. Defendants used the mails and wires to disseminate and transfer information in at least the following ways:

- Defendants' marketing and promotional activities and testimony communicated to the public nationwide in newspapers, magazines and other periodicals, as well as over the broadcast media, were designed to deceive the public, including Plaintiff and members of the Class and their participants and beneficiaries regarding, among other things, the addictive nature of smoking, the adverse health effects associated with tobacco use, as well as the accuracy of Defendants' knowledge and "independent" research efforts regarding such health effects.

- Defendants' communications directed toward government agencies and health officials were designed to preserve and increase the market for their products while concealing the deleterious health effects caused by using the products. Examples of these communications with government agencies include the Defendants' communications with the U.S. Surgeon General, as well as their communications among

themselves regarding what should not be disclosed to the Surgeon General; communications with congressional subcommittees; and communications with union members of the TILMC, including those attached as exhibits hereto.

- Defendants communicated with each other regarding research into the effects of nicotine and ways to suppress such information;

- Defendants communicated among themselves and with their trial lawyers to manipulate and conceal adverse research evidence and to send it overseas out of the reach of the plaintiffs in product liability litigation;

- Defendants communicated with each other and the public regarding ways to identify and target the minors' market for the sale of cigarettes.

ii. Chief executive officers or representatives of the Defendants made false and fraudulent statements under penalty of perjury, in hearings before the House Subcommittee on Health and the Environment, convened on March 25, April 14, April 28, May 17, May 26, June 21 and June 23, 1994, and televised nationwide. Defendants' press releases also recounted Defendants' fraudulent statements. The Industry witnesses affirmatively denied that nicotine is addictive; that Defendants manipulate the amount of nicotine contained in cigarettes; denied that using tobacco products causes cancer; and denied that there was any correlation between the amount of nicotine in tobacco products and the incidence of cancer.

iii. On the nationally televised CBS program *Face the Nation*, air date March 27, 1994, Brenda Dawson, vice-president of the Tobacco Institute, stated before a live television and radio audience: "All six cigarette manufacturers in the United States do . . . not add nicotine" and "they don't manipulate nicotine. So Congress has been told formally by every cigarette manufacturer in the United States that this claim is without foundation."

b. Obstruction of justice in the form of threatening and intimidating a witness in violation of 18 U.S.C. § 1512, and threatening to retaliate against a witness, in violation of 18 U.S.C. § 1513. Upon information and belief, Defendants have made threats against Jeffrey Wigand, former research chief of Brown & Williamson, to discourage him from providing testimony in connection with Mike Moore, Attorney General, et

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rel., State of Mississippi v. The American Tobacco Co., No. 94-1429 (Ch. Ct. Jackson Co. Miss.), and in other litigation against the Tobacco Companies, and to retaliate against him for having served as a witness.

c. Engaging in interstate or foreign travel in aid of racketeering activities, in violation of 18 U.S.C. § 1952.

d. Mailing obscene or crime-inciting matter in violation of 18 U.S.C. § 1461.

These predicate acts form a "pattern" of racketeering activity. They have been related in their common objectives of maximizing sales of tobacco products, misleading the public, government regulators and unions as to the hazards of tobacco use and the addictive properties of nicotine, suppressing the truth concerning the addictive properties of nicotine and Defendants' manipulation of nicotine levels, soliciting minors and others to purchase cigarettes through false and misleading advertising, directing marketing and advertising towards teenagers and children so as to addict more tobacco users at an early age, devising means for manipulating and controlling nicotine levels of tobacco products so as to addict minors and others, suppressing research and design and marketing of safer cigarettes, and avoiding responsibility for the foreseeable costs of medical care for tobacco-related diseases. These acts have had the same or similar purposes, results, participants, victims and methods of commission. The acts have been consistently repeated and are capable of further repetition.

Each Defendant also conspired to violate 18 U.S.C. § 1962(c), in violation of 18 U.S.C. § 1962(d).

