

**PRESENT.:
TOBACCO
LITIGATION
BY GRANT
WOODS**

TONY KNOWLES
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

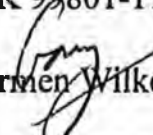
RECEIVED

APR 14 1997 P.O. Box 110001
Juneau, Alaska 99811-0001
(907) 465-3500
Fax (907) 465-3532

April 14, 1997

The Honorable Gary Wilken, Chair
Senate Health, Education, and Social Services Committee
Alaska State Capitol, Room 510
Juneau, AK 99801-1182

The Honorable Con Bunde, Chair
House Health, Education, and Social Services Committee
Alaska State Capitol, Room 104
Juneau, AK 99801-1182

Dear Chairmen  Wilken and Bunde:

Congratulations on your leadership in the fight to protect Alaskans, especially young Alaskans, from the dangers of tobacco. Today's joint HESS Committee forum is a fine example of your willingness to provide valuable information to the public and generate new debate about the health risks of cigarettes and other tobacco products.

In any discussion about the health of Alaska's Family, one of our highest priorities must be reducing smoking by discouraging young people from ever picking up the habit. That's why, on the occasion of today's hearing, I want to reiterate Alaska's ongoing commitment to discourage smoking--then add a new tool to our toolbox in the fight against tobacco.

First, I applaud the work of both of your committees on a significant increase in the tax on tobacco products. I am firmly convinced this bold step will ultimately save many, many lives. There is no doubt higher taxes on cigarettes will discourage young people from smoking. Given the recent admission by one cigarette manufacturer that nicotine is addictive and harmful--and that the company aimed at least some of its advertising at young people--any effort to discourage teen smoking is vitally important. It truly is a matter of life and death. Today, I reiterate my call for a significant increase in the tax on tobacco in Alaska. I also congratulate those lawmakers who have already voted for an increase, and urge those who haven't had the chance to quickly bring the matter to a full vote.

Health, Education, & Social Services Committees

April 14, 1997

Page 2

Second, ongoing efforts to warn Alaskans against the dangers of tobacco must continue. The sooner we can get that message to young people--and the more often we can repeat it--the less likely they will be to pick up what can ultimately be a deadly habit.

Third, we must support and enforce the laws against underage smoking and punish those who sell cigarettes and other tobacco products to minors. All Alaskans--teenagers, parents, and merchants--need to know we're serious about enforcing the law.

All of these efforts--a higher tobacco tax, education about the risks of tobacco, and enforcement of laws against underage smoking--are valuable tools in the fight against smoking and other tobacco use. But we can do more.

Today, we are adding another important tool to the toolbox. I have directed Attorney General Bruce Botelho to initiate legal action against this country's major tobacco companies. That lawsuit, to be filed today in Juneau Superior Court, commits Alaska to stand with the other 22 states suing the tobacco industry. We must protect Alaska children and Alaska's Medicaid Program from corporate decisions that purposely target young people as "replacements" for thousands of dying smokers.

Alaska's lawsuit alleges that, while the tobacco industry marketed its products to children and others in Alaska and reaped huge profits, all Alaskans paid the bill in the form of Medicaid payments made by the state on behalf of injured smokers who required medical care. During the years 1980 through 1993 alone, Alaska's Medicaid payments on behalf of injured smokers exceeded \$100 million.

Today's action sends a strong signal. Alaskans are fighting back against an industry that generates these alarming statistics:

- 21.1 percent of Alaska high school students become frequent cigarette smokers, compared to the U.S. high school student average of 13.8 percent.
- Tobacco use among Alaska adults (28.9 percent) was second in the nation only to Nevada, which had the highest rate of tobacco use (29.1 percent) in 1994.

Health, Education, & Social Services Committees

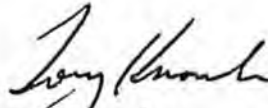
April 14, 1997

Page 3

- It has been estimated that smoking-related illnesses result in the deaths of 470 Alaskans per year.
- Smoking cigarettes accounted for more deaths in Alaska from 1992-94 than AIDS, alcohol, aircraft crashes, falls, fires, firearms, and motor vehicle crashes combined.

Again, I wish to congratulate you and the members of your committees for your important efforts to protect the health of all Alaskans. By working together, we can win the fight against the health problems, huge medical bills, and death and dying caused by tobacco use.

Sincerely,



Tony Knowles
Governor

cc: The Honorable Mike Miller, Senate President
The Honorable Gail Phillips, Speaker of the House
The Honorable Loren Leman, Vice-Chair, Senate HESS
The Honorable Lyda Green, Senate HESS
The Honorable Jerry Ward, Senate HESS
The Honorable Johnny Ellis, Senate HESS
The Honorable Joe Green, Vice-Chair, House HESS
The Honorable Fred Dyson, House HESS
The Honorable Brian Porter, House HESS
The Honorable Norman Rokeberg, House HESS
The Honorable Ethan Berkowitz, House HESS
The Honorable Eric Croft, House HESS

TOBACCO

Turning a New Leaf

Liggett breaks ranks with 'Big Tobacco'

BY JOLIE SOLOMON AND
ADAM ROGERS

WHEN ONE GUY IN A CASE FINALLY squeals, it's champagne time in the prosecutor's camp and ulcer time for the defense. Sure enough, tobacco opponents broke out in cheers and press briefings last week, when Liggett Group became the first of the major cigarette makers to say the magic words: cigarettes cause cancer, nicotine is addictive and we market directly to your kids.

The statements are part of a settlement between Liggett, the smallest of the top tobacco companies, and 22 state attorneys general who are suing the tobacco industry for recovery of health-care costs. The deal gives the AGs a new weapon against their biggest adversaries, and could shift the odds in a slew of lawsuits due in court this spring and summer. It also promises the release of damaging documents and frees any Liggett employee to testify—in court, in Congress or on TV. That's "the kind [of evidence] every prosecutor dreams of in these ... conspiracy cases," says Massachusetts AG Scott Harshbarger.

No question, this means new pain for the industry. In its usual stoic style, Big Tobacco released a joint statement dismissing the "so-called settlement" and its importance. But the companies have a point. The deal has holes that could limit its impact or cause parts of it to be overturned. It could be many years and billions of dollars before tobacco's opponents can really dance in the streets.

Liggett didn't settle out of altruism. The company is in severe financial straits. Last year Bennett LeBow, head of the Brooke Group, which owns Liggett, failed in an attempt to take over RJR Nabisco. By dealing with the AGs, LeBow hopes to find a buyer for Liggett—and stave off bankruptcy. The settlement may make Liggett more appealing to buyers because it includes a cap on liability: any company that merged with or acquired



Let me put that out for you: Liggett's deal burns fellow smokesters

Liggett would gain protection for its non-tobacco assets and for lucrative overseas tobacco business.

But this cap might not hold up in court—and there are other uncertainties. Liggett claims that, except for suits brought by other states' AGs, it has obtained immunity to virtually any other litigation, present or future. Many lawyers view this as unconstitutional. Even more important are questions about whether Liggett can act on a promise to turn over masses of documents potentially devastating to the entire industry. The other companies got a court order preventing, for now, the release of most of the documents, claiming that they are protected by attorney-client privilege. Win or lose, such arguments gain the industry valuable time to woo new smokers and push opponents into a favorable settlement.

Despite the evident hurdles, the industry's enemies took heart from last week's news. Liggett has promised to pay a percentage of its earnings over the next 25

years—but it probably won't amount to much, given its current financial condition. Some see LeBow's admissions of tobacco's effects as dynamite, given the decades of denial on the part of every tobacco executive. One negotiator in the settlement was Woody Wilner, a Florida attorney who last year won the only damages yet paid by a tobacco company. For companies outside the settlement, he says, hearing LeBow's words is "like you're sitting in the police cruiser and you see the guy you did the robbery with having dinner with the cops."

Liggett's admissions could also boost federal restrictions on tobacco. Federal prosecutors in several grand-jury probes of possible perjury or conspiracy by the industry could use the Liggett statements as evidence. Rep. Martin Meehan, cochair of the House tobacco task force, speculates that prosecutors could bypass court battles by subpoenaing Liggett for the hot documents. And, he says, Congress may now show more support for regulation of tobacco advertising aimed at children.

But opponents will have to be careful. In 1964, after the surgeon general's first report, they let the industry off with a few restrictions on advertising and the famous warning labels that later proved a strategic advantage to the cigarette companies. If prosecutors "stay the course, [this could] transform the tobacco epidemic," says University of California professor Stanton Glantz. "But if they settle for too little, we could look back in 30 years and see this as a time of lost opportunity."

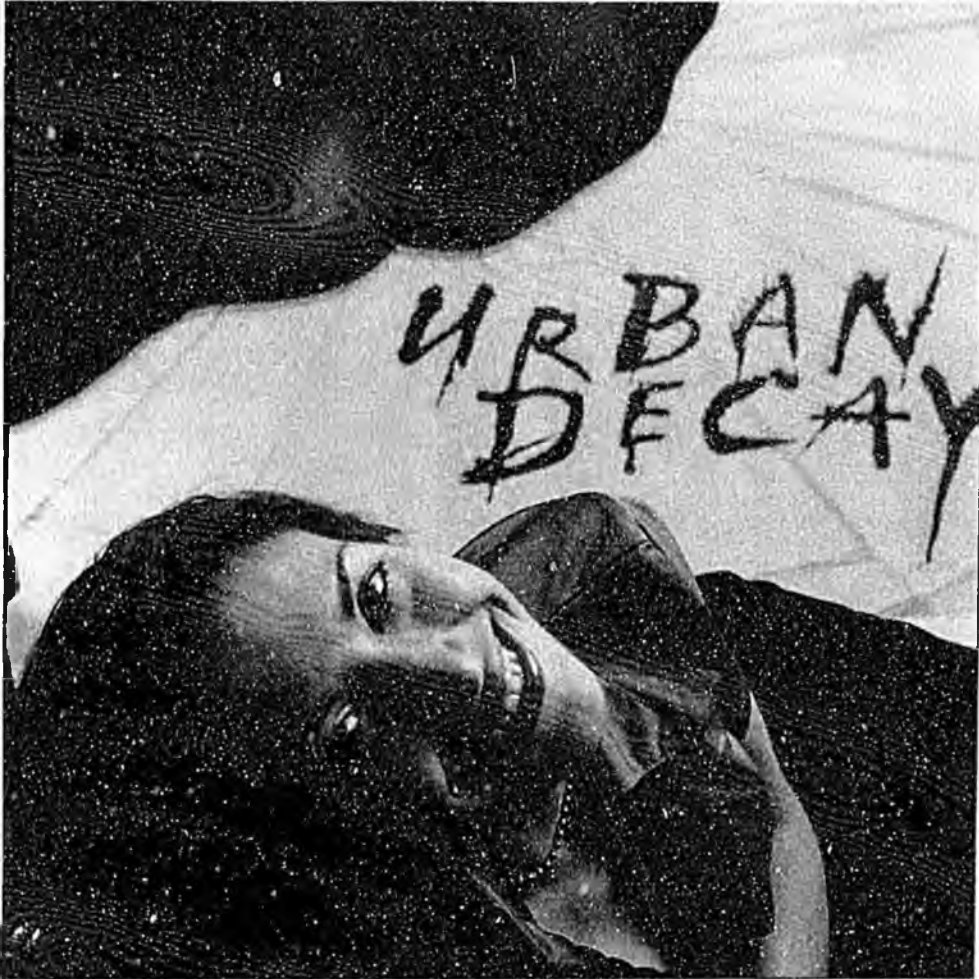
With PETER KATEL and
JENNIFER LACH

Looking for a Smoking Gun

Within a month, a judge's ruling is expected on the FDA's right to regulate tobacco marketing to minors. Other hot cases to watch:

| DATE | COURT CASE | PLACE | COMMENTS |
|----------|----------------|-------|---|
| April 7 | Raulerson | Fla. | Wrongful-death suit; 'Woody' Wilner tries for win No. 2 |
| June 2 | Broin et al. | Fla. | First national class-action suit; job injuries from secondhand smoke |
| June 2 | Moore et al. | Miss. | First state Medicaid suit; no punitive damages; decision by judge |
| Aug. 4 | Florida et al. | Fla. | Medicaid suit as well as racketeering charges, punitive damages |
| Sept. 8 | Engle et al. | Fla. | First class-action suit for smokers; similar cases in more than 12 states |
| Sept. 20 | Texas et al. | Texas | Medicaid suit seeks more than \$16 billion in damages |

SOURCE: NORTHEASTERN UNIVERSITY'S TOBACCO PRODUCTS LIABILITY PROJECT



Color me Uzi: Wende Zomnir of Urban Decay hawks street-smart nail polish

doesn't blame the retail powerhouses for cutting in; she just wishes they wouldn't do it so quickly. "The fashion cycle has gotten so short," she says. "It's like a race."

One way to avoid being knocked off is to let an interested corporation buy into your company, but most of these young business owners are reluctant to be swallowed by the very world they've defined themselves against. Laura Whitcomb was working as a fashion stylist for music videos in 1992 when she noticed that women in rap videos always wore clothing that looked like men's. Wanting to use something recognizably masculine while transforming it into something clearly feminine, she settled on an Adidas track suit, which she cut and reshaped into a tight little number. It was so popular among her music-video friends that word reached Madonna, who started wearing the dress to Knicks games. Whitcomb's career was launched. Her business, Label, which does \$500,000 a year in sales, is turning away large retail chains that want to carry her lines. Whitcomb, 27, is balking, because "once cool people start selling in not-too-cool places like malls, it's all over."

Cool consultants: Keeping that edge is increasingly difficult. A cottage industry of cool consultants has sprung up to advise the big boys. Some corporations have even developed small in-house labels whose sole purpose is to keep up with the street. Levi's, Klotz's nemesis, has expanded its boutique label, Silver Tab, which company spokeswoman Carmella Cavallaro says is designed "to react to volatile trends in the market." That has meant truckloads of denims that

her blue platform shoes, so she mixed up her own batch. Her friends went wild for it. With a \$50,000 loan from her parents, she started her own company, Hard Candy. Soon such Hollywood stars as Drew Barrymore, Cher and Antonio Banderas (yes, boys wear it, too) were sporting her line, which included colors like Trailer Trash (metallic silver), Jail Bait (white-and-pink swirl) and Fiend (metallic plum). Soon after, Wende Zomnir, 29, helped start a similarly funky but more upscale nail-polish company called Urban Decay. But as Urban Decay got its product onto the shelves of stores like Nordstrom and Urban Outfitters, it ran into serious competition. Revlon had started its own streetwear line. Where Urban Decay has Uzi and Gash, Revlon offers Gun Metal and Blood. Urban Decay wrote Revlon a letter complaining the cosmetics giant was infringing on its trademark. Revlon responded by going to court and trying to make its tiny rival renounce any trademark claim.

Even when the competition isn't quite so fierce, the trendsetters say it's impossible to hold on to their innovations for

long. Darryl Kerrigan, 32, started making hip-hugger pants in her New York studio in 1991. Word spread among models, and soon superstars like Kate Moss and Elle Macpherson had their pants slung beneath their navels. But the imitators came on fast. "It's reached the point," Kerrigan says, "where Kmart is manufacturing hip-huggers." Kerrigan, who grosses \$5 million annually,



Fresh jive: Rick Klotz dressed up active wear and started a trend

seem reminiscent of Klotz's. Peter Zollo, president of Teenage Research, thinks that the major companies will ultimately beat the hipsters at their own game. Most entrepreneurs get one great idea and then burn out, he says. By contrast, "Levi's has a lot of money behind them, and they are recruiting the coolest kids to talk to them."

But the thing about being a cool innovator is that you don't sweat the corporate competition. "Re-e-vlon," says Hard Candy's Mohajer, drawing out the name mockingly. "When they start a product they do focus groups and studies. I just put out the colors I dig." And since she's a part of the market she's selling to, what she digs often turns out to be what sells.

With PETER KATEL in Miami



Official Business

Alaska State Legislature

Joint House and Senate
Health, Education and Social Services Committee

State Capitol
Juneau, AK 99801-1182

PRESS RELEASE

ARIZONA ATTORNEY GENERAL TO ADDRESS JOINT HESS MEETING; HELPED WIN SETTLEMENT WITH LIGGETT GROUP TOBACCO FIRM

JUNEAU -- (April 11, 1997) -- Arizona Attorney General Grant Woods, who helped negotiate the recent settlement of lawsuits against the Liggett Group tobacco company, will address a joint meeting of the Alaska House and Senate Health and Social Services committees on Monday, April 14, 1997 at 3:30 p.m.

Woods will discuss the historic Liggett settlement, and examine the variety of tools anti-tobacco forces can use to cut down the use of tobacco, including taxation, litigation and enforcement.

Also at the meeting, Alaska Attorney General Bruce Botelho will discuss the status of the tobacco industry's pre-emptive lawsuit against Alaska, and discuss the Knowles Administration's views on the multi-prong approach to fighting tobacco. Alaska Health and Social Services Commissioner Karen Perdue will also make a brief presentation on tobacco's impact on public health in the state.

Woods, recently featured on ABC's "Nightline" program, on Cable News Network and in other national media, was a lead participant in the lengthy negotiations that led to the settlement between Liggett and the attorneys-general of 22 states.

As part of the settlement, Liggett admitted that cigarettes have long been actively marketed to minors, that cigarettes are addictive and that they can cause cancer. An undated marketing study done for Liggett and revealed by the settlement shows the tobacco industry has targeted youths aged 16 to 21 years old and specific ethnic groups in its efforts to attract new smokers.

(MORE)

Woods
April 11, 1997
First add

Under terms of the settlement, Liggett agreed to waive privilege and turn over hundreds of industry documents going back decades.

"To use a criminal analogy, Liggett is turning state's evidence in our lawsuits," Woods said. "We believe this is the beginning of the end for this conspiracy of lies and deception that's been perpetrated on the American public by the tobacco companies. Someone is finally telling the truth."

Woods, a Republican elected to the Arizona attorney general's post, gained national attention last fall when he proceeded with a lawsuit against the tobacco companies on behalf of the state over the objections of Arizona's Republican Governor Fife Symington. It was later reported that Symington had met with tobacco lobbyists before announcing his objection.

The joint meeting will begin at 3:30 p.m. in the Senate Finance Room, Room 532 of the State Capitol. The presentation will be carried by KTOO-TV's Gavel to Gavel, and will also be available via teleconference at Legislative Information Offices in Anchorage and Fairbanks, and at other LIOs by request.

The House HESS Committee members are Representatives Con Bunde (Chairman), Joe Green, Fred Dyson, Brian Porter, Al Vezey, Tom Brice and Alan Kemplen. The Senate HESS Committee members are Senators Gary Wilken (Chairman), Loren Leman, Lyda Green, Jerry Ward and Johnny Ellis.

###

FOR IMMEDIATE RELEASE

FOR MORE INFORMATION:

Representative Con Bunde
(907) 465-4843
(907) 465-3871 fax

Senator Gary Wilken
(907) 465-3762
(907) 465-4714 fax



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

1275 WEST WASHINGTON, PHOENIX 85007-2928

GRANT WOODS
ATTORNEY GENERAL

MAIN PHONE: 542-5025
TELECOPIER: 542-4085

GRANT WOODS

Grant Woods is a lifelong resident of Arizona. He grew up in Mesa, Arizona, before attending Occidental College in Los Angeles where he graduated Phi Beta Kappa. In 1979 he received a law degree from Arizona State University.

Mr. Woods led all candidates on the 1990 ballot and was re-elected Arizona Attorney General in 1994 with 80% of the vote. He presides over a staff of 850 employees including 300 attorneys and is chief counsel and law enforcement officer for the State of Arizona.

He is recognized across the nation for his leadership in consumer protection, environmental enforcement, civil rights, and fighting crime. A pro-active Attorney General, Mr. Woods personally appears in the courtroom in trials, hearings and sentencings, and argues for the state before appellate courts throughout the state and country. Mr. Woods successfully argued to the United States Supreme Court the matter of Lewis v. Casey, a case dealing with inmate access to the courts. He was named "Attorney General of the Year" by the National Association of Attorneys General in June of 1995. He is the past national president of the Civil Rights Committee and currently chairs the national Supreme Court Committee.

Mr. Woods was founding President of the Mesa Education Foundation. In 1986, he founded the Mesa Boys & Girls Club. The Club recently opened its new facility, the largest in Arizona, and renamed it after Grant Woods. Mr. Woods also hosts his own radio show on Fridays from 1:00-3:00 P.M. on top-rated KTAR radio.

Mr. Woods is married to Marlene Galan Woods, news anchor at KSAZ-Channel 10, and has four children, Austin 13, Lauren 11, Cole 5 and Dylan 1.

For Immediate Release
March 20, 1997

Contact: David White (202-223-8700)
Jay Smith (703-683-8512)

ATTORNEYS GENERAL REACH MAJOR TOBACCO LAWSUIT SETTLEMENT

Industry Documents Reveal Big Tobacco's Knowledge of Smoking's Dangers; Marketing to Kids

Washington, D.C., March 20 - In a stunning development for America's tobacco industry, Liggett Group, Inc. has agreed to settle lawsuits filed against it by twenty-two states, it was announced today.

For the first time in history, Liggett, one of the nation's top five tobacco companies, admits that three of the tobacco companies' major contentions are in fact false. Liggett admits that cigarette smoking causes lung cancer, heart disease and emphysema. Liggett admits that nicotine is addictive. Liggett admits that tobacco companies actively market to teenagers, and when tobacco companies refer in their internal documents to "youth," it includes teenagers 14-18 years of age.

Under the terms of the settlement, Liggett has agreed to waive privilege and turn over hundreds of industry documents going back decades. These documents are being filed in courthouses around the country.

In a statement issued as part of the settlement, Liggett CEO Bennett S. LeBow pledged to "scrupulously avoid any and all advertising and marketing that would appeal to children and adolescents" and to place a warning on all Liggett brands that "Smoking is Addictive."

"Never again will Big Tobacco be able to claim innocence with a straight face," said Mississippi Attorney General Michael Moore (D), whose first-in-the-nation lawsuit seeking compensation for the cost borne by taxpayers to treat tobacco-related disease in indigent citizens goes to trial in June. "The documents will tell the real story behind the industry's lies."

"To use a criminal analogy, Liggett is turning states evidence in our lawsuits against the other major tobacco companies," stated Arizona Attorney General Grant Wood (R),

-MORE-

a lead participant in the lengthy negotiations that led to today's settlement. "Juries across the country are finally going to hear the truth, from the inside, about how tobacco companies have operated over the years."

The Liggett agreement does not constitute a consent to any fraudulent conveyance of the RJR food group or any other entity which would constitute fraudulent conveyance.

"The Attorneys General want to be absolutely clear: we will fight any attempts to spin off assets in a fraudulent conveyance. RJ Reynolds is put on notice - you cannot protect your assets by spinning them off into a new company," said Attorney General Hubert H. Humphrey, III of Minnesota.

The Attorneys General participating in the Liggett settlement are (listed by alphabetical order of state): Arizona (Grant Woods); Connecticut (Richard Blumenthal); Florida (Bob Butterworth); Hawaii (Margery Bronster); Iowa (Tom Miller); Illinois (Jim Ryan); Indiana (Jeffrey Modisett); Kansas (Carla Stovall); Louisiana (Richard Ieyoub); Maryland (Joseph Curran, Jr.); Massachusetts (Scott Harshbarger); Michigan (Frank Kelley); Minnesota (Hubert H. Humphrey, III); Mississippi (Mike Moore); New Jersey (Peter Vermiero); New York (Dennis Vacco); Oklahoma (Drew Edmondson); Texas (Dan Morales); Utah (Janet Graham); Washington (Christine Gregoire); West Virginia (Darrel McGraw); and Wisconsin (James Doyle).

Copies of the settlement agreement can be obtained on the Internet at <http://stic.neu.edu>



Liggett settles with states

Cigarette maker to admit smoking causes cancer; pay some \$750 million



March 20, 1997: 6:10 p.m. ET

NEW YORK (CNNfn) - Liggett Group Inc. on Thursday reached an unprecedented lawsuit settlement with 22 U.S. states, becoming the first tobacco company to admit that cigarettes are addictive and can cause cancer.

Breaking ranks with the rest of the tobacco industry, Liggett Group, a unit of Bennett LeBow's Brooke Group, also agreed to turn over 25 percent of its pre-tax profits for the next 25 years.

Under the deal, Liggett will pay an estimated \$30 million annually to the states, or about \$750 million in total.

Liggett will also pay a flat \$25 million fee if the company either acquires an additional tobacco unit, or is itself purchased by a cigarette firm.

Further, Liggett agreed to add a label to its products, including the Chesterfield and Lark brands, stating the nicotine is addictive.

"This is the beginning of the end for this conspiracy of lies and deception that has been perpetrated on the American people by the tobacco companies," Grant Woods, Arizona's attorney general, told a Washington, D.C., news conference. "Someone is finally telling the truth." (814K WAV) or (814K AIF)

Woods said Liggett would cooperate fully with state attorneys general in cases pending against the other companies, and would allow its current and former employees to testify about industry practices.

He said the company had already turned over internal documents, and would argue in court for the right to provide states with documents related



Grant Woods



Mike Moore

to other tobacco companies.

Liggett executives did not make any immediate comment about the settlement.

While industry watchers long viewed Liggett, the smallest of the top cigarette makers, as a loose link in the powerful tobacco front, analysts say the company's admission that tobacco causes disease deals a major blow to the sector.

Tobacco companies face a growing list of lawsuits filed by states seeking to recoup the medical costs of treating tobacco-related illnesses in impoverished patients who receive state-funded Medicaid insurance.

Along with the cases brought by the states and individual civil suits, the Justice Department is investigating whether top tobacco-industry executives lied to Congress in 1994 when they testified that nicotine is not addictive.

Scott Harshbarger, the Massachusetts attorney general and president of the National Association of Attorneys General, told reporters that the Liggett deal "will produce information that indicates that major tobacco companies were fully aware that the product they were selling is addictive, that the product they were selling had great impact on public health."

The nation's four largest tobacco companies, which all claim nicotine is a non-addictive flavor enhancement, quickly lashed out against Liggett's deal.

Philip Morris called the agreement a "sham," and insisted in a statement that the settlement did nothing to impact other tobacco litigation.

"Philip Morris will continue to defend vigorously against the meritless lawsuits filed by the states seeking to recover health-care expenses," the statement said.

A key element of the settlement is Liggett's agreement to turn over potentially damaging documents, including notes between tobacco companies.

However, a North Carolina state judge issued a temporary restraining order prohibiting Liggett for the time being from given any notes to the states.

Lawyers for R.J. Reynolds Tobacco, Philip Morris, Brown & Williamson Tobacco and Lorillard Tobacco argued that the information is protected by a joint-defense privilege.

Liggett is expected to argue in court that all the documents should be delivered to the states, Arizona's Attorney General Woods said.

Yet Mike Moore, Mississippi's attorney general, said that even with documents only involving Liggett, states will receive unprecedented help in litigation against Big Tobacco.

"We will bring the other four tobacco companies to their knees," he vowed. (151K WAV) or (151K AIFE)

Just one year ago, Liggett became the first company to ever offer to settle smoking litigation, reaching an accord with five states. The company also agreed to settle its part of a class-action lawsuit in New Orleans.

As word of Thursday's settlement leaked out, Wall Street investors sent tobacco shares down sharply.

Shares of Philip Morris (MO), a component in the Dow Jones industrial average, closed down 7-1/4 to 114-3/4, while RJR Nabisco Holdings (RN) lost 3/4 to 51-1/2 and B.A.T. Industries (BTI) fell 13/16 to 15-5/8. Brooke Group (BGL) rose 5/8 to 4-7/8. ▶

-- *David Rynecki*



Liggett to settle
- March 20,
1997

Liggett states
near settlement
- March 19,
1997

[home](#) | [companies](#) | [hot stories](#) | [contents](#) | [search](#) | [stock quotes](#) | [help](#)

Copyright © 1997 Cable News Network, Inc.
ALL RIGHTS RESERVED.

FINAL
EDITION

THE ARIZONA

© Copyright 1987, The Arizona Republic

Friday, March 21, 1997

★★

Phoenix, Arizona

REPUBLIC

50¢

G

107th year, No. 307

Tobacco 'conspiracy' is broken

Firm gives up documents

By Jeff Barker
Republic Washington Bureau

WASHINGTON — A settlement signed Thursday could end the tobacco industry's 30-year "conspiracy of deceit" by making public documents detailing cigarette executives' highly sensitive conversations, Arizona Attorney General Grant Woods said.

The documents are being made available to judges around the country as part of a civil settlement that Arizona and 21 other states reached with Liggett Group Inc., the maker of Chesterfield and Lark cigarettes.

The documents, which go back decades, include industrywide conversations that Liggett says will demonstrate crime and fraud against its tobacco company.



Grant Woods /
"I believe this is the beginning of the end for this conspiracy of lies and deception."

— See TOBACCO, page A16

Tobacco firm takes deal in suit

— TOBACCO, from page A1

brethren, according to Woods, who appeared at a news conference Thursday with other states' attorneys general.

Woods said the documents "could well break the back of this (tobacco) conspiracy" by showing that the industry lied about whether cigarette smoking causes lung cancer and other diseases, whether nicotine is addictive, and whether cigarette companies illegally marketed products to minors.

Woods said that Liggett's agreement was the equivalent of a criminal defendant turning state's evidence.

"I believe this is the beginning of the end for this conspiracy of lies and deception perpetrated on the American public by the tobacco companies," said Woods, who played a prominent role in the negotiations. "We're going to tell the truth from the inside, using their own documents."

Mississippi Attorney General Mike Moore said the bounty includes "the most incriminating documents ever in the history of tobacco litigation."

"These are documents, you see, that we never supposed to find out about," he said.

The documents are already on their way to Arizona, Mississippi and other states that still have claims pending against Philip Morris, R.J. Reynolds and other tobacco firms. In Arizona, Woods said in the suit that the firms illegally marketed their wares to minors.

Woods proceeded with the lawsuit over the objections of Gov. Fife Symington, who ordered him to drop the legal battle. Woods accused the governor of being "bought off" by tobacco companies.

Asked whether he felt vindicated, Woods replied Thursday. "The governor sided with the five tobacco companies, and one of them has now admitted that the allegations in our suit were correct. I don't know what more you can say."

Woods scored a publicity coup, moderating the press conference and appearing on a CNN program and other news talk shows.

Judges in each of the 22 states will determine whether the documents contain evidence of a crime. Such a finding is needed to overcome attorney-client privilege rules that

ARIZONA CENTRAL

Do you feel that the state Legislature has misused tobacco tax funds? How do you think those tax dollars should be spent? Sign on to America Online and tell us how you feel. Go to keyword: Arizona Central and click on the What's Hot icon.

would allow the documents to remain confidential.

Out of thousands of documents, Liggett has already chosen 25 to 30 that it believes will be particularly helpful to the 22 states — and damaging to the industry. Woods said he and the other attorneys general have not seen the documents since they are privileged, and are relying on the characterizations of Liggett.

Philip Morris has already won a temporary restraining order in a North Carolina court to prevent attorneys in the settlement from reading the documents immediately.

But Moore said the court order would not handicap the tobacco firm's opponents in other states.

"I doubt if a judge in any other state in this country is going to care too much about what a judge in North Carolina says to try to hide those documents continuously from us," Moore said.

In the settlement, Liggett became the first tobacco company to admit that cigarette smoking causes lung cancer, heart disease and emphysema, and that nicotine is addictive. The attorneys general said Liggett also conceded that tobacco firms market to "youth" 14-18 years of age.

Liggett agreed to pay 25 percent of its pretax profit over the next 25 years. If Liggett merges with another tobacco company, it would immediately have to pay \$25 million.

Liggett also said its attorneys will help the states interpret the documents it has made available.

Woods and the other attorneys general stressed that money was not the main factor in the settlement. They said they could not estimate how much Liggett would ultimately have to pay.

"This is a little bit like busting a street drug dealer to get at the Colombia drug cartel," said Minnesota Attorney General Hubert H. Humphrey III. "This is a one-time deal. The terms offered to Liggett today to come clean are not going to be offered to others."

Major tobacco stocks were off in morning trading. Philip Morris Cos. was down \$5.75, to \$116.25.

When smoke clears, truth about cigarettes is plain

For the nation's tobacco industry, it was the worst of times Thursday in Washington. For Arizona Attorney General Grant Woods, it was the best.

In a press conference broadcast live on CNN, Woods took center stage in announcing a historic settlement between Liggett Group Inc. and 22 states.

During the past seven months, Woods was lead negotiator for the states. Liggett attorneys flew into Phoenix three times for meetings, but most of the work was done on the phone, usually in conference calls involving 40 to 50 lawyers.

"Getting all of Liggett's people and 22 attorneys general to agree to every line in a 61-page document wasn't the easiest thing to do, but I'm feeling pretty good right now," Woods said from Washington.

In fact, he didn't complete the deal until moments before it was announced.

"We needed their lawyers' confirmation that (Liggett CEO) Bennett LeBow had signed the document," he said. "We got it



STEVE WILSON
Republic Columnist

on the phone as we were walking into the hotel for the press conference."

The deal is a savvy one for Liggett and a giant setback for the rest of the industry.

By being the first tobacco defendant to settle with the states, Liggett got favorable terms. It settles 22 state lawsuits in exchange for 25 percent of its pretax profits for the next 25 years.

But the guts of the agreement is Liggett's willingness to turn over more than 100,000 documents. These contain incriminating admissions that Woods expects will be pivotal in upcoming trials.

Liggett now admits that nicotine is addictive, that cigarettes cause cancer and heart disease, and that the tobacco industry markets to kids as young as 14.

For 40 years, the nation's tobacco companies have denied those things.

"This deal shatters their united front," said Ed Sweda, senior attorney for the Tobacco Products Liability Project at Northeastern University in Boston.

"Liggett's move seems comparable to the situation in criminal law where a co-conspirator provides critical evidence. It's very bad news for the bigger fish."

The agreement is all the sweeter for Woods because of his battle with Gov. Fife Symington over the state's lawsuit against the tobacco companies.

Symington ordered Woods to drop it last

fall, saying he feared the legal bill would be too high. It was later reported that Symington met with tobacco lobbyists before announcing the decision.

Woods got around the governor's order by filing an amended complaint on behalf of the state of Arizona rather than the Arizona Health Care Cost Containment System.

"The governor obviously sided with wrong people," Woods said Thursday.

"He sided with the tobacco companies, and one of them has now admitted that everything we allege is true."

Woods said Symington's order hurts Arizona's chances of collecting as much from the companies as other states.

"We are in an inferior position because he made us remove AHCCCS from the suit. But I think we will still get a lot of money. The other companies will have to do what Liggett did or be put out of business."

The tobacco companies' biggest problem all along, and the underlying reason for Thursday's settlement, is this simple:

Truth isn't on their side.

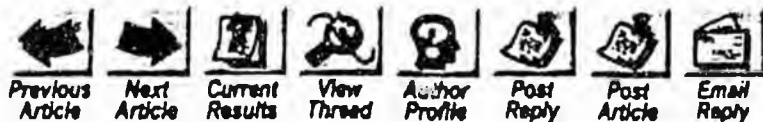
They have shown for years that if you hire enough lawyers and lobbyists, enrich enough politicians, and blow enough smoke, the truth can be covered up, twisted, shoved out of sight.

But it doesn't go away. Cigarettes are addictive. They are pitched to kids. They cost us billions in health care every year. They will kill 8,000 Americans this week. Just as many died last week. At least as many will die next week and the next.