Plaintiff and members of the Class have been injured in their business and property by reason of Defendants' violations of 18 U.S.C. §§ 1962(c) and (d), because they have been required to incur significant costs and expenses attributable to tobacco-related diseases and to forgo other health care programs that would have benefited smoking and non-smoking participants and beneficiaries alike, and had been deterred from obtaining recovery from defendants of tobacco-related costs and expenses by defendants' fraudulent scheme; have been unable to participate in a market for alternative safer or less addictive cigarettes, or to advise, suggest, promote, subsidize or require their

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participants or their beneficiaries to choose to use effective alternative products such as safer cigarettes or less addictive cigarettes; and have not been as effective as they would otherwise have been in helping in causing their beneficiaries to choose not to use hazardous tobacco products. In absence of the Defendants' violation of 18 U.S.C. §§ 1962(c) and (d), these costs and expenses would have been avoided or substantially reduced.

This injury is not a form of compensation for personal injuries suffered by smokers. It is a separate injury to the business and property of Plaintiff and members of the Class, and is wholly distinct from the harms suffered by individuals.

The consumption of tobacco products by the participants and beneficiaries of Plaintiff and the members of the Class, and consumers throughout the United States, was an object of the Defendants' wrongful conduct, and those products were used by Plaintiff's and the Class members' participants and beneficiaries precisely as Defendants intended.

Another object of Defendants' wrongful conduct was the avoidance and shifting of tobacco-related health care costs onto others, including Plaintiff and the Class members. Defendants knew that the development of illness and disease was an inevitable result of tobacco use and that they had not taken reasonable steps to improve the safety of their products. Defendants also knew that the Plaintiff and Class members would incur substantial financial injury and would be deterred from seeking and obtaining recovery of those costs from the Tobacco Companies by virtue of the fraudulent scheme perpetuated by their counsel. Finally, defendants acted to frustrate initiatives to reduce smoking and the resulting health care costs borne by Plaintiff and the Class's members.

Defendants specifically targeted and exploited unions to sustain high levels of smoking among union members and to fraudulently cloak the Industry's interests in the guise of organized labor when appearing before legislative and regulatory bodies.

Under the provisions of 18 U.S.C. § 1964(c), Plaintiffs are entitled to bring this action and to recover herein treble damages, the costs of bringing this suit, and reasonable attorneys' fees.



## COUNT II

**[Violation of the Federal Racketeer Influenced and Corrupt  
Organizations Act -- 18 U.S.C. §§ 1962(a) and (d)]  
[Against all Defendants]**

Plaintiff restate and incorporate herein the previously alleged paragraph of this Complaint.

This claim for relief is asserted against each of the Defendants, and arises under 18 U.S.C. § 1962(a) and (d) of RICO, which provide:

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity . . . to use or invest, directed, or indirectly, any part of such income, or the proceeds of such income, in acquisition of and, interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection[ ] (a) . . . this section.

At all relevant times, each of the Defendants was a "person" within the meaning of 18 U.S.C. § 1961(3), as each of the Defendants was "capable of holding a legal or beneficial interest in property."

At all relevant times the Tobacco Institute and CTR (formerly TIRC) have constituted an enterprise within the meaning of 18 U.S.C. § 1961(4) or, in the alternative, each Defendant has constituted an enterprise within the meaning of 18 U.S.C. § 1961(4). Each enterprise is an ongoing organization. Each enterprise and its activities have an effect on interstate commerce in that the enterprise is engaged in the business of maximizing the sales of cigarettes and smokeless tobacco.

Defendants have engaged in a pattern of racketeering activity which dates from 1953 through the present and threatens to continue in the future. Defendants' multiple predicate acts of racketeering are set forth at paragraph \_\_\_\_ above. These racketeering acts generated income for the Defendants because they contributed to the suppression and concealment of scientific and medical information regarding the health effects of smoking, and defendants knowledge of the hazards of smoking, the manipulation of

nicotine to create and sustain addiction to Defendants' products, the suppression of a market for alternative safer or less addictive cigarettes, the targeting of teenagers and children with marketing and advertising designed to addict them at an early age, the targeting and exploitation of unions and their members, all to protect and ensure continued sales of cigarettes and other tobacco products and avoidance and shifting of smoking-related health care costs.

Defendants have used or invested their illicit proceeds, generated through the pattern of racketeering activity, directly or indirectly in the acquisition of an interest in, or the establishment or operation of, each enterprise in violation of 18 U.S.C. § 1962(a). Defendants' use and investment of these illicit proceeds in each enterprise is for the specific purpose and has the effect of controlling the material information distributed to the public concerning the health effects of smoking, suppressing and concealing scientific and medical information regarding the adverse health effects of smoking and smokeless tobacco use, devising means for manipulating nicotine to create and sustain addiction to the Tobacco Companies' products, directing marketing and advertising toward teenagers and children to addict them to nicotine at an early age, and enticing more individuals to smoke cigarettes and use tobacco products and frustrating efforts to reduce the incidence of smoking and avoidance and shifting of tobacco-related health care costs.

Each Defendant also conspired to violate 18 U.S.C. § 1962(a), in violation of 18 U.S.C. § 1962(d).

251. Plaintiff and members of the Class have been injured in their business and property by reason of Defendants' violations of 18 U.S.C. § 1962(a) and (d) in that they have been required to incur significant costs and expenses attributable to tobacco-related diseases, to forgo other health care programs and been deterred from recovering smoking related costs and expenses from defendants; have been unable to participate in a market for alternative safer or less addictive cigarettes or smokeless tobacco, or to advise, suggest, promote, subsidize or require their participants or their beneficiaries to choose to use alternative products such as safer or less addictive tobacco products; and have not been as effective as they would otherwise have been in helping in causing their participants and beneficiaries to choose not to use hazardous tobacco products. Under the

provisions of 18 U.S.C. § 1964(c), Plaintiff and members of the Class are entitled to bring this action and to recover herein treble damages, the costs of bringing this suit and reasonable attorneys' fees.

### **COUNT III**

**[Violation of Rhode Island Civil RICO Statute, R.I.G.L. §7-15-1 et seq.]**

**[Against All Defendants]**

Plaintiffs restate and incorporate herein the previously alleged paragraphs in this complaint.

At all relevant times, Defendants and their co-conspirators have participated in and/or constituted an "enterprise" within the meaning of R.I.G.L. §7-15-1(a). The enterprise is an ongoing organization whose constituent elements function as a continuing unit to maximize the sale and use of tobacco products.

Defendants and their co-conspirators, as "persons" employed by and/or associated with said enterprise, conducted and participated in the conduct of the affairs of the enterprise through racketeering activity in violation of R.I.G.L. §7-15-1(c).

Defendants and their co-conspirators, as demonstrated by the conduct detailed in this complaint, have repeatedly and continually employed widely dangerous means in a manner which recklessly place Plaintiffs' participants and beneficiaries who smoke cigarettes or are exposed to cigarette smoke in danger of death or serious bodily injury. Defendants' acts are chargeable as a violation of R.I.G.L. §7-15-1 for misrepresentation of their (a) manipulation of nicotine levels, (b) findings and information, and (c) addictive nature of nicotine and its effects.

As a result of their repeated and continuing violations of R.I.G.L. §7-15-1, Defendants and their co-conspirators have amassed profits in the billions of dollars while costing the Plaintiffs millions of dollars.

As a direct and proximate cause of Defendants' repeated and continuing violations of R.I.G.L. §7-15-1, federal regulators were unable to undertake appropriate regulatory action and Plaintiffs' participants and beneficiaries have suffered injuries in the form of addiction, cancer, and other illness and disease. Plaintiffs have been forced to bear the

massive costs of these illnesses and diseases by providing necessary health care to their participants and beneficiaries injured by Defendants' cigarettes.

Plaintiffs have therefore been injured in their property.

Plaintiffs will seek all civil remedies available to including, but not limited to: (a) the entry of such appropriate orders necessary to prevent and restrain Defendants and their co-conspirators' repeated and continuing violations of R.I.G.L. §7-15-1 through 11, including targeting advertisement to minors, (b) an award of damages equal to the amount of monies expended and to be expended by Plaintiff in the provision of health care to their participants and beneficiaries for tobacco-related disease and illnesses, (c) an award of costs of suit and an award of attorneys' fees, and (d) an award requiring Defendants to divest their ill-gotten gains, and (e) an award requiring Defendants to disgorge their profits from sale of cigarettes to Plaintiffs' participants and beneficiaries.

#### **COUNT IV**

**[Violation of the Sherman Antitrust Act]**

**(15 U.S.C. §§ 1, 15, 26)**

**[Against all Defendants]**

##### **A. Suit For Damages**

Plaintiffs restate and incorporate herein the foregoing alleged paragraphs of this complaint.

But for Defendants' conspiracy, defendants would have produced safer tobacco/nicotine products, and the workers covered by Plaintiffs would have purchased safer tobacco/nicotine products.