It's worth noting that the settlement knocked tobacco stocks lower. The biggest cigarettemaker, Philip Morris, fell 6 points. It has lost 25 points in the past week.

The only exception was the stock of Liggett's corporate parent, Brooke Group. Wall Street pushed its price up for cutting a smart deal — not for coming clean — but it's still good to see honesty rewarded.

It will be even better to see the truth finally come out in court and put an end to Big Tobacco's decades of deadly deceit.



Article 17 of 26

Subject: Ex-FDA chief Kessler sees anger in US tobacco case
From: anon3c67@nyx.cs.du.edu (Bruce Watson)
Date: 1997/03/21
Message-Id: <5guns5\$51r@nyx.cs.du.edu>
Newsgroups: alt.smokers,alt.support.non-smokers
[\[More Headers\]](#)

Ex-FDA chief Kessler sees anger in US tobacco case

WASHINGTON, March 21 (Reuter)--Former U.S. Food and Drug Administration Commissioner David Kessler said on Friday the American people would react angrily to a tobacco company's admission that the industry marketed cigarettes to children.

"For one of the major tobacco companies to admit that they marketed to children, that's striking," Kessler said on NBC's Today Show. "I think it will make the average person just angry," he added.

The admission by the Liggett Group Inc.--makers of Chesterfield, L&M and Lark cigarettes--is a striking blow to the cigarette industry. The admission came in a settlement of lawsuits on Thursday by attorneys general of 22 states who said Liggett confessed tobacco was addictive, caused cancer and that tobacco was marketed to minors.

The firm, the smallest of big tobacco companies, made the concessions to settle lawsuits by 22 states seeking to recoup money spent on health care for tobacco-related illnesses.

Liggett agreed to turn over documents to state judges that could prove crucial in lawsuits against other tobacco firms.

"The industry has always maintained that smoking is an adult choice," Kessler said. "Now one company has said it is addictive and they marketed an addictive product to children--it is not a matter of choice, that settles that issue."

He noted that even Republican presidential candidate Bob Dole said during last year's campaign that cigarettes were not necessarily addictive. "That has been the view of some--that cannot be credible any more," Kessler said.

Arizona Attorney General **Grant Woods** said on the program it was a significant decision. "This is the first time in the nation's history--remember there are only five of them--one of them has come forward and finally told the truth."

He added that "Most of us probably intuitively know they were not telling the truth--at least now it's over, as far as this discussion because an insider, one of the tobacco companies has come forward and says smoking causes cancer, smoking causes heart disease and emphysema, nicotine is addictive and, yes, we have marketed towards children and the tobacco industry markets toward children."



Article 10 of 26

Subject: Liggett told to retrieve documents
From: anon3c67@nyx.cs.du.edu (Bruce Watson)
Date: 1997/03/23
Message-Id: <5h4ivl\$069@nyx.cs.du.edu>
Newsgroups: alt.smokers, alt.support.non-smokers
[\[More Headers\]](#)

Liggett told to retrieve documents
Judge seals secret papers linked to nicotine addiction; 22 states may have them by now
By Steve McQuilkin
JOURNAL BUSINESS REPORTER

Judge William H. Freeman ordered the Liggett Group yesterday to retrieve any secret documents on nicotine addiction and other legal issues that may have been distributed after he ordered them sealed Thursday.

The tobacco industry sought the measure in Forsyth Superior Court after **Grant Woods**, the attorney general for Arizona, said that the Liggett documents were being flown to all 22 states suing the industry. "They will be all over the country before the sun comes up," Woods said Thursday.

Many involved with the dispute could not say yesterday whether the documents were delivered; several states had not received the documents by yesterday afternoon. But some who have been following the legal battle between the major tobacco companies and the 22 states suing them say that it will be hard for the industry to keep the documents confidential.

David Logan, a law professor at Wake Forest University who tracks tobacco issues, said that if even one attorney general finds a judge willing to unseal the documents "it won't matter very much what Judge Freeman decides 10 days from now because the cat's already out of the bag."

In a settlement agreement announced Thursday, Liggett admitted that nicotine is addictive and that smoking causes lung cancer and other ailments--something the other tobacco companies have denied.

Michael Moore, the attorney general for Mississippi, said that Liggett's internal documents show that the industry aimed marketing efforts at minors.

For many years, the tobacco companies shared information and legal strategies in developing defenses to lawsuits against the industry. At issue is whether Liggett can now break ranks and disclose notes and other papers gleaned from those meetings, which the other tobacco companies say should remain secret under client-attorney privilege.

Freeman's order requires Liggett to identify anyone who directed or failed to stop the distribution or production of the secret documents after 12:21 p.m. Thursday--shortly after he signed the order. It also demands that Liggett provide a full accounting of the whereabouts of all copies of the documents since that time.

Allison M. Zieve, an attorney for the Public Citizen Litigation Group, said that though it's possible the federal government would move to introduce new evidence, it's not likely.

Copyright 1997, Piedmont Publishing Co. Inc.



[Home](#) [Power Search](#) [Post to Usenet](#) [Ask DN Wizard](#) [Help](#)
[Why use DN?](#) | [Advertising Info](#) | [Press Releases](#) | [Jobs](#) | [Policy Stuff](#)
Copyright © 1995-97 [Deja News, Inc.](#) All rights reserved.



Article 14 of 26

Subject: STATE ATTORNEYS GENERAL V. TOBACCO: A War Without End?
From: anon3c67@nyx.cs.du.edu (Bruce Watson)
Date: 1997/03/22
Message-Id: <5h1o4r\$948@nyx.cs.du.edu>
Newsgroups: alt.smokers, alt.support.non-smokers
[\[More Headers\]](#)

STATE ATTORNEYS GENERAL V. TOBACCO: A War Without End?
 by: James E. Tierney (Attorney General of Maine 1980-1990)

On February 19, 1997, Indiana Attorney General Jeffrey Modisett filed a lawsuit against the tobacco industry asking for extensive regulatory relief and over a billion dollars in reimbursement for his state's medical expenses. Indiana therefore became the 22nd state to jump into the war between the tobacco industry and the state attorneys general.

The lines in this war are clear.

On one side is the tobacco industry. It is armed with billions of dollars in assets, hundreds of thousands of employees, hundreds of millions of dollars in political contributions and access to thousands of top-flight lawyers and lobbyists. No court has ever ordered the tobacco industry to pay one cent in damages for smoking related claims.

On the other side are twenty-two attorneys general. With their staffs, a group of well-financed trial lawyers, and the power of emerging public sentiment, they are utilizing legal theories that have yet to be successfully applied to the tobacco industry.

No one knows who will win the bitter battle currently being played out almost daily in court, press conferences, the halls of Congress and Wall Street. The answer may well lie buried deep in the eleven million tobacco industry documents that have been turned over to the state attorneys general and their lawyers.

I. The First and Second Wave

By any measure, the tobacco industry is big and growing. While tobacco has been cultivated since colonial days, it has only been since the dawn of the 20th Century that cigarettes, as opposed to cigars or smokeless (e.g. "spitting") tobacco, have dominated its use. Portable, inexpensive, and addictive, cigarettes were the perfect product to market with massive advertising campaigns directed by the fast-growing tobacco industry. By the end of World War II, no social gathering was complete without the availability of cigarettes and their use skyrocketed.

Also skyrocketing, however, were the number of deaths caused by lung cancer and heart attacks among heavy smokers. Medical research slowly began to find connections, physicians stopped smoking, the Surgeon General issued his reports and the rest is history. Today, every reputable scholar agrees that cigarette smoking kills 400,000 Americans a year making smoking the country's number one health problem.

During the 1960's and 1970's, the tobacco industry found itself the target of private litigation. Brought mainly under the tort theories of deceit, breach of express and implied warranty and negligence, plaintiffs' cases were hampered by the lack of definitive medical studies and a firm grasp of what was then internal tobacco industry knowledge.

In the 1980's, more suits were filed that added the newer legal theories of failure to warn and strict liability. While plaintiffs could generally now prove a direct connection between smoking and various diseases, the tobacco industry successfully countered by arguing that smokers had freely chosen to smoke, could quit anytime they wanted, and had thereby voluntarily assumed any hypothetical risk that might exist from smoking cigarettes. These defenses were ironically bolstered by the Federal Cigarette Labeling and Advertising Act's imposition of a warning label on all cigarette packaging and advertising.

Strategically, the tobacco industry countered each and every suit with scorched earth defense tactics that often spent their opposition into the ground. As a result, full discovery of internal industry practices never really took place. Coupled with seemingly invincible power in both political parties, the tobacco industry entered the 1990's with its power in tact and cigarette smoking on the rise among young people.

II. Third Wave

On May 23, 1994, Mississippi Attorney General Mike Moore filed an unprecedented law suit against the entire tobacco industry. On August 17, 1994, Minnesota Attorney General Hubert H. Humphrey, III, joined by Blue Cross and Blue Shield of Minnesota, did the same. Vilified not only by the tobacco industry but also by most large business groups, the actions by these two attorneys general will forever change the way tobacco is regulated in the United States.

These state's cases have much in common. Both assert that the tobacco industry has engaged in years of illegal activity. Both were brought by experienced private plaintiff's lawyers working under contract with the attorney general. The legal theories of the two cases, however, differ significantly.

In Mississippi, Attorney General Moore filed in his state's court of equity. Utilizing theories of unjust enrichment and restitution, his suit attempts to recoup for his state millions of dollars paid by it for the medical care of indigent citizens. By avoiding the filing of a subrogation claim that the State of Mississippi was acting on behalf of specific smokers, Moore avoided the assumption of the risk defense which had earlier proven successful for the tobacco industry.

In Minnesota, Attorney General Humphrey's case was filed in state court asserting that the tobacco industry engaged in a series of illegal activities that violate consumer protection and antitrust laws. The case further alleged that the tobacco industry knew of the addictiveness of nicotine and yet engaged in a "unified campaign of deceit and misrepresentation" to conceal the information from the general public and governmental agencies.

Both attorneys general, however, spoke forcefully of their concerns over the increased rate of teenage smoking. With statistics showing that 50% of all adult smokers had begun smoking before the age of 14, both Moore and Humphrey echoed Federal Food and Drug Administration (FDA) Commissioner David Kessler who since his appointment by President Bush had made the reduction of youthful smoking a top priority.

In February of 1994, Kessler wrote that he believed that there was "mounting evidence" that "the nicotine ingredient in cigarettes is a

powerfully addictive agent" and that "cigarette vendors control the levels of nicotine to satisfy this addiction." This letter was followed in April of 1994 by the now infamous hearing before the House Health and Environment Subcommittee then chaired by Rep. Henry Waxman (D-Ca) wherein the CEO's of the seven largest tobacco companies testified that they personally believed that nicotine is not addictive and that smoking has not been proven to be a cause of cancer. One month later, Moore filed his case.

III. The Next Brave Souls

On September 20, 1994, West Virginia Attorney General Darrell McGraw filed a medical reimbursement lawsuit that for the first time named U.S. Tobacco, manufacturers of 95% of the smokeless tobacco sold in the United States, as a defendant along with the other major cigarette companies. McGraw's case not only mirrored Moore's case legally, but politically as well. In both state's, the Governors came down hard on the side of the tobacco industry and filed briefs in court asserting that their attorney general lacked the authority to bring the suit and/or sign contracts with private lawyers to bring the case.

The attention that arose from these suits, however, at times seemed minor when compared to the controversy that erupted in Florida with the late-night passage of the Medicaid Third-Party Liability Act on the last day of the 1994 Legislative Session. Swept through the Legislature without a hearing, the Act specifically authorizes the Florida Attorney General to bring a reimbursement lawsuit and, more importantly, strips from tobacco defendants the ability to utilize the defenses of assumption of risk and contributory negligence. Strongly supported by Florida Governor Lawton Chiles and Attorney General Bob Butterworth, both the procedure and the substance of the passage resulted in a huge effort by the entire business community to repeal the Act as soon as possible.

IV. The Stall

During the summer and fall of 1995, the tobacco industry came very close to ending the initiative of the attorneys general. In Mississippi, Governor Kirk Fordice, with the support of the entire business community, sued Attorney General Mike Moore in an attempt to have the case dismissed. In West Virginia, Governor Gaston Caperton's legal intervention persuaded a trial judge that Attorney General McGraw did not have the authority to bring the suit and she dismissed most of the claims. In Florida, the Legislature overwhelmingly repealed the Liability Act and it appeared that the industry had the votes to override the veto of Governor Chiles. Only the Minnesota case was still politically alive although preliminary legal attacks left it buried deep in the state's appellate process.

The four attorneys general who sued, however, continued their efforts. Secret documents from the archives of the industry, brought forward by whistleblowers, sometimes in defiance of state court orders, increasingly appeared in the press. The tobacco industry then launched legal assaults on the media itself, winning an apology from ABC and frightening CBS's "60 Minutes" into cancelling a story on the eve of broadcast. The key committee posts in the new Republican controlled Congress were entirely pro-tobacco and federal "tort reform" threatened to wipe out all of the state cases. The tobacco industry dramatically increased its corporate and PAC contributions and the proposed FDA rule was under furious assault.

V. "Don't Let That Attorney General File That Suit!"

At this point, the industry launched what at best can only be charitably described as a curious litigation strategy. It initiated lawsuits against the attorneys general of Massachusetts, Texas, and Maryland, who--at that

point--were considering filing actions but had not yet finally decided to do so. These unprecedented suits asked the courts to stop the attorney general from ever filing a suit as opposed to the more common method of submitting a Motion to Dismiss after a suit had been filed.

Even a casual observer of state attorneys general could have predicted that these suits would have the exact opposite effect from what the industry wanted. Virtually all of the fifty attorneys general rallied to the defense of the four that had been sued. In private discussions, they characterized the preemptive efforts of the industry as an indication of corporate arrogance not shown by any other segment of the American business community. The response of Massachusetts Attorney General Scott Harshbarger was representative of others when he responded that "the tobacco industry may intimidate '60 Minutes,' but they won't intimidate me."

In November 1995, a conference for state attorneys general, funded by the Robert Wood Johnson Foundation and organized by the Tobacco Products Liability Project, was held at Northeastern University in Boston. It brought together representatives from thirty state attorneys general, leaders of the tobacco control movement, and the plaintiff's bar, and resulted in a renewed commitment to continue the litigation efforts.

After almost a year during which no state had sued, Massachusetts became the fifth state to file. On December 1, 1995 at a press conference held in a Catholic hospital attended by the Archbishop of Boston, Harshbarger stated that "cigarette manufacturers have ... known for years, based on their own secret research, that their products eventually injure or kill the consumer when used exactly as intended."

The stall was over.

VI. Liggett:

On March 15, 1995, the headlines of every newspaper in the country announced that The Liggett Group, the nation's fifth largest cigarette manufacturer, had settled its claims with five of the six states who had sued it for \$10 million, a stake in future profits, and an agreement to immediately comply with the proposed FDA rule dealing with youth access. (Louisiana Attorney General Richard Ieyoub had filed the day before the settlement announcement.) Minnesota Attorney General Hubert Humphrey refused to join the settlement, noting that the dollars were too low and that the agreement actually provided the states with an economic stake in a failing tobacco company that was attempting a hostile takeover of R.J.Reynolds.

Regardless of the legal merits, there can be no question that the settlement was a stunning success for all state attorneys general. The industry's aura of invincibility was gone forever.

The settlement immediately solved several critical political problems. In West Virginia, the Governor, with a check for \$200,000 literally in hand, reversed his position, thereby reactivating the suit in his state. In Florida, the settlement on the eve of the vote to override Governor Chiles's veto of the Liability Act saved the day. In New Jersey, Governor Christine Todd Whitman ordered her appointed attorney general to start the process to file, making her the first prominent Republican to support state litigation.

Most important, the settlement legitimized the efforts of the first five attorneys general. The media lost its timidity and began launching new and ever more negative attacks on the tobacco industry. Editorials now asked why the state attorney general had not sued instead of the other way around. National health associations, long skeptical of litigation as a route to tobacco control, have whole heartedly supported the efforts of the

attorneys general.

VII. The Deluge

In December 1995, the tobacco industry had preemptively sued Texas Attorney General Dan Morales in state court in Austin. On March 28, 1996, Morales responded with a law suit, the first state case to be filed in federal court, that alleged civil racketeering violations. Morales also issued a blistering attack on the industry. In the face of polls that showed the citizens of his state opposed his filing the suit, Morales stated that he believed that the industry had engaged in the "systematic cultivation of new, life-long customers, life-long nicotine addicts."

On May 1, 1996, Maryland Attorney General Joe Curran became the eighth attorney general to file in a suit he hand delivered to the court house. Asking for \$3 billion in compensatory damages, Curran was the first to seek punitive damages.

On June 5, 1996, Washington Attorney General Christine Gregoire filed against the industry. Connecticut Attorney General Richard Blumenthal filed shortly thereafter. In just one August week, four states sued. Arizona Attorney General **Grant Woods** became the first Republican to actually file although he was immediately followed by Kansas Republican Attorney General Carla Stovall. Oklahoma Attorney General Drew Edmondson and Michigan Attorney General Frank Kelley, who called the industry "merchants of death," each filed in their state courts.

In the last six months, cases have been filed by Utah Attorney General Jan Graham, Iowa Attorney General Tom Miller, New York Attorney General Dennis Vacco, Hawaii Attorney General Margery Bronster, Wisconsin Attorney General Jim Doyle and Indiana Attorney General Jeff Modisett.

These state court cases make many of the same allegations. All are brought by a state attorney general who has hired, often on a contingent fee basis, a private firm who has agreed to front all or most of the up front litigation costs.

And there is no question that more states, counties, cities and towns will be filing in the near future.

VIII. Preliminary Results

All of the rulings to date in the state attorney general reimbursement actions have been legal and procedural in nature. In other words, they have not reviewed the factual basis of the claims. That said, as of March 1, 1997 the states have won almost every round.

Every preemptive suit decided to date has been dismissed with especially harsh language being directed at the tobacco industry by the Court in the Connecticut and Utah cases. Every attempt to remove state cases to federal court (or to state court in the case of Texas) has been defeated. Every contingent fee agreement attacked has been upheld. In Minnesota, the Supreme Court has upheld the trial judge's rulings that upheld the dismissal of a Motion to Dismiss and kept Blue Cross and Blue Shield of Minnesota as a co-plaintiff. In Florida, the state Supreme Court has upheld the basic constitutionality of the law that limited the tobacco industry's defenses and created a de facto strict liability law and the trial judge has upheld the state's inclusion of a major conspiracy count.

This is not to say that the tobacco industry is down for the count. The Mississippi Supreme Court has yet to rule on the lawsuit of Governor Fordice that challenges Attorney General Moore's right to bring his case. In Washington, Florida and West Virginia, a number of counts have been

dismissed. In Texas, a legislative attempt will be made to eliminate the right of the Attorney General Morales to hire outside counsel. Defense counsel in each state, many of whom are as powerful in the political arena as in the courtroom, are defending the industry in a sophisticated and tightly organized manner.

Still, as of right now, all twenty-two state cases are on track to go to trial. Mississippi trial is scheduled to begin on June 1, 1997. Florida's case is set to begin in August and Texas is scheduled in October. Minnesota begins its trial the first week of January, 1998.

IX. Possible Congressional Resolution

Geoffrey Bible, the President of Philip Morris, stated in June that "after 40 years of astonishing growth...our business is in phenomenally robust shape, and our prospects have never looked better."

There is much support for Bible's statement. Profits, fueled especially by international sales, are very high. Increased smoking rates for teenagers, officially decried by the industry, nonetheless make it clear that there will be plenty of American customers for generations to come. Congressional support in key positions remains absolute and polls consistently show that Americans are not in the mood to ban tobacco products from the adult population.

All of this notwithstanding, the tobacco industry has shifted its position in the last few months and will soon be approaching Congress seeking what they call "regulatory peace," or, in the words of RJR Chief Executive Officer Steven Goldstone, a definition of "the role that tobacco should play in commerce and our society." Pro-tobacco stock analyst Gary Black, who for years had derided the significance of state and private litigation, stated the issue clearly when he wrote last August that "we believe that odds have increased significantly that over the next 18-24 months, the industry will agree to a legislative solution that could put litigation risks behind it. We believe that tobacco stocks could soar as investors adopt the view that the current litigation discounts...are several times likely settlement costs...."

To get ready for this Congressional fight, the industry is employing an increased number of high profile lobbyists from both political parties and expanding their public relations efforts. President Clinton has indicated a willingness to help bring the two warring sides together to see if common ground can be found.

The suing attorneys general, however, cannot see how a truce can be declared as long as 400,000 Americans die each year of tobacco related illnesses and youth smoking rates continue to climb. For all of its talk of "peace," few attorneys general are anxious for a settlement that allows tobacco stocks to "soar." While attorneys general are internally discussing the possible parameters of a "global settlement," all are spending most of their time getting ready for trial.

In their hearts, both sides to the tobacco wars know full well the risks of litigation. When it comes to the question of who will blink first, however, there is more than enough evidence that the state attorneys general who have sued the tobacco industry are not at all be afraid of going all the way.

James E. Tierney served as the Attorney General of Maine from 1980 until 1990. Since that time he has written widely on the subject of state attorneys general, served as a special prosecutor and serves on the Board of Commentators for the Courtroom Television Network. During 1995, Tierney worked with the Tobacco Products Liability Project and currently is assisting state attorneys general in the coordination of their tobacco litigation. For more information see: <http://stic.neu.edu>.



Article 8 of 26

Subject: Tobacco foes fired up
From: anon3c67@nyx.cs.du.edu (Bruce Watson)
Date: 1997/03/23
Message-Id: <5h4jca\$0ig@nyx.cs.du.edu>
Newsgroups: alt.smokers,alt.support.non-smokers
[\[More Headers\]](#)

Tobacco foes fired up
Liggett pact with 22 states hailed by many, decried by RJR, others By
John Hoëffel
JOURNAL WASHINGTON BUREAU

WASHINGTON--In a stunning settlement reached yesterday with the attorneys general from 22 states, the Liggett Group, the country's fifth-biggest maker of cigarettes, admitted that nicotine is addictive, that smoking causes cancer and that cigarettes have long been marketed to minors.

Liggett, in a major concession, agreed to put a warning label on its cigarette packages declaring that smoking is addictive, contradicting the long-standing claims of tobacco officials that it is not.

The company, based in Durham, also agreed that its employees and attorneys will testify in the lawsuits the 22 states have filed against the four other major cigarette makers, including R.J. Reynolds Tobacco Co. in Winston-Salem.

Liggett also promised to hand over several boxes of highly confidential documents.

"We believe this is the beginning of the end for this conspiracy of lies and deception that's been perpetrated on the American public by the tobacco companies," said **Grant Woods**, the Arizona attorney general.

Woods, flanked by the other attorneys general in a packed hotel ballroom, announced the settlement yesterday afternoon shortly after the last attorney general and financier Bennett LeBow, Liggett's owner, accepted it.

CHRISTINE GREGOIRE, the Washington attorney general, lauded the agreement. "Today, we put Joe Camel in its coffin where it belongs," she said. "It is a breakthrough, watershed day."

Woods said that the documents could contain evidence of crime and fraud. "The documents are extremely damaging," he said.

Some of the hundreds of thousands of pages pertain just to Liggett, but many others, considered potentially explosive, describe meetings between the top in-house attorneys for all five of the major cigarette makers.

Long before the agreement was signed yesterday afternoon, Reynolds and the three other major cigarette companies obtained a temporary restraining order from Judge William H. Freeman of Forsyth Superior Court. Freeman's order bars Liggett from "misusing or disclosing any privileged or confidential information" relating to the four tobacco companies.

or confidential information" relating to the four tobacco companies.

The order set a hearing on the issue for March 31.

Woods said that the attorneys general had seen only the Liggett documents and not the industry documents but suggested that all the documents were being shipped to the courts where the 22 states have filed suit. "They will be all over the country before the sun comes up," said Woods, who had not seen Freeman's order. "We don't know what went on in that North Carolina courtroom."

Liggett, however, said in a statement that it would turn only Liggett documents over to the attorneys general and would wait to submit the industry documents to the courts "pursuant to court order."

Michael Moore, the Mississippi attorney general, ridiculed the notion that the top lawmen from 22 states would violate the law. "We're in the business of enforcing the law. That's what attorneys general do," he said. "We're the good guys. They're the bad guys."

Woods said he believes that the judges in those cases will unseal the documents, rejecting claims that they are protected by attorney-client privilege. Liggett, he said, has separated out about 25 of the most incendiary documents, which could be used to pierce the legal protection. "It has been represented to us that they are evidence of crime and fraud," Wood said.

With the aid of the documents and the witnesses, Moore predicted, "We will bring the other four tobacco companies to their knees."

Under the agreement, Liggett will pay 25 percent of its pretax profits for 25 years to a fund that would go to the states and others with claims against Liggett. Woods and Moore, however, acknowledged that the states might see little cash from the deal. Liggett is the smallest domestic cigarette maker by far and had no pre-tax profits last year. Liggett, which sells Chesterfield and Eve brands, has less than a 2 percent market share. Reynolds had a 24.6 percent share and Philip Morris USA had 47.8 percent.

"Money is way down the list of priorities," Woods said, explaining that the historic deal was cut to open the floodgates for documents and witnesses that could help win their suits to recoup state Medicaid spending on tobacco-related diseases, an amount some estimates put at \$6 billion a year.

"We got the wheel man. Now we're going after the bank robbers," Woods explained. Hubert H. Humphrey III, the Minnesota attorney general who has been instrumental in the lawsuits, quipped, "This is a little bit like busting a street drug dealer to get at the Colombia cartel."

Moore, whose lawsuit comes to trial in June, said, "Their lawyers are going to be on our team fighting on our side."

In Winston-Salem, news of the settlement was not taken lightly at Simos Barbecue Restaurant. Paul Simos built his business on R.J. Reynolds Tobacco's lunch crowd. So he lost no time removing three brands of Liggett cigarettes from a vending machine at the restaurant yesterday.

"We believe in our local products," Simos, 67, said. "Hell, I wear Hanes underwear."

The lunch crowd yesterday was buzzing with talk of Liggett's settlement. "Is it true," workers asked one another. Many called Simos over to their tables to ask what he thought.

"I think they are just trying to take the easy way out," Simos said. "I

"I think they are just trying to take the easy way out," Simos said. "I always felt like people ought to stick together in a great battle."

Anti-tobacco opponents heralded the settlement.

His voice quavering, Matthew L. Myers, the executive vice president of the National Center for Tobacco-Free Kids, proclaimed, "We have turned a very important corner."

"Make no mistake," he said. "This agreement is about kids and is about protecting kids."

Rep. Martin T. Meehan, D-Mass., a prominent congressional tobacco foe, said that the agreement "will make it very difficult for any member of Congress to argue against the FDA's plans to regulate tobacco products."

"What we have here is a major tobacco company making the case for FDA action," he said in a prepared statement.

But John C. Maxwell Jr., an analyst with Wheat First Butcher Singer in Richmond, said that the whole settlement is "media hype." "It's meaningless," he said, raising doubts about whether the documents contain any "smoking guns." "These guys have been sued since 1954. There's been 40 years of discovery. I don't think there's a hell of a lot more to discover," he said.

North Carolina, the country's top tobacco producer, is among the 28 states that have not sued. Attorney General Mike Easley could not be reached for comment, and several North Carolina congressmen declined to comment.

Tobacco opponents and several attorneys general also said that the Liggett documents and witnesses will help the plaintiff's attorneys pursue their lawsuits against the tobacco companies and the federal government defend the Food and Drug Administration regulations in federal court in Greensboro.

"I think the word will get around that there's plenty of incriminating stuff sitting around out there," said Richard A. Daynard, a law professor who is the chairman of the Tobacco Products Liability Project. "It's not good news for the other tobacco companies."

Daynard also predicted that the move to ask for a restraining order to keep documents secret would destroy whatever credibility the tobacco companies still have with the public. "I think the companies' responses are going to contribute to the general perception that these companies are hiding something really damning," he said.

The two biggest tobacco companies downplayed the agreement.

"It changes nothing," said a Philip Morris statement, adding that it "will continue to defend vigorously against the meritless lawsuits filed by the states seeking to recover health-care expenses."

Philip Morris, reiterating that it recognizes that smoking is a risk factor for some diseases and denying that it markets cigarettes to children, said it will continue to pursue "reasonable measures" to resolve pending lawsuits, including comprehensive legislation in Congress.

Reynolds, in a joint statement with Philip Morris, Brown & Williamson Tobacco Co. and Lorillard Tobacco Co., lashed out at LeBow, whose Brooke Group Ltd. owns Liggett. LeBow, who owns a significant stake in RJR Nabisco Holdings Corp., tried to sell Liggett to RJR Nabisco. LeBow also tried to strong-arm RJR Nabisco into spinning off its Nabisco food

operations by instigating a shareholder revolt at the annual meeting in April.

"We suspect he is simply brokering this deal in a desperate attempt to force one of the other cigarette manufacturers to take over his financially troubled and failing tobacco interests," the statement reads.

RJR Nabisco's next annual meeting is scheduled for April 16 in Winston-Salem.

The settlement includes what looks like an invitation for RJR Nabisco to buy Liggett and seize an advantage over arch-competitor Philip Morris. It includes a stipulation that a tobacco company, excluding Philip Morris, merging with Liggett "would receive certain settlement benefits, including limiting its potential liability to its domestic tobacco operations."

The joint statement from the tobacco companies also points out that LeBow testified under oath that he smoked two or three packs a day for about 15 years and quit with no problem. Asked if he believed tobacco was addictive, according to a transcript supplied by Reynolds, he said, "No, I do not."

"The only ones who potentially benefit from LeBow's latest shenanigans are plaintiffs' lawyers, who get nothing more than another free round of publicity and possibly some seed money to fund their illegitimate assault on the remainder of the tobacco industry," the statement concludes.

Under the settlement, Liggett also agreed to comply with some of the FDA regulations, including a prohibition on using cartoon characters and limitations on promotional materials and sample packages. It was unclear last night which provisions it does not plan to follow.

The settlement protects Liggett from further smoking-related claims filed by the 22 states. Liggett will also seek court approval for protection from all class-action and individual suits.

JOURNAL reporter Paula Christian contributed to this report.

Copyright 1997, Piedmont Publishing Co. Inc.



[Home](#) [Power Search](#) [Post to Usenet](#) [Ask DN Wizard](#) [Help](#)
[Why use DN?](#) | [Advertising Info](#) | [Press Releases](#) | [Jobs](#) | [Policy Stuff](#)
Copyright © 1995-97 [Deja News, Inc.](#) All rights reserved.



Article 4 of 26

Subject: Tobacco industry reportedly set targets by age, gender, ra
From: anon3c67@nyx.cs.du.edu (Bruce Watson)
Date: 1997/04/02
Message-Id: <5hu538\$e16@nyx.cs.du.edu>
Newsgroups: alt.smokers,alt.support.non-smokers
[\[More Headers\]](#)

Tobacco industry reportedly set targets by age, gender, race

PHOENIX (Apr 1, 1997 06:49 a.m. EST) --The tobacco industry targeted consumers by age, race and gender while knowing of the "severe toxicity" of nicotine, according to internal papers from the Liggett Group, a newspaper reported Tuesday.

The Arizona Republic said it obtained the confidential documents from Arizona Attorney General **Grant Woods**, who played a major role in lawsuits brought by Arizona and 21 other states that resulted recently in a settlement with Liggett.

The papers also show the industry manipulated nicotine levels in cigarettes and at one point, Liggett, which makes Lark and Chesterfield cigarettes, considered using synthetic ingredients to increase the impact of cigarettes on smokers "without the severe toxicity of nicotine itself," the Republic said.

The newspaper said the research papers from the 1960s and 1970s also show how manufacturers targeted marketing campaigns.

A report prepared by Arthur D. Little Inc., a Massachusetts consulting firm, identifies potential smokers ages 16 to 21 as those in "the formative years (when) smoking starts and brand preferences are developed," the Republic said.

One section of the Arthur Little report says that "Spanish and Negro groups like to purchase only the best of everything--they are not looking for bargains," the Republic reported.

In the same report, issued about 1963, the consultants say, "There must be a racial slant in the marketing efforts" directed toward minorities, "while in the case of the Jewish market, this is not a requirement," according to the Republic.

The internal records, released as part of a settlement with Arizona and the other states, also show that Liggett was aware of that smoking is habit forming and once considered producing "less hazardous" cigarettes.

The documents released to The Republic represent only a fraction of thousands of papers being turned over to the states by Liggett. However, most of those are under seal until state judges determine whether to release them to the states.

Copyright 1997 Nando.net

Copyright 1997 The Associated Press



Article 3 of 26

Subject: Liggett worried about addiction
From: anon3c67@nyx.cs.du.edu (Bruce Watson)
Date: 1997/04/03
Message-Id: <5i0t6r\$ipp@nyx.cs.du.edu>
Newsgroups: alt.smokers,alt.support.non-smokers
[\[More Headers\]](#)

Liggett worried about addiction
By Bob Kur NBC NEWS CORRESPONDENT

When the Liggett Group agreed to settle lawsuits with 22 states suing the tobacco companies, the cigarette-maker turned over thousands of confidential, internal documents. Now, those documents are beginning to surface as officials in some of the states make them public.

For decades, Liggett and other tobacco companies experimented with so-called "safer cigarettes."

The goal, according to newly released Liggett documents, was finding a way to reduce harmful ingredients like tar and nicotine without breaking the smoker's addiction.

The documents show an obsession with "increasing the physiological effect of the nicotine" ... "without the severe toxicity of nicotine"--a stunning admission.

"They tried to figure out exactly how they could boost the addictive substance to the point where it would be very difficult for smokers to quit," says **Grant Woods**, Arizona's attorney general.

More than 20 years later, Liggett's chief and other tobacco executives swore before Congress--under oath--that they did not manipulate nicotine or believe it was addictive.

But one item from the Liggett collection, a 1978 chemists' report for tobacco companies, discusses ethics: "Is it morally permissible to develop a safe method for administering a habit-forming drug when, in so doing, the number of addicts will increase?"

Increasing the number of smokers was a priority, according to an undated marketing study done for Liggett. Targeted in the documents were: "16 to 21 year olds ... ages when brand preferences are developed." Also targeted were ethnic groups, with a document stating, "Spanish and negro markets ... there must be a racial slant in marketing efforts directed toward them..."

Anti-tobacco activists believe the racial targeting could prove to be a powerful weapon when the facts are presented in court, before a jury.

And all the way back in 1966, a memo shows industry researchers debated the risks of publishing what they knew then about the dangers of smoking.

"What they did was do a dollar and cents cost analysis. Was it cheaper for them to tell the truth and risk lawsuits, or was it cheaper for them to keep the truth hidden no matter how many people died?" says Matthew Myers of the Campaign For Tobacco Free Kids.

NBC News was told that the Liggett documents released Tuesday are not the most sensitive ones. Those, dealing with what the tobacco companies and their lawyers told each other over the years, may also play a key role in upcoming trials.

Copyright 1997 MSNBC



[Home](#) [Power Search](#) [Post to Usenet](#) [Ask DN Wizard](#) [Help](#)

[Why use DN?](#) | [Advertising Info](#) | [Press Releases](#) | [Jobs](#) | [Policy Stuff](#)

Copyright © 1995-97 [Deja News, Inc.](#) All rights reserved.