Because Defendants' conspiracy deprived the covered workers of safer tobacco/nicotine products, the workers as a group incurred more medical illness than they otherwise would have, and the Plaintiffs directly paid the medial bills for the increase in medical illness that resulted from this anticompetitive degradation in product quality.

But for Defendants' conspiracy, Defendants would have produced more accurate product safety information, which would have led the workers covered by Plaintiffs, as a group, to use fewer tobacco/nicotine products and select safer tobacco/nicotine products.

Because Defendants' conspiracy deprived the covered workers of more accurate product safety information, the workers as a group incurred more medical illness than they otherwise would have, and the Plaintiffs directly paid the medical bills for the increase in medical illness that resulted from this anticompetitive degradation in product safety information.

The medical bills caused by Defendants' conspiracy were not paid by covered workers but were directly paid by or on behalf of the Plaintiffs or its agents.

The Defendants' conspiracy thus caused injuries to the business or property of the Plaintiffs that do not duplicate any injuries to the business or property of its worker-smokers.

Plaintiffs do not seek antitrust damages for the physical injuries suffered by its covered workers as a result of Defendants' conspiracy.

There is no other person who could sue in antitrust for the damages that the Plaintiffs seek.

Allowing suit by the Plaintiffs does not lengthen the causal connection between Defendants' conspiracy and the intended and foreseeable increase in medical expenses, nor does it render it more complicated or inaccurate because it is easier and more accurate to prove the statistical harm to a large group than to prove the individual harm to each smoker. The Plaintiffs are the most efficient and natural parties to seek redress for Defendants' antitrust violation.

The interests of the Plaintiffs would directly be served by enhanced competition in the market for tobacco/nicotine products because enhanced competition would produce safer tobacco/nicotine products and more accurate safety information about tobacco/nicotine products.

The injury to Plaintiffs is inextricably intertwined with the market injury to its participants and beneficiaries, the covered worker-smokers, since the Plaintiffs directly paid the costs of the anticompetitive degradation in product quality and information by being the first out-of-pocket payor of the resulting medical bills.

The injury to Plaintiffs was also inextricably intertwined with the market injury to its participants and beneficiaries because deceiving and shifting costs to health care

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payors like the Plaintiffs was an integral and inextricable part of Defendants' anticompetitive scheme and a necessary means to achieving the conspirators' illegal end of conspiring to sell low quality tobacco/nicotine products at a price that did not reflect their full externalities and preventing health care payors from interfering with the scheme by causing smokers to smoke few or safer tobacco/nicotine products.

Plaintiffs accordingly are entitled to three times the damages they suffered to their business or property as a result of Defendants' conspiracy, together with the costs of bringing this suit and reasonable attorneys' fees, and prejudgment interest.

**B. Suit For Damages**

Plaintiffs restate and incorporate herein the foregoing paragraphs of this Complaint.

But for Defendants' conspiracy, defendants would have produced safer tobacco/nicotine products, some of which the Plaintiffs would have purchased to manage, treat, reduce or prevent the illnesses of their covered workers and lower Plaintiffs' expenses. The products the Plaintiffs would have purchased include less addictive or less carcinogenic tobacco products or nicotine addiction treatment products such as nicotine patches, gum, inhalers, or other products that would allow nicotine addicts to continue to consume nicotine without the more harmful health effects created by Defendants' tobacco products. The market for all such products was suppressed by Defendants' conspiracy.

But for Defendants' conspiracy, Defendants would have produced more accurate product safety information, which the Plaintiffs would have used to more effectively: design their health plans; advise covered workers; manage, treat, reduce or prevent the illnesses of their covered workers; adjust deductibles, co-payments, or coverage; or otherwise operate Plaintiffs' businesses in a way that would have lowered their expenses.

Because Defendants' conspiracy deprived them of the ability to directly purchase safer tobacco/nicotine products and obtain more accurate product safety information, the Plaintiffs suffered increased expenses and losses to their business and property.

Defendants' conspiracy also prevented Plaintiffs from taking more effective steps to reduce the physical injury suffered by their workers, but Plaintiffs do not seek antitrust damages for any physical injury suffered by their covered workers.

The Defendants' conspiracy thus caused injuries to the business or property of the Plaintiffs that do not duplicate any injuries to the business or property of their covered worker-smokers.

There is not other person who could sue in antitrust for the damages that the Plaintiffs seek.

Plaintiffs health trust funds accordingly are entitled to three times the damages they suffered to their business or property as a result of Defendants' conspiracy, together with the costs of bringing this suit and reasonable attorneys' fees, and prejudgment interest.

**C. Suit For Injunctive Relief**

Plaintiffs restate and incorporate herein the foregoing paragraphs of this Complaint.

Defendants' conspiracy threatens to cause immediate and permanent harm to Plaintiffs by increasing their medical costs and preventing them from designing their health plans to reduce expenses.

If the court were to hold that Plaintiffs cannot recover fully for this resulting increase in medical costs, the economic harm to Plaintiffs from Defendants' conspiracy would be by definition irreparable damages.

If the court were to hold that Plaintiffs can recover fully in damages for this resulting increase in medical costs, the economic harm to Plaintiffs from Defendants' conspiracy would still be irreparable damages because plaintiffs reasonably apprehend a significant threat of injury from Defendants' conspiracy.

If the court were to hold that plaintiffs can recover fully in damages for this resulting increase in medical costs, the economic harm to Plaintiffs from Defendants' conspiracy would still be irreparable damages because lawsuits for damages are expensive, difficult to bring repeatedly, and methods or measurements inevitably fail to capture the full amount of the harm to Plaintiffs.

Defendants' conspiracy threatens to cause immediate and permanent harm to Plaintiffs by causing physical injury to the workers from whom the Plaintiffs are

fiduciaries. The resulting physical injury to the workers from whom the Plaintiffs are fiduciaries would be irreparable damages.

Plaintiffs' health trust funds accordingly are entitled to an injunction against Defendants' conspiracy, together with the costs of bringing this suit and reasonable attorneys' fees, and any other relief the court may deem necessary and appropriate.

#### **COUNT V**

**[Unfair Methods of Competition and Unlawful Combination in Restraint of Trade in Violation of the Rhode Island Antitrust Act, R.I.G.L. §6-36-1 et seq.]**

**[Against All Defendants]**

Plaintiffs restate and incorporate herein the previously alleged paragraphs of this Complaint.

As set forth above, Defendants have entered into a contract, combination, or conspiracy in unreasonable restraint of trade and commerce in violation federal law. The conduct described also constitutes willful and/or flagrant violation of the Rhode Island Antitrust Act, R.I.G.L. § 6-36-1 et seq.

Pursuant to said Act, Plaintiffs are also entitled to injunctive relief. Unless enjoined from doing so, Defendants will continue to engage in a contract, combination, or conspiracy in violation of R.I.G.L. §6-36-1 et seq., and Plaintiffs will continue to suffer serious and substantial injury to its businesses and property as a direct result of the Defendants' anticompetitive activity.

#### **COUNT VI**

**[Fraud]**

**[Against All Defendants]**

Plaintiffs restate and incorporate herein the previously alleged paragraphs of this Complaint.

Defendants represented and promised to those who advance and protect the public health, and provide health care, that they would conduct objective scientific research into the safety of their products and discover and disclose all material facts about the effects of cigarette smoking and smokeless tobacco use on human health, including addiction. Rather than engage in legitimate research, defendants secretly abdicated to their litigation



counsel their research responsibilities. Defendants' supposedly "independent" research efforts were calculated to buttress the Tobacco Companies' defense in product liability lawsuits and were exploited for their public relations value.

Defendants have engaged in a scheme to defraud, making and continuing to make representations, statements and promises about the safety of cigarettes and smokeless tobacco and their effect on human health and addiction, and repeatedly contending that despite the millions that had been invested in seeking answers, the health effects of smoking remained an "open controversy." Such representations, statements and promises were and remain materially false, incomplete and fraudulent at the time Defendants made them, and Defendants knew or had reason to know of their falsity. Only Defendant Liggett has conceded that the nicotine in cigarettes is addictive; Liggett made this admission for the first time in March 1997.

At all relevant times, Defendants intentionally, willfully or recklessly misrepresented, failed to disclose and concealed material facts about the nature of the research conducted by defendants, the human health hazards of tobacco use, including addiction, the association of cigarette smoking and smokeless tobacco use with various kinds of cancer and heart disease and the knowledge of defendants about the health hazards and addictive character of their products.