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

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU

THE STATE OF ALASKA,)
)
Plaintiff,)
)
vs.)
)
PHILIP MORRIS, INCORPORATED; R.J.)
REYNOLDS TOBACCO CO.; AMERICAN)
TOBACCO CO., INC.; BROWN &)
WILLIAMSON TOBACCO CORP.;)
LIGGETT & MYERS, INC.; LORILLARD)
TOBACCO CO., INC.; UNITED STATES)
TOBACCO COMPANY; B.A.T.)
INDUSTRIES, P.L.C.; BRITISH AMERICAN)
TOBACCO COMPANY, LTD.; HILL &)
KNOWLTON, INC.; THE COUNCIL FOR)
TOBACCO RESEARCH - U.S.A., INC.; and)
TOBACCO INSTITUTE, INC., foreign)
corporations.)
)
Defendants.)

FILED IN THE TRIAL COURTS
STATE OF ALASKA, FIRST DISTRICT
AT JUNEAU

APR 14 1997

By _____ Dep

No. 1JU-97- 915 CI

COMPLAINT FOR INJUNCTIVE RELIEF, DAMAGES,
RESTITUTION, DISGORGEMENT, PENALTIES AND OTHER RELIEF

I. INTRODUCTION

1. The State of Alaska, through Attorney General Bruce M. Botelho, on information and belief, brings this action for monetary damages, civil penalties, declaratory and injunctive relief, restitution, and disgorgement of profits.

2. This case challenges a massive unlawful course of conduct and conspiracy perpetrated by the defendants. The defendants' unlawful conduct includes a host of unfair, deceptive, anticompetitive and illegal acts, including without limitation the following:

COMPLAINT FOR INJUNCTIVE RELIEF,
DAMAGES, RESTITUTION, DISGORGEMENT,
PENALTIES AND OTHER RELIEF

ATTORNEY GENERAL, STATE OF ALASKA
DIMOND COURTHOUSE
P.O. BOX 110300, JUNEAU, ALASKA 99811
PHONE: 465-3600

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

- Publicly undertaking a supposedly "paramount" special duty to research and disclose to public health authorities and the public at large--including the State of Alaska--the full extent of the health risks of cigarette smoking; but then suppressing and distorting the state of their knowledge of those health risks:

- Creating and/or funding fraudulent "front" organizations--such as the Tobacco Industry Research Council (later the Council for Tobacco Research)--which were held out to the public as independent research organizations, but were in fact secretly controlled by the industry's lawyers and public relations firms and were used by the defendants as industry fronts to prevent the public from learning what defendants knew about the health risks of smoking and to falsely create a controversy about the health risks of smoking:

- Secretly destroying, concealing, and shipping overseas incriminating evidence of industry testing and research on the health risks of cigarette smoking and the addictive nature of nicotine, shutting down laboratories overnight and making personal threats against scientists who tried to publish research revealing what the industry knew, and asserting improper claims of attorney-client privilege and work product to suppress the results of adverse scientific research:

- Conspiring in violation of state antitrust law to eliminate and restrain competition based on the health effects of smoking and by agreeing not to market "safer" cigarettes:

- Conspiring to and concealing the addictive nature of tobacco products and the tobacco companies' deliberate manipulation of the nicotine levels in tobacco products: and

- Engaging in unfair and deceptive trade practices by undertaking a course of conduct designed to promote illegal sales of cigarettes to minors and, thereby, also contributing to the delinquency of minors.

As a direct, foreseeable result of these and other actions, the State of Alaska has suffered substantial damages, and minors continue to be lured into illegal use of tobacco products. The Attorney General seeks to recover those damages and enjoin the continuing deceptive and unlawful practices described below.

COMPLAINT FOR INJUNCTIVE RELIEF,
DAMAGES, RESTITUTION, DISGORGEMENT,
PENALTIES AND OTHER RELIEF

1
2
3 **A. The Defendants' Unlawful Conduct**

4 3. The Tobacco Industry in the U.S. is a highly profitable oligopoly
5 dominated by Brooke Group, Ltd., Liggett Group, Inc. (Liggett and Myers Tobacco Co.),
6 Philip Morris Companies, Inc. (Philip Morris, Inc.), American Brands, Inc. (the American
7 Tobacco Co.), UST, Inc. (United States Tobacco), RJR Nabisco, Inc. (R.J. Reynolds
8 Tobacco Co.), Batus, Inc. (Brown & Williamson Tobacco Company), British American
9 Tobacco Company (BATCO), and Lowes Corporation (Lorillard Tobacco Co.) (collectively
10 referred to as the "Tobacco Companies," "Tobacco Industry" or the "Tobacco Cartel"). For
11 decades, these Tobacco Companies have sold tobacco products at huge profit margins to
12 millions of consumers. The Tobacco Companies have built and sustained the market for
13 their products in large part by concealing and/or misrepresenting the addictive nature of
14 tobacco products, by creating confusion concerning the damage to human health caused by
15 tobacco products, by manipulating the levels of nicotine in tobacco products in order to
16 maintain and boost addiction, by agreeing not to compete for sale of a "safer cigarette" and
17 other innovative products, and by focusing the brunt of their sales efforts on minors.

18 4. The Tobacco Companies, as well as their public relations agents,
19 lawyers and industry "fronts," have known for more than 40 years that their tobacco
20 products contain large amounts of nicotine--a highly addictive substance--as well as
21 numerous carcinogens and other harmful elements.

22 5. Notwithstanding this knowledge, the Tobacco Companies have
23 repeatedly told the public that nicotine, an element in all tobacco products, is not addictive.
24 As recently as April 14, 1994, the CEOs of seven tobacco companies testified under oath
25 that nicotine is "not addictive." These statements are false.
26

1
2
3 6. Nicotine is addictive. The Tobacco Industry is aware of the addictive
4 nature of nicotine as evidenced by just one of the many internal industry documents
5 addressing this subject:

6 Moreover, nicotine is addictive. We are, then in the business of
7 selling nicotine, an addictive drug. . . .

8 7. Tobacco products are not only addictive, they are abnormally
9 dangerous and unfit for human use. Tobacco products kill, maim and injure virtually all
10 who use them. The Tobacco Companies know this, but continue to deny the existence of
11 adverse health effects in their public statements.

12 8. The Tobacco Industry's unlawful conduct does not stop with
13 misrepresentations concerning the addictive nature of nicotine and the adverse health
14 effects of tobacco use. The industry has secretly gone a step further by manipulating the
15 level of nicotine in tobacco products in order to increase addiction and sell more product.
16 For example, manufacturers of smokeless tobacco seek to "graduate" new users from
17 milder products to those with more "kick" in order to addict users. Their campaign to
18 addict new users has achieved great success, particularly with the young.

19 9. To continue in its hugely profitable business, in 1953 the Tobacco
20 Industry entered into a multifaceted unlawful conspiracy which continues to this day. One
21 essential element of the conspiracy was an agreement to suppress harmful information
22 concerning tobacco products which was accomplished as follows. First, the tobacco
23 conspirators agreed to falsely represent that there is no proof that smoking or tobacco use
24 is harmful. Second, they agreed to falsely represent that nicotine and tobacco use is not
25 addictive. And finally, the tobacco conspirators represented to the public and governmental
26 regulators that they would undertake a "special duty" and "responsibility" to determine and

1
2
3 report the scientific truth about the health effects of tobacco, both by conducting internal
4 research and by funding "independent" external research.

5 10. Those representations were and continue to be false. Despite the
6 Tobacco Companies' denials, there is no question that the Tobacco Industry knew its
7 products were addictive and harmful. Further, the industry's publicly proclaimed special
8 undertaking to pursue and report the truth about smoking was false. The industry's
9 purported undertaking was part of a conspiracy to refute, undermine and neutralize
10 information coming from the objective scientific and medical community and, at the same
11 time, to confuse and mislead the public in an effort to avoid state or federal regulation, to
12 encourage existing smokers to continue smoking and to induce new persons to commence
13 smoking.

14 11. An additional important element of the conspiracy was an agreement
15 by the Tobacco Companies to restrain competition for sales of an innovative "safer"
16 cigarette. The purpose and effect of this aspect of the conspiracy was to suppress and
17 restrain competition based on claims of health because such competition would have
18 exposed the ill effects and addictive nature of smoking, thereby substantially increasing the
19 defendants' liability exposure for the inevitable harm caused by cigarettes and tobacco
20 products, and thereby threatening their shares of the tobacco market.

21 12. The conspiracy described above originated in response to medical and
22 scientific studies publicizing the adverse health impact of smoking in the early 1950s. In
23 response to what the industry internally called the "health scare," in late 1953 and early
24 1954, the Tobacco Companies and their public relations agent, Hill & Knowlton, jointly
25 created a purportedly independent entity initially known as the Tobacco Industry Research
26 Council (the "TIRC"). As part of their unlawful conspiracy, the Tobacco Companies

1
2
3 publicly represented that the TIRC would undertake, on behalf of the public and those
4 responsible for the public health, including those in Alaska, to objectively research and
5 gather data concerning the relationship between cigarette smoking and health and truthfully
6 publicize the results of this "independent" research. From 1954 forward the industry has
7 been using the TIRC and its successor, the CTR, to publish false reports regarding the
8 relationship between smoking and health.

9 13. Indeed, the Tobacco Companies, their lawyers and Hill & Knowlton
10 controlled the TIRC and manipulated its affairs so as to "[s]uppress any data demonstrating
11 the addictive nature of cigarette smoking or that cigarette smoking caused human disease"
12 and to publicize information, regardless of its merit, tending to obscure any relationship
13 between cigarette smoking and disease. This course of conduct was designed to create the
14 notion that there was a legitimate and good faith medical/scientific controversy over
15 whether smoking or tobacco is harmful to human health or that nicotine is addictive. The
16 tobacco cartel accomplished this hoax, in part, by assigning all information indicating that
17 cigarette smoking or tobacco use is harmful to human health or that nicotine is addictive
18 to a so-called "Special Projects" division of the TIRC, where the information was secreted
19 from the public and concealed from discovery in litigation against the Tobacco Companies
20 by the improper assertion of the attorney-client privilege.

21 14. In the words of U.S. District Court Judge H. Lee Sarokin, a "jury could
22 reasonably conclude that the creation of . . . [the TIRC] was nothing but a hoax created for
23 public relations purposes with no intention of seeking the truth or publishing it."

24 15. Also in the 1950s, the Tobacco Companies began, and continued
25 thereafter, to tailor their cigarette advertisements, promotional activities and public
26 statements to conceal and/or misrepresent the addictive nature and the adverse health

1
2
3 impact of cigarette smoking and tobacco use, while at the same time presenting cigarette
4 smoking in a glamorous, youthful, exciting, relaxing posture by associating it with
5 professional and economic success, intelligence, athletic ability and sexual attraction. This
6 course of conduct accomplished the purpose of suppressing or misstating the addictive
7 nature and the adverse health impact of smoking, so that new smokers, mainly young
8 teenagers, could be "hooked" and existing smokers would continue smoking.

9 **B. The Damages Caused by Defendants' Unlawful Conduct**

10 16. The intended and foreseeable effects of the conspiracy are several and
11 far-reaching, including but not limited to increased medical costs to the State of Alaska and
12 its agencies, the use of tobacco products by minors in violation of state law and the failure
13 of the industry to develop and market "safer" innovative products.

14 1. **Health care costs.** One of the foreseeable and intended consequences
15 of defendants' conduct has been to unjustly enrich the defendants at the expense of Alaska's
16 health care system, the state health care authority, state workers' compensation funds, and
17 ultimately, all Alaska residents and taxpayers.

18 (a) Approximately 50 million residents of the United States smoke
19 cigarettes, and another six million use smokeless tobacco products. Nationwide, tobacco
20 related deaths are a national tragedy: More than 400,000 deaths per year in the United
21 States are tobacco related.

22 (b) In Alaska, thousands of adults are smokers. Thousands of
23 Alaskans adults use smokeless tobacco.

24 (c) Health care costs in the United States are hundreds of billions
25 of dollars each year. Tobacco-related health care costs are estimated to be more than seven
26

1
2
3 percent of total health care costs, and for 1993, tobacco-related health care costs were \$50
4 billion.

5 (d) The defendants' conduct has wrongfully shifted these increased
6 costs to the State of Alaska in the form of charges directly attributable to tobacco usage and
7 exposure that should have been borne by the defendants, including but not limited to,
8 increased Medicaid payments and increased health care insurance for public employees.

9 (e) Alaska's excess health care costs alone caused by defendants'
10 conduct is in excess of \$100 million. These costs would have been avoided if defendants
11 had not engaged in the course of conduct described in this complaint, and Alaska's share
12 of those costs are sought as damages in this case.

13 **2. Targeting minors in violation of state law.** A further effect of
14 defendants' course of unlawful conduct and conspiracy is the targeting and eventual
15 addiction of minors and young people. Recognizing the pernicious addictive nature of their
16 products, the Tobacco Industry seeks new customers among the youth of the nation.
17 Because of the deaths of so many of the industry's adult customers, the defendants must
18 constantly add new customers in order to maintain their profits.

19 (a) According to a 1994 U.S. Surgeon General's Report, every day
20 another 3,000 children become regular smokers. Eighty-two percent of adults who have
21 ever smoked had their first cigarette before age 18 and more than half of them had already
22 become regular smokers by that age. Reports published by the U.S. Centers for Disease
23 Control and Prevention indicate that anyone who does not begin smoking in childhood is
24 unlikely to begin. For those 3,000 children who do become regular users of tobacco
25 products every day, projections of current trends indicate that 1,000 will die prematurely
26 as a result of their tobacco use. According to the Centers for Disease Control, in 1993, 28.1

1
2
3 percent of Alaska teenagers smoked. Ten and three-tenths percent of teenagers in Alaska
4 smoke on a daily basis.

5 (b) It is against the law of Alaska for minors to smoke and efforts
6 to encourage them to do so contravene public policy. Nonetheless, to lure minors into
7 smoking, the Tobacco Companies have unfairly and deceptively designed special marketing
8 campaigns particularly appealing to minors and young people. This targeting of minors is
9 accomplished by promotional materials designed to create the impression that smoking is
10 glamorous, sexy, fun and the "in" thing to do. An integral part of this campaign is the use
11 of images particularly appealing to minors and the placement of promotional materials in
12 locations likely to be accessed primarily by minors.

13 (c) Further, knowing that products, such as smokeless tobacco, with
14 too much nicotine can be harsh and thus deter new users from becoming new addicts, the
15 Tobacco Companies seek to graduate new users, often minors, from "milder" products to
16 those with more "kick" in order to attract and addict more customers.

17 (d) As a result of defendants' unlawful acts, each day minors use
18 tobacco products in violation of state law. The Attorney General seeks to halt this practice.

19 **C. The Objectives of This Action**

20 17. In this action, the Attorney General seeks (i) to secure for the State of
21 Alaska a fair and open market, free from unfair or deceptive acts or practices and illegal
22 restraints in trade; (ii) to return to the State the increased costs of health care caused by
23 defendants' wrongful conduct; (iii) to require fair and full disclosure by defendants of the
24 nature and effects of their products; (iv) to unequivocally halt the marketing of tobacco
25 products to minors; and (v) to disgorge defendants' profits from their sales of tobacco
26 products in violation of state law.

COMPLAINT FOR INJUNCTIVE RELIEF,
DAMAGES, RESTITUTION, DISGORGEMENT,
PENALTIES AND OTHER RELIEF

1
2
3 **II. JURISDICTION AND VENUE**

4 18. This complaint is filed and these proceedings are instituted under the
5 provisions of the Alaska Unfair Trade Practices and Consumer Protection Act.
6 AS 45.50.471 et seq., the Alaska Monopolies and Restraint of Trade Act. AS 45.50.562 et
7 seq., and the common law of the State of Alaska.

8 19. Authority for the Attorney General to commence this action for
9 injunctions, mandatory injunctions, damages, restitution, disgorgement, civil penalties,
10 attorneys' fees and such other relief as the Court deems proper, is conferred by, *inter alia*,
11 AS 45.50.501; AS 45.50.580; and AS 44.23.020(b).

12 20. The violations alleged herein have been and are being committed in
13 whole or in part, and affect commerce in, and defendants do business in, the First Judicial
14 District of Alaska and elsewhere throughout the State of Alaska. The basis for jurisdiction
15 over defendants is further set forth in this complaint.

16 21. The amount in controversy exceeds \$50,000.

17 **III. THE PARTIES**

18 **PLAINTIFF**

19 22. This action is brought for and on behalf of the State of Alaska, by
20 Bruce M. Botelho, Attorney General of the State of Alaska, pursuant to the provisions of
21 the Alaska Monopolies and Restraint of Trade Act, AS 45.50.562 et seq., the Alaska Unfair
22 Trade practices and Consumer Protection Act, AS 45.50.471 et seq. and his common law
23 authority as Attorney General to represent the State of Alaska.

24 **DEFENDANTS**

25 23. Defendant American Tobacco Company, Inc. ("American Tobacco")
26 is a Delaware corporation whose principal place of business is Six Stamford Forum.

1
2
3 Stamford, Connecticut 06904. American Tobacco, sometimes hereinafter referred to as
4 "ATC." manufactured, advertised and sold Lucky Strike, Pall Mall, Tareyton, American,
5 Malibu, Montclair, Newport, Misty, Iceberg, Silk Cut, Silva Thins, Sobrania, Bull Durham,
6 and Carlton cigarettes and other tobacco products throughout the United States. In 1994,
7 American Tobacco was sold to British-American Tobacco Co., parent of defendant Brown
8 & Williamson.

9
10 24. Defendant Brown & Williamson Tobacco Corporation ("Brown &
11 Williamson") is a Delaware corporation whose principal place of business is 1500 Brown
12 & Williamson Tower, Louisville, Kentucky 40202. Brown & Williamson manufactures,
13 advertises and sells Kool, Raleigh, Barclay, BelAir, Capri, Richland, Laredo, Eli Cutter and
14 Viceroy cigarettes and other tobacco products throughout the United States.

15
16 25. Defendant Liggett & Meyers, Inc. ("Liggett") is a Delaware
17 corporation whose principal place of business is Main and Fuller, Durham, North Carolina.
18 Liggett manufactures, advertises and sells Chesterfield, Decade, L&M, Pyramid, Dorado,
19 Eve, Stride, Generic and Lark cigarettes and other tobacco products throughout the United
20 States.

21
22 26. Defendant Lorillard Tobacco Company, Inc. ("Lorillard"), is a
23 Delaware corporation whose principal place of business is 1 Park Avenue, New York, New
24 York 10016. Lorillard manufactures, advertises and sells Old Gold, Kent, Triumph, Satin,
25 Max, Spring, Newport and True cigarettes and other tobacco products throughout the
26 United States.

27. Defendant Philip Morris Inc. ("Philip Morris"), is a Virginia
corporation whose principal place of business is 120 Park Avenue, New York, New York
10017. Philip Morris manufactures, advertises and sells Philip Morris, Merit, Cambridge,

1
2
3 Marlboro, Benson & Hedges, Virginia Slims, Alpine, Dunhill, English Ovals, Galaxy,
4 Players, Saratoga and Parliament cigarettes and other tobacco products throughout the
5 United States.

6 28. Defendant R.J. Reynolds Tobacco Company ("Reynolds") is a New
7 Jersey corporation whose principal place of business is Fourth & Main Street,
8 Winston-Salem, North Carolina 27102. Reynolds manufactures, advertises and sells
9 Camel, Vantage, Now, Doral, Winston, Sterling, Magna, More, Century, Bright Rite and
10 Salem cigarettes and other tobacco products throughout the United States.

11 29. Defendant United States Tobacco Company ("U.S. Tobacco"), is a
12 Delaware corporation whose principal place of business is 100 West Putnam Avenue,
13 Greenwich, Connecticut. U.S. Tobacco manufactures, advertises and sells Sano cigarettes.
14 U.S. Tobacco also manufactures, advertises and sells approximately 88 percent of the
15 smokeless tobacco (snuff and chewing tobacco) sold in the United States, under various
16 brand names including Happy Days, Skoll and Copenhagen.

17 30. Each of the cigarette and tobacco manufacturers advertised, sold and
18 promoted their tobacco products in the State of Alaska.

19 31. B.A.T. Industries P.L.C. ("B.A.T. Industries" or "BAT II") is a British
20 corporation whose principal place of business is Windsor House, 50 Victoria St., London.
21 Through a succession of intermediary corporations and holding companies, B.A.T.
22 Industries is the sole shareholder of Brown & Williamson. Through Brown & Williamson,
23 B.A.T. Industries has placed cigarettes into the stream of commerce with the expectation
24 that substantial sales of cigarettes would be made in the United States and in the State of
25 Alaska. B.A.T. Industries has also conducted, or through its agents, subsidiaries, associated
26 companies and/or co-conspirators, significant research for Brown & Williamson on the

COMPLAINT FOR INJUNCTIVE RELIEF,
DAMAGES, RESTITUTION, DISGORGEMENT,
PENALTIES AND OTHER RELIEF

1
2
3 topics of smoking, disease and addiction. On information and belief, Brown & Williamson
4 also sent to England, research conducted in the United States on the topics of smoking,
5 disease and addiction, in order to remove sensitive and inculpatory documents from United
6 States jurisdiction, and such documents were subject to B.A.T. Industries' control. B.A.T.
7 Industries is a participant in the conspiracy described herein and has caused harm and
8 affected commerce in the State of Alaska.

9
10 32. British American Tobacco Company, Ltd. ("BATCO") is a British
11 Corporation whose registered office is Milbank, Knowle Green, Staines, Middelsex,
12 England TW18 1DY. British American Tobacco Company, Ltd., is or was a related
13 corporation of defendant Brown & Williamson Tobacco Corporation. Both are owned by
14 BAT Industries, PLC. BATCO also advertises, promotes and sells its own tobacco products
15 such as "555 Express" cigarettes throughout the State of Alaska. At times pertinent to the
16 Complaint, BATCO, individually or through its affiliate, alter ego, subsidiary and/or
17 division, defendant Brown & Williamson Tobacco Corporation, designed, tested,
18 manufactured, marketed and sold cigarettes for use in the State of Alaska. BATCO has also
19 conducted, or through its associated companies, agents, or subsidiaries significant research
20 for Brown & Williamson on the topics of smoking, disease, and addiction. On information
21 and belief, Brown & Williamson also sent to England research conducted in the United
22 States on the topics of smoking, disease, and addiction, in order to remove sensitive and
23 inculpatory documents from United States jurisdiction. BATCO is a participant in the
24 conspiracy described herein and has caused harm and affected commerce in the State of
25 Alaska.

26 33. Defendant Hill & Knowlton, Inc. is an international public relations
firm with offices located in major United States cities and whose principal place of business

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

is 420 Lexington Avenue, New York, New York. Defendant Hill & Knowlton played an active and knowing role in the conspiracy complained of, aiding the circulation and/or publication of many of the false statements of the tobacco industry attributable to the TIRC and the Council for Tobacco Research (the "CTR"). Hill & Knowlton has been the primary advertising agency responsible for dissemination of the false and misleading information in question, in its capacity as the advertising and public relations agency for The Tobacco Institute, the CTR and several members of the tobacco industry, including Liggett Group, Inc., Philip Morris, U.S.A., R.J. Reynolds Tobacco Co., the American Tobacco Company and Lorillard Tobacco Co. In the course of such representation Hill & Knowlton aided these defendants in creating and issuing false information and covering up the truth concerning the tobacco industry, the link between smoking and cancer or other health hazards, the addictive nature of smoking and the true nature of the activities of the TIRC/CTR and its relationship to the industry. Hill & Knowlton has been involved in the wrongful conduct and conspiracy since its creation. The TIRC was actually formed at the recommendation and with the substantial assistance of Hill & Knowlton in 1954. 11 days after Hill & Knowlton, in December 1953 sent members of the tobacco industry "preliminary recommendations" for dealing with "a serious problem with public relations," suggesting the tobacco industry form the Tobacco Industry Research Committee. Moreover, Hill & Knowlton shared office space with the TIRC and provided staffing for it. Hill & Knowlton also played a major role in the creation, development and dissemination of "selection criteria" for a publication entitled, "Tobacco & Health Research," which was used as a vehicle for the dissemination of the false and misleading information generated by the tobacco industry. Hill & Knowlton knew that the CTR and the tobacco industry were engaged in the fraudulent conspiracy complained of, but failed

to disclose the truth because the tobacco industry and its agents had promised Hill & Knowlton enormous fees to help publicize and circulate the false information necessary to conceal the truth and to continue the tobacco industry's fraud of issuing misleading statements regarding the health risks of tobacco products.

34. The Council for Tobacco Research--U.S.A., Inc. (the "CTR"), successor in interest to the Tobacco Institute Research Committee (the "TIRC"), is a New York nonprofit corporation with its principal place of business at 900 3rd Avenue, New York, New York 10022. At all relevant times, the CTR and the TIRC operated as public relations and lobbying arms of the Tobacco Companies and as agents and employees of the Tobacco Companies. They also acted as facilitating agencies in furtherance of defendants' combination and conspiracy as described in this complaint. In doing the things alleged, the CTR and the TIRC acted within the course and scope of their agency and employment, and acted with the consent, permission, and authorization of each of the Tobacco Companies. All actions of the CTR and the TIRC alleged were ratified and approved by the officers or managing agents of the Tobacco Companies. The CTR and the TIRC have been involved continuously in the conspiracy described and the actions of the CTR and the TIRC have affected commerce and caused harm in Alaska.

35. Defendant Tobacco Institute, Inc. ("Tobacco Institute") is a New York nonprofit corporation with its principal place of business at 1875 I Street Northwest, Suite 800, Washington, D.C. 20006. At all relevant times, Tobacco Institute operated as a public relations and lobbying arm of the Tobacco Companies and was an agent and employee of the Tobacco Companies. It also acted as a facilitating agency in furtherance of the combination and conspiracy of the defendants described in this complaint. In doing the things alleged, Tobacco Institute acted within the course and scope of its agency and

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

8
9 36. The above named defendants are sometimes herein collectively
10 referred to as "Defendants," "Tobacco Industry," "Tobacco Companies" or "Tobacco
11 Cartel."

12 **IV. CONSPIRACY ALLEGATIONS**

13 37. In committing the wrongful acts alleged, all of the defendants and the
14 other entities and persons identified, with the assistance and knowledge of their counsel,
15 have pursued a common course of conduct, acted in concert with, aided and abetted and
16 conspired with one another and other conspirators not yet named or known, in furtherance
17 of their common plan and scheme outlined herein.

18 **V.**

19 **ADDITIONAL JURISDICTIONAL ALLEGATIONS**
20 **REGARDING BAT INDUSTRIES, P.L.C.**

21 38. B.A.T. Industries p.l.c., or "BAT-II," describes itself as "one of the
22 U.K.'s leading business enterprises with interests principally in tobacco and financial
23 services." "[B.A.T. Industries] is the world's most international cigarette manufacturer."
24 with an unrivaled range of both international and domestic brands. In 1995, the "B.A.T.
25 Industries Group"¹ sold "more than 670 billion cigarettes . . . achieving a 12.4% share of

26 ¹ The defendant, B.A.T. Industries p.l.c. (or "BAT-II") repeatedly refers to itself and
(continued...)

1
2
3 the world market [and] B.A.T. Industries has the leading cigarette brand in over 30
4 markets." In 1995, BAT-II's total revenue amounted to about \$38.8 billion, and pre-tax
5 profit reached a record \$4.6 billion. (*Id.*)

6 39. For the past 20 years, BAT-II has played a significant role in the BAT
7 Group process that leads to the sale of millions of packs of cigarettes in Alaska annually.
8 The BAT-II board and senior officers established and enforced coordinated cigarette
9 research, tobacco growing and other development policies for the BAT Group. BAT-II also
10 established and enforced policies and guidelines for the design and manufacture of
11 addictive cigarettes in the United States. BAT-II also established, and enforced,
12 coordinated marketing and public relations policies for the BAT Group in the United States.
13 In sum, BAT-II is the ultimate decision-maker on all significant issues-- whether it be
14 research, tobacco agriculture, design, manufacture, marketing or administration--that affect
15 the BAT Group's sale of cigarettes in Alaska.

16 40. BAT-II acted in complicity not only with the corporate members of
17 the BAT Group itself, but with the American tobacco industry as a whole, in connection
18 with the wrongdoing alleged in this case. The promulgation and enforcement of deceptive
19

20 (...continued)

21 its subsidiaries as the "B.A.T. Industries Group," or "the BAT Group," "the Group" or
22 simply "BAT" in publicly required filings and promotional material. Bat-II and
23 subsidiary annual reports are replete with references to BAT-II as being in the business
24 of selling cigarettes. Of course, this is a clear indication of the close cooperation of the
25 affiliated BAT-II companies worldwide. The term "BAT-II" as used herein, refers to
26 the corporate defendant, B.A.T. Industries p.l.c.; the term "BAT-I" refers to British
American Tobacco Corporation Limited, an English corporation that, from 1902 until
1976, was the ultimate parent company for the BAT commercial enterprise. After 1976,
BAT-I has functioned largely as only one of many of the BAT Group's tobacco
operating companies, and since 1976 the defendant has typically referred to BAT-I
simply as "BATCo," a usage which is similarly adopted for the post-1976 period. The
terms "BAT," the "BAT Group," and "BAT Industries Group" shall be used to refer to
BAT-II and its subsidiaries, a usage adopted by BAT-II in its own documentation.

COMPLAINT FOR INJUNCTIVE RELIEF,
DAMAGES, RESTITUTION, DISGORGEMENT,
PENALTIES AND OTHER RELIEF

1
2
3 smoking and health policies, or of the manipulative nicotine design of cigarettes to addict
4 smokers, did not remain within the walls of BAT-II's Windsor House headquarters--they
5 spread throughout the BAT Group and into BAT-II's American tobacco business. And, by
6 combining with the wider tobacco industry in the United States, these policies were
7 implemented on an industry-wide basis.

8 41. BAT-II has purposely availed itself of the American economy,
9 including the Alaska cigarette markets. Over time, BAT-II has reaped millions of dollars
10 of profits from Alaska consumers, upstreaming those profits to diversify its global
11 commercial enterprise and pay dividends. Furthermore, BAT-II has succeeded in its
12 aggressive United States corporate acquisition plan, a plan that has had significant effects
13 upon the Alaskan economy. For example, in 1994 BAT-II purchased the American
14 Tobacco Company, then the fifth-largest tobacco operation in the country, for
15 approximately \$1 billion.

16 42. Furthermore, BAT-II has directly and substantially engaged in key
17 decision-making for the research, development, design, manufacture and marketing of
18 millions of dollars of cigarettes sold in Alaska. Through secret programs such as "Project
19 GHOST" or "Project BATTALION" and through formal "delegation" of authority, BAT-II
20 directly participated in fundamental, strategic and implementive decisions leading to the
21 sale of cigarettes in the U.S. by the BAT Group, and more particularly, its wholly owned
22 subsidiary, Brown & Williamson. The participation was detailed, and covered many
23 important aspects of the research, development, manufacture, design and marketing of
24 cigarettes, along with the political relations to accompany the business generally, and the
25 administrative infrastructure to carry on that work. BAT-II's actions were intentional, and
26 they were directed at the sale of cigarettes in Alaska (as well as other states). BAT-II is the

1
2
3 hub of the BAT Group industrial enterprise, which sells millions of dollars of cigarettes in
4 Alaska. In short, BAT-II regularly does or solicits business in Alaska.

5 43. BAT-II is also subject to personal jurisdiction for causing tortious
6 injury by an act or omission in Alaska. BAT-II has participated in a fraud against Alaska
7 and the public: has assured that substantial scientific and other knowledge not be disclosed
8 to Alaska and its citizens; has directed the research and design of cigarettes sent into Alaska
9 for sale and consumption, and; has assured the complicity of B&W and the other BAT-II
10 operating companies in the United States tobacco industry conspiracy alleged in the
11 Amended Complaint. As a result, BAT-II has directly or by an agent caused tortious injury
12 by an act or omission in this commonwealth.

13 44. BAT-II also has minimum contacts with Alaska under a stream-of-
14 commerce analysis. In this case, BAT-II has played *the* most significant and important role
15 in the research, development, design and marketing of cigarettes for the BAT Group,
16 including B&W. BAT-II established and enforced the coordinated research and
17 development policies of the BAT Group for 20 years. BAT-II established and enforced
18 policies and programs for the design and manufacture of addictive cigarettes in the United
19 States for many years, such as Project AIRBUS, Project GREENDOT, Project WHEAT and
20 "Y-1" tobacco. BAT-II established and enforced coordinated marketing and public
21 relations policies of the BAT Group in the United States and elsewhere for over 20 years.
22 BAT-II has, quite simply, been the ultimate decision-maker for the BAT Group on the
23 issues which go to the heart of this case, including decisions on the research, design,
24 manufacture, distribution, marketing and public relations of cigarettes in the United States
25 for 20 years. It is, therefore, subject to personal jurisdiction in Alaska.
26

1
2
3 45. When it suits BAT-II's own purposes, BAT-II does not hesitate to
4 subject itself to jurisdiction in the United States. For example, when it sought to
5 consummate its \$5.2 billion purchase of the Farmer's Group, BAT-II subjected itself to
6 jurisdiction in various states in undertaking the insurance approval process for that
7 transaction; when it sought to purchase American Tobacco Company for \$1 billion, it
8 submitted to the jurisdiction of the Federal Trade Commission, and judicially admitted that
9 it was involved in "commerce" between the various states; when it sought to raise hundreds
10 of millions of dollars on the American financial markets through the sale of promissory
11 notes through a BAT-II United States subsidiary, BAT-II submitted to the jurisdiction of
12 New York courts and unconditionally guaranteed payment on the notes.

13
14 46. The United States, including Alaska, has been central to BAT-II's
15 global tobacco and financial businesses. There is nothing unfair, indeed it is only just, to
16 require BAT-II to defend this action in Alaska.

17 VI. FACTUAL ALLEGATIONS

18 A. Background

19 47. Today, 50 million Americans smoke and, according to current trends,
20 22 percent of adult Americans will still be smokers in the year 2000. In the latter half of
21 the 20th century, some 10 million Americans have been killed by cigarette disease. This
22 year (and every year into the foreseeable future), nearly half a million Americans will die
23 prematurely due to disease caused by cigarette smoking. Based upon current smoking
24 trends, of the American children alive today, more than 5 million will be killed by cigarette
25 disease during the 21st century. In 1993, 402 Alaska residents died from smoking related
26 causes.

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

48. Cigarette and smokeless tobacco diseases share a common root cause: a highly addictive product that has been fraudulently and falsely promoted by the corporations comprising the Tobacco Cartel. Smoking causes lung cancer. It is also virtually the only cause of throat cancer and emphysema. Smoking-caused heart disease actually results in more deaths than lung cancer. Smoking is responsible for approximately one-fourth of all cancer deaths as well as one-third of all heart disease deaths.

49. Several factors account for the persistence of cigarette smoking and other tobacco use. First, largely as a result of the Tobacco Industry's false and fraudulent advertising, smoking and other tobacco use became socially acceptable before it was proven to be a cause of lung cancer and other diseases. Second, the long latency period between the initiation of tobacco use and disease contraction masked the causal relationship for decades. Third, cigarettes and other tobacco products contain large amounts of nicotine, an extraordinarily addictive substance, which makes it difficult for a person to stop smoking. Fourth, the Tobacco Industry has conspired not to compete on the basis of relative health risk, to restrict output in safer and alternate products, and to create confusion as to whether smoking or other tobacco use is really harmful and to make it appear that there is a legitimate good faith scientific dispute over the health impact of smoking and other tobacco use, while presenting cigarette smoking in an attractive, youthful and positive way--concealing all the while that tobacco products are, in fact, highly addictive and unquestionably dangerous.