297. Because of Defendants' secret internal research, much of which having been conducted overseas to assure its non-disclosure, Defendants' knowledge of the material facts about tobacco use, health, and addiction and the fact that the adverse health effects of smoking are not a serious subject of scientific debate, was and is superior to the knowledge of Plaintiff's and Class members' participants and beneficiaries who purchased, used and consumed the Tobacco Companies' cigarettes. Defendants' knowledge of the material facts about tobacco use, health, and addiction was and is also superior to that of Plaintiff and the Class members which undertook to provide comprehensive health care for their participants and beneficiaries as well as to those public entities which bear responsibility for the public health. Public access to these facts is limited because such facts are exclusively within Defendants' control.

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Under common law, pursuant to obligations imposed in on-going product liability litigation, as a result of their advertising and promotional activities and by expressly raising the issue of smoking, health and addiction and making partial and incomplete statements about this issue, Defendants had a duty to conduct objective scientific research and to reveal all material facts of which they had notice or actual knowledge, in order not to deceive and mislead Plaintiff and the Class members and their participants and beneficiaries. Defendants' scheme by which they abdicated their research obligations to their lawyers who disclosed only irrelevant or helpful research findings, cloaking all adverse research under claims of attorney-client and attorney-work product privileges or declaring inculpatory information "deadwood" and sending it offshore for storage with affiliated companies, constitutes actionable fraud.

Defendants, through their trade association and public relations firms, also schemed to defraud unions and union members by issuing bulletins, statements and kits that falsely purported to represent the interests of organized labor and falsely undercut health disclosures by legitimate health advocates, including the Surgeon General, and blunted employer initiatives to reduce smoking, with the intent and effect of sustaining smoking among union members, and increasing the associated medical costs of the Fund and Class members.

Defendants also purposefully placed themselves in a unique relationship to Plaintiff's and Class members' participants and beneficiaries and to Plaintiff and the Class members by expressly telling the public to place special trust and confidence in Defendants' promises to discover and disclose all material facts about tobacco use, health and addiction. Plaintiff and members of the Class, who were responsible for providing comprehensive health care to their participants and beneficiaries, were in a vastly inferior position to discover the truth about cigarettes and smokeless tobacco and defendants' knowledge of same. Defendants had the obligation under law and voluntarily undertook the responsibility to discover and disclose the truth about cigarettes and smokeless tobacco. Defendants publicly undertook this responsibility for the purpose of cultivating the trust and confidence of their consumers and of Plaintiff and the Class members, and

thereby to induce Plaintiff and the Class members and their participants and beneficiaries to rely on Defendants' promises.

Plaintiff and members of the Class, which bear responsibility for providing comprehensive health care to their participants and beneficiaries, reasonably and justifiably relied on Defendants' misrepresentations and material nondisclosures, including that legitimate scientific research was being conducted and that the issue of the adverse health effects of smoking remained an open controversy. For years, because of Defendants' material nondisclosures and misrepresentations, Plaintiff and members of the Class were lulled into inaction to reduce the incidence of smoking among Plaintiff and members of the Class; and public health agencies, lacked complete information regarding the effects of tobacco use on health, the relationship between nicotine and addiction, and the manipulation of levels of nicotine delivery to ensure addiction -- and defendants knowledge of same. As a result, Plaintiff and members of the Class, as well as public health agencies, relied on false or incomplete information in taking or not taking actions to discourage and reduce tobacco use by Plaintiffs' participants and beneficiaries and in refraining from recovering the medical costs resulting from smoking from Defendants.

Defendants are aware of the dependency of Plaintiff and members of the Class, and the general public, on receiving complete information from government agencies concerning health risks, and have exploited this dependency to their advantage and to the detriment of Plaintiff and the Class.

Defendants sought to induce the reliance of smokers and those who paid the medical costs of smoking, including that of Plaintiff and Class members, on Defendants' representations and promises to disclose the truth about cigarettes and smokeless tobacco, knowing that the public, including Plaintiff and the Class members and their participants and beneficiaries, was in a vastly inferior position to discover the truth about cigarettes and smokeless tobacco and Defendants' scheme to keep smokers smoking and to shift the medical costs of smoking to others.

Defendants engaged in this fraudulent course of retaining their tobacco sales while avoiding their concomitant costs and thereby reaping huge profits. Defendants' fraudulent statements, concealment and conduct, including their effect upon the market

for tobacco products, was a substantial cause persuading Plaintiff's and Class members' participants and beneficiaries to purchase and use a deadly and addictive product and to dissuade Plaintiff and class members from acting to reduce the incidence of smoking among their participants and beneficiaries. Defendants' fraudulent scheme was also calculated to shield themselves from having to pay the health care costs of tobacco-related diseases and to shift those costs to others, including Plaintiff and members of the Class.