50. Despite their knowledge that nicotine is extremely addictive, the Tobacco Companies to this day, pursuant to their conspiracy, deny that smoking is the cause of disease or that nicotine is addictive. Recently, and in furtherance of the

1
2
3 conspiracy, each of the CEOs of the defendant Tobacco Companies testified under oath
4 before Congress that smoking was not addictive.

5 **B. The Cartel's Pre-Conspiracy Advertising and Promotional Activities: False**
6 **Claims of Health and Safety**

7 51. The promotional activities and conduct of the Tobacco Industry, after
8 the conspiracy was agreed to and implemented (which is described below), can only be
9 understood in the context of the fraudulent and false claims they had engaged in
10 preconspiracy regarding cigarette smoking and health. Until the mid-1950s, explicit or
11 implied health claims and/or medical endorsement for smoking were major advertising
12 campaign themes for many cigarette brands and in the public statements issued by the
13 Tobacco Industry.

14 52. Cigarette smoking increased dramatically in the first half of the 20th
15 century. With the increase of cigarette smoking came an increase in lung cancer. Dr. Alton
16 Ochsner, a New Orleans surgeon and regional medical director of the American Cancer
17 Society, told an audience at Duke University on October 23, 1945, that "there is a distinct
18 parallelism between the incidence of cancer of the lung and the sale of cigarettes . . . [T]he
19 increase is due to the increased incidence of smoking and . . . smoking is a factor because
20 of the chronic irritation it produces."

21 53. In 1946, Tobacco Company chemists themselves reported concern for
22 the health of smokers. A 1946 letter from a Lorillard chemist to its manufacturing
23 committee states that "[c]ertain scientists and medical authorities have claimed for many
24 years that the use of tobacco contributes to cancer development in susceptible people. Just
25 enough evidence has been presented to justify the possibility of such a presumption."
26

1
2
3 54. Despite evidence showing their cigarettes caused lung disease and
4 cancer, the Tobacco Companies chose sales over public health and safety. Starting in the
5 1930s and continuing until the mid-1950s, the Tobacco Companies made express claims
6 and warranties as to the healthiness of their products with reckless disregard to the falsity
7 of their claims and the consequential adverse impact on consumers. Examples of these
8 health warranties include the following: Old Gold – “Not a cough in a Carload;” Camel –
9 “Not a single case of throat irritation due to smoking Camels;” Philip Morris – “The Throat-
10 tested cigarette.”

11 55. One of the key themes used to promote cigarette smoking during this
12 period was a promise that individual cigarette brands were either “less irritating” or that
13 “harmful irritants” had been removed. At one point or another during this period every
14 major cigarette brand made a false claim regarding health and/or irritation. These pre-1954
15 advertisements and representations demonstrate defendants’ understanding that consumers
16 wanted safer products, and as a result, the Tobacco Companies engaged in vigorous
17 competition on the basis of claims of health and safety as detailed above and elsewhere in
18 this complaint.

19 **C. The 1953 “Big Scare” and Beginning of the Industry Conspiracy to Suppress**
20 **the Truth and Curtail Competition**

21 56. The defendants and their co-conspirators knew that published
22 information about health risks would (i) increase consumer demand for safer tobacco
23 products, (ii) induce some competitors to promote their own brands or denigrate competing
24 brands on the basis of relative health risk, (iii) materially reduce their profits and market
25 shares, and (iv) increase the likelihood of government regulation and decrease the
26 likelihood that they could shift to the public and public agencies the health costs caused by

1
2
3 use of tobacco products. Armed with this knowledge, and as set forth below, defendants
4 ultimately agreed to not compete in the market based on health claims or in the market for
5 "safer" or alternative products and agreed to suppress adverse information concerning
6 health risks and addiction.

7 57. In the early 1950's, scientists published two significant scientific
8 studies warning of the health hazards of cigarettes. The first was published in 1952 by
9 Dr. Richard Doll, a British researcher, who found that lung cancer was more common
10 among people who smoked and that the risk of lung cancer was directly proportional to the
11 number of cigarettes smoked. A second study was published in December 1953 by Dr.
12 Ernest Wynder and others of the Sloan-Kettering Institute, whose experiments with mice
13 confirmed the cancer-causing properties of cigarettes. The widespread reporting of these
14 studies caused what cigarette company officials called the "Big Scare."

15 58. The cigarette industry responded quickly to the Big Scare, that by late
16 1953 had caused a decrease in consumption of tobacco products and in the stock prices of
17 many tobacco companies. Thus, on December 14, 1953, in the direct aftermath of the
18 Wynder study and the public concern over it, B&W President, Timothy V. Hartnett,
19 circulated a memorandum to his counterparts at other tobacco companies and set out his
20 proposals on how the industry should collectively deal with the "health issue."

21 59. Hartnett proposed a two-prong collective response to his competitors
22 "to get the industry out of this hole": (a) "unstinted assistance to scientific research," with
23 the most difficult part of this effort being the group deciding "how to handle significantly
24 negative research results if, as, and when they develop;" and (b) "the best obtainable"
25 public relations counsel since none "has ever been handed so real and yet so *delicate* a
26 multimillion dollar problem." (Italics in original.)

1
2
3 60. Hartnett's proposal was an invitation to his competitors to agree to
4 restrain independent economic best interest in favor of collusion.

5 61. The next day, December 15, 1953, accepting Hartnett's offer to
6 conspire, the presidents of the leading tobacco companies met at an extraordinary gathering
7 in the Plaza Hotel in New York City. Present were the presidents of American Tobacco,
8 Benson & Hedges, B&W, Lorillard, Philip Morris, R.J. Reynolds and U.S. Tobacco. This
9 gathering was unprecedented: It was the first time the Tobacco Companies had met
10 together outside occasional dinners. Also in attendance was Hill & Knowlton, who
11 coordinated the meeting and was to play a major role in formulating and executing the
12 industry's response.

13 62. According to a Hill & Knowlton memorandum summarizing the
14 meeting, the companies exchanged proprietary information and "voluntarily admitted" that
15 "their own advertising and [past] competitive practices have been a principal factor in
16 creating a health problem." and acknowledged that they had "informally talked over the
17 problem and will try and do something about it." (Emphasis added). The defendants
18 realized that the subject of doing something collectively about competitive advertising
19 practices "is one of the important public relations activities that might very clearly fall
20 within the purview of the antitrust act." In order to conceal their intentions to collectively
21 restrain competition, they concluded, "it is doubtful that we will be able to make any formal
22 recommendation with regard to the advertising or selling practices and claims." (Emphasis
23 added.)

24 63. At the Plaza Hotel meeting, the defendants entered into a contract,
25 combination and conspiracy to cease to compete on the basis of relative health risks, an
26 ongoing agreement that is a violation of the Alaska Monopolies and Restraint of Trade Act.

1
2
3 64. At the time of the December 15, 1953 meeting, the cigarette industry
4 did not have a trade association, and cigarette manufacturers had never before met in a
5 formal business meeting or discussed business, because, according to the Hill & Knowlton
6 memo, the Tobacco Companies were prevented by a 1911 dissolution decree and criminal
7 convictions for price fixing in 1939 from carrying on many group activities.

8 65. Despite the dangers, the competitors met because they viewed the
9 current problem "as being extremely serious and worthy of drastic action." An indication
10 of the seriousness of the problem was "that salesmen in the industry are frantically alarmed
11 and that the decline in tobacco stocks on the stock exchange market has caused grave
12 concern."

13 66. The agreement reached at the Plaza Hotel to conceal adverse
14 information and not compete on the basis of health, was to be a permanent fixture of
15 defendants' future relationship. According to the Hill & Knowlton memorandum, "[e]ach
16 of the company presidents attending emphasized the fact that they consider the program to
17 be a long term one," and the meeting participants were "emphatic in saying that the entire
18 activity is a long-term, continuing program, since they feel the problem is one of promoting
19 cigarettes and protecting them from these and other attacks that may be expected in the
20 future." (Emphasis added.)

21 67. Thus, at the December 15, 1953 meeting the course of conduct agreed
22 to include, but was not limited to:

23 a. "The chief executive officers of all the leading companies--
24 R.J. Reynolds, Philip Morris, Benson & Hedges, U.S. Tobacco Company, Brown &
25 Williamson--have agreed to go along with a public relations program on the health issue."
26

1
2
3 b. "Because of the antitrust background, the companies do not
4 favor the incorporation of a formal association. Instead, they prefer strongly the
5 organization of an informal committee which will be specifically charged with the public
6 relations function and readily identified as such."

7
8 c. Hill & Knowlton, a public relations firm, was to play a central
9 role in the industry association. "The current plans are for Hill & Knowlton to serve as the
10 operating agency of the companies, hiring all the staff and disbursing all funds."

11 d. All of the leading manufacturers, except Liggett, agreed to join
12 in the public relations strategy. Liggett decided not to participate at that time "because that
13 company feels that the proper procedure is to ignore the whole controversy."

14 68. In furtherance of the conspiracy, nine days later, Hill & Knowlton
15 presented a detailed recommendation to the tobacco companies and their co-conspirators.
16 The recommendation recognized the importance of gaining public trust, and avoiding the
17 appearance of bias, if the industry's "pro-cigarette" public relations strategy was to succeed.
18 According to the memorandum:

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

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

25 c. "The situation is one of extreme delicacy. There is much at
26 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."

1
2
3 69. John Hill suggested that the word "research" be included in the name
4 of the Committee. The suggestion was apparently taken, and thus, an organization designed
5 to pursue a very delicate "public relations function" was given the intentionally misleading
6 name of the "Tobacco Industry Research Committee" (the "TIRC").

7
8 70. Five of the Big Six cigarette manufacturers were original members of
9 the TIRC. Liggett did not join until 1964. In 1964, the TIRC changed its name to the
10 Council for Tobacco Research (the "CTR"). The industry formed equivalent organizations
11 in other countries, as well, including the Tobacco Advisory Committee, formerly Tobacco
12 Research Council in the United Kingdom, and Verbrand der Cigarettenindustrie in
13 Germany. The U.S. companies, either directly or through affiliates, are members of the
14 other organizations.

15 71. The agreement that the industry would not compete based on claims
16 of health was documented and communicated in a number of ways. One example is a
17 June 21, 1954 Hill & Knowlton memorandum:

18 Early in the life of the Tobacco Industry Research Committee, it was
19 accepted as a basic principle that every effort should be made to avoid
20 stimulating more adverse publicity and controversy on the subject of
21 tobacco and health.

22 The principle has been and will continue to be carefully adhered to in
23 the work carried on for the committee.

24 (Emphasis added.)

25 72. The "every effort" referred to the agreement not to compete on the
26 basis of health claims for fear of stirring up any controversy regarding health and safety.

73. A July 31, 1954 Hill & Knowlton "Confidential Memorandum"
acknowledges that the formation of the TIRC was the result of a decision that "joint action"
was imperative.

1
2
3 74. The defendants were keenly aware that the agreement creating the
4 TIRC was a restraint on competition: "On the Continent individual companies and
5 monopolies have agreed to pool research on the health question, thereby reducing it as a
6 basis for competition." (Emphasis added.)

7
8 75. British research conducted by the Tobacco Manufacturers' Standing
9 Committee [TMSC], an equivalent organization to the TIRC (and including companies,
10 such as British American Tobacco [BAT] who were affiliated with U.S. companies) had
11 known competitive impacts. BAT's Chairman, Sir Charles Ellis said, "The Board has
12 decided that if this Company [BAT] makes any significant scientific discovery clearly
13 relevant to health it will share its knowledge with its co-members of TMSC and not seek
14 to obtain competitive commercial advantage." (Emphasis added.)

15 76. In compliance with the noncompetition conspiracy, at least one of the
16 companies, American Tobacco, did nothing on its own to evaluate the risks of use of its
17 products: "The Council for Tobacco Research was the source of expertise on that."

18 77. To further the existing conspiracy, a second trade group, the Tobacco
19 Institute, was formed by cigarette manufacturers in 1958. It performs a variety of functions
20 and provided opportunities for the conspirators to exchange information, to police the
21 agreement, and otherwise to coordinate activities.

22 **D. Representations and Special Undertakings by the Industry**

23 78. The cigarette industry announced the formation of the TIRC on
24 January 4, 1954, with newspaper advertisements placed in virtually every city with a
25 population of 50,000 or more, reaching a circulation of more than 43 million Americans.
26 The advertisement was captioned "A Frank Statement to Cigarette Smokers" and was run

1
2
3 under the auspices of the TIRC with, *inter alia*, five of the Big Six manufacturers listed by
4 name. The advertisement stated as follows:

5 "A Frank Statement to Cigarette Smokers"

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

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

14 At the same time, we feel it is in the public interest to call attention to
15 the fact that eminent doctors and research scientists have publicly
16 questioned the claimed significance of these experiments.
17 Distinguished authorities point out:

- 18 1. That medical research of recent years indicates many
19 possible causes of lung cancer.
- 20 2. That there is no agreement among the authorities
21 regarding what the cause is.
- 22 3. That there is no proof that cigarette smoking is one of
23 the causes.
- 24 4. That statistics purporting to link cigarette smoking with
25 the disease could apply with equal force to any one of many other
26 aspects of modern life. Indeed the validity of the statistics themselves
is questioned by numerous scientists.

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

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

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

32 For more than 300 years tobacco has given solace, relaxation
33 and enjoyment to mankind. At one time or another during these years
34 critics have held it responsible for practically every disease of the

1
2
3 human body. One by one of these charges have been abandoned for
4 lack of evidence.

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

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

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

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

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

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

26 (Underlining added.) Listed as sponsors of this announcement were, *inter alia*, the
American Tobacco Company, Brown & Williamson Tobacco Corporation, P. Lorillard
Company, Philip Morris Co. Ltd., Inc., R.J. Reynolds Tobacco Company, United States
Tobacco Company.

79. By issuing this publication and others that followed, the industry
undertook a special and continuing duty to protect the public health by representing that it
would conduct and disclose unbiased and authenticated research on the health risks of
cigarette smoking. When they made this representation, defendants intended that the public
and government regulators believe and rely upon it, and knew or should have known that

1
2
3 consumers would consider the representation material to their decisions to purchase and
4 smoke cigarettes and that government regulators would consider the representation material
5 to their decisions to regulate cigarettes. At that time, and continuing to the present,
6 defendants intended and/or knew or should have known that their failure to fulfill the duty
7 they undertook would directly increase the health care costs to the State of Alaska. The
8 issuance of this statement and others that have followed was also intended by defendants
9 to assure public health officials that the industry would respond to health issues in an honest
10 manner so that no government regulation was necessary. The issuance of this publication
11 was an integral step in the conspiracy to suppress and conceal information that might reduce
12 the cartel's sale of tobacco products.

13 **E. Repeated False Promises to the Public**

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

21 81. Other public statements issued by the tobacco industry through the
22 TIRC/CTR or the TI, repeated several themes: (1) that the industry was working to report
23 the full and complete truth concerning tobacco and health, (2) that these working on
24 reporting the truth were "independent" scientists and (3) that the results of this independent
25 research cast grave doubt on any study linking tobacco use with health problems. These
26 statements include, but are not limited to the following:

COMPLAINT FOR INJUNCTIVE RELIEF,
DAMAGES, RESTITUTION, DISGORGEMENT,
PENALTIES AND OTHER RELIEF

1
2
3 (1) On June 4, 1955, the TIRC issued a release entitled "Anti-
4 smoking Theories Not Based on Scientific Knowledge." The release represented that
5 according to the TIRC's associate scientific director, "little is established scientifically
6 about tobacco effects on the heart:" tobacco has "even been reported as killing various
7 harmful bacteria." The release represented that the TIRC "is supporting scientific
8 investigation into many phases of tobacco use and human health in order to get the facts."
9 (Emphasis added.)

10 (2) On December 16, 1957, the TIRC issued a release representing
11 that "extensive scientific research now underway into tobacco use does not substantiate
12 generalized charges against smoking as a cause of cancer." Reporting on the findings of
13 Dr. Clarence Cook Little, "Scientific Director" of the TIRC, the release represented that "no
14 substance has been found in tobacco smoke known to cause cancer." According to
15 Dr. Little, the research program was designed "solely to obtain new information and to
16 advance human knowledge in every possible phase of the tobacco and health relationship."
17 (Emphasis added.)

18 (3) On or about December 27, 1958, the TIRC issued a release
19 representing that "during the past year many scientists of high professional standing have
20 produced additional evidence and opinions that challenge the validity of broad charges
21 made against tobacco use." According to the TIRC, its research had developed several
22 "essential facts," including the fact that "the cause or causes of lung cancer remain
23 undetermined" and that "compelling doubts have been raised about statistics and their
24 interpretations involving smoking and health." The release concluded with the following
25 promise:
26

1
2
3 At its formation in January 1954, the Tobacco Industry Research
4 Committee stated its fundamental position: "We believe the products
5 we make are not injurious to health. We are providing aid and
6 assistance to research efforts into all phases of tobacco use and
7 health."

8 That statement and pledge are reaffirmed today by members of the
9 Tobacco Industry Research Committee.

10 (4) On March 28, 1960, the TIRC issued a release challenging any
11 link between smoking and lung cancer. In the release the TIRC repeated that "we have
12 frankly accepted a responsibility for financing independent research into health problems,
13 including lung cancer, in an effort to get needed facts and evidence." (Emphasis added.)

14 (5) George Allen, President of the Tobacco Institute issued a report
15 pledging that the TI, for the benefit of the "public interest" would "encourage the kind of
16 research that will provide the necessary facts." Further, Allen promised that this type of
17 research "is what the industry has tried to do in the past" and "is what we shall do in the
18 future, until enough facts are known to provide solutions to the health questions involved."
19 (Emphasis added.)

20 (6) In 1962, the TIRC issued a release announcing it was in its
21 ninth year of supporting research by independent scientists relevant to questions about
22 tobacco and health. The release represented that "the tobacco industry continues its support
23 of the search for truth and knowledge." (Emphasis added.)

24 (7) On May 28, 1962, the TIRC in a release confirmed that its
25 purpose was to "make the facts known to the public." (Emphasis added.)

26 (8) In 1964, the TIRC issued a "year end statement" representing
that its research "will intensify," that \$7.25 million had been apportioned to date involving

1
2
3 125 grants and that the TIRC "is dedicated to support its program of research by
4 independent scientists until all the answers are known." (Emphasis added.)

5 (9) In 1979 the TI issued a document entitled "Tobacco Industry
6 Research on Smoking and Health." In it, the TI represented that "[t]here are still eminent
7 scientists who question whether a causal relationship has been proven between cigarette
8 smoking and human disease." The report went on to claim the industry had a great desire
9 to "learn the truth":

10 [A] major portion of this scientific inquiry has been financed by the
11 people who knew the most about cigarettes and have a great desire to
12 learn the truth--the tobacco industry.

13 The industry has committed itself to this task in the most objective
14 and scientific way possible.

15 The report describes how the industry spent \$82 million in research "into all
16 phases of tobacco use and health." Further the report proclaimed that "the findings are not
17 secret" and reaffirmed the commitment to the tobacco industry:

18 From the beginning the tobacco industry has believed the American
19 people deserve objective, scientific answers.

20 With this credo in mind, the tobacco industry stands ready today to
21 make new commitments for additional valid scientific research that
22 may shed light on the question of smoking and health.

23 (Emphasis added.)

24 82. Additional representations were made by the tobacco companies
25 themselves repeating the promise that they would investigate and report all facts relating
26 to smoking and health. For example:

1
2
3 (1) On February 28, 1956, the President of American Tobacco
4 Company ("ATC") issued a release indicating that "many highly respected medical
5 scientists challenge the anti-tobacco claims."

6 (2) On November 14, 1957, ATC issued a release representing that
7 its own research produced "evidence directly contradicting the theory that smoking causes
8 lung cancer or heart disease."

9 (3) On April 9, 1962, ATC issued a release indicating that research
10 contradicting any statistical association between cigarettes and higher death rates was "very
11 difficult to refute."

12 (4) On June 4, 1963, ATC issued a release, quoting Dr. Robert
13 Heiman, Assistant to the President and prime author of studies refuting any link between
14 smoking and health. In the release, Heiman claimed that workers for the company smoked
15 twice as much as the average while having a mortality rate of 29 percent below average.

16 (5) On October 3, 1963, ATC again issued a release, this time citing
17 Heiman for proof that the statistical association between smoking and lung cancer is
18 "fallacious" and leads to "absurd consequences."

19 (6) In 1967, ATC issued a release describing a 46-page booklet
20 prepared by the tobacco industry which "refutes anticigarette charges." ATC called the
21 evidence on smoking and health "an open one," refuted the studies linking smoking with
22 cancer in mice, and claimed that "no one does more" about smoking and health than "The
23 Tobacco People:"

24
25 No one does more. The tobacco industry supports more scientific
26 research into the problems than any other source. . . .

1
2
3 The release went on to claim that: "The tobacco industry continues to endure unfair and
4 unjustified harassment from government and private sources." ATC also claimed that "the
5 cold hard fact remains that no clinical or biological evidence has been produced which
6 demonstrates how cigarettes relate to cancer or any other disease in human beings."

7
8 83. Additional representations were made in 1970 when the cigarette
9 industry, through its lobbying group the Tobacco Institute, placed a number of
10 announcements similar to the 1954 "Frank Statement." These announcements stated in
11 part:

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

14 (2) "[N]o particular ingredient, as it occurs in cigarette smoke, has
15 been demonstrated as the cause of any particular disease."

16 (3) "[A] major portion of this scientific inquiry has been financed
17 by the people who know the most about cigarettes and have a great desire to learn the truth
18 . . . the tobacco industry. And the industry has committed itself to this task in the most
19 objective and scientific way possible."

20 (4) "A \$35,000,000 program."

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

23 (6) "In 1954, the Industry established what is now known as CTR,
24 the Council for Tobacco Research--U.S.A., to provide financial support for research by
25 independent scientists into all phases of tobacco use and health. Completely autonomous,
26 CTR's research activity is directed by a board of ten scientists and physicians who retain

1
2
3 their affiliations with their respective universities and institutions. This board has full
4 authority and responsibility for policy, development and direction of the research effort."

5 (7) "The findings are not secret."

6 (8) "From the beginning, the tobacco industry has believed that the
7 American people deserve objective, scientific answers."

8 (9) "The tobacco industry stands ready today to make new
9 commitments for additional valid scientific research that offers to shed light on new facets
10 of smoking and health."

11 84. On March 24, 1965, the TI issued a release in which it represented that
12 regulations on advertising should not be implemented, in part because the "industry is
13 profoundly conscious of the questions concerning smoking and health" and the industry is
14 conducting scientific research through the CTR. In the release, Boyman Gray of RJR,
15 represented that "it has not been established that smoking causes lung cancer or any other
16 disease."

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

21 86. Yet another announcement co-sponsored by the TIRC and the Tobacco
22 Industry, called "A Statement about Tobacco and Health," stated:

23 We recognize that we have a special responsibility to the public, to
24 help scientists determine the facts about tobacco and health, and about
25 certain diseases that have been associated with tobacco use.

26 We accepted this responsibility in 1954 by establishing the Tobacco
Industry Research Committee, which provides research grants to

1
2
3 independent scientists. We pledge continued support of this program
4 of research until the facts are known.

5 * * *

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

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

11 (Emphasis added.)

12 87. In 1972, Tobacco Institute President Horace Kornegay testified before
13 Congress:

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

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

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

22 89. In 1984, RJR placed an editorial style announcement in the New York
23 Times stating:

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

COMPLAINT FOR INJUNCTIVE RELIEF,
DAMAGES, RESTITUTION, DISGORGEMENT,
PENALTIES AND OTHER RELIEF

1
2
3 90. Each of the representations to the public that defendant tobacco
4 companies were sponsoring independent objective research, that they were endeavoring to
5 bring the truth to light, and that the public could therefore rely upon the statements made,
6 were false and deceptive. These misrepresentations were designed to gain the trust of the
7 public and public health authorities in order to better distort and suppress substantive
8 information about smoking and health.

9 **F. The True Nature of the TIRC: A Front for the Tobacco Cartel**

10 91. The TIRC was an agent of the conspirators and operated among other
11 things, to facilitate their implementation of the Plaza Hotel agreement/conspiracy to
12 suppress and/or misrepresent information and to not compete in the development of a
13 "safer" cigarette. Its acts were the acts of defendants in furtherance of their covenant not
14 to compete.

15 92. The TIRC was physically established in the Empire State Building, one
16 floor below the Hill & Knowlton offices. Internal documents confirm that Hill &
17 Knowlton, and not independent scientists as represented, actually ran the TIRC.

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

21 94. The sham nature of the TIRC is revealed by a series of Hill &
22 Knowlton reports to the TIRC. Those reports reveal that the true nature of the TIRC was
23 to influence media and scientific reports so as to cloud the issue of smoking and health and
24 to suppress all harmful information. These reports all reveal that Hill & Knowlton--not the
25 independent scientists--actually ran the Tobacco Industry Research Committee, and
26 "provided assistance in selecting" the Scientific Advisory Board, "proposed" Dr. Little for

1
2
3 the Scientific Director, and "handled liaison, agendas, organizational plans, business affairs,
4 reports, and materials for meetings of the TIRC [and] the Scientific Advisory Board, . . .
5 in addition to developing operating procedures for the research program." (Emphasis
6 added.)

7 95. By the Spring of 1955, the unlawful strategy recommended by Hill &
8 Knowlton and implemented by the industry through the "Frank Statement" was largely
9 successful. Hill & Knowlton reported to the TIRC:

- 10 a. [P]rogress has been made . . . The first 'big scare' continues on
11 the wane.
- 12 b. The research program of the TIRC has won wide acceptance
13 in the scientific world as a sincere, valuable and scientific
14 effort.
- 15 c. Positive stories are on the ascendancy.

16 96. In 1970, H. Wakeman, a Vice President of Philip Morris, observed that
17 the stated objective of the CTR was "to make available to the public" information on
18 tobacco use and health. He noted this "broad statement" had been interpreted more
19 narrowly by the CTR. Wakeman also noted that the public statement of the purpose of
20 CTR is "to find out about smoking and health." In this regard, rather than be independent
21 as publicly represented, Wakeman wrote "we are interested in evidence which we believe
22 denies the allegation that cigaret [sic] smoking causes disease." Wakeman then posited
23 alternatives for the future of the CTR, one of which was to use the CTR as a means for
24 expert witnesses in "legislative halls" and "in litigation." This option, was the true function
25 of the CTR.

26 97. In 1977, Addison Yeaman, chairman and president of CTR, stated
during a published speech that "[CTR] has no propaganda function of any kind or any

1
2
3 degree." Internal documents demonstrate, however, that the tobacco companies' joint
4 efforts undertaken through TIRC, and later, through CTR, were not disinterested or
5 objective. Rather, they were designed and used to promote favorable research, to suppress
6 negative research when possible, and to attack negative research where it could not be
7 suppressed, all in order to convince the public that the "case against smoking is [not]
8 closed."

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

12 For nearly twenty years, this industry has employed a single strategy
13 to defend itself on three major fronts -- litigation, politics, and public
14 opinion. While the strategy was brilliantly conceived and executed
15 over the years helping us win important battles, it is only fair to say
16 that it is not - nor was it ever intended to be - a vehicle for victory.
17 On the contrary, it has always been a holding strategy, consisting of

18 * creating doubt about the health charge without actually denying it

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

21 * encouraging objective scientific research as the only way to resolve
22 the question of the health hazard.

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

26 In the cigarette controversy, the public -- especially those who are
present and potential supporters (e.g. tobacco state congressmen and
heavy smokers) -- must perceive, understand, and believe in evidence
to sustain their opinions that smoking may not be the causal factor.
As things stand, we supply them with too little in the way of ready-
made credible alternatives.

99. 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

1
2
3 goals. but rather for various purposes such as public relations, political relations, position
4 for litigation, etc. Thus, it seems obvious that reviews of such programs for scientific
5 relevance and merit in the smoking and health field are not likely to produce high ratings.

6
7 100. A 1978 memo addressed to the CTR file from a Philip Morris official
8 characterized CTR as "an industry 'shield.'" The memorandum goes on to state: "the
9 'public relations' value of CTR must be considered and continued . . . It is extremely
10 important that the industry continue to spend their dollars on research to show that we don't
11 agree that the case against smoking is closed for 'PR' purposes . . ."

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

16 102. This and other evidence demonstrates that the role and purpose of
17 TIRC and CTR in the tobacco companies' strategy was to seek to use the public's trust to
18 propagate "pro-tobacco" propaganda. An industry official wrote in his personal notes
19 describing a meeting that included high level officials from various tobacco companies that:
20 "CTR is the best & cheapest insurance the tobacco industry can buy and without it the
21 Industry would have to invent CTR or would be dead."

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

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

1
2
3 b. [G]rantees are assured complete scientific freedom in
4 conducting these studies . . . [P]ublication [of research results] is
5 encouraged in every instance.

6 104. In fact, CTR-sponsored research projects were directed away from
7 research that might add to the evidence against the use of tobacco products. When CTR-
8 sponsored research did produce unfavorable results the information was distorted or simply
9 suppressed. For example, Dr. Freddy Homburger, a researcher in Cambridge,
10 Massachusetts, undertook a study of smoke exposure on hamsters. According to Dr.
11 Homburger, he received a grant from CTR that was changed half-way through the study to
12 a contract "so they could control publication--they were quite open about that." Dr.
13 Homburger has testified that when the study was completed in 1974, the scientific director
14 of CTR and a CTR lawyer "didn't want us to call anything cancer" and that they threatened
15 Dr. Homburger with "never get[ting] a penny more" if his paper was published without
16 deleting the word cancer.

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

19 He . . . was to tell the press that the tobacco industry was attempting
20 to suppress important scientific information about the harmful effects
21 of smoking. He was going to point specifically at CTR . . . I
22 arranged later that evening for it to be canceled. Homburger was
23 given a cordial welcome and nicely hastened out the door. P.S. I
24 doubt if you or Tom will want to retain this note.

25 **G. Role of the CTR as a "Front" for Disseminating False Information**

26 106. In 1964, the year of the first Surgeon General's report on smoking, the
CTR formed a "Special Projects" division to assist the industry in concealing unfavorable
information. A series of research grants designated as CTR "Special Projects" were
developed by defendants in a manner so as to appear to receive the protection of the

1
2
3 attorney-client or attorney work product privilege. The "Special Projects" division was
4 under the auspices of the CTR.

5 107. The true purpose of the "Special Projects" division was to conduct
6 research regarding the links between smoking and disease in order to develop a number of
7 expert witnesses for defense purposes in tort suits against the tobacco industry. Consistent
8 with this purpose, the tobacco industry's counsel were substantially involved in strategic
9 and specific decision-making within the "Special Projects" division, to secrete dangerous
10 evidence from the public. For example, the notes of one CTR meeting, written in 1981,
11 state, "When we started the CTR Special Projects, the idea was that the scientific director
12 of CTR would review a project. If he liked it, it was a CTR special project. If he did not
13 like it, then it became a lawyers' special project." Another memorandum from 1981
14 explained, "Difference between CTR and Special Four (lawyers' projects). Director of
15 CTR reviews special projects -- if project was problem for CTR, use Special Four."

16 108. The industry has been successful in using the CTR Special Projects
17 division to conceal harmful information. Research from the Special Projects division
18 remains shielded from public scrutiny. Individual companies furthered the conspiracy by
19 shielding company documents with claims of attorney-client privilege and through tactics
20 such as that undertaken by Brown & Williamson, which over the years has transferred
21 documents described as "deadwood" to its British parent company, BAT Industries, so that
22 they would not be discovered in legal proceedings in the United States.

23 109. Other internal industry documents also shed light on the true nature
24 of the conspirators' associations, as the following quotations demonstrate by way of
25 example:
26

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

a. "CTR began as an organization called Tobacco Industry Research Council (TIRC). It was set up as an industry 'shield' in 1954. That was the year statistical accusations relating smoking to diseases were leveled at the industry; litigation began; and the Wynder/Graham reports were issued. CTR has helped our legal counsel by giving advice and technical information, which was needed at court trials [T]he 'public relations' value of CTR must be considered and continued It is very 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."

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

c. "Historically, the joint industry funded smoking and health research programs have not been selected against specific scientific goals, but rather for various purposes such as public relations, political relations, position for litigation, etc. . . . In general, these programs have provided some buffer to public and political attack of the industry, as well as background for litigious (sic) strategy."

d. "Historically, it would seem that the 1954 emergency was handled effectively. From this experience there arose a realization by the tobacco industry of a public relations problem that must be solved for the self-preservation of the industry."

e. "To date, the TIRC program has carried its fair share of the public relations load in providing materials to stamp out brush fires as they arose. While effective in the past, this whole approach requires both revision and expansion. The public relations program . . . was like the early symptoms of diabetes - certain dietary controls kept public opinion reasonably healthy. When some new symptom appeared, a shot of insulin in the way of a news release . . . kept the patient going."

f. "When the products of an industry are accused of causing harm to users, certainly it is the obligation of that industry to endeavor to determine whether such accusations are true or false. Money spent for such purpose should not be regarded as a charitable contribution but as a business expense -- an expense necessary to keep that industry alive. In view of the billions of dollars of annual sales of our industry our expenditures for health research has been of a minimal order."

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

g. "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 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. . . . 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."

h. A July 1963 industry report acknowledged that the TIRC was not qualified to conduct research in reaction to the Surgeon General's report because it "was conceived as a public relations gesture . . . and it has functioned as a public relations gesture." The report noted that the TIRC did not have breadth of research to adequately respond to the Surgeon General.

110. Despite overwhelming scientific evidence, and the confirmation of this evidence by their own internal research, the cigarette manufacturers and their trade associations continue to deny uniformly that there is a causal connection between cigarette smoking and adverse health effects, or that nicotine is addictive. As one industry representative testified: "[A company can't represent that] smoking doesn't cause cancer. You can't say that. But you can say it is a risk factor, and scientifically it hasn't been established. And that's what the research is for [emphasis added] . . . I don't agree [that nicotine is addictive]. From what I've read on nicotine is that it contributes to the flavor, the taste of the product." These representations are intentionally misleading, unfair and deceptive. They are moreover a result of the industry's ongoing conspiracy and combination arising from the Plaza Hotel agreement, and are done to maintain its market and profits from a deadly and addictive product.

111. Special Projects was not the only instance where the industry used lawyers to shield the truth. For example, in 1984, BAT began internally plotting how to

1
2
3 shield documents produced by scientists from discovery. This plan included having BAT's
4 "scientific literature review publication . . . set up as a Law Department function." BAT
5 internally noted that "Direct lawyer involvement is needed in all BAT activities pertaining
6 to smoking and health from conception through every step of the activity. This is a direct
7 admission of BAT's efforts to shield adverse scientific information from seeking the light
8 of day. This goal was being frustrated because "[t]he problem posed by BAT scientists and
9 frequently used consultants who believe cause is proven is difficult."

10
11 112. The Kansas City law firm of Shook, Hardy & Bacon and other lawyers
12 played a critical role in furthering the conspiracy to suppress and conceal information about
13 the adverse health effects caused by the use of tobacco products. The lawyers' strategy was
14 to attempt to protect damaging tobacco-related documents from disclosure under the
15 attorney-client or work product privileges regardless of whether such documents were
16 prepared in anticipation of litigation or represented confidential communications made
17 between lawyer and client for the purpose of rendering legal advice. Lawyers routinely
18 provided a number of non-legal services to the defendants such as deciding which CTR
19 "special projects" should receive funding, dispensing funding to the "scientists" involved
20 in such projects and designing the scope and approach of the special project. Shook, Hardy
21 & Bacon also undertook to coordinate the tobacco companies CTR "special projects"
22 subterfuge.

23 113. For example, in 1976, Donald K. Hoel of Shook, Hardy & Bacon
24 wrote to in-house lawyers at the various tobacco companies that a study to measure
25 environmental tobacco smoke should be modified in such a way so that the study would
26 yield more favorable results for the tobacco companies' position. The study was

1
2
3 subsequently modified to de-emphasize the role of second-hand tobacco smoke relating to
4 indoor environmental quality.

5 114. In addition, a May 19, 1981 letter from Ernest Pepples, vice president
6 and general counsel of Brown & Williamson, to Patrick Sirridge of Shook, Hardy & Bacon
7 requests that Sirridge evaluate the qualifications of various scientists seeking to conduct
8 scientific studies for Brown & Williamson. Shook, Hardy & Bacon responded by providing
9 biographical sketches of potential consultants including whether they previously had taken
10 a scientific position favorable to the industry's position. Sirridge also cooperated with
11 Pepples' request in 1984 to transfer the funding of some helpful research by a cooperative
12 scientist from a CTR account to a law firm project: "I do not think . . . that we should
13 continue burdening CTR with such programs, and instead suggest that they be handled as
14 law firm projects."

15 115. In 1972, William Shinn of Shook, Hardy & Bacon wrote to tobacco
16 company officials that a potentially favorable study should be secretly funded by the
17 tobacco companies as a "special project (non-CTR)" in order to make the study appear
18 independent of the industry and thus heighten its perception as unbiased and reliable.

19 116. By becoming intimately involved in the funding and design of these
20 scientific studies, these lawyers attempted to further the conspiracy and fraud of the tobacco
21 companies and CTR by (1) clothing such studies in the attorney-client or work product
22 privilege in order to protect them from disclosure if their results were unfavorable, and (2)
23 creating the perception that CTR and the tobacco companies were fairly and appropriately
24 fulfilling their obligations and promises to the public that they would, in a vigorous and
25 unbiased manner investigate and report to the public the link between their products and
26 human disease.

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

117. At least one tobacco company used similar tactics in-house to suppress and avoid disclosure of its 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 most 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."

118. Similarly, in a 1978 memo, B&W's Pepples wrote that use of the CTR avoids the dilemma of a manufacturer that needs to know the state of the art, but "on the other hand cannot afford the risk of having the in-house work turn sour. . . . The point here is the value of having CTR doing work on a nondirected and independent fashion as contrasted with either in-house or under B&W contract which, if it goes wrong, can become the smoking pistol in a lawsuit!"

119. Thus, the tobacco companies and their lawyers have misused claims of attorney/client privilege to insulate CTR-funded research projects and internal documents from disclosure to the public and to government officials. This conduct demonstrates the falsity of the tobacco companies' representations that they would jointly fund objective research and report the results of that research to the public.

ATTORNEY GENERAL, STATE OF ALASKA
DIMOND COURTHOUSE
P.O. BOX 110300, JUNEAU, ALASKA 99811
PHONE: 465-3600

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

H. Beyond 1953: The Continuing Conspiracy to Restrain Trade

I. The "Gentlemen's Agreement"

120. The industry's 1953 combination and conspiracy was supplemented and aided by a commitment jointly to conduct research because of "a general feeling that an industry approach as opposed to an individual company approach was highly desirable." This approach was desirable to prevent, among other things, competition on the basis of health risk comparisons.

121. As part and in furtherance of the agreement not to compete to develop a "safer" cigarette, there was a "gentlemen's agreement" among the manufacturers to suppress independent research on the issue of smoking and health, for the purpose of and with the effect of restricting output. Despite increasing market demand, the tobacco manufacturers agreed not to market any safer or alternative products. The means of effecting this output reduction conspiracy included suppression of independent research and policing violators, as described below. This agreement was referenced in a 1968 internal Philip Morris draft memo, which stated, "We have reason to believe that in spite of gentlemen (sic) agreement from the tobacco industry in previous years that at least some of the major companies have been increasing biological studies within their own facilities."

This memo also acknowledged that cigarettes are inextricably intertwined with the health field, stating, "Most Philip Morris products both tobacco and non-tobacco are directly related to the health field."

122. As indicated by this memo, it was believed within the industry that individual companies were performing certain research on their own, in addition to the joint industry "research." Some companies viewed the strengthening demand for safer and alternative products as a potential future marketing opportunity. But the fundamental

ATTORNEY GENERAL, STATE OF ALASKA
DIMOND COURTHOUSE
P.O. BOX 110300, JUNEAU, ALASKA 99811
PHONE 465-3600

1
2
3 understanding and agreement remained: That information and activities deemed harmful
4 to the unified, defensive posture of the industry or inconsistent with the non-competition
5 conspiracy would be restrained, suppressed, and/or concealed. No company or industry
6 trade organization stood behind the "promise" the defendants had made. As American
7 Tobacco's CEO testified, "[If the health studies are correct], consumers have the right to
8 know whatever is affecting their health. I think that's what the public health agencies and
9 the government have that responsibility." (Emphasis added.)

10
11 123. The agreement not to compete was explicitly referenced in an October
12 1964 memorandum entitled "Reports on Policy Aspects of the Smoking and Health
13 Situation in U.S.A.":

14 The informal agreement between TRC members not to make health
15 claims was explained to Philip Morris.

16
17 124. Defendants' activities in furtherance of the output-restriction non-
18 competition combination included restraining, suppressing, and concealing research on the
19 health effects of smoking, including the addictive properties of tobacco products, and
20 restraining, concealing, and suppressing the research and marketing of safer cigarettes.
21 Despite the ability to produce "safer" cigarettes, the defendants did not market such
22 products, except in limited test markets, because it was understood within the combination
23 that no company would characterize or promote a product as biologically "safer."

24
25 125. Like all classic cartels, defendants policed their conspiracy internally
26 and externally. One member of the conspiracy, US Tobacco, went so far as to terminate
an employee and apologize to the Big 6 cigarette companies when the employee was quoted
in a New York Post article referring to smokeless tobacco as less dangerous than smoking.
Ernest Pepples of Brown & Williamson reported this in a memo, where he wrote that he

1
2
3 had been called by UST's General Counsel, Jim Chapin. Pepples stated. "Chapin says the
4 statements quoted were unauthorized and do not represent his company's views. He has
5 asked me to extend U.S. Tobacco's apology to each of the cigarette companies and advised
6 me that the individual quoted in the article is no longer employed at U.S. Tobacco. Chapin
7 says U.S. Tobacco has instituted smoking and health seminars throughout the company."
8 This action is totally contrary to the self-interest of U.S. Tobacco, and is consistent with the
9 conspiracy among the defendants not to compete on the basis of safety and health.

10 2. Suppression of Liggett's "Safer" Cigarette

11 126. In response to perceived growing demand, several companies
12 researched the possibility of marketing "safer" (less harmful to humans) cigarettes. One
13 of the ways in which the defendants acted in concert was to exclude the products from the
14 market and further exclude potential new entrants by patenting the processes for these less
15 harmful products, which they neither marketed nor licensed to any other actual or potential
16 competitor.

17 127. In response to demand, Liggett was one of the defendants who was
18 successful in researching and actually developing a less biologically active cigarette.
19 However, in response to retaliation and threats from co-conspirators, Liggett agreed not to
20 market this product after an apparent threat of retaliation by another manufacturer.

21 128. Liggett initiated its safer cigarette project, called XA, in 1968. After
22 a minimal expenditure of only \$14 million, Liggett was able, internally, to proclaim the
23 project a success in 1979. By applying an additive of palladium metal and magnesium
24 nitrate to tobacco to act as a catalyst in the burning process, Liggett found that "[c]igarette
25 tar has been neutralized" and that there was "[n]o evidence for new or increased hazard .
26

1
2
3 129. Using this process, Liggett was able to produce cigarettes "which are
4 believed to be of commercial quality." These cigarettes, however, were never marketed.

5
6 130. Liggett abandoned its XA project for the reason, among others, that
7 it faced retaliation from industry leader Philip Morris if Liggett broke ranks. Another
8 reason for abandoning the project was fear that the marketing of a "safer" cigarette would
9 be, in essence, a confession that its, and the industry's other cigarettes, were not safe. Thus,
10 one Liggett executive wrote that, "Any domestic activity will increase risk of cancer
11 litigation on existing products."

12 131. James Mold, who was assistant director of research at Liggett during
13 the development of the safer cigarette, the XA project, has provided testimony including
14 the following overview of the XA project and its abandonment:

15 a. Mold stated that the XA project produced a safer cigarette. He
16 stated, "We produced a cigarette which was, we felt, commercially acceptable as
17 established by some consumer tests, which eliminated carcinogenic activity, . . ." (underline
18 supplied).

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

24 c. Mold testified that he was at a conference of scientists in
25 Buenos Aires prepared to present his research regarding a less harmful cigarette when he
26 received a "frantic call" from legal counsel and was told not to present the paper or issue

1
2
3 the press release. He was instructed not to publish his results in the Journal of Preventative
4 Medicine.

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

15 **3. Brown & Williamson's Efforts to Develop a Safer Cigarette**

16 132. Brown & Williamson also developed "safer" cigarettes, which it did
17 not market despite promising test results, because, among other reasons, such efforts would
18 violate the output-restriction conspiracy. Jeffrey Wigand, a former Vice President for
19 Research and Development for Brown & Williamson, states that he was instructed by the
20 President of the company to abandon all efforts to develop a safer product. He has testified
21 that he was told, generally, "That there can be no research on a safer cigarette. Any
22 research on a safer cigarette would clearly expose every other product as being unsafe and,
23 therefore, present a liability issue in terms of any type of litigation." Brown &
24 Williamson's Project "Ariel" used a heating, as opposed to burning system. Its Project
25 "Janus" was intended to identify hazardous components of cigarette smoke so they could
26 be removed.

1
2
3
4 133. Brown & Williamson also conducted research on tobacco substitutes
5 or analogues, as did a number of the other companies. These substitutes were sought as a
6 means to duplicate some of the effects of nicotine without toxic or harmful effects. For
7 example, Brown & Williamson's parent BAT developed "Batflake," a tobacco substitute.
8 Laboratory tests showed that use of "Batflake" reduced a number (though not all) of the
9 harmful effects of smoking in direct proportion to the amount used in a cigarette. So far as
10 is known, none of the substitute products was ever marketed in the United States. In 1980,
11 BAT and Brown & Williamson abandoned the "safer" product search: "Dangerous area
12 [research into irritation and smoke inhalation]. Please do not publish or circulate. No more
13 work is needed on biological side." (Emphasis added.)

14 134. Despite increasing market demand for their products, such innovative
15 products were not marketed because of the agreement not to compete; *i.e.* to restrict output
16 of alternative or safer products. No other member of the conspiracy broke ranks by
17 competitively marketing products with improved biologic performance despite individual
18 competitive reasons for marketing such product: "Within B & W, we have rarely attempted
19 to develop new products specifically designed to deliver low CO [carbon monoxide], except
20 perhaps a prototype of FACT that was kept ready on a turn-key basis in the event of a
21 marketing need for such product. This was done through a combination of filter ventilation,
22 cigarette paper permeability, and appropriate cigarette paper additive. Needless to say, such
23 need did not arise." (Emphasis added.)

24 **4. Philip Morris: Avoiding an Industry War**

25 135. Philip Morris also explored research to develop a safer cigarette, or,
26 in the words of one memorandum to the board of directors, cigarettes with "superior
physiological performance." This memorandum noted competitive pressures to produce

1
2
3 "less harmful" cigarettes. However, the memorandum was careful to state that, "[o]ur
4 philosophy is not to start a war, but if war comes, we aim to fight well and to win." Philip
5 Morris never broadly marketed such a "safer" cigarette. Its documents recognize the strong
6 market demand and state that "after much discussion we decided not to tell the
7 physiological story which might have appealed to a health conscious segment of the market.
8 The product as test marketed didn't have good 'taste' and consequently was unacceptable
9 to the public ignorant of its physiological superiority." Subsequently, taste was improved
10 and Philip Morris attempted to promote the product. However, "The imposition of FTC
11 rules and the industry advertising code took the starch out of the program . . ." (Emphasis
12 added.)

13 5. Reynolds' Safer Product

14 136. Reynolds also developed an alternative product which had reduced
15 physiological consequences. Except for a brief test in several cities, because of the output-
16 restriction conspiracy Reynolds did not market its safer product, "Premier."

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

1
2
3 agreement not to compete. The voluntary agreement with the FTC was characterized by
4 the Consumers Union as being "to the industry's advantage and to the public's
5 disadvantage. . . ."

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

13 **6. The Industry Position on "Safer" Cigarettes**

14 139. In furtherance of their illegal combination and conspiracy, defendants
15 collectively denied that a safer cigarette could be produced.

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

19 141. The 1987 memorandum was written in the context of the marketing
20 by R.J. Reynolds of a smokeless cigarette, Premier, which heated rather than burned
21 tobacco. The Shook, Hardy attorney wrote that the smokeless cigarette could "have
22 significant effects on the tobacco industry's joint defense efforts" and that "[t]he industry
23 position has always been that there is no alternative design for a cigarette as we know
24 them." The attorney also noted that, "Unfortunately, the Reynolds announcement . . .
25 seriously undercuts this component of industry's defense." This fundamental position of
26 the "industry" defense had been identified much earlier. In 1970, David Hardy of the

1
2
3 Shook. Hardy firm wrote to DeBaun Bryant, General Counsel at Brown & Williamson.
4 expressing concerns about some of the industry research into alternative products. In
5 critiquing the minutes of a conference, he stated: "It is our opinion that statements such as
6 [references to research into safer products, products which are less biologically active, and
7 to 'healthy cigarettes'] constitute a real threat to the continued success in the defense of
8 smoking and health litigation. Of course, we would make every effort to 'explain' such
9 statements if we were confronted with them during a trial, but I seriously doubt that the
10 average juror would follow or accept the subtle distinctions and explanations we would be
11 forced to urge. . . . [E]mployees in both companies [Brown and Williamson and British
12 American Tobacco] should be informed of the possible consequences of careless statements
13 on this subject."

14
15 142. All defendants were keenly aware of the risk to the industry if any of
16 them sought a competitive advantage by developing and marketing a safer product. The
17 risk was avoided by agreeing to not compete on that basis. As one industry representative
18 testified: "[A]s a company, we cannot position our products as being healthy. We've
19 already agreed that they are a risk factor [the 'agreement' referenced is the industry's
20 acceptance of the warning labels on cigarette packages]. [W]e wouldn't run any advertising
21 that positions any of our products as being healthier than others."

22
23 143. As part of the conspiracy, the companies agreed to avoid research that
24 might produce bad results for the industry. For example, on March 31, 1980, Philip Morris
25 scientist Robert Seligman wrote Lorillard scientist Alex Spears, suggesting "subjects to be
26 avoided." These subjects included developing new tests for carcinogenicity, attempts to
relate human desires to smoking and tests which would show the "addictive" effect of
smoking on carcinogenicity.

1
2
3 **7. Suppression of the R.J. Reynolds "Mouse House" Research**

4 144. For a period of time in the late 1960's, R.J. Reynolds had a
5 state-of-the-art laboratory in Winston-Salem, nicknamed "the mouse house." Here,
6 scientists conducted research with mice, rats and rabbits and began to uncover promising
7 avenues of investigation into the mechanisms of smoking-related diseases. In 1970, this
8 entire research division was disbanded in one day, and all 26 scientists were fired without
9 notice. Company attorneys had collected dozens of research notebooks, still undisclosed,
10 from the biochemists several months before the firings.

11 **8. Suppression of Philip Morris Research on Nicotine Analogues**

12 145. In the early 1980's, researchers working at a Philip Morris laboratory
13 in Richmond worked to develop a synthetic form of nicotine that would avoid its
14 cardiovascular complications. However, in April 1984 the company abruptly shut the
15 laboratory. The researchers were fired and threatened with legal action if they published
16 their work.

17 146. The research was conducted by Victor J. DeNoble and his colleague
18 Paul C. Mele, who remained silent about their work under confidentiality agreements
19 imposed by Philip Morris until testifying in 1994 before a congressional committee in
20 Washington.

21 147. The research was so secretive that laboratory animals were brought in
22 at night under cover. The researchers discovered that nicotine demonstrated addictive
23 qualities and that the animals self-administered the substance, pressing levers to obtain
24 nicotine. The researchers also discovered nicotine analogues, artificial versions of nicotine.
25 These analogues affected the brain much like nicotine. But the analogues did not seem to
26 produce the harmful cardiovascular effects of nicotine. Thus, rats using the analogue

1
2
3 behaved as if they had a nicotine "high" but did not show signs of heart distress such as
4 rapid heart beat.

5
6 148. By 1983, the research was becoming particularly problematic. A
7 number of personal injury cases had been filed against the industry, with nicotine
8 dependence a critical issue. In June 1983, DeNoble was called to the Philip Morris
9 headquarters in New York to brief top executives. Following the meeting, company
10 lawyers visited the lab and reviewed research notebooks. There were discussions of
11 shifting the research out of the company, perhaps to DeNoble and Mele as outside
12 contractors or to a lab in Switzerland, to distance Philip Morris from the results.

13
14 149. Finally, in April 1984, the researchers were abruptly told to halt their
15 work, kill all the rats, and turn in their security badges. The researchers also were forced
16 to withdraw a paper on the addictive qualities of nicotine, even after it had been accepted
17 for publication by a scientific journal.

18 I. History of Industry Knowledge that Smoking is Harmful

19
20 150. Even before defendants represented in the Frank Statement that "there
21 is no proof that cigarette smoking is one of the causes" of lung cancer, an industry
22 researcher had reported the contrary.

23
24 151. As early as 1946, Lorillard chemist H.B. Parmele, who later became
25 Vice President of Research and a member of Lorillard's Board of Directors, wrote to his
26 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.

1
2
3
4 152. As early as 1953, prior to the issuance of the Frank Statement, RJR's
5 Claude Teague created an internal survey of cancer research and concluded that "studies
6 of clinical data tend to confirm the relationship between heavy and prolonged tobacco
7 smoking and the incidence of lung cancer." Teague recommended that "management take
8 cognizance of the problem and its implications to our industry."

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

17 154. Internal cigarette industry documents reveal, for example:

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

23 b. A 1958 memorandum from a Philip Morris researcher to the
24 company's Vice President of Research, who later became a member of its Board of
25 Directors, stated "the evidence . . . is building up that heavy cigarette smoking contributes
26 to lung cancer either alone or in association with physical and physiological factors. . . ."

1
2
3 c. A 1961 document presented to the Philip Morris Research and
4 Development Committee by the company's Vice President of Research and Development
5 included a section entitled "Reduction of Carcinogens in Smoke." The document states,
6 in part:

7 To achieve this objective will require a major research effort, because
8 Carcinogens are found in practically every class of compounds in
9 smoke. This fact prohibits complete solution of the problem by
10 eliminating one or two classes of compounds.

11 The best we can hope for is to reduce a particularly bad class, *i.e.*, the
12 polynuclear hydrocarbons, or phenols. . . .

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

15 d. A 1963 memorandum to Philip Morris' President and CEO
16 from the company's Vice President of Research describes a number of classes of
17 compounds in cigarette smoke which are "known carcinogens." The document goes on to
18 describe the link between smoking and bronchitis and emphysema:

19 Irritation problems are now receiving greater attention because of the
20 general medical belief that irritation leads to chronic bronchitis and
21 emphysema. These are serious diseases involving millions of people.
22 Emphysema is often fatal either directly or through other respiratory
23 complications. A number of experts have predicted that the cigarette
24 industry ultimately may be in greater trouble in this area than in the
25 lung cancer field.

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

There are biologically active materials present in cigarette tobacco.

They are: a) cancer causing
b) cancer promoting
c) poisonous

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

d) stimulating, pleasurable, and flavorful.

f. A 1963 memorandum from the Liggett consulting research firm states:

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

155. A 1965 report to the B&W Executive Committee on research activities at BATCO's facility at Harrogate acknowledged that BATCO's research found that smoke is "weakly carcinogenic" and noted that these "results may have more impact since they will come from a tobacco supported facility." The report noted that release of the contents of the Harrogate report "would have a significant impact on the American tobacco industry." The results of this report were not released by the industry.

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

(1) "All Types of Smoking are Associated with Increased Mortality from all causes combined. . . ."

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

(3) "Lung cancer extremely rare among nonsmokers"

ATTORNEY GENERAL, STATE OF ALASKA
DIMOND COURTHOUSE
P.O. BOX 110300, JUNEAU, ALASKA 99811
PHONE: 465-3600

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

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

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

157. The report Liggett presented to the Surgeon General did not contain any of these conclusions, and instead, focused on alternative causes of disease, such as air pollution, coffee and alcohol consumption, diet, lack of exercise and genetics. Liggett criticized the known statistical association between smoking and mortality and various diseases as based upon "unreliably conducted" studies and "inadequately analyzed" data. 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.

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

1970 might very properly be called the year of the beagle. Early in the year, the American Cancer Society announced that they had finally demonstrated the formation of lung cancer in beagles by smoke inhalation in the now infamous Auerbach and Hammon study. I am sure all of you have read extensively about this in the newspapers, how the industry asked to have an independent panel of pathologists review the histological sections showing cancer, how the Society refused, how generally the ACS was put on the defensive, how publication was refused by two medical journals and how the story was changed somewhat by the time it was published

159. The memorandum goes on to describe how the industry publicly dismissed the mice cancer studies, such as the 1953 Wynder research. Dr. Wakeman

1
2
3 explained that "mouse skin is not human lung tissue." "smoke condensate has different
4 chemical composition from inhaled smoke," and "painting is not the method of application
5 practised [sic] by human smokers."

6
7 160. In contrast to the mice studies, however, Dr. Wakeman continued:

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

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

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

27 162. Recently, a series of Brown & Williamson documents were publicly
disclosed which set forth the far-ranging deceptions of that company in particular, and of
the industry in general with respect to the harmful effects of smoking.

1
2
3 163. Brown & Williamson, like the other manufacturers, was aware early
4 on of the dangers of cigarettes. Indeed, a Brown & Williamson review of published
5 statistical research, including the 1952 report by Dr. Doll, noted that the studies offered
6 "frightening testimony from epidemiological studies."

7
8 164. By 1957, one of Brown & Williamson's British affiliates, which
9 conducted much of the health research for the U.S. company, was using the code-name
10 "zephyr" for cancer. For example, in a March 1957 report, the British affiliate stated, "As
11 a result of several statistical surveys, the idea has arisen that there is a causal relation
12 between zephyr and tobacco smoking, particularly cigarette smoking."

13 165. In 1962, Brown & Williamson's London-based parent company
14 conducted a meeting of its worldwide subsidiaries in Southampton, England. A transcript
15 of the meeting reveals the following remarks:

16 a. One researcher stated that "smoking is a habit of addiction" and
17 that "[n]icotine is not only a very fine drug, but the technique of administration by smoking
18 has considerable psychological advantages." (Several years later, in 1967, the researcher
19 admitted that the company "is in the nicotine rather than the tobacco industry.")

20 b. Another research executive "thought we should adopt the
21 attitude that the causal link between smoking and lung cancer was proven because then at
22 least we could not be any worse off."

23 c. Another researcher stated that "no industry was going to accept
24 that its product was toxic, or even believe it to be so, and naturally when the health question
25 was first raised, we had to start denying it at the P.R. level. But by continuing that policy,
26 we had got ourselves into a corner and left no room to maneuver. In other words, if we did

1
2
3 get a breakthrough and were able to improve our product, we should have to about-face,
4 and this was practically impossible at the P.R. level.”

5 d. The chairman of Brown & Williamson's British affiliate stated
6 that it "was very difficult when you were asked as chairman of a tobacco company to
7 discuss the health question on television. You had not only your own business to consider
8 but the employees throughout the industry, retailers, consumers, farmers growing the leaf
9 and so on. And you were in much too responsible a position to get up and say, 'I accept that
10 the product which we and all our competitors are putting on the market gives you cancer,
11 whatever you might think privately.'"

12 e. The chairman also stated that if the company manufactured
13 safer brands, "how to justify continuing the sale of other brands? . . . It would be admitting
14 that some of its products already on the market might be harmful. This would create a very
15 difficult public relations situation."

16 166. The next year, 1963, Brown & Williamson engaged in an internal
17 debate over whether to disclose what it knew about the adverse effects of smoking to the
18 Surgeon General, who was preparing his first official report on cigarettes. It was decided
19 that its information would not be disclosed. Some of the documents generated by Brown
20 & Williamson as part of this process were shared with its London-based parent company,
21 as well as other cigarette manufacturers and the TIRC/CTR. Addison Yeaman, who was
22 then general counsel at Brown & Williamson and who authored some of the most critical
23 memoranda from this time, subsequently became a director of the CTR.

24 167. Yeaman wrote in a 1963 analysis that:

25 a. "[N]icotine is addictive."
26

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

- b. "We are, then, in the business of selling nicotine, an addictive drug
- c. Cigarettes "cause, or predispose, lung cancer . . ."
- d. "They contribute to certain cardiovascular disorders . . ."
- e. "They may well be truly causative in emphysema, etc."

168. Yeaman suggested that Brown & Williamson "accept its responsibility" and disclose the hazards of cigarettes to the Surgeon General. He noted that this would allow the company to openly research and develop a safer cigarette.

169. Yeaman warned, however, that one danger of candid disclosure was that jurors would learn that the cigarette companies knew of the hazards of their products and had the means to make safer cigarettes--but didn't. Yeaman noted that this might cause an "emotional reaction" in jurors. Ultimately, Yeaman's suggestion for full disclosure was rejected.

170. Subsequently, Brown & Williamson continued to conduct and conceal biological research. Some of these research projects confirmed causation.

171. The more sensitive research was often undertaken by Brown & Williamson's British affiliate, acting on behalf of both companies. Much of the work was performed at a British laboratory called Harrogate, which performed work for a number of cigarette manufacturers, and some of this research was shared with these other companies and the Tobacco Institute.

172. Brown & Williamson also attempted to develop a safer cigarette or, in the words of an internal document, "a device for the controlled administration of nicotine." There were at least two safer cigarette projects, Project Ariel, which focused on heating rather than burning tobacco, and Project Janus, which focused on isolating and

1
2
3 removing the harmful elements of tobacco. At least some of the work was performed by
4 Battelle Laboratories in Frankfurt. By the end of the 1970's, however, in a pattern that was
5 repeated throughout the industry, Brown & Williamson closed its research labs and halted
6 work on a safer cigarette.

7 **J. Industry Knowledge of the Addictive Nature of Nicotine**

8 **1. Industry Statements and Documents Reveal the Tobacco**
9 **Companies' Long-Standing Knowledge that Nicotine is a**
10 **Powerful and Addictive Drug**

11 173. As alleged above, the defendants continue to deny and conceal that
12 tobacco products are addictive while secretly manipulating levels of nicotine to increase or
13 maintain addiction. The evidence is clear that the tobacco industry has known and hidden
14 for decades the addictive nature of tobacco products.

15 174. Numerous Tobacco Company documents contain statements by
16 company researchers and executives acknowledging that nicotine is, in fact, addictive. For
17 example, more than 30 years ago, a report was completed for BATCO that specifically
18 addressed the mechanism of nicotine addiction in smokers. The researchers concluded that
19 chronic intake of nicotine, such as that which occurs in regular smokers, creates a need for
20 ever-increasing levels of nicotine to maintain the desired action: "[u]nlike other dopings,
21 such as morphine, the rate of increasing demand for greater dose levels is relatively slow
22 for nicotine." The report continues:

23 A body left in this unbalanced state craves for renewed drug intake in
24 order to restore the physiological equilibrium. This unconscious
25 desire explains the addiction of the individual to nicotine.

26 175. Internal Tobacco Company documents reveal that all of this research
has convinced company researchers and executives that nicotine in tobacco functions as a
drug with powerful psychoactive effects. For example, in 1962, even before much of this

1
2
3 research had been completed. Charles Ellis, of BATCO, expressed his view that nicotine
4 in tobacco functions as a drug much like stimulants and tranquilizers:

5 It is my conviction that nicotine is a very remarkable beneficent drug
6 that both helps the body to resist external stress and also can as a
7 result show a pronounced tranquilising effect. You are all aware of
8 the very great increase in the use of artificial controls, stimulants,
9 tranquilisers, sleeping pills, and it is a fact that under modern
10 conditions of life people find that they cannot depend just on their
11 subconscious reactions to meet the various environmental strains with
12 which they are confronted: they must have drugs available which
13 they can take when they feel the need. Nicotine is not only a very fine
14 drug, but the techniques of administration by smoking has
15 considerable psychological advantages and a built-in control against
16 excessive absorption.

17 (Emphasis added.)

18 176. In the decades that followed this statement, BATCO and Brown and
19 Williamson held many research conferences, some of which were devoted entirely to
20 discussing nicotine's pharmacological effects. The records of these conferences
21 demonstrate that, at almost every conference, Tobacco Company officials from around the
22 world discussed the results of research on nicotine pharmacology and reached agreement
23 that nicotine had been shown to have pharmacological effects on tobacco users.

24 177. Researchers and executives from the other major Tobacco Companies
25 and associated with the CTR have also made statements revealing their knowledge that
26 nicotine is a psychoactive drug. For example, the authors of a research paper funded by the
CTR reporting on the "beneficial" pharmacological effects of nicotine in cigarettes said that
"[n]icotine is recognized as the primary psychoactive compound in cigarette smoke."

 178. More than 30 years ago, in 1962 through 1963, BATCO received the
results of its Project HIPPO study (HIPPO I and HIPPO II), the aim of which was to
"understand some of the activities of nicotine--those activities that could explain why

1
2
3 smokers are so fond of their habit." A second purpose of the Project HIPPO study was to
4 compare the effects of nicotine with those of then-new tranquilizers, "which might
5 supersede tobacco habits in the near future." Thus, these researchers believed that nicotine-
6 containing tobacco and tranquilizers were used for the same purposes by consumers.

7
8 179. The Project HIPPO reports were disseminated to officials of Brown
9 and Williamson ("B&W"). The exchange of information between BATCO and B&W is
10 important because it demonstrates B&W's awareness of the results of studies such as
11 Project HIPPO, which was just one of a number of studies commissioned by BATCO to
12 study the physiological and pharmacological effects of nicotine. For example, a 1980
13 report addresses the critical role of nicotine's drug effects:

14 Nicotine is an extremely biologically active compound capable of
15 eliciting a range of pharmacological, biochemical, and physiological
16 responses In some instances, the pharmacological response of
17 smokers to nicotine is believed to be responsible for an individual's
18 smoking behavior, providing the motivation for and the degree of
19 satisfaction required by the smoker.

20
21 180. The BATCO documents include not only some of the research reports
22 themselves, but also summaries or minutes of numerous BATCO research and development
23 ("R&D") meetings at which nicotine's drug effects and importance to the industry were
24 discussed. These papers demonstrate both the consistency and the extent of the industry's
25 interest in and knowledge of nicotine as the primary pharmacological agent in tobacco. For
26 example, at a 1974 BATCO Group R&D Meeting, it was noted that:

23 Nicotine (which has been assumed to be the main pharmacologically
24 active component in smoke) may act in a bi-phasic manner, either as
25 a stimulant (CNV increase) or depressant (CNV decrease).

26 181. Subsequent BATCO research conferences offer equally revealing
statements about the drug effects of nicotine. A BATCO Group R&D Smoking Behavior-

1
2
3 Marketing Conference held in 1984 focused almost entirely on the role of nicotine
4 pharmacology in smoking. Summaries of the presentations at that conference include
5 numerous references to the pharmacological effects of nicotine and the importance of these
6 effects in maintaining tobacco use. For example, one presentation included the following
7 observation:

8 Smoking is then seen as a personal tool used by the smoker to refine
9 his behavior and reactions to the world at large.

10 It is apparent that nicotine largely underpins these contributions
11 through its role as a generator of central physiological arousal effects
12 which express themselves as changes in human performance and
13 psychological well-being.

14 (Emphasis added.)

15 182. Another BATCO conference focusing on nicotine was held in 1984.

16 One of the presentations was characterized by a Brown and Williamson official:

17 The presentation was concerned with summarizing and outlining the
18 central role of nicotine in the smoking process and our business
19 generally. . . . There are two areas of nicotine action that are of
20 primary importance: (i) to identify to what extent the
21 pharmacological properties or responses to nicotine are influenced by
22 blood and tissue levels of nicotine. (ii) what is the significance and
23 role of nicotine in eliciting the impact response and upper respiratory
24 tract responses. . .

25 (Emphasis added.)

26 183. Philip Morris researchers conducted extensive research on nicotine
pharmacology from the late 1960s until at least the mid-1980s. The nature and magnitude
of the research, as well as statements made in internal documents, show that the Philip
Morris researchers strongly believed that nicotine has potent psychoactive effects and that
these effects provide a primary motivation for smoking. In 1974, Philip Morris researchers
began a study designed to test their theory that hyperkinetic children take up smoking in

1
2
3 adolescence because nicotine may perform the same pharmacological function as
4 prescription medications used to treat hyperkinesis:

5 It has been found that amphetamines, which are strong stimulants,
6 have the anomalous effect of quieting these children down . . . Many
7 children are therefore regularly administered amphetamines
8 throughout grade school years. . . . We wonder whether such children
9 may not eventually become cigarette smokers in their teenage years
10 as they discover the advantage of self-stimulation via nicotine. We
11 have already collaborated with a local school system in identifying
12 some such children in the third grade.

13 (Emphasis added.)

14 184. More than three decades ago, in 1961, a presentation by Dr. Helmut
15 Wakeham, a senior Philip Morris research scientist, to the company's Research and
16 Development Committee noted that:

17 Low nicotine doses stimulate, but high doses depress functions . . . It
18 is also recognized that smoking produces pleasurable reactions or
19 tranquility, and that this is due at least in part to nicotine. . . .

20 185. Dr. Wakeham also noted that "nicotine is believed essential to cigarette
21 acceptability," a view later restated by William Dunn, Jr., another high-ranking Philip
22 Morris official. In summarizing a 1972 conference sponsored by the Council for Tobacco
23 Research, Dr. Dunn reported:

24 Most of the conferees would agree with this proposition: The primary
25 incentive to cigarette smoking is the immediate salutary effect of
26 inhaled smoke upon body function.

27 (Emphasis added.)

28 186. After describing "the physiological effect" as "the primary incentive"
29 for smoking, Dr. Dunn continued:

30 The majority of the conferees would go even further and accept the
31 proposition that nicotine is the active constituent of cigarette smoke.
32 Without nicotine, the argument goes, there would be no smoking.
33 Some strong evidence can be marshaled to support this argument:

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

- 1) No one has ever become a cigarette smoker by smoking cigarettes without nicotine.
- 2) Most of the physiological responses to inhaled smoke have been shown to be nicotine-related.
- 3) Despite many low nicotine brand entries in the market place, none of them have captured a substantial segment of the market . . .

(Emphasis added.)

187. A 1971 secret internal report distributed to Philip Morris executives showed that tobacco executives knew the powerfully addictive nature of nicotine in cigarettes. The report studied persons who had tried to stop smoking and concluded that only 28 percent of those who tried to quit were still non-smokers eight months later:

Even after eight months quitters were apt to report having neurotic symptoms, such as feeling depressed, being restless and tense, being ill-tempered, having a loss of energy, being apt to doze off. They were further troubled by constipation and weight gains which averaged about five pounds per quitter . . . This is not the happy picture painted by the Cancer Society's anti-smoking commercial which shows an exuberant couple leaping into the air and kicking their heels with joy because they've kicked the habit. A more appropriate commercial would show a restless, nervous, constipated husband bickering viciously with his bitchy wife who is nagging him about his slothful behavior and growing waistline.