The facts concealed by Defendants about tobacco use, health and addiction were material in that a reasonable consumer would have considered them important in deciding whether to purchase and smoke cigarettes. The facts concealed by Defendants about tobacco use, health and addiction were material in that a reasonable provider of health care would have considered them important in deciding how to best provide comprehensive health care and in deciding whether to pursue recovery from the Tobacco Companies.

Plaintiffs reasonably and justifiably relied on Defendants' materially false, incomplete, and misleading representations about tobacco use, health and addiction, and Defendants' knowledge thereof, Defendants' nondisclosures of material facts about cigarette smoking, smokeless tobacco use and health and Defendants' scheme to defraud. As a result of such reliance, Plaintiff and the Class members failed to take or would have taken sooner actions to more appropriately reduce the incidence of smoking among its participants and beneficiaries and to recover the costs associated therewith.

Plaintiff's and the Class members' participants and beneficiaries, and the general public, also relied on the nondisclosures of material facts about defendants' scheme to defraud and tobacco use and health, and were thereby induced to purchase, smoke (or chew) and become addicted to Defendants' deadly and defective products, to the detriment of Plaintiff and members of the Class.

As a direct and proximate result of Defendants' fraudulent scheme, their misrepresentations, nondisclosures and active concealment, Plaintiff and members of the Class have suffered and will continue to suffer substantial injuries and damages for which

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Plaintiff and members of the Class are entitled to recovery, and for which Defendants are jointly and severally liable.

#### **COUNT VII**

##### **[Undertaking And Failure To Perform A Special Duty]**

##### **[Against All Defendants]**

Plaintiffs restate and incorporate herein the previously alleged paragraphs of this Complaint.

Beginning as early as 1954 with the publication of "A Frank Statement to Cigarette Smokers" and continuing to the present date. Defendants assumed a special duty to protect the public health and a duty to those who advance the public health, including Plaintiff and the Class.

Defendants publicly represented that they were undertaking to act on behalf of the public's health; to aid and assist the research effort into all phases of tobacco use and health; to cooperate closely with those who safeguard the public health; to continue research and all possible efforts until all the facts were known; and to provide complete and authenticated information about cigarette smoking and health.

Plaintiff and the Class reasonably and justifiably relied on Defendants' materially false, incomplete and misleading representations about the research they conducted, and tobacco use, health and addiction, and Defendants' nondisclosures of material facts about their research and tobacco use and human health. As a result of such reliance, Plaintiff and the Class members failed to take or would have taken sooner actions to more appropriately reduce the incidence of smoking among their participants and beneficiaries and to recover the costs associated therewith.

Defendants' continuing conduct is an intentional breach of their publicly announced special duty. Defendants failed to exercise reasonable care in the performance of their duty, instead abdicating to their lawyers their research responsibilities. Further, Defendants knowingly suppressed information that would have assisted any effort to advance the public's health as it relates to tobacco usage. This has resulted in a detrimental impact to the health needs of Plaintiff and the Class members' participants and beneficiaries, and the general public.

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As a direct and proximate cause of Defendants' breach, Plaintiff and the Class members have suffered and will continue to suffer substantial injuries and damages. The conduct described above constitutes an intentional reach of a voluntarily assumed special duty. Beginning as early as 1954 with the publication of "A Frank Statement to Cigarette Smokers" and continuing to the present date, Defendants assumed a special duty to protect the public health and a duty to health care providers and the participants and beneficiaries of Plaintiff and the Class.

The conduct described constitutes an intentional breach of a voluntarily assumed special duty for which Plaintiff and the Class are entitled to recovery and for which Defendants are jointly and severally liable.

#### **COUNT VIII**

**[Violation of Rhode Island Unfair Trade Practice and Consumer Protection Act, R.I.G.L. §6-13.1-5]**

**[Against All Defendants]**

The Plaintiffs reallege and incorporate herein each of the foregoing Paragraphs in its Complaint.

This Court has jurisdiction under R.I.G.L. §6-13.1-5 of the Unfair Trade Practice and Consumer Protection Act.