188. In a research paper funded by the CTR, reporting on the "beneficial" pharmacological effects of nicotine in cigarettes, the authors said:

Nicotine is recognized as the primary psychoactive compound in cigarette smoke.

189. Many other industry documents refer to the central role of nicotine's drug effects for smokers and, therefore, for the industry. Nicotine is repeatedly identified as a primary reason consumers smoke or use other nicotine-containing products. A "Proposal for Low Delivery Project for B&W" prepared by a marketing firm by B&W in

1
2
3 the late 1970's contained the following statement that a sufficient dose of nicotine is
4 essential to sell cigarettes and, implicitly, to maintain market share based on nicotine
5 addiction:

6 Current market trends clearly indicate a major trend toward low-tar
7 brands although current "ultra" low "tar" brands have had limited
8 success because of their failure to delivery is that if a satisfying, low-
9 nicotine cigarette were to be developed, it could represent an effective
means of withdrawal. . . with severe implications for long-term
market growth.

10 (Emphasis added.)

11 190. In 1972, RJR's Claude Teague wrote that the tobacco industry was
12 really part of the pharmaceutical industry because it delivers nicotine. "a potent drug."
13 According to Teague, nicotine is known to be habit forming and a smoker chooses his
14 product according to his "individual nicotine requirements." . . . thus a tobacco product is,
15 in essence, a vehicle for delivery of nicotine." According to Teague, "our industry is then
16 based upon design, manufacture and sale of attractive dosage forms of nicotine." Teague
17 confirmed that the industry had concealed the importance of nicotine, "we have deliberately
18 played down the role of nicotine, hence the non-smoker has little or no knowledge of what
19 satisfaction it offers him."

20 191. A 1976 BATCO Conference on Smoking Behavior further underscores
21 tobacco industry researchers' awareness of the fundamental importance (to the huge
22 majority of smokers) of nicotine's effects on the brain:

23 Some insight into the likely benefits of smoking follows from a
24 consideration of the properties of nicotine, which is considered to be
the reinforcing factor in the smoking habit for at least 80% of
smokers. . .

25 (Emphasis added.)
26

1
2
3 192. In 1988, during the case Cipollone v. Liggett, Joseph Cullman III,
4 former CEO of the Philip Morris Tobacco Company, testified as follows:

5 Q: Let me ask you the question, then, Mr. Cullman. Is nicotine a
6 drug?

7 A: Well it's so described in every book on pharmacology.

8 Q: So then you agree that it's a drug?

9 A: I have no reason to disagree with books on pharmacology.

10 193. A memorandum from a Philip Morris official in 1980 confirms the
11 company's view that nicotine's pharmacological effects on the central nervous system are
12 critical to the tobacco industry's success:

13 Nicotine is a powerful pharmacological agent with multiple sites of
14 action and may be the most important component of cigarette smoke.
15 Nicotine and an understanding of its properties are important to the
16 continued well being of our cigarette business since this alkaloid has
17 been cited often as 'the reason for smoking' and theories have been
advanced for 'nicotine titration' by the smoker. Nicotine is known to
have effects on the central and peripheral nervous system as well as
influencing memory, learning, pain perception, response to stress and
level of arousal.

18 (Emphasis added.)

19 194. Despite the 1994 sworn testimony of tobacco CEOs that nicotine is not
20 addictive, it is clear that high-ranking tobacco company officials have repeatedly
21 acknowledged that nicotine is addictive and that this is the reason why people use tobacco.

22 195. The smokeless tobacco industry also recognizes that almost all
23 consumers use tobacco products to obtain the pharmacological effects of nicotine. The
24 senior vice-president for marketing of U.S. Tobacco wrote in a 1981 letter on new product
25 development:
26

1
2
3 Flavorwise we should try for innovation, taste and strength, nicotine
4 should be medium . . . Virtually all tobacco usage is based upon
5 nicotine, "the kick," satisfaction.

6 196. In contrast, Thomas E. Sandefur, former CEO of Brown &
7 Williamson, testified before Congress that nicotine was not addictive and that B&W
8 scientists had concluded that none of B&W's research indicated that nicotine was addictive.
9 These statements were false. Sandefur further testified that "nicotine is a very important
10 constituent in the cigarette smoke for taste." In fact, nicotine tastes bad, and the industry
11 has conducted hundreds of tests designed to increase nicotine without injecting a bad taste.

12 197. In 1994, in testimony before the Waxman Committee, Edward
13 Horrigan, Chairman and CEO of RJR, testified that as far as the industry had been
14 concerned "no causal link has been shown" between smoking and heart diseases, lung
15 disease and cancer. Further, Horrigan testified that there is "no proof that cigarettes are
16 addictive." Sandefur and Horrigan, by issuing these statements, were continuing the
17 industry misrepresentation concerning nicotine.

18 **2. Long-Standing Industry Awareness of the Difficulty Smokers**
19 **Have in Quitting Underscores the Tobacco Companies'**
20 **Knowledge of Addiction**

21 198. The strongest evidence of the addictive power of nicotine is the fact
22 that a substantial majority of smokers (75 percent to 85 percent in most surveys) say they
23 would like to quit, and that they are concerned for their health, yet a vast majority of those
24 who attempt to quit are unable to do so. The failure rate of people who attempt to stop or
25 reduce smoking is dramatic, even in the face of life-threatening tobacco related illnesses.
26 Thus, even after a heart attack or lung cancer surgery, approximately one-half of survivors
return to smoking within one year. A study of drug use by high school seniors conducted
annually by the University of Michigan shows that of high school seniors who smoke, more

1
2
3 than half have tried unsuccessfully to quit. Follow-up surveys show that eight years later
4 three of four are still smoking, and those still smoking are smoking more heavily. As a
5 result of these characteristics and others, the FDA in 1995 found that "nicotine satisfies the
6 classic criteria for an addictive substance."

7
8 199. The Tobacco Companies are aware of the large number of smokers
9 who have tried to quit using tobacco, and of the very small number who actually succeed.
10 The evidence known to the Tobacco Companies about smokers' unsuccessful attempts to
11 quit shows that the Tobacco Companies know that a large percentage of their market
12 consists of people who demonstrate one of the characteristic features of addiction.

13 200. The great difficulty smokers experience when they try to quit was
14 conceded by Joseph F. Cullman, III, the former chief executive officer of Philip Morris.
15 Mr. Cullman was called as a witness in the Cipollone lawsuit and gave the following
16 answers in response to questions from one of the plaintiff's attorneys:

17 Q. But it is difficult [to quit]?

18 A. That's what it says here and I'm not disagreeing with it.

19 Q. They said it was very difficult. Do you agree with that?

20 A. I would say it's difficult.

21 Q. And it's difficult for the vast majority of smokers, you would
22 agree with that, too, would you not?

23 A. That's a question of semantics. What's the vast majority? A
24 lot of smokers have a hard time quitting [sic].

25 Q. Let's see, most smokers have a tough time giving up
26 cigarettes?

1
2
3 A. Well, if they didn't, there would be many fewer smokers than
4 there are today.

5 (Emphasis added.)

6 201. A presenter responsible for summing up the results of cessation studies
7 at a 1984 BATCO conference agreed that, while a large percentage of smokers do not want
8 to smoke, most of those smokers feel compelled to continue to smoke:

9 Although intentions and attempts to quit are relatively high (30-40%
10 of smokers [in a given year]), the actual success rate of quitting is
11 relatively low and stable.

12 It was thus well known to the participating companies that a very large percentage of their
13 customers were smoking not out of choice but because they could not quit.

14 202. Other companies also understand that many of their consumers would
15 like to quit but are unable to do so. A Philip Morris researcher who studied a "cold turkey"
16 campaign in the small Iowa town of Greenfield in 1969 reported that those who succeed in
17 quitting smoking over the long term are a much smaller group than those who would like
18 to quit and who attempt to quit. The researcher cited the findings of Hunt and Matarazzo
19 in proposing that most attempts to quit smoking are not long-lasting: "[I]n summarizing
20 many reports of long-term quitting using various techniques, [the authors] show that the
21 percentage of nonrecidivists [successful quitters] decreases as a function of time . . . in a
22 negatively accelerated fashion." The Philip Morris researcher found that in Greenfield only
23 28 percent of those smokers who agreed to quit as part of the cold turkey campaign were
24 still not smoking after seven months. The researcher then observed that the small number
25 of Greenfield residents who managed to stay off cigarettes for more than seven months was,
26 based on other published reports of success rates for quitting smoking, about average.

1
2
3 203. The researcher also described findings that revealed in part why it is
4 so hard for smokers to quit. He reported that smokers who quit for more than seven months
5 continued to suffer a variety of adverse effects related to quitting, including weight gain,
6 restlessness, depression, ill-temper, constipation, nervous mannerisms and loss of energy.
7 These are some of the classic symptoms of nicotine withdrawal, described earlier.

8 204. Market research documents also show that the Tobacco Companies
9 have conducted research in quitting behavior and have documented the reasons why people
10 quit and why they fail to quit, despite a desire to do so. A market research firm reporting
11 on a survey of smokers' views about the health implication of smoking observed that:

12 a minority expresses a resentment about the addictive aspects of
13 smoking. Being "out of control," unable to quit causes them to feel
14 somehow unworthy. . . . Nicotine is usually singled out as the culprit
15 here. However, even these smokers would be reluctant to give up the
16 satisfaction elements in smoking. So they are in a quandry [sic].

17 Another market research firm reported its findings about the inability of young smokers to
18 quit when they want to:

19 However intriguing smoking was at 11, 12 or 13, by the age of 16 and
20 17 many regretted their use of cigarettes for health reasons and
21 because they feel unable to stop smoking when they want to.

22 205. The fact that many smokers smoke even though they do not enjoy
23 smoking is conceded in a candid marketing research document prepared for Imperial
24 Tobacco Ltd., which reported that it is particularly difficult to sell cigarettes by "trading on
25 the positives" because the industry is "vexed by the unique problem that users of the
26 category do not necessarily like the product." Another document reports that many smokers
of ultra-low tar and nicotine cigarettes want to quit and "refer to their behavior in terms of
'satisfying a craving' while smokers of stronger cigarettes talk about taste and satisfaction."

1
2
3 206. In summary, the Tobacco Companies' data shows that users find it
4 extremely difficult to quit smoking and that many tobacco users would quit if they could.
5 Their data also shows that, of those smokers who try to quit, only a small percentage
6 succeed permanently. Consequently, tobacco manufacturers are aware that the large
7 percentage of their customers who try to quit but fail continue to buy and use tobacco
8 products, in large part to satisfy their dependence on nicotine-containing tobacco. Despite
9 this overwhelming knowledge, the defendants have misrepresented and suppressed the truth
10 regarding nicotine and addiction. Instead, they have falsely claimed that this is simply a
11 matter of individual choice.

12 **K. Suppression and Concealment of Research on Nicotine Addiction**

13 207. Defendants, rather than fulfilling their promise to the public to disclose
14 material information about smoking and health, chose a course of suppression,
15 concealment, and disinformation about the true properties of nicotine and the addictiveness
16 of smoking.

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

23 209. However, Philip Morris instructed DeNoble and Mele to keep their
24 work secret, even from fellow Philip Morris scientists. Test animals were delivered at dawn
25 and brought from the loading dock to the laboratory under cover.
26

1
2
3 210. DeNoble was later told by lawyers for the company that the data he
4 and Mele were generating could be dangerous. Philip Morris executives began talking of
5 killing the research or moving it outside of the company so Philip Morris would have more
6 freedom to disavow the results. DeNoble recalled that Philip Morris discussed several
7 possible scenarios, including having DeNoble and Mele leaving the company payroll and
8 continuing as contractors, and shifting their work to a lab in Switzerland.

9 211. In August 1983, Philip Morris ordered DeNoble to withdraw from
10 publication a research paper on nicotine that had already been accepted for publication after
11 full peer review by the journal Psychopharmacology. According to DeNoble, the company
12 changed its mind because it did not want its own research showing nicotine was addictive
13 or harmful to compromise the company's defense in litigation recently filed against it.
14 DeNoble subsequently told Jack Henington, Ph.D., Chief of the Clinical Pharmacology
15 Branch of the National Institute on Drug Abuse's Addiction Research Center, that Philip
16 Morris officials had rightly interpreted the suppressed nicotine studies as showing that, in
17 terms of addictiveness, "nicotine looked like heroin."

18 212. In April 1984, Philip Morris, apparently to ensure that DeNoble and
19 Mele's nicotine research remained suppressed and concealed, told DeNoble and Mele that
20 the lab was being closed. DeNoble and Mele were forced abruptly to halt their studies, turn
21 off their instruments and turn in their security badges by morning. Philip Morris executives
22 threatened them with legal action if they published or talked about their nicotine research.
23 According to DeNoble, the lab literally vanished overnight. The animals were killed, the
24 equipment was removed and all traces of the former lab were eliminated. DeNoble
25 recalled, "The lab was gone, everything was gone. The cages were gone, the animals were
26 all gone, all the data was gone. It was empty rooms."

1
2
3 213. DeNoble testified to the Waxman Subcommittee that "senior research
4 management in Richmond, Virginia, as well as top officials at the Philip Morris Company
5 in New York continually reviewed our research and approved our research." DeNoble also
6 stated that these officials were specifically told about nicotine's addictiveness.

7 **L. The Industry's Secret Manipulation of Nicotine Levels**

8 214. Not content to conceal the addictive nature of nicotine, the industry has
9 developed sophisticated technology to control the levels of nicotine in order to maintain its
10 market and guarantee that its customers become and remain addicted. David A. Kessler,
11 M.D., Commissioner of Food and Drugs, recently testified before a congressional
12 committee that cigarette manufacturers can manipulate precisely nicotine levels in
13 cigarettes, manipulate precisely the rate at which the nicotine is delivered in cigarettes, and
14 add nicotine to any part of cigarettes.

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

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

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

24 c. "The public thinks of cigarettes as simply blended tobacco
25 rolled in paper. But they are much more than that. Some of today's cigarettes may, in fact,
26 qualify as high technology nicotine delivery systems that deliver nicotine in precisely

1
2
3 calculated quantities -- quantities that are more than sufficient to create and to sustain
4 addiction in the vast majority of individuals who smoke regularly."

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

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

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

12 g. "[Since] the technology apparently exists to reduce nicotine in
13 cigarettes to insignificant levels, why, one is led to ask, does the industry keep nicotine in
14 cigarettes at all?"

15 216. The Tobacco Industry has used techniques such as adding chemicals
16 to increase nicotine potency. In general, by increasing the alkalinity, or smoke pH, of
17 tobacco blends, the industry can deliver an enhanced "nicotine kick."

18 217. Particularly instructive on the issue of nicotine manipulation was the
19 following FDA finding published in the FDA's August 1995 report Nicotine In Cigarettes
20 and Smokeless Tobacco Products:

21 The information in the preceding sections demonstrates that
22 cigarette manufacturers manipulate and control the delivery of
23 nicotine in marketed products. Cigarettes are designed to supply
24 nicotine at consistent levels despite the wide variations in the nicotine
25 levels of the raw materials, the immensely complicated combustion
26 chemistry, and the complex chemical flow properties of a modern
cigarette.

Manufacturers use many techniques to control nicotine
deliveries. The application of these modifications in cigarette design
and their interactive nature pose complex problems in maintaining

1
2
3 brand uniformity and consistency regarding nicotine delivery. Yet,
4 the nicotine content and delivery of each brand of cigarettes is
5 remarkably consistent from batch-to-batch and year-to-year. This
6 level of control is analogous to that of the pharmaceutical industry
7 in the production of prescription drugs. In fact, to determine how well
8 nicotine content is controlled in cigarettes, FDA laboratories
9 compared the content uniformity of drugs in tablet or capsule form to
10 the content uniformity of nicotine in cigarettes. The results showed
11 that nicotine content varies from cigarette to cigarette no more than
12 the content of active ingredients in marketed pharmaceuticals.

13
14
15
16
17
18
19
20
21
22
23
24
25
26
FDA's investigation has also disclosed that the tobacco industry uses a number of methods to boost nicotine delivery in low-yield cigarettes. The cigarette industry has successfully used these methods to maintain adequate nicotine delivery from low-yield products. Without the independent manipulation of nicotine, many of the techniques used to reduce tar would also substantially reduce nicotine. Instead, regardless of differences in labeled/advertised FTC nicotine yields and manufacturers' claims of low-nicotine delivery for certain brands, all cigarettes contain approximately the same amount of nicotine in the rod, and deliver about 1 mg of nicotine, enough to produce pharmacological effects. Moreover, studies by FDA and others have demonstrated that the lowest-yield cigarettes have the highest concentrations of nicotine, demonstrating that nicotine delivery has been independently manipulated.

The tobacco industry's control and manipulation of nicotine delivery from cigarettes provides additional evidence of the industry's intent to deliver pharmacologically satisfying levels of nicotine to smokers.

(Emphasis added.)

218. In particular, the FDA based its findings, in part, on the following:

(1) The first manufacturing step in nicotine control is the development and selection of raw materials. The Tobacco Industry has, through breeding and cultivation practices, developed high-nicotine tobacco plants that provide higher-potency raw material, giving manufacturers greater flexibility in blending and in providing uniform and sufficient nicotine deliveries.

1
2
3 (2) Even without the selective breeding and cultivation of plants
4 for nicotine content, careful tobacco leaf purchasing plants permit the manufacturers to
5 control nicotine content in their products. For example, nicotine content varies among
6 types of tobacco and from one crop year to the next. Awareness of these basic differences
7 and monitoring of the nicotine levels in purchased tobacco allows the companies to produce
8 cigarettes with nicotine deliveries consistent to a tenth of one percent, despite variations as
9 high as 25 percent in the nicotine content of the raw material originating in the same area,
10 from year to year.

11 (3) The primary control of nicotine delivery (the amount received
12 by the smoker), however, is in the design and careful, sophisticated manufacture of the
13 cigarette, to ensure that the smoker obtains the precise amount of nicotine intended by the
14 manufacturer. According to the FDA's investigation, despite reductions in the amount of
15 tar delivered by cigarettes over the past several decades, nicotine delivery in low-yield
16 cigarettes has not fallen proportionately with the reductions in tar. Instead, nicotine
17 delivery has apparently risen over the last decade, a result that confirms that nicotine
18 delivery is being independently and carefully manipulated by tobacco manufacturers. The
19 FDA specifically found that "this newly gathered information, together with the other
20 evidence of the industry's breeding, purchasing, blending, and manufacturing practices,
21 reveals that the tobacco manufacturers control the amount of nicotine that is delivered to
22 the consumer from cigarettes." Such manipulation is accomplished, in part, as set forth
23 below.

24 **1. Tobacco Leaf Growing**

25 (4) The industry's control and manipulation of nicotine in the
26 production of cigarettes begins long before the cured tobacco leaf reaches the

1
2
3 manufacturing plant. The characteristics of leaf tobacco, including nicotine content, are
4 established by the genetic makeup of the plant, developed during growing and fixed by
5 post-harvest handling. Like other raw agricultural commodities, the physical and chemical
6 properties of tobacco, including nicotine, can vary widely, depending on genetic
7 differences, growing season conditions and soil type. The tobacco industry uses these
8 differences to control and manipulate nicotine through careful genetic breeding and
9 agronomic practices.

10 (5) Modern types of cultivated tobacco (*Nicotiana tabacum* L.) have
11 been selected for a relatively high level of nicotine. Five major types of tobacco make up
12 nearly all tobacco products marketed in the United States: Burley, flue-cured, Maryland,
13 the Dark tobaccos and Oriental. These tobaccos vary both in nicotine levels and in pH.
14 The pH of a tobacco can have a significant influence on the amount of, and rate at which,
15 nicotine is absorbed into the bloodstream of the tobacco user and delivered to the brain.

16 (6) American tobaccos of all types have undergone cumulative
17 increases in total nicotine levels since the 1950s. Nicotine levels in the most widely grown
18 American tobaccos increased almost 10 percent for Burley and more than 50 percent for
19 flue-cured between 1955 and 1980.

20 (7) According to the FDA, two Tobacco Industry activities over the
21 last several decades appear to be responsible for this increase: (1) the industry's active and
22 controlling participation in the Minimum Standards Program, which ensures that nicotine
23 levels of U.S.-grown and marketed tobacco are maintained within specified ranges; and (2)
24 the industry maintains control over which varieties are suitable for growing in the United
25 States and thereby eligible for price support.
26

1
2
3 (8) One key objective of the Tobacco Industry's involvement in the
4 Minimum Standards Program appears to be to ensure that nicotine levels in marketed
5 tobacco do not fall below specified levels. The program was initiated in response to the
6 emergence, in the 1950s, of several so-called "discount" varieties of tobacco (e.g., "Coker
7 139," "Coker 187-Golden Wilt," "Coker 282," "Coker 140," "Coker 316," and "Reams
8 64") that failed to meet current industry specifications established, among other things, to
9 control the amount of nicotine delivery when used in manufacturing filtered cigarettes. To
10 insure the elimination of "discount" or low-nicotine varieties from the market, the industry
11 obtained the necessary cooperation from USDA to eliminate these varieties from the price-
12 support program. In fact, to be eligible under this program, growers must certify, even to
13 this day, that "discount" varieties are not being grown.

14 (9) While the Minimum Standards Program ensured that nicotine
15 levels in marketed tobaccos did not fall, breeding and cultivation initiatives undertaken by
16 the industry caused nicotine levels to increase. In the 1960s and 70s, the industry turned
17 to tobacco breeders to develop tobacco varieties that produced less tar. Breeders found that
18 without intervention in the breeding of these varieties, nicotine levels were reduced along
19 with tar levels. Thus, the industry has long been able to grow low-tar and low-nicotine
20 varieties of tobacco for use in manufacturing cigarettes.

21 (10) By 1978, however, the industry had abandoned its interest in
22 the development of low-tar, low-nicotine varieties of tobacco for manufacturing low-yield
23 cigarettes, and instead turned to the development of higher nicotine varieties.

24 (11) In addition to breeding high-nicotine tobacco varieties, the
25 Tobacco Industry engages in a number of agronomic practices that increase nicotine levels
26 in tobacco. Heavy application of nitrogen fertilizers, early topping, and tight "sucker" (i.e.,

1
2
3 bud growth at the junction of stalk and leaves) control have all acted in concert to push
4 nicotine levels upward. In addition, tobacco varieties have been selected for tolerance to
5 brown spot, a leaf disease that makes early harvest necessary. Leaves of disease-resistant
6 varieties tend to remain in the field longer, resulting in maximum nicotine accumulation.
7 Since the introduction in 1965 of the acreage-poundage control system, farmers have
8 reduced the number of harvestable leaves per plant and have tended to increase plant
9 spacing. Both of these practices tend to increase nicotine content in the leaf. Finally,
10 tobacco growers are transplanting tobacco crops earlier, which, coupled with the
11 widespread use of pesticides in the soil, often results in slow early season growth, and also
12 tends to increase nicotine content in the leaves.

13 (12) The foregoing facts has led the FDA to conclude that:

14
15 These nicotine-raising agronomic practices have been adopted
16 by U.S. growers in recent years, even though over 50% of the U.S.
17 cigarette market is now characterized as low delivery. Thus, the
18 tobacco industry has developed a number of sophisticated methods for
19 manipulating nicotine levels through breeding and cultivation of
20 tobacco plants and has used these methods to maintain and increase
21 concentrations of nicotine in tobacco leaves. These methods enable
22 the industry to use high-nicotine leaf in low-tar cigarettes, so that,
23 paradoxically, certain low-tar cigarettes now contain more of the
24 higher nicotine tobacco in their blend than cigarettes with higher tar
25 deliveries. The use of these methods demonstrates that the industry
26 manipulates nicotine independently of other tobacco components to
ensure that cigarettes contain sufficient nicotine to satisfy smokers.

2. Leaf Purchasing

(13) Another method of manipulation occurs as follows: The key
factor related to nicotine in leaf purchasing is stalk position. The concentration of nicotine
is lowest at the bottom of the plant and highest in the top leaves of flue-cured tobacco.
Thus, the position of the leaf on the stalk determines how much nicotine the leaf will
contain. In fact, "stalk position" is an industry euphemism for nicotine content. The stalk

1
2
3 position of a leaf can be determined by its appearance, shape, color, and thickness, even
4 after harvest. Therefore, an experienced buyer, whose instructions are dictated by the
5 manufacturer's chemists, need only be concerned with these physical characteristics in
6 identifying leaves of varying nicotine content.

7 (14) Representatives of the Tobacco Industry described to FDA
8 investigators the significant role that nicotine plays in the purchase of tobacco leaf. Brown
9 and Williamson informed the FDA that stalk position is the "first thing" they look for
10 during leaf purchasing.

11 3. Leaf Blending

12 (15) After purchase, tobacco leaves are blended to attain target levels
13 of nicotine and tar in the smoke. FDA's investigation noted particular attention on the part
14 of manufacturers to the nicotine content of the leaf in the blending operation. As noted
15 above, blending practices by manufacturers are designed to: (1) control the naturally
16 occurring variations in nicotine and other components caused by genetics, growing season
17 conditions, and soil type within a given type and grade; and (2) particularly for low-tar
18 cigarettes, to increase nicotine concentrations and thereby maintain an acceptable nicotine
19 level in the cigarettes.

20 (16) The pH of cigarette smoke directly affects the delivery of
21 nicotine because it alters the amount of nicotine that is absorbed in the mouth or lungs. PH
22 is controlled by the manufacturer in the selection of the type of tobacco used and blended.
23 For example, smoke-condensate pH is higher from certain tobacco varieties as well as from
24 leaves at upper stalk positions.

25 (17) According to the FDA, blending techniques have been used to
26 finely control nicotine concentrations in marketed cigarettes.

1
2
3 (18) The foregoing led the FDA to conclude that:

4 Significant evidence also demonstrates that tobacco
5 manufacturers have used blending techniques to increase nicotine
6 concentrations in low-tar cigarettes and thereby maintain nicotine
7 delivery while reducing tar delivery. FDA has observed the industry's
8 use of proportionately greater amounts of higher nicotine-containing
9 Burley tobacco in the tobacco blends of the lowest-tar varieties of
10 cigarettes. In fact, Thomas Sandefur, the chief executive officer of
11 Brown and Williamson, admitted to Congress that nicotine levels can
12 be adjusted "up or down" depending on the blend of tobaccos used in
a particular cigarette. Industry scientists have also acknowledged that
tobacco manufacturers blend high-nicotine tobaccos to compensate
for the reductions in nicotine caused by innovations in cigarette design
and manufacturing to reduce tar delivered. These examples
demonstrate that tobacco manufacturers deliberately increase the
proportion of high-nicotine delivery that would otherwise result in
these products.

13 (Emphasis added.)

14 **4. Additional Evidence of Nicotine Manipulation**

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

22 220. A laboratory analysis commissioned by "Day One" and conducted by
23 the American Health Foundation confirmed the industry's heavy use of reconstituted
24 tobacco. One RJR brand had 25 percent and another had about 33 percent reconstituted
25 tobacco. Yet, tested samples of the reconstituted tobacco implanted in RJR brands,
26 Winston, Salem, Magna and Now had up to 70 percent, rather than the expected 25 percent.

1
2
3 of the nicotine that would be found in regular tobacco, indicating that RJR had fortified the
4 reconstituted tobacco with additional nicotine.

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

11 222. The Kimberly-Clark tobacco reconstitution process is believed to be
12 used throughout the tobacco industry in a number of countries. A Kimberly-Clark
13 advertisement published in tobacco industry trade publications states:

14 Nicotine levels are becoming a growing concern to the designers of
15 modern cigarettes, particularly those with lower "tar" deliveries. The
16 Kimberly-Clark tobacco reconstitution process used by LTR
17 INDUSTRIES permits adjustments of nicotine to your exact
18 requirements. These adjustments will not affect the other important
19 properties of customized reconstituted tobacco produced at LTR
20 INDUSTRIES: low tar delivery, high filling power, high yield and
21 the flexibility to convey organoleptic modifications. We can help you
22 control your tobacco.

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

 224. Another enterprise quite 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 Conraf Group." An advertisement run by the Conraf Group
in the international trade press states: "Don't Do Everything Yourself! Let us do it More

1
2
3 Efficiently!" Calling itself "The Niche Market Specialists." Contraf lists among its areas
4 of specialization "Pure Nicotine and other special additives."

5 225. The cigarette industry has also used a process called "denaturing" to
6 add nicotine to cigarettes. Nearly-pure nicotine is combined with alcohol and then applied
7 to tobacco during the manufacturing process. Trucking records show that Philip Morris,
8 for example, received thousands of gallons of this nicotine alcohol mixture during the
9 1980s.

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

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

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

20 c. Andrew J. Schindler, President and Chief Operating Officer
21 U.S.A., R.J. Reynolds Tobacco Company, told Congress that "We do not restore any
22 nicotine anywhere in our process. . . . We lose nicotine, for example, in the reconstituted
23 sheet process. . . . [N]owhere in that process is any nicotine being incrementally added into
24 the process." Contradicting Johnston's and Schindler's statements, Dr. Robert Suber, a
25 toxicologist with RJR, admitted, however, that RJR controls the nicotine in its products.
26

1
2
3 He told CNN that "In order to deliver to the consumer a product that he wants, a consistent
4 level of nicotine, we have to blend the tobaccos accordingly. So we do control it."

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

9 e. Edward A. Horrigan, Jr., Chairman and CEO of Liggett Group,
10 Inc., told Congress that "In all my years in this business worldwide, I have never known of
11 a product-designed objective or goal that included even the notion of spiking the amount
12 of nicotine in a cigarette to achieve a level that would hook or addict smokers." Horrigan,
13 however, former Chairman and CEO of RJR through the late 1980s, participated in the
14 development and marketing of Premier and other RJR cigarette brands whose
15 manufacturing process included the manipulation of nicotine content and delivery.

16 f. Thomas E. Sandefur, Jr., CEO of Brown & Williamson, in the
17 face of overwhelming evidence to the contrary, denied secretly growing Y-1 in sworn
18 testimony before Congress on June 23, 1994, and stated that his company was being "set
19 up." He admitted that the company controlled nicotine, but in a shop-worn and now
20 familiar refrain, stated that the company did so only for "taste."

21 g. T.F. Riehl, Vice President for Research and Development at
22 Brown & Williamson, denying that the company mixed the tobacco for the Barclay
23 cigarette to have a higher concentration of nicotine, told Congress, "No, sir. We blend for
24 taste, not nicotine." However, internal documents from Brown & Williamson indicate that
25 Riehl, himself, has conducted research focusing on the adjustment of nicotine and tar levels
26 without regard to taste. In fact, at the 1984 Smoking Behavior-Marketing Conference,

1
2
3 Riehl gave a presentation on Project Aries, Brown & Williamson's safer cigarette project,
4 which emphasized tar reduction and nicotine enrichment in later puffs, but never addressed
5 the issue of taste.

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

11 228. The newly discovered evidence of nicotine manipulation by the
12 cigarette industry and the recent disclosures about nicotine addiction and manipulation
13 made before Congress have not deterred the industry from its campaign of concealment and
14 disinformation. As recently as April 1994, the cigarette industry placed advertisements
15 across the country denying that it "spikes" cigarettes with nicotine, denying that it believes
16 cigarette smoking is addictive, and misleading the public about whether the cigarette
17 companies deliberately control nicotine levels in their products.

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

22 230. RJR placed a similar advertisement in newspapers across the United
23 States, including on information and belief, newspapers sold in Alaska, in 1994
24 mischaracterizing the "recent controversy" as focusing on RJR's various techniques that
25 help us reduce the 'tar' (and consequently the nicotine) yields of our products."
26

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

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

M. Maintaining the Market Through Sales to Minors

1. The Increasing Addiction of Minors: A Predicate to Continuing Industry Profits

232. In addition to ensuring a captive market through the addiction of its customers, the cigarette industry has maintained its sales and replaced the hundreds of thousands of smokers who die each year by intentionally targeting marketing and promotional efforts at children and adolescents.

233. Every day, more than 1,200 cigarette smokers die of disease caused by smoking. In order to prevent a precipitous decline in cigarette sales, the big cigarette companies must attract new smokers. Children and teenagers became the main target and as a result of the tobacco companies' unfair and deceptive marketing programs and advertising, over 3,000 of them begin smoking everyday.

ATTORNEY GENERAL, STATE OF ALASKA
DIMOND COURTHOUSE
P.O. BOX 110300, JUNEAU ALASKA 99811
PHONE: 465 3600

1
2
3 234. The use of tobacco by minors continues to rise. The Centers for
4 Disease Control and Prevention ("CDC") announced on May 24, 1996, that a study of high
5 school students showed a higher prevalence of tobacco use among high school students in
6 1995 than in 1993 and 1991, up 35 percent from 1993 and 28 percent from 1991. The
7 prevalence of cigarette smoking in recent years among 8th and 10th grade students has risen
8 significantly and provides cause for great concern. For example, among 8th grade students,
9 14.3 percent in 1991 and 18.6 percent in 1994 were current smokers; among 10th grade
10 students, 20.8 percent in 1991 and 25.4 percent in 1994 were current smokers.

11 235. The 1994 Surgeon General's Report reviewed several different surveys
12 and found that the estimated percentage of adolescents who have ever smoked cigarettes
13 ranged up to approximately 42 percent (as reported by the 1991 Youth Risk Behavior
14 Survey). The 1994 Surgeon General's Report also found that 28 percent of high school
15 seniors were current smokers. Further, the 1994 Surgeon General's Report states that seven
16 to 13 percent of adolescents were frequent or heavy smokers, consuming at least a one-half
17 pack daily or smoking 20 days or more of the 30 days in a survey period.

18 236. Approximately 3 million children under the age of 18 are daily
19 smokers. One study found that children between the ages of 8 and 11 who are daily
20 smokers consume an average of 4 cigarettes daily, and those who are between the ages of
21 12 and 17 average nearly 14 cigarettes daily. The study also estimated that adolescents
22 consume an estimated 947 million packs of cigarettes and 26 million containers of
23 smokeless tobacco annually and account for annual tobacco sales of \$1.26 billion. Another
24 study estimates that teenagers in 1991 smoked 516 million packs of cigarettes and spent
25 \$962 million purchasing them. As stated previously, these figures are especially significant
26 given that all states prohibit the sale of tobacco to persons under the age of 18 (with some

1
2
3 states prohibiting sales to persons under the age of 19 and one state, Pennsylvania,
4 prohibiting cigarette sales to persons under the age of 21). Unfortunately, few states can
5 successfully enforce their laws restricting tobacco sales to minors given the tobacco
6 industry's intense effort to lure minors into smoking.

7
8 237. Studies have also suggested that the age one begins smoking can
9 greatly influence the amount of smoking one will engage in as an adult and will ultimately
10 influence the smoker's risk of tobacco related morbidity and mortality. Those who started
11 smoking by early adolescence were more likely to be heavy smokers than those who began
12 smoking as adults. Another study found that high school students who smoked their first
13 cigarette during childhood smoked more often and in greater amount than those who first
14 tried smoking during adolescence.