By engaging in the conduct described above, Defendants have violated and continue to violate R.I.G.L. §6-13.1-5 by, among other things:

a. Engaging in unfair or deceptive trade practices, as defined in the Consumer Protection Act by making false and misleading oral and written statements that had, and have, the capacity, tendency or effect of deceiving or misleading Plaintiffs, including, but not limited to, statements concerning Defendants' knowledge of the harmful health effects of smoking and the addictive properties of nicotine;

b. Engaging in unfair or deceptive trade practices, as defined in the Consumer Protection Act by making representations that their products have an approval, characteristic, ingredient, use or benefit which they do not have, including, but not limited to, their statements concerning the harmful health effects of smoking and the addictive properties of nicotine;

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c. Engaging in unfair or deceptive trade practices, as defined in the Consumer Protection Act, by failing to state material facts the omission of which deceived or tended to deceive, including, but not limited to, facts relating to the harmful health effects of smoking and the addictive properties of nicotine;

d. Engaging in unfair or deceptive trade practices, as defined in the Consumer Protection Act, through their deception, fraud, misrepresentation, and knowing concealment, suppression, and omission of material facts with the intent that Rhode Island consumers rely upon the same in connection with the promotion or sale of tobacco products, including, but not limited to, facts relating to the harmful health effects of smoking and the addictive properties of nicotine;

e. Engaging in unfair trade practices, including, but not limited to, promoting and selling tobacco products to minors, promoting and selling harmful tobacco products that addict consumers, and misleading the public as to Defendants' concern and knowledge about the harmful health effects and addictive nature of their products, and the purpose and independence of the Tobacco Industry Research Committee/Council for Tobacco Research.

In view of the foregoing, Defendants have violated the Rhode Island Unfair Trade Practice and Consumer Act.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for relief and judgment against the Defendants, jointly and severally, as follows:

1. For certification of the proposed Class and designation of Plaintiff as the Class Representative and the undersigned counsel as Class Counsel.

2. Awarding damages and compensation to Plaintiff and the Class for past and future damages, including but not limited to health care expenditures caused by the Defendants' actions in violation of any laws, together with interest and costs.

3. For injunctive and declaratory relief as follows:

(a) Requiring 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 and addiction;

(b) Requiring Defendants to fund a corrective public education campaign designed to reduce smoking as rapidly as possible, administered and controlled by an independent third party;

(c) Requiring Defendants to cease advertising and promotion campaigns that attract minors to begin smoking;

(d) Requiring Defendants to fund smoking cessation programs including the provision of nicotine replacement therapy for dependent smokers;

(e) Requiring Defendants to disclose the nicotine yields of their cigarettes based on realistic human smoking behaviors for each brand;

(f) Declaring that Defendants have violated the provisions of the Racketeering Influenced Corrupt Organizations Act, 18 U.S.C. §§ 1961 et seq.

(g) Enjoining Defendants and their respective successors, agents, servants, officers, directors, employees and all persons acting in concert with them, directly or indirectly, from engaging in conduct violative of 18 U.S.C. 1961 §§ et seq.

(h) Declaring that Defendants have violated the R.I. State Unfair Trade Practice and Consumer Act;

(i) Declaring that Defendants have violated the R.I. RICO statute;

(j) Declaring that Defendants have violated the R.I. Anti-Trust Act.

4. Ordering pre-judgment and post-judgment interest, as provided by law.

5. Awarding punitive damages in an amount to punish Defendants and to deter future conduct.

6. Requiring Defendants to pay restitution.

7. Ordering treble damages pursuant to 18 U.S.C. § 1964(c).

8. Awarding Plaintiff reasonable attorneys' fees and costs.

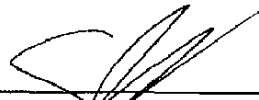
9. Granting such other and further relief as this Court deems equitable, just and proper.

#### **JURY DEMAND**

Plaintiffs demand a trial by jury.



Respectfully submitted,  
**COIA & LEPORE, LTD.**



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George L. Santopietro, Esq., #2056  
226 South Main Street  
Providence, RI 02903  
(401) 751-5522

**CERTIFICATION**

I do hereby certify that I mailed a true copy of the within Amended Complaint by regular mail, postage prepaid this *19th* day of *February*, 1999 to:

David A. Wollin, Esq.  
2300 Hospital Trust Tower  
Providence, RI 02903



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Diane R. Pellegrino

Dated: February 16, 1999

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