15 238. The escalating use of smokeless tobacco products by underage persons
16 presents an additional and growing public health problem. Smokeless tobacco products
17 include chewing tobacco and snuff and are also known as "spit tobacco" or "spitting
18 tobacco." In 1970, the prevalence of snuff use among males was lowest in those 17 to 19
19 years of age and the highest use was by men aged 50 or more. By 1985, a dramatic shift
20 had occurred, and males between 16 and 19 were twice as likely to use snuff as men aged
21 50 and over. An estimated 3 million users of smokeless tobacco products were under the
22 age of 21 in 1986, when Congress enacted the Comprehensive Smokeless Tobacco Health
23 Education Act (the "Smokeless Act") (15 U.S.C. § 4401). The Smokeless Act required the
24 Secretary of Health and Human Services ("Secretary") to inform the public of the health
25 dangers associated with smokeless tobacco use, required warning labels on packages,
26 banned advertising on electronic media subject to the Federal Communications
Commission's jurisdiction (such as television and radio), and encouraged States to make

1
2
3 18 years the minimum age for purchasing smokeless tobacco products. Despite the
4 Smokeless Act and State laws prohibiting sales to minors, a high percentage of persons
5 under the age of 18 use smokeless tobacco products. For example:

- 6 • 1991 school-based surveys estimated that 10.7 percent
7 of U.S. high school seniors and 19.2 percent of male 9th to
8 12th grade students use smokeless tobacco.
- 9 • A 1992 national household-based survey of U.S.
10 children found that 11.0 percent of males 12-17 years of age
11 were using smokeless tobacco.
- 12 • Among high school seniors who had ever tried
13 smokeless tobacco, 73 percent did so by the ninth grade.

14 239. In some parts of the United States the rates are especially high.
15 According to the 1990-91 Youth Risk Behavior Survey, the smokeless tobacco product use
16 rates among males in grades 9 through 12 were as high as 34 percent in Tennessee, 33
17 percent in Montana, 32 percent in Colorado, and 31 percent in Alabama and Wyoming.
18 Smokeless tobacco use rates among Alaska Native children have been reported in 13
19 percent of kindergarten children, increasing to 30 percent in high school.

20 240. The recent and very large increase in the use of smokeless tobacco
21 products by young people and the addictive nature of these products has persuaded the
22 Secretary that these products must be included in any regulatory approach that is designed
23 to help prevent future generations of young people from becoming addicted to nicotine-
24 containing tobacco products.

25 241. Despite the best efforts of parents, educators, and the medical
26 profession, smoking among young people has increased since the 1970's. This is because
cigarette company advertising is used to create a mental image associating smoking with
healthy, glamorous and athletic lifestyles, with success and sexual attractiveness and

1
2
3 success. This increases demand for cigarettes among young people. Within a short period
4 of time, the young smoker becomes physiologically and emotionally dependent, *i.e.*,
5 addicted to tobacco. Later, as the maturing smoker begins to wish he or she could quit,
6 advertising reinforces the practice and seeks to minimize health concerns, creates doubt,
7 confusion and mistake which are used by smokers as an excuse to avoid the pain and
8 discomfort of attempting to break their addiction to nicotine. This is the vicious cycle
9 created by defendants.

10
11 242. The cigarette companies sell more than one billion packs of cigarettes
12 per year to minors under the age of 18. In 1988, these sales accounted for about \$1.25
13 billion. Approximately 3 percent of the total tobacco industry profits (\$221 million in
14 1988) are derived directly from the sale of cigarettes to children under the age of 18, an
15 activity that is illegal in 47 states. Marlboro and Camel cigarettes, produced by Philip
16 Morris and Reynolds, respectively, dominate the teenage smoking market.

17 243. Sales to minors is no accident--it is the intended result of a carefully
18 orchestrated scheme. For example, despite the fact it is illegal to sell to minors in Alaska,
19 each of the tobacco companies studies how to attract minors and engages in conduct to
20 accomplish that goal. Illustrative is RJR which repeatedly has conducted reports "relating
21 to teenage smokers," including an analysis of RJR's share of teenage smokers, defined as
22 "14-17." Indeed, as early as 1973, Claude Teague of RJR was writing internal memos
23 stating that RJR should recognize that despite prohibitions on smoking, minors were
24 smoking in increasing numbers, thus, "if this is to be so, there is certainly nothing immoral
25 or unethical about our company attempting to attract smokers to our products." Teague
26 went onto write that as RJR "is to survive and prosper . . . we must get our share of the
youth market." Teague's view prevailed and RJR developed a scheme to attract minors that

1
2
3 was highly successful. This theme was repeated in a 1976 research department
4 memorandum, labeled "SECRET" which stated "Evidence is now available to indicate that
5 the 14 to 18 year old group is an increasing segment of the smoking population. RJR must
6 soon establish a successful new brand in this market if our position in the industry is to be
7 maintained over the long term." (Emphasis in original.)
8

9 2. The Use of Appealing Images

10 244. Defendants have engaged in a course of conduct designed to promote
11 cigarette smoking among young people and to particularly appeal to those with low self
12 esteem and emotional insecurity. Once the young person has been predisposed toward
13 smoking, a variety of factors can precipitate actual experimentation. For many young
14 people, the precipitating factor is being given a free pack of cigarettes by a tobacco
15 company representative, or purchasing cigarettes in order to obtain an attractive tee shirt,
16 baseball cap or other gimmick used to promote cigarette smoking.

17 245. One of the best examples of this was the transformation of Marlboro
18 Cigarettes from a red-tipped cigarette for women to the cigarette for the macho cowboy.
19 By changing imagery, Philip Morris was able to tap into a wholly new and different market.
20 In 1950, Reynolds was the king of the cigarette business. It sold more cigarettes than any
21 other company. Philip Morris, though doing well on the basis of its fraudulent health-
22 oriented advertising, was still far behind. In 1981, Philip Morris passed Reynolds in market
23 share and each year has extended its lead by developing an effective marketing campaign
24 for recruiting young new smokers to its brands. The wild spirit of the Marlboro man
25 captured the adolescent imagination. Also, Philip Morris' representatives fanned out to
26 colleges across the country, giving free cigarettes to incoming freshmen to get them
hooked. The children and teenagers who started smoking Marlboro became tenaciously

1
2
3 loyal customers. Soon, Marlboro became the gold standard of cigarettes among teenagers.
4 Up until 1988, nearly three-fourths of teenage smokers used Marlboro.

5 246. At about the time it lost market leadership to Philip Morris, Reynolds
6 dedicated itself to a ruthless campaign encouraging children and teenagers to smoke. One
7 of the key elements of the R.J. Reynolds' strategy for attracting children was to reposition
8 many of its cigarette brands to younger audiences.

9 247. Reynolds' Vantage cigarettes entered the 1980s as a brand targeted at
10 the health conscious adult smoker. Advertisements were intended to assuage fears of lung
11 cancer and other diseases, and give concerned smokers arguments for rationalizing their
12 continuation of the addiction. Through multiple transmogrifications, Vantage cigarettes
13 have been progressively repositioned to ever-younger audiences. During the mid-1980s this
14 campaign featured young successful professionals (including architects, fashion designers,
15 lawyers, etc.) with the slogan "The taste of success." These campaigns promoted the
16 implication that smoking is helpful--if not essential--to social success or prominence. This
17 is an image designed to appeal to underage smokers who dream of becoming successful
18 professionals. In the late 1980s the theme for Vantage cigarettes began to feature
19 professional-caliber athletes like wind surfers, aerobic dancers, downhill ski-racers and
20 auto-racers. This theme depicts physical activity requiring strength or stamina beyond
21 those of everyday activity, clearly suggesting that smoking is not harmful.

22 248. During the 1980s, as intended by the manufacturer, the theme for
23 Salem cigarettes also became more youth-oriented. Whereas the dominant theme for Salem
24 cigarettes used to be clean fresh country air, during the 80's, the theme was conveyed
25 through the use of Salem ads were populated by muscular surfers and beach bunnies, fun-
26 loving party animals and other attractive adolescent role models. Another successful

1
2
3 advertising campaign targeted at young people is the Lorillard Tobacco Company campaign
4 promoting Newport cigarettes. The theme links Newport with men and women in sexually
5 suggestive positions, always having fun, using the slogan "Alive with pleasure."

6 249. Another successful campaign has been the "You've come a long way
7 baby" campaign promoting Virginia Slims cigarettes. One of the most important
8 psychological needs of most adolescent girls is to become independent from their parents.
9 By associating smoking with women's liberation, Philip Morris hopes to create in the minds
10 of these teenage girls the vision of smoking as a symbol of autonomy and independence.
11 The theme Created for Virginia Slims and other "feminine" cigarettes prey upon the natural
12 and almost universal insecurity and sense of inferiority experienced by adolescents by
13 portraying the cigarette as a crutch and a symbol of superiority. Perhaps the most acute
14 psychological need of adolescence is to fit in, to be accepted, to be popular.

15 250. A status symbol and secret desire of many teenage boys is a powerful
16 motorcycle. It is for this reason that so many cigarette brands have used motorcycle
17 imagery to encourage teenage boys to smoke. To target young boys the industry uses
18 images of high risk activities like hang gliding, motorcycle racing, mountain climbing, etc.
19 Cigarette makers do this deliberately to undermine awareness that smoking is dangerous.
20 In its campaign to attract adolescent boys to become smokers, the R.J. Reynolds cigarette
21 company has made extensive use of risk-taking and danger. By glorifying risk-taking, these
22 ads have a more insidious purpose. How a person estimates the magnitude and likelihood
23 of a risk can be significantly affected by what it is compared against. By portraying
24 extremely dangerous activities like hang-gliding, mountain climbing and stunt motorcycle
25 riding, Reynolds minimizes the dangers of smoking in adolescent minds.
26

1
2
3 251. The greatest success that Reynolds had in its effort to gain on Philip
4 Morris in the youth market is the "Joe Camel" cartoon character. This campaign was
5 inaugurated in the United States in 1987 to commemorate the 75th anniversary of Camel
6 cigarettes. In the first ads, the camel leered out over the pack saying, "75 years and still
7 smoking." The implication is obvious. It soon became evident that "Joe Camel" would
8 strike a responsive chord among children and teenagers, and has been used by Reynolds to
9 target young persons--even children--to get them to start smoking at as early an age as
10 possible. Reynolds has more than tripled its expenditures for Camel cigarettes after 1988,
11 utilizing themes like "Joe Camel" guaranteed to be attractive to young people at high risk
12 of becoming smokers.

13 **3. Use of Youth Oriented Locations for Promotional and Advertising**
14 **Materials**

15 252. It is not just the themes within cigarette advertising that betray the real
16 target, it is also the location of those themes. During the decade of the 1980s there was a
17 steady migration of cigarette advertising into youth-oriented publications. Magazines with
18 sexually oriented themes, and those concerning entertainment and sporting activities, had
19 the highest concentration of cigarette ads. For many of these magazines, teenagers
20 comprise a quarter or more of the total readership. Cigarette ads in these youth-oriented
21 magazines were frequently multi-page, pop-up ads. News magazines like Time and
22 Newsweek, which have older audiences, had few cigarette ads, and those tended to
23 emphasize implicit health promises concerning tar and nicotine rather than glamorous
24 images.

25 253. In tests all across the country, it has been demonstrated that children
26 as young as 12 years old can buy cigarettes in three out of four retail outlets. A study by

1
2
3 the Inspector General's Office of the Department of Health and Human Services concluded
4 that, while there are laws prohibiting the sale of tobacco to minors, they are almost
5 uniformly unenforced. The risk of a merchant being punished for selling cigarettes to
6 minors is about one in 33 million. Cigarettes are available in unlimited quantities to
7 children through vending machines as well.

8
9 254. A particularly successful element of the industry's campaign has been
10 aimed at young girls. Nearly every issue of magazines for young girls like Teen and Young
11 Miss includes an statement by Reynolds urging children not to smoke. But the reasons
12 given for refraining are designed to continue to conceal, *i.e.* the reasons are not that
13 smoking is addictive, that it can harm or kill the infants of pregnant women, or that it causes
14 cancer and other awful diseases. Rather, the reason given is that it is an "adult custom."

15
16 255. This message, rather than discouraging children from smoking, plants
17 in impressionable young girls' minds the notion that smoking is something to do to show
18 one's independence, to act grown up. This notion is, of course, reinforced by the ubiquitous
19 cigarette ads depicting glamorous young adult women smoking as a way of demonstrating
20 their independence.

21
22 **4. Reynolds: "Old Joe Camel"**

23
24 256. The most notorious recent example of the industry targeting of minors
25 is the "Joe Camel" advertising campaign conducted by Reynolds, in observance of the
26 Camel brand's 75th anniversary. As part of the initiation of the promotion, Reynolds
included singing birthday cards in Rolling Stone magazine, a publication particularly
popular with young people, and offered premiums such as T-shirts, party mugs and wall
posters. When Reynolds began this cartoon campaign in 1988, Camel's share of the
children s (under 18 years of age) market was only 0.5 percent. In just a few years, Camel's

1
2
3 share of this illegal market has increased to 32.8 percent, representing sales estimated at
4 \$476 million per year. Another indication of the phenomenal success of this marketing
5 campaign is the fact that in a recent survey of six year-olds, 91 percent of the children could
6 correctly match "Old Joe" with a picture of a cigarette, and both the silhouette of Mickey
7 Mouse and the face of Old Joe were nearly equally well recognized by almost all children.

8 257. All defendants are aware of the fact that tobacco use begins primarily
9 among youth who are not yet 18 years of age. Among minors, the three most used brands
10 of cigarettes are the most advertised. Reynolds studied the attributes of an advertising
11 campaign which would most appeal to the group it carefully identified as "21 and under."
12 Those attributes directly coincide with the "Joe Camel" campaign. Several years later,
13 again addressing those attributes, this startling statement was made: "Young people will
14 continue to become smokers at or above the present rates during the projection period. The
15 brands which these beginning smokers accept and use will become the dominant brands in
16 future years. Evidence is now available to indicate that the 14 to 18 year old group is an
17 increasing segment of the smoking population. RJR must soon establish a successful new
18 brand in the market if our position in the industry is to be maintained over the long term."
19 (Emphasis in original.)

20 258. Reynolds continues to use the "Old Joe" character in conjunction with
21 other offers attractive to minors. Recently, for example, it began an advertising campaign
22 offering concert tickets in return for redemption of a number of Camel coupons, again in
23 Rolling Stone magazine.

24 259. Reynolds has made other premiums available in exchange for coupons
25 included in packages of Camel cigarettes. These premiums are deliberately designed to
26 appeal primarily to minors.

1
2
3
4 260. Reynolds has expressly encouraged minors to circumvent laws related
5 to tobacco use by minors. For example, in one coupon offer for a free package of Camels,
6 "Joe Camel" advised individuals that it would be a "smooth move" to have someone else
7 redeem the coupon, thus suggesting the means to overcome prohibitions of sales to minors
8 of tobacco products. Other Reynolds campaigns have targeted stores and advertising
9 locations close to high schools and other areas frequented by minors, and Reynolds
10 concentrates advertising in publications read by large numbers of minors.

11 **5. U.S. Tobacco: "Old Enough to Chew"**

12 261. U.S. Tobacco has engaged in an ongoing campaign to induce
13 individuals to become users of smokeless tobacco, and its efforts find particular success
14 among minors, as intended by the company.

15 262. U.S. Tobacco designs its products to introduce the "new user" to
16 smokeless tobacco products, and as addiction grows, "graduate" users to higher nicotine
17 content products: "Skoal Bandits [a mild, low-nicotine product, packaged in individual use
18 'tea bags'] is the introductory product, and then we look towards establishing a normal
19 graduation process [to higher nicotine content products]." The introductory products are
20 aimed at new users, mainly cigarette smokers, between ages 15 and 35.

21 263. A U.S. Tobacco employee, Bill Falk, who was apparently terminated
22 for some other comments in the article [see discussion below] told a New York Post
23 reporter: "A lot of young people are getting into it [smokeless tobacco use] . . . It's become
24 a status thing. When a kid gets a new pair of jeans, he puts the snuff can in the back pocket
25 and rubs it till the outline shows. It shows he's old enough to chew."

1
2
3 **6. Philip Morris: Competing for the Minor Market**

4 264. All defendants promote and market their products to minors. At least
5 one company, Philip Morris, tracked hyperactive children in grade school to research
6 whether they would become smokers. Philip Morris apparently conducted market research
7 concerning minors who smoke or are apt to smoke. In a 1969 presentation to the Board of
8 Directors by the Philip Morris Research Center, W.L. Dunn, Jr. and F.J. Ryan talked about
9 the future of the "psychology department," noting that more attention was being paid to the
10 reasons why people smoke: "there is general agreement on the answer to [why people begin
11 to smoke]. The 16 to 20 year old begins smoking for psychosocial reasons. The act of
12 smoking is symbolic; it signifies adulthood. he smokes to enhance his image in the eyes of
13 his peers." Philip Morris, having apparently studied the minor market for tobacco, has
14 recently begun a program characterized as "Marlboro Unlimited," which is a program
15 offering premiums for coupons from cigarette packages. This program is a direct response
16 to Reynolds success in the minor market, is designed to appeal to minors, and is an effort
17 by Philip Morris to maintain Marlboro's dominance of that illegal market.

18 265. Each tobacco company defendant engages in various advertising and
19 promotional activities in an effort to develop a "minor" market. These activities include
20 pervasive sponsorship of various sporting events, concerts and other events likely to attract
21 extensive youth interest. Another means of appealing to youth used by the companies is
22 paying for promotional appearances in movies which, because of the subject matter or the
23 actors in the films, are most likely to appeal to youth. For example, Brown & Williamson
24 agreed with the actor Sylvester Stallone that he would use the former's products in at least
25 five feature films, in exchange for \$500,000. Philip Morris paid for the promotion of
26 Marlboro in "Superman II," "Risky Business," and "Crocodile Dundee" and for promotion

1
2
3 of Lark in "License to Kill." It paid for or otherwise provided promotional material for 56
4 films in 1987 and 1988. Liggett paid for promotion of Eve [its brand designed especially
5 to appeal to young women] in "Supergirl." American Tobacco promoted Lucky Strike in
6 "Beverly Hills Cop." Reynolds paid for the promotion of Camel in "Who Framed Roger
7 Rabbit." "Desperately Seeking Susan." and "Honey, I Shrunk the Kids."

8
9 **7. Philip Morris' Admission that it has Targeted Minors**

10 266. The Tobacco Cartel is currently under intense scrutiny from state and
11 federal officials. In a blatant attempt to stave off FDA regulations, Philip Morris has
12 proposed a series of changes to their marketing practices. In a recent letter to the Attorneys
13 General of many states, Philip Morris informed the Attorneys General that it has announced
14 a "blue print which directly addresses the issue of youth smoking." Among the proposals
15 are the following:

- 16 ● Ban tobacco ads near schools and playgrounds and in youth oriented publications:
- 17 ● Prohibit tobacco brand names, logos and characters on promotional items like t-shirts and caps:
- 18 ● Ban cigarette vending machines:
- 19 ● Limit tobacco brand name sponsorship to events with primarily adult audiences:
- 20 ● Ban tobacco advertising in video arcades and family oriented centers.

21
22 267. These proposals constitute an admission that the industry has
23 attempted to attract minors, when it: (1) places tobacco ads near schools, playgrounds and
24 in youth oriented publications; (2) uses logos and characters that are intended to appeal to
25 minors; (3) sponsors events that have primarily youth audiences; (4) places ads in places
26 likely to reach minors such as video and family oriented centers. These admissions are

1
2
3 powerful evidence that the Tobacco Industry has knowingly and intentionally targeted
4 minors.

5 **N. Smokeless Tobacco Products: Addiction Through the "Graduation Process"**

6 268. The Defendants Brown & Williamson and R.J. Reynolds also
7 manufacture and distribute loose tobacco used in the "roll your own" process of cigarette-
8 making.

9 269. Even though the medical evidence regarding the hazards of cigarette
10 smoking and addiction have been known to the defendants for many years, the packages
11 and containers of the "roll your own" tobacco conceal and/or misrepresent the hazards of
12 use of this product.

13 270. Despite their knowledge that the use of smokeless tobacco is, as a
14 result of nicotine, extremely addictive, the Tobacco Companies to this day deny that
15 smoking, "dipping," or "chewing" tobacco is addictive. Through their individual
16 advertising and public relations campaigns, and collectively, through the Tobacco Institute,
17 the Tobacco Companies have successfully promoted and sold tobacco products by
18 concealing and misrepresenting the highly addictive nature of cigarettes and smokeless
19 tobacco.

20 271. Defendant United States Tobacco Company makes approximately 90
21 percent of the oral snuff and chewing tobacco sold in the United States. As alleged above,
22 smokeless tobacco delivers a similar amount of nicotine as cigarettes and is equally as
23 addictive. Plaintiff is informed and believes that smokeless tobacco manufacturers intend
24 to cause nicotine dependence among consumers through a strategy that involves promoting
25 the user of lower nicotine brands with the intent of moving users up to higher, more
26 addictive brands over time. The "graduation" strategy calls for three different brands of

1
2
3 low, medium and high nicotine content. The strategy is based on the premise that new users
4 of smokeless tobacco are most likely to begin with products that are milder tasting, more
5 flavored and lighter in nicotine content. After a period of time, there is a natural
6 progression to products that are more full-bodied and have more concentrated tobacco taste,
7 with more nicotine, than the entry brand. This graduation strategy is supported by the
8 manufacturers' advertising practices which indicate the manufacturers' intent to have
9 consumers experiment with low-nicotine brands and graduate to higher-nicotine brands
10 over time. The FDA's 1995 investigation into nicotine and tobacco products found, that
11 with respect to smokeless products, "tobacco manufacturers control the delivery of
12 nicotine" so that products that deliver lower doses of nicotine are provided to "new users"
13 who are then encouraged by tobacco marketing to "graduate" to products that deliver
14 "higher doses of nicotine."

15 **O. The Human Toll of Cigarette Smoking**

16 **1. Health Effects of Cigarette Smoking**

17 272. Over 400,000 Americans die each year from smoking-related illnesses.
18 This equates to more than one of every five deaths in the United States. If an adolescent's
19 tobacco use continues for a lifetime, there is a 50 percent chance that the person will die
20 prematurely as a direct result of smoking. Moreover, the earlier a young person's smoking
21 habit begins, the more likely he or she will become a heavy smoker and therefore suffer a
22 greater risk of smoking related diseases. Smoking is responsible for about 90 percent of all
23 lung cancer deaths; 87 percent of deaths from chronic obstructive pulmonary diseases
24 (COPD); 21 percent of deaths from coronary heart disease; and 18 percent of deaths from
25 stroke. Further, a causal relationship exists between cigarette smoking and cancers of the
26 larynx, mouth, esophagus and bladder; and atherosclerotic peripheral vascular disease.

1
2
3 cerebrovascular disease (stroke) and low-birth weight babies. Cigarette smoking is also a
4 probable cause of infertility and peptic ulcer disease and contributes to, or is associated
5 with, cancers of the pancreas, kidney, cervix and stomach.

6 273. Epidemiologic studies provide overwhelming evidence that smoking
7 causes lung cancer. The risk of getting lung cancer may be more than 20 times greater for
8 heavy smokers than nonsmokers. The relationship between smoking and lung cancer is due
9 to the numerous carcinogens in cigarette smoke. Cigarette smoking caused an estimated
10 117,000 deaths from lung cancer in 1990.

11 274. The risk of getting lung cancer increases with the number of cigarettes
12 smoked and the duration of smoking, and decreases after cessation of smoking. Starting
13 smoking at an earlier age increases the potential years of smoking and increases the risk of
14 lung cancer. Studies have shown that lung cancer mortality is highest among adults who
15 began smoking before the age of 15.

16 275. Cigarette smoking also causes cancer of the larynx, mouth and
17 esophagus. According to current estimates, 82 percent of laryngeal cancers are due to
18 smoking and about 80 percent of the 10,200 deaths from esophageal cancer in 1993 can be
19 attributed to smoking. The risk of oral cancer among current smokers ranges from 2.0 to
20 18.1 times the risk in people who have never smoked and can be reduced more than 50
21 percent after quitting. The risk of esophageal cancer among current smokers ranges from
22 1.7 to 6.4 times the risk in people who have never smoked and can also be reduced by about
23 50 percent after quitting.

24 276. Epidemiological studies demonstrate that cigarette smoking contributes
25 to the development of pancreatic cancer. The reason for this relationship is unclear, but
26 may be due to carcinogens or metabolites present in the bile or blood. In 1985, the

1
2
3 proportion of pancreatic cancer deaths in the United States attributable to smoking was
4 estimated to be 29 percent in men and 34 percent in women.

5 277. Cigarette smoking accounts for an estimated 30 to 40 percent of all
6 bladder cancers and is a contributing factor for kidney cancer. The increased risk of kidney
7 and bladder cancer may be related to the number of cigarettes smoked per day, and the risk
8 decreased following smoking cessation.

9 278. Smoking is a contributing factor for cancer of the cervix. The
10 association between cigarette smoking and cervical cancer persists after control is made for
11 risk factors, such as age at first intercourse and the number of sexual partners, that
12 predispose a woman to developing sexually-transmitted diseases. The inclusion of these
13 risk factors, however, may not completely rule out confounding by sexually-transmitted
14 diseases. The findings that components of tobacco smoke can be found in the cervical
15 mucus of smokers, and the mucus of smokers is mutagenic, and that former smokers have
16 a lower risk of getting cervical cancer than current smokers are consistent with the
17 hypothesis that smoking is a contributing cause of cervical cancer.

18 279. The 1982 Surgeon General's Report concluded that stomach cancer
19 is associated with cigarette smoking.

20 280. Smoking is a leading cause of heart disease. The 1964 Surgeon
21 General's Report noted that male cigarette smokers had higher death rates from coronary
22 heart disease than nonsmokers. Subsequent reports have concluded that cigarette smoking
23 contributes to the risk of heart attacks, chest pain, and even sudden death. Overall, smokers
24 have a 70 percent greater death rate from coronary heart disease than nonsmokers.

25 281. Ischemic heart disease resulting from cigarette smoking claimed nearly
26 99,000 lives in 1990. One study estimates that smoking causes 30 to 40 percent of all

1
2
3 deaths due to coronary heart disease. Smokers between the ages of 40 and 64, who smoked
4 more than one pack a day, were shown to have a risk of coronary heart disease that is 3.2
5 times higher than people who do not smoke.

6 282. Smoking also increases a person's risk of atherosclerotic peripheral
7 vascular disease, especially if the smoker is diabetic. Complications of this disease include
8 decreased blood delivery to the peripheral tissues, gangrene and ultimately loss of the
9 affected limb. Smoking cessation is the most important intervention in the management of
10 peripheral vascular diseases.

11 283. Smoking is a cause of stroke. Stroke is the third leading cause of death
12 in the United States. The association of smoking with stroke is believed to be mediated by
13 the mechanisms responsible for atherosclerosis (narrowing and hardening of the arteries),
14 thrombosis and decreased cerebral blood flow in smokers. Female smokers who use oral
15 contraceptives are at an increased risk of having a stroke.

16 284. Cigarette smoking is the leading cause of chronic obstructive
17 pulmonary disease (COPD) in the United States. Approximately 84 percent of the COPD
18 deaths in men and 79 percent of the COPD deaths in women are attributable to cigarette
19 smoking. The risk of death from COPD may depend on how many cigarettes a person
20 smokes daily, how deeply the person inhales and the age when the person began smoking.
21 The number of cigarettes smoked per day is a strong indicator for the presence of the
22 principal symptoms of chronic respiratory illness, including chronic cough, phlegm
23 production, wheezing and shortness of breath.

24 285. Smoking's detrimental effect on lung structure and function appear
25 within a few years after cigarette smoking begins. Children who smoke are more likely to
26 suffer from respiratory illnesses than children who do not smoke. Adolescents who smoke

1
2
3 may experience inflammatory changes in the lung, reduced lung growth and may not
4 achieve normal lung function as an adult.

5 286. Cigarette smoking is a probable cause of peptic ulcer disease. Peptic
6 ulcer disease is more likely to occur in smokers than in nonsmokers, and the disease is less
7 likely to heal, and more likely to cause death in smokers than nonsmokers. Quitting
8 smoking reduces the chances of getting peptic ulcer disease and is an important component
9 of effective peptic ulcer treatment.

10 287. Studies also show that women who smoke have reduced fertility. One
11 study showed that smokers were 3.4 times more likely than nonsmokers to take more than
12 1 year to conceive.

13 288. Smoking's severe detrimental effects during pregnancy are well
14 documented. Women who smoke are twice as likely to have low birth weight infants as
15 women who do not smoke. Smoking also causes intrauterine growth retardation of the
16 fetus. Mothers who smoke also have increased rates of premature delivery.

17 289. Smoking may lead to premature infant death. Babies of mothers who
18 smoke are more likely to die than babies born to nonsmoking mothers. A recent meta-
19 analysis reported that use of tobacco products by pregnant women results in 19,000 to
20 141,000 miscarriages per year, and 3,100 to 7,000 infant deaths per year. In addition, the
21 meta-analysis attributed approximately two-thirds of deaths from sudden infant death
22 syndrome to maternal smoking during pregnancy. By another estimate, if all pregnant
23 women stopped smoking, there would be 4,000 fewer infant deaths per year in the United
24 States.

1
2
3 **2. Health Effects of Smokeless Tobacco Products**

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

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

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

21 **P. The Injury to the State of Alaska as a Direct and Foreseeable Consequence of**
22 **Defendants' Unlawful Conduct**

23 293. In addition to the human toll, the economic cost of tobacco use, and,
24 in particular, health care expenditures from tobacco-attributable diseases, amount to an
25 unacceptable burden on society and the State of Alaska.
26

COMPLAINT FOR INJUNCTIVE RELIEF,
DAMAGES, RESTITUTION, DISGORGEMENT,
PENALTIES AND OTHER RELIEF

1
2
3 294. The State spends millions of dollars each year to provide or pay for
4 health care and other necessary facilities and services on behalf of state employees, the
5 needy, indigents and other eligible residents. Increased health care costs for those
6 individuals are directly caused by tobacco induced cardiovascular disease, lung cancer,
7 emphysema, respiratory and other diseases.

8 295. In fulfilling its statutory duties, the State of Alaska has expended and
9 will expend substantial sums of money due to the increased cost of providing health care
10 services for treatment of tobacco-caused diseases. These increased expenditures have been
11 caused by the unlawful actions of the Tobacco Industry.

12 296. Alaska expends funds in several areas which include significantly
13 increased charges attributable to tobacco usage and exposure. These include but are not
14 limited to:

15 a. Medical payments: Pursuant to AS 47.07.010 et seq.,
16 Alaska makes payments for medical care services provided to
17 recipients of public assistance. The amount paid for Medicaid is
18 higher than it would be otherwise due to payment for tobacco-related
19 illnesses;

20 b. Health Care: Alaska purchases health care insurance for
21 public employees and dependents. The premiums paid for all
22 employees and dependents are higher than they would be otherwise
23 due to the potential of payments for tobacco-related illnesses for some
24 employees and dependents;

25 297. The Centers for Disease Control have developed information on
26 smoking-attributable deaths and diseases and the economic impact of smoking. Their study
demonstrates that there is a direct and substantial cost to Alaska State taxpayers of
increased health care attributable to use of tobacco. Nationwide, the CDC data shows that
the estimated health care costs for smoking-attributable diseases are \$50 billion. These
costs have been increasing at a precipitous rate, more than doubling in the period from 1987

1
2
3 to 1993. The present value of Alaska's Medicaid expenses attributable to smoking for the
4 period 1980 to 1993 exceeds \$150 million. This figure does not include other damages
5 suffered by the state, such as increased health care premiums.

6 **Q. Fraudulent Concealment**

7
8 298. Plaintiff was without knowledge of defendants' combination or
9 conspiracy, or of any facts from which it might reasonably be concluded that defendants
10 were illegally conspiring, or which would have led to the discovery thereof, until early
11 1996. Plaintiff could not have discovered such facts or the alleged violations at an earlier
12 time because defendants fraudulently concealed their course of conduct.

13 299. Plaintiff is not aware of the methods used by defendants to conceal
14 their activities, but believes that the methods used by defendants in furtherance of their
15 combination and conspiracy were by nature self-concealing and not of a type which could
16 have reasonably been apparent to plaintiff.

17 300. For example, in 1985 a Brown & Williamson attorney recommended
18 that much of its medical research be declared "deadwood" and shipped to England. The
19 attorney stated that, "I have marked with an X documents which I suggested were
20 deadwood in the behavioral and biological studies area. I said that the B series are Janus
21 series studies and should also be considered deadwood." The attorney further suggested
22 that the research, development, and engineering department also "should undertake to
23 remove the deadwood from its files."

24 301. Brown & Williamson attempted to control other documents such that
25 it could later claim an attorney-client privilege or work product protection for documents
26 which its attorneys thought might later cause difficulties in product liability actions. Such
documents included scientific reports which the company sought to protect from discovery:

1
2
3 "[Scientific] material should come to you [corporate counsel] under a policy statement
4 between you and Southampton [BAT] which describes the purpose of developing the
5 documents for B & W and sending them to you as use for defense of potential litigation.
6 It is possible that a system can be devised which would exempt the Engineering reports
7 because it might be difficult to maintain a privilege for covering such reports under the
8 potential litigation theory. [C]ontinued Law Department control is essential for the best
9 argument for privilege. At the same time, control should be exercised with flexibility to
10 allow access of the R & D staff to the documents."

11 302. The Brown & Williamson assertions of privilege are false and in bad
12 faith. Other defendants have used similar tactics to conceal the activities of the conspiracy.
13 The joint actions of the conspiracy through the CTR and Tobacco Institute have been
14 similarly shielded from scrutiny. Part of the document review undertaken by Brown &
15 Williamson was an effort to conceal documents showing the true nature of the associations:
16 "[In conducting document review] pay special attention to documents suggesting that TI
17 [Tobacco Institute] was used as a vehicle for the industry's alleged conspiracy to promote
18 cigarettes through the 'open controversy' PR program. . . ."

19 303. The CTR had a number of categories of research projects. Of
20 particular significance is the category "Special Projects." Special Projects were reviewed
21 and selected for funding by the general counsel of the member companies. It may be
22 reasonably inferred that lawyers controlled this research so as to protect it from discovery
23 and also to further the ends of the conspiracy.

24 304. Plaintiff's claim of CTR manipulation through the siphoning of
25 relevant projects is further supported by the notes of the September 10, 1981 Committee
26

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

of General Counsel, transmitted via a September 18, 1981 letter from Webster & Sheffield, which states:

Stevens: 'I need to know what the historical reasons were for the difference between the criteria for lawyers' special projects and CTR special projects.' . . .

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

Stevens: 'He took offense re scientific embarrassment to us, but not to CTR.'

Jacob: 'With Spielberger, we were afraid of discovery for FTC and Aviado, we wanted to protect it under the lawyers. We did not want it out in the open.'

These minutes explicitly acknowledge that the supposedly "independent" scientific director of CTR channeled research into "Special Projects" for defendants' litigation efforts. But even more disturbing is defendants' announced practice of using the "Special Projects" division in order to shield damaging research results from the public and the FTC. A document captioned "Notes from the September 10, 1981 Meeting of Company Counsel and Ad Hoc Committee Members" is even more explicit. Page one of the "Notes" states as follows:

skeptical scientists. . . . The staff at CTR also needed to be more tobacco oriented with a skeptical view.

This document pertains not only to the Special Projects division but also to defendants' intentional manipulation of the CTR as a whole.

305. Defendants' conspiracy is ongoing and continues to this day. The defendants continue to deny that (i) nicotine is addictive; (ii) smoking causes cancer and

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

other health problems; (iii) that they are illegally targeting minors; and (iv) that they manipulate the level of nicotine in tobacco products to increase addiction.

VI. CLAIMS FOR RELIEF

COUNT 1

(Violation of AS 45.50.471)

UNLAWFUL MARKETING AND TARGETING MINORS

306. The State of Alaska repeats and realleges paragraphs 1 through 119 and 150 through 305 as if set forth fully above.

307. The Alaska State Legislature has declared that it is the public policy of this State to prohibit minors' access to tobacco products. For example, pursuant to AS 11.76.100, it is a criminal violation to give or sell tobacco products to minors. Further, AS 11.76.100 and AS 11.76.107 outline various restrictions relating to the placement and supervision of cigarette vending machines, and AS 11.76.105 prohibits a person under the age of 19 from knowingly possessing tobacco products.

308. Defendants have engaged in a course of conduct and have suppressed information causing others to rely on such suppression in an effort to deceptively, unfairly and unlawfully encourage minors to violate the declared public policy of the State of Alaska.

309. More specifically, and as set forth above, defendants have caused their products to be sold to minors, in part, by (i) concealing that their marketing is designed to encourage minors to smoke in violation of State law; (ii) concealing that their products are addictive and harmful and suppressing and omitting information on these subjects; (iii) designing their marketing campaigns causing minors to rely on the tobacco companies' advertisements, and (iv) engaging in their course of conduct with the purpose of causing

COMPLAINT FOR INJUNCTIVE RELIEF,
DAMAGES, RESTITUTION, DISGORGEMENT,
PENALTIES AND OTHER RELIEF

ATTORNEY GENERAL, STATE OF ALASKA
DIMOND COURTHOUSE
P.O. BOX 110300, JUNEAU, ALASKA 99811
PHONE: 465-3600

1
2
3 minors to smoke in violation of state law. This conduct is both unfair and deceptive.
4 Further, defendants' conduct is made even more deceptive by virtue of the fact they have
5 publicly proclaimed that they are against encouraging minors to smoke while secretly they
6 have launched a course of conduct designed to accomplish exactly the opposite.

7 310. Defendants' course of conduct and marketing efforts unfairly
8 encourages minors to violate the declared public policy of the State of Alaska.

9 311. Tobacco sales to minors and/or use by minors have increased in Alaska
10 as a direct, foreseeable and intended result of the defendants' practices.

11 312. Defendants' course of conduct and the targeting of minors as described
12 in the Complaint violates the expressed public policy of the State of Alaska, and as such,
13 is an unfair and deceptive act or practice in violation of AS 45.50.471.

14 313. Defendants' actions caused others to rely upon the concealment,
15 suppression and omissions of information set forth above.

16 314. Defendants' unfair and deceptive acts or practices occurred in the
17 course of conduct involving trade or commerce.

18 315. Defendants' conduct as described above constitutes unfair and
19 deceptive acts and practices in violation of Alaska's Unfair Trade Practices and Consumer
20 Protection Act: AS 45.50.471.

21 WHEREFORE, the State of Alaska prays as follows:

22 A. That the Court adjudge and decree that defendants have engaged in the
23 conduct alleged herein.

24 B. That the Court adjudge and decree that such conduct is unlawful and
25 in violation of AS 45.50.471.
26

1
2
3 C. That the Court enjoin and restrain defendants and their officers, agents,
4 servants and employees, and those in active concert or participation with them, from
5 continuing or engaging in such conduct or other conduct having similar purpose or effect.

6 D. That the Court order defendants to publicly disclose, disseminate, and
7 publish all research previously conducted directly or indirectly by themselves and their
8 respective agents, affiliates, servants, officers, directors, employees and all persons acting
9 in concert with them, that relates to the issue of smoking and health.

10 E. That the Court order defendants to fund a corrective public education
11 campaign relating to the issue of smoking and health, administered and controlled by an
12 independent third party.

13 F. That the Court order the defendants to take reasonable and necessary
14 steps to prevent the distribution and sale of cigarettes to minors under the age of 19.

15 G. That the Court order defendants to fund clinical smoking cessation
16 programs in the State of Alaska.

17 H. That the Court order defendants to disgorge all unjust profits from
18 tobacco sales to minors, and from all other tobacco sales in the State of Alaska which
19 defendants should not be allowed to retain.

20 I. That, pursuant to AS 45.50.551(b), the Court assess civil penalties of
21 \$5,000 from each defendant for each violation of AS 45.50.471.

22 J. That the State of Alaska recover from defendants the costs of this
23 action, including a reasonable attorney's fee.

24 K. That the Court order such other and further relief as the Court deems
25 just, necessary and appropriate.
26

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

COUNT 2
(Violation of AS 45.50.471)
CONTRIBUTING TO THE DELINQUENCY OF MINORS

316. The State of Alaska repeats and realleges paragraphs 1 through 119 and 150 through 305 as if set forth fully above.

317. The Alaska State Legislature has declared that it is the public policy of the State to prohibit a person from aiding, inducing, causing or encouraging a child under 18 years of age to do any act prohibited by state law. AS 11.51.130(a)(1).

318. Defendants have engaged in a course of conduct and have suppressed information causing others to rely on such suppression in an effort to deceptively, unfairly and unlawfully aid, induce, cause and/or encourage children of the State of Alaska to become delinquent children.

319. More specifically, and as set forth above, defendants have aided, induced, caused, and/or encouraged the delinquency of the children of Alaska, in part, by (i) concealing that their marketing is designed to encourage minors to smoke in violation of State law; (ii) concealing that their products are addictive and harmful and suppressing and omitting information on these subjects, while at the same time portraying tobacco use as glamorous and in a fashion that is designed to minimize the risks associated with tobacco use; (iii) designing their marketing campaigns to cause minors to rely on the tobacco companies' advertisements; and (iv) engaging in conduct with the purpose of causing minors to smoke in violation of state law. This conduct is both unfair and deceptive. Further, defendants' conduct is made even more unfair and deceptive by virtue of the fact they have publicly proclaimed that they are against encouraging minors to smoke while secretly they have launched a course of conduct designed to accomplish exactly the opposite.

COMPLAINT FOR INJUNCTIVE RELIEF,
DAMAGES, RESTITUTION, DISGORGEMENT,
PENALTIES AND OTHER RELIEF

1
2
3 320. Tobacco sales to minors have increased in Alaska as a direct,
4 foreseeable and intended result of the defendants' practices.

5 321. Defendants' efforts to aid, induce, cause and/or encourage children of
6 the State of Alaska to become delinquent through the targeting of minors as described in
7 the Complaint violates the expressed public policy of the State of Alaska, and as such, is
8 an unfair and deceptive act or practice in violation of AS 45.50.471.

9 322. Defendants concealment, suppression and omission of information set
10 forth above caused Alaskans to rely on false information and purchase and use defendants'
11 unsafe and dangerous products.

12 323. Defendants' unfair and deceptive acts or practices occurred in the
13 course of conduct involving trade or commerce.

14 324. Defendants' conduct as described above constitutes unfair and
15 deceptive acts and practices in violation of Alaska's Unfair Trade Practices and Consumer
16 Protection Act, AS 45.50.471.

17 WHEREFORE, the State of Alaska prays as follows:

18 A. That the Court adjudge and decree that defendants have engaged in the
19 conduct alleged herein.

20 B. That the Court adjudge and decree that such conduct is unlawful and
21 in violation of AS 45.50.471.

22 C. That the Court enjoin and restrain defendants and their officers, agents,
23 servants and employees, and those in active concert or participation with them, from
24 continuing or engaging in such conduct or other conduct having similar purpose or effect.

25 D. That the Court order defendants to publicly disclose, disseminate, and
26 publish all research previously conducted directly or indirectly by themselves and their

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

respective agents, affiliates, servants, officers, directors, employees and all persons acting in concert with them, that relates to the issue of smoking and health.

E. That the Court order defendants to fund a corrective public education campaign relating to the issue of smoking and health, administered and controlled by an independent third party.

F. That the Court order the defendants to take reasonable and necessary steps to prevent the distribution and sale of cigarettes to minors under the age of 19.

G. That the Court order defendants to fund clinical smoking cessation programs in the State of Alaska.

H. That the Court order defendants to disgorge all unjust profits from tobacco sales to minors, and from all other tobacco sales in the State of Alaska which defendants should not be allowed to retain.

I. That, pursuant to AS 45.50.551(b), the Court assess civil penalties of \$5,000 from each defendant for each violation of AS 45.50.471.

J. That the State of Alaska recover from defendants the costs of this action, including a reasonable attorney's fee.

K. That the Court order such other and further relief as the Court deems just, necessary and appropriate.

COUNT 3
(Violation of AS 45.50.471)
UNFAIR AND DECEPTIVE ACTS OR PRACTICES

325. The State of Alaska repeats and realleges paragraphs 1 through 119 and 150 through 305 as if set forth fully above.

1
2
3 326. In the regular course of business, defendants engaged in
4 misrepresentations and/or omissions of material facts, including but not limited to
5 representing:

6 a. That the defendants would lead an effort to discover and
7 disclose to the public the truth about the health effects of tobacco products use:

8 b. That the use of tobacco products is not harmful and has not been
9 proven to cause and exacerbate diseases:

10 c. That nicotine contained in tobacco products is not addictive:

11 d. That the defendants do not exploit or manipulate the nicotine
12 in tobacco products:

13 e. That the defendants do not target, direct or seek to focus their
14 tobacco products marketing efforts on children and adolescents and, in fact, actively
15 discourage sale of those products to children and adolescents.

16 327. The conduct described above and in this Complaint constitutes unfair
17 and deceptive acts or practices in violation of AS 45.50.471 in that:

18 a. The defendants have not been truthful in disclosing the
19 information developed by or otherwise known to them concerning the health hazards of
20 tobacco product use, including the addictive nature of nicotine. They have systematically
21 suppressed and concealed material information developed by or otherwise known to them
22 concerning the adverse health effects of tobacco product use, including the addictive nature
23 of nicotine, and have engaged in a misinformation and disinformation campaign to conceal
24 the truth. The defendants have further systematically sought falsely to discredit or cast
25 doubt upon scientific studies and reports which concluded that use of tobacco products
26 caused adverse health effects, including the addictive nature of nicotine:

COMPLAINT FOR INJUNCTIVE RELIEF,
DAMAGES, RESTITUTION, DISGORGEMENT,
PENALTIES AND OTHER RELIEF

1
2
3 b. Tobacco products are harmful when used for their intended
4 purpose. Tobacco product use causes a large variety of diseases, including debilitating
5 diseases and diseases that result in death. In furtherance of their deceptive representations
6 about the health effects of tobacco product use, the defendants have suppressed the
7 development and commercial production of safer tobacco products:

8 c. The nicotine contained in tobacco products is addictive:

9 d. The tobacco companies rely upon the addictive nature of
10 nicotine in designing, marketing and selling tobacco products and manipulate nicotine
11 levels, availability and delivery in order to achieve their design, marketing and sales
12 strategies:

13 e. The defendants market, distribute and sell tobacco products in
14 a manner that targets children and adolescents and intentionally attracts them to begin or
15 continue to use tobacco products.

16 328. Defendants' actions caused others to rely upon the concealment,
17 suppression and omissions of information set forth above.

18 329. Defendants' unfair and deceptive practices occurred in the course of
19 conduct involving trade or commerce.

20 330. Defendants' violation of AS 45.50.471 was done in order to defraud
21 Alaskans.

22 WHEREFORE, the State of Alaska prays as follows:

23 A. That the Court adjudge and decree that defendants have engaged in the
24 conduct alleged herein.

25 B. That the Court adjudge and decree that such conduct is unlawful and
26 in violation of AS 45.50.471.

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

C. That the Court enjoin and restrain defendants and their officers, agents, servants and employees, and those in active concert or participation with them, from continuing or engaging in such conduct or other conduct having similar purpose or effect.

D. That the Court order defendants to publicly 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.

E. That the Court order defendants to pay restitution which would restore plaintiff to the financial position that it would be in, absent the defendants' conduct.

F. That the Court order defendants to disgorge all unjust profits from tobacco sales to minors, and from all other tobacco sales in the State of Alaska which defendants should not be allowed to retain.

G. That, pursuant to AS 45.50.551(b), the Court assess civil penalties of \$5,000 from each defendant for each violation of AS 45.50.471.

H. That the State of Alaska recover from defendants the costs of this action, including a reasonable attorney's fee.

I. That the Court order such other and further relief as the Court deems just, necessary and appropriate.

COUNT 4

**UNREASONABLE RESTRAINT OF TRADE UNDER THE
ALASKA MONOPOLIES AND RESTRAINT OF TRADE ACT, AS 45.50.562;
AND UNFAIR METHOD OF COMPETITION UNDER THE ALASKA UNFAIR
TRADE PRACTICES AND CONSUMER PROTECTION ACT, AS 45.50.471.
[Equitable Relief Under AS 45.50.580 and AS 45.50.501]**

331. The State of Alaska repeats and realleges paragraphs 1 through 305 as if set forth fully above.

1
2
3 332. As described above, beginning at least as early as 1953 and continuing
4 until the present date, the defendants entered into a contract, combination or conspiracy to
5 eliminate and suppress competition in the market for tobacco products.

6 333. Pursuant to such contract, combination or conspiracy, the defendants
7 engaged in the following underlying activity, all as set forth in considerably more detail
8 above:

9 (a) They restrained and suppressed research on the health
10 consequences of smoking.

11 (b) They restrained and suppressed the dissemination of truthful
12 information on the health consequences of smoking in Alaska, including information as to
13 the addictive properties of nicotine.

14 (c) They knowingly disseminated false information in Alaska about
15 the health consequences of smoking and about their commitment to make public scientific
16 information regarding such consequences.

17 (d) They restrained, controlled, limited and suppressed research in
18 and the development, manufacture and marketing of a "safer" cigarette and other tobacco
19 products that would have resulted in reduced harmful health cost for the State of Alaska.

20 (e) In general, they declined to compete in Alaska in any manner
21 relating to the health claims of cigarettes.

22 (f) Apart from maintaining the demand for their tobacco products,
23 the defendants knew that their conduct would cause smoking-related diseases in Alaska as
24 well as cause the State of Alaska to incur substantial health care costs in treating such
25 diseases.
26

1
2
3 334. In fact, as a direct result of the defendants' conduct, the State of Alaska
4 incurred substantial health care costs arising from smoking-related diseases and injuries.
5 The defendants' conduct is thus inextricably intertwined with the State's increased health
6 care costs.

7 335. The defendants' conduct has had a direct and foreseeable effect on the
8 State's health care costs. The defendants continue to reap enormous profits by virtue of
9 their wrongful conduct at the expense of the State, and have thus effectively shifted the
10 health care costs of smoking-related diseases to third parties, including the State of Alaska.

11 336. The defendants' conduct constitutes an unreasonable restraint of trade
12 and an unfair method of competition. The defendants have thus violated AS 45.50.562 of
13 the Alaska Monopolies and Restraint of Trade Act and AS 45.50.471 of the Alaska Unfair
14 Trade Practices and Consumer Protection Act, which violations are continuing and likely
15 to continue unless restrained, the State's remedy at law being inadequate.

16 337. By virtue of such violations, the State of Alaska, through the Attorney
17 General, is authorized to bring suit and seek appropriate equitable remedies and penalties
18 under AS 45.50.580(a) of the Alaska Monopolies and Restraint of Trade Act and
19 AS 45.50.501(a) of the Alaska Unfair Trade Practices and Consumer Protection Act.

20 WHEREFORE, the State of Alaska prays as follows:

21 A. That the Court adjudge and decree that defendants have engaged in the
22 conduct alleged herein.

23 B. That the Court adjudge and decree that such conduct is unlawful and
24 in violation of AS 45.50.562 and AS 45.50.471.

1
2
3 C. That the Court enjoin and restrain defendants and their officers, agents,
4 servants and employees, and those in active concert or participation with them, from
5 continuing or engaging in such conduct or other conduct having similar purpose or effect.

6 D. That the Court order defendants to publicly disclose, disseminate, and
7 publish all research previously conducted directly or indirectly by themselves and their
8 respective agents, affiliates, servants, officers, directors, employees, and all persons acting
9 in concert with them, that relates to the issue of smoking and health.

10 E. That the Court order defendants to fund a corrective public education
11 campaign relating to the issue of smoking and health, administered and controlled by an
12 independent third party.

13 F. That the Court order defendants to fund clinical smoking cessation
14 programs in the State of Alaska.

15 G. That the Court award damages to the State resulting from the actions
16 described above.

17 H. That, pursuant to AS 45.50.580(b) of the Alaska Monopolies and
18 Restraint of Trade Act and AS 45.50.501(b) of the Alaska Unfair Trade Practices and
19 Consumer Protection Act, the Court allow such relief as necessary to remove the effects of
20 the defendants' violations, including the divestiture of the defendants' property (i) in the
21 form of profits they have derived from Alaska smokers attributable to the defendants'
22 wrongful conduct, and (ii) equal to the amount expended by the State of Alaska attributable
23 to such conduct;

24 I. That, pursuant to AS 45.50.580(b) of the Alaska Monopolies and
25 Restraint of Trade Act and AS 45.50.501(b) of the Alaska Unfair Trade Practices and
26 Consumer Protection Act, the Court allow such relief as necessary to prevent such

1
2
3 violations from continuing or from being renewed in the future, including preliminary and
4 permanent injunctive relief.

5 J. That, pursuant to AS 45.50.580(b) of the Alaska Monopolies and
6 Restraint of Trade Act and AS 45.50.501(b) of the Alaska Unfair Trade Practices and
7 Consumer Protection Act, the Court impose a penalty in accordance with AS 45.50.551(b)
8 of the Alaska Unfair Trade Practices and Consumer Protection Act against each defendant
9 in the amount of \$5,000 for each wrongful act in furtherance of the defendants' contract,
10 combination or conspiracy.

11 K. That the State of Alaska recover from defendants the costs of this
12 action, including a reasonable attorney's fee.

13 L. That the Court order such other and further relief as the Court deems
14 just, necessary and appropriate.

15
16 **COUNT 5**

17 **UNREASONABLE RESTRAINT OF TRADE UNDER THE**
18 **ALASKA MONOPOLIES AND RESTRAINT OF TRADE ACT, AS 45.50.562**
19 **[TREBLE DAMAGES AND EQUITABLE RELIEF UNDER AS 45.50.580]**

20 338. The State of Alaska repeats and realleges paragraphs 1 through 231,
21 272 through 305, and 332 through 337 as if set forth fully above.

22 339. The defendants' conduct constitutes an unreasonable restraint of trade
23 and an unfair method of competition. The defendants have thus violated AS 45.50.562 of
24 the Alaska Monopolies and Restraint of Trade Act, which violations are continuing and
25 likely to continue unless restrained, the State's remedy at law being inadequate.

26 340. By virtue of such violations, the State of Alaska, through the Attorney
General, is authorized to bring suit and seek appropriate equitable remedies and treble

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

damages for its injuries under AS 45.50.580(a) of the Alaska Monopolies and Restraint of Trade Act.

WHEREFORE, the State of Alaska prays as follows:

A. That the Court adjudge and decree that defendants have engaged in the conduct alleged herein.

B. That the Court adjudge and decree that such conduct is unlawful and in violation of AS 45.50.562 of the Alaska Monopolies and Restraint of Trade Act.

C. That the Court enjoin and restrain defendants and their officers, agents, servants and employees, and those in active concert or participation with them, from continuing or engaging in such conduct or other conduct having similar purpose or effect.

D. That, pursuant to AS 45.50.580(b) of the Alaska Monopolies and Restraint of Trade Act, the Court provide for the recovery of damages equal to the amount incurred by the State of Alaska attributable to such conduct and, in accordance with AS 45.50.576(b), treble such damages.

E. That, pursuant to AS 45.50.580(b), the Court allow such relief as necessary to restrain continuing violations by the defendants, including preliminary and permanent injunctive relief.

F. That, pursuant to AS 45.50.576(b) and AS 45.50.580(b), the State of Alaska recover from defendants the costs of this action, including a reasonable attorney's fee.

G. That the Court order such other and further relief as the Court deems just, necessary and appropriate.

ATTORNEY GENERAL, STATE OF ALASKA
DIMOND COURTHOUSE
P.O. BOX 110300, JUNEAU, ALASKA 99811
PHONE: 465-3600

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

COUNT 6
NEGLIGENCE

341. The State of Alaska repeats and realleges paragraphs 1 through 305 as if set forth fully above.

342. Beginning as early as 1954 with the publication of "A Frank Statement to Cigarette Smokers" and continuing to the present date, the defendants assumed a special and general duty to protect the public health and a duty to those who advance the public health, including the State of Alaska and its political subdivisions.

343. Defendants publicly represented that they were undertaking to act on behalf of the public's health ("¶ 78, 80-83, 85-86, 88); to aid and assist the research effort into all phases of tobacco use and health ("¶ 78, 80-83, 85-86, 88); to cooperate closely with those who safeguard the public health ("¶ 78, 80-83, 85-86, 88); 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 ("¶ 78, 80-83, 85-86, 88).

344. Defendants ostensibly undertook performance of their assumed duty, and awarded highly-publicized grants to supposedly "independent researchers." Throughout the years and continuing to the present date, defendants' spokespersons have repeatedly announced that research was underway, but the results are always "inconclusive" and the health questions "unresolved." These actions are part of defendants' elaborate disinformation campaign designed to obscure the overwhelming and conclusive evidence that smoking causes lung cancer, heart disease and a host of other health problems.

345. Defendants did not make these representations gratuitously. Rather, they were made to combat emerging concerns about smoking, to protect the Tobacco Cartels' enormous profits and to avoid government regulation. The "Frank Statement" and

1
2
3 subsequent statements proclaiming the industries' "responsibility" were intended to affect
4 the State of Alaska: defendants directly pledged to cooperate with "those responsible for
5 public health." (¶ 78)

6
7 346. Defendants further pledged to support research by independent
8 scientists and to share results (¶ 78).

9 348. Defendants also stated that public health was their preeminent concern,
10 of greater concern than their own profits (¶ 78).

11 348. Each of these undertakings was designed, among other purposes, to
12 cause Alaska governmental officials, among others, to believe that immediate action on
13 their part to curb tobacco use was not needed. As the evidence mounted as to the hazards
14 of tobacco use, governmental entities considered and/or began to legislate various controls
15 on tobacco use smoking and advertising. Defendants resisted these efforts and the "Frank
16 Statement" and its progeny were designed to lull the State of Alaska, among others, into
17 avoiding the implementation and/or passage of such regulations.

18 349. In making the commitments set forth above in paragraphs ¶¶ 78-88,
19 defendants assumed duties to both the State and to the public. As to the State, defendants
20 specifically pledged to "cooperate closely with those whose task it is to safeguard the public
21 health and to report fully and truthfully on tobacco and health." As to the public,
22 defendants specifically order a "special responsibility to the public and accept[ed] an
23 interest in people's health as paramount to every other consideration in [their] business."
24 (¶¶ 78-88.) In accepting these responsibilities, defendants undertook three specific duties.
25 First, by committing themselves to making health their preeminent responsibility, the
26 tobacco companies agreed that they would not sell or continue to sell products which they
knew to cause death and disease when used as intended. The violation of this duty is the

1
2
3 direct cause of the costs incurred by the State in treating the illness that resulted from
4 defendants' sales of tobacco products.

5 350. Second, defendants pledged to cooperate with public health and they
6 did the opposite, thereby directly allowing continued and unfettered tobacco sales, which
7 in turn directly injured the State.

8 351. Third, having undertaken to tell the truth about tobacco use and health,
9 they were legally bound to speak the whole truth. Defendants breached this duty and such
10 breach also damaged the State of Alaska.

11 352. Defendants reasonably could have foreseen the risk of harm to the
12 State of Alaska. Physical injury to tobacco users was not only foreseeable, it was
13 contemplated as the inevitable consequence of defendants' undertakings. Defendants knew
14 or should have known of the State's obligation to care for indigent people or Medicaid
15 recipients, who have suffered the ill effects of smoking, physical injury due to tobacco use.

16 353. The defendants' breach of duty not only served to forestall increased
17 government regulation but contributed to the State's increased health care costs because the
18 breach caused smokers in the State of Alaska to take up or continue smoking. Had the
19 defendants disclosed what they knew, had they not suppressed information about addiction
20 and nicotine manipulation, had they not targeted minors, and had they, in fact, reported the
21 truth, the amount of tobacco use in the State of Alaska would have been far less, which in
22 turn would have reduced the State's Medicaid costs attributable to smoking related diseases.
23 The very purpose of defendants' assumption of a duty was to promote the use of tobacco
24 products and thus directly increase the risk of harm to the State of Alaska.

25 354. Defendant's breach of duty also influenced the State's course of
26 conduct. Had defendants not breached their assumed and general duty, they would have

1
2
3 fully disclosed (1) that the companies' own studies showed links between tobacco use and
4 adverse health effects, (2) that nicotine is highly addictive, (3) that the tobacco companies
5 manipulate nicotine levels in tobacco products in order to increase and maintain addiction,
6 and (4) that the tobacco companies were trying to induce minors to use tobacco to increase
7 their long-term profits by replacing tobacco users who die. For years these facts have been
8 concealed and many of the facts still remain concealed. Had those facts been disclosed
9 earlier, the State would have taken action to restrain the companies' activities. Once the
10 State learned, through partial disclosures, of the true nature of defendants' activities, this
11 action was commenced.

12 355. As a direct, foreseeable, intended and proximate cause of defendants'
13 breach, plaintiff suffered and will continue to suffer substantial injuries and damages.

14 356. The conduct described constitutes an intentional and or negligent
15 breach of a voluntarily assumed special and or general duty for which defendants are liable.

16 357. Defendants' unlawful conduct will continue unless the relief prayed
17 for in this Complaint is granted.

18 WHEREFORE, the State of Alaska prays as follows:

19 A. That the Court adjudge and decree that defendants have engaged in the
20 conduct alleged herein.

21 B. That the Court adjudge and decree that such conduct is an unlawful
22 breach of assumed duty.

23 C. That the Court enjoin and restrain defendants and their officers, agents,
24 servants and employees, and those in active concert or participation with them, from
25 continuing or engaging in such conduct or other conduct having similar purpose or effect.
26

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

D. That the Court order defendants to publicly 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.

E. That the Court award damages to the State resulting from the actions described above.

F. That the Court order such other and further relief as the Court deems just, necessary and appropriate.

COUNT 7
NEGLIGENCE PER SE

358. The State of Alaska realleges and incorporates paragraphs 1 through 119, 150 through 305, 306 through 324 as if set forth fully above.

359. Defendants violations of AS 45.50.471 and AS 11.76.100 as described above in Counts 1 and 2 constitutes negligence per se.

360. As a direct result of defendants' conduct, the State of Alaska has suffered and will continue to suffer substantial injuries and damages for which it is entitled to relief.

WHEREFORE, the State of Alaska prays as follows:

A. That the Court adjudge and decree that defendants have engaged in the conduct alleged herein.

B. That the Court adjudge and decree that such conduct is unlawful as negligence per se.

ATTORNEY GENERAL, STATE OF ALASKA
DIMOND COURTHOUSE
P.O. BOX 110300, JUNEAU, ALASKA 99811
PHONE: 465-3600

1
2
3 C. That the Court enjoin and restrain defendants and their officers, agents,
4 servants and employees, and those in active concert or participation with them, from
5 continuing or engaging in such conduct or other conduct having similar purpose or effect.

6 D. That the Court order defendants to publicly disclose, disseminate, and
7 publish all research previously conducted directly or indirectly by themselves and their
8 respective agents, affiliates, servants, officers, directors, employees, and all persons acting
9 in concert with them, that relates to the issue of smoking and health.

10 E. That the Court order defendants to fund a corrective public education
11 campaign relating to the issue of smoking and health, administered and controlled by an
12 independent third party.

13 F. That the Court order defendants to fund clinical smoking cessation
14 programs in the State of Alaska.

15 G. That the Court order defendants to pay restitution which would restore
16 plaintiff to the financial position that it would be in, absent the defendants' conduct.

17 H. That the Court award damages to the State resulting from the actions
18 described above.

19 I. That the Court order such other and further relief as the Court deems
20 just, necessary and appropriate.

21
22 **COUNT 8**
23 **CONSPIRACY**

24 361. The State of Alaska realleges and incorporates paragraphs 1 through
25 360 as if set forth fully above.

26 362. Defendants entered into a conspiracy to violate the statutes set forth
above in Counts 1-5 and the common law as set forth in Count 6, and agreed as part of the

1
2
3 conspiracy to: (1) suppress information concerning the adverse effects of smoking and the
4 addictive qualities of nicotine; (2) create doubt about the scientific studies linking smoking
5 to adverse health consequences and/or the addictive nature of nicotine; (3) conceal their
6 manipulation of the level of nicotine in tobacco products; (4) avoid competition based on
7 a safer cigarette.

8 363. Defendants knowingly and voluntarily participated in the common
9 scheme to commit these unlawful acts.

10 364. A part of this conspiracy was a plan to cause governmental officials
11 to believe that immediate action on their part to curb smoking was not needed. As the
12 evidence mounted as to the hazards of smoking, governmental entities considered and or
13 began to legislate various controls on smoking and advertising. Defendants resisted these
14 efforts and the "Frank Statement" and its progeny, an integral part of the conspiracy, were
15 designed to lull the State of Alaska, among others, into avoiding the implementation and or
16 passage of such regulations.

17 365. The defendants' conspiracy not only served to forestall government
18 regulation but contributed to the State's increased health care costs because the conspiracy
19 caused smokers in the State of Alaska to take up or continue smoking. Had the defendants
20 not engaged in the conspiracy and disclosed what they knew, had they not suppressed
21 information about addiction and nicotine manipulation, had they not targeted minors, and
22 had they in fact reported the truth, the amount of tobacco use in the State of Alaska would
23 be far less, which in turn would have reduced the State's Medicaid costs attributable to
24 smoking related. The very purpose of defendants' conspiracy was to promote and increase
25 the use of cigarettes and tobacco products and thus directly increase the risk of harm to the
26 State of Alaska.

1
2
3
4 366. Defendants' conspiracy was designed to and did influence the State's
5 course of conduct. Had defendants not engaged in the conspiracy, they would have fully
6 disclosed (1) that the companies' own studies showed links between tobacco use and
7 adverse health effects, (2) that nicotine is highly addictive, (3) that the tobacco companies
8 manipulate nicotine levels in tobacco products in order to increase and maintain addiction,
9 and (4) that the tobacco companies were trying to induce minors to use tobacco products
10 despite the dangers outlined above and despite their representations that they were not
11 trying to encourage minors to use tobacco products. For years these facts have been
12 concealed and many of the facts still remain concealed. Had the conspiracy not occurred,
13 and had those facts been disclosed earlier, the State would have taken action to restrain the
14 companies' activities. Once the State learned, in a partial fashion, of the true nature of
15 defendants' activities, this action was commenced.

16 367. Defendants, knowingly, willingly and wantonly, combined and agreed
17 with one another for the purposes of deceiving the state regulators and the public about the
18 carcinogenic, pathologic and addictive properties of cigarettes and accomplishing the
19 unlawful ends complained of and/or for the purposes of unlawfully accomplishing the
20 lawful ends complained of, namely, the ability to legally continue to sell and profit from
21 cigarettes, in spite of the significant carcinogenic, pathologic and addictive properties of
22 cigarettes.

23 368. All defendants joined in the conspiracy at least by 1954 through the
24 formation of the TIRC, or, in the case of defendant Liggett, by its actual and/or tacit
25 agreement with the other defendants to withhold from government regulators and the public
26 their knowledge about the true carcinogenic, pathologic and addictive properties of their
cigarettes.

1
2
3 369. Defendants' overt acts in furtherance of these purposes, include.
4 without limitation:

- 5 a. the formation and control of the TIRC and later the CTR;
6 b. engaging in deceptive acts and practices in the course of
7 business in violation of the Alaska law:
8 c. fraudulently misrepresenting and omitting material information
9 regarding the human health dangers of smoking:
10 d. restraining and suppressing research and information
11 concerning the adverse effects of tobacco product use and the addictive effect of nicotine:
12 e. creating doubt about the scientific studies linking tobacco
13 product use to adverse health consequences and/or the addictive nature of nicotine:
14 f. affirmatively misrepresenting the addictive effects of nicotine
15 and the harmful effects of tobacco product use:
16 g. concealing their manipulation of the level of nicotine in tobacco
17 products:
18 h. restraining the development, production, and marketing of a
19 safer cigarette:
20 i. avoiding competition based on health claims and safer
21 cigarettes;
22 j. passing on health care costs associated with tobacco products
23 to others;
24 k. designing, testing, manufacturing, marketing, supplying and
25 selling defective cigarettes;
26

1
2
3
4 l. targeting minors for the marketing, supply, sale and use of their
cigarettes; and

5
6 m. suppressing the design, test, manufacture, marketing and or sale
of non- or less-addictive, carcinogenic and pathologic cigarettes.

7
8 370. The effect of this conspiracy was to violate State law as set forth
above. The conspiracy is ongoing and will not stop unless injunctive relief is granted.

9
10 371. The defendant co-conspirators performed tortious acts in furtherance
of the conspiracy, thereby proximately causing injury to the State of Alaska.

11
12 372. As a direct, actual and proximate result of defendants' conduct, the
State of Alaska has suffered and will continue to suffer substantial injuries and damages for
13 which the State of Alaska is entitled to relief.

14 WHEREFORE, the State of Alaska prays as follows:

15
16 A. That the Court adjudge and decree that defendants have engaged in the
conduct alleged herein.

17
18 B. That the Court adjudge and decree that such conduct is an unlawful
conspiracy.

19
20 C. That the Court enjoin and restrain defendants and their officers, agents,
servants and employees, and those in active concert or participation with them, from
21 continuing or engaging in such conduct or other conduct having similar purpose or effect.

22
23 D. That the Court order defendants to publicly disclose, disseminate, and
publish all research previously conducted directly or indirectly by themselves and their
24 respective agents, affiliates, servants, officers, directors, employees, and all persons acting
25 in concert with them, that relates to the issue of smoking and health.
26

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

E. That the Court order defendants to fund a corrective public education campaign relating to the issue of smoking and health, administered and controlled by an independent third party.

F. That the Court order defendants to fund clinical smoking cessation programs in the State of Alaska.

G. That the Court order defendants to pay restitution which would restore plaintiff to the financial position that it would be in, absent the defendants' conduct.

H. That the Court award damages to the State resulting from the actions described above.

I. That the Court order such other and further relief as the Court deems just, necessary and appropriate.

COUNT 9

UNJUST ENRICHMENT/RESTITUTION

373. In the alternative to the above claims, if the Court finds that the State of Alaska has no remedy at law, the State of Alaska alleges as follows:

374. The State of Alaska realleges and incorporates paragraphs 1 through 383 as if set forth fully above.

375. Use of defendants' cigarettes as intended causes disease.

376. Many of the State of Alaska's residents who are afflicted with tobacco-related diseases are unable to provide for their own medical care. These residents rely upon the State of Alaska to provide their medical care, and the State is legally obligated to provide and pay for such medical services, pursuant to AS 47.07.010 et seq. and the provisions of 42 U.S.C. § 1396, et seq. The provision of and payment for such medical care results in an extreme burden on the taxpayers and the financial resources of this State. The

ATTORNEY GENERAL, STATE OF ALASKA
DIMOND COURTHOUSE
P.O. BOX 110300, JUNEAU, ALASKA 99811
PHONE: 465-3600

COMPLAINT FOR INJUNCTIVE RELIEF,
DAMAGES, RESTITUTION, DISGORGEMENT,
PENALTIES AND OTHER RELIEF

1
2
3 State of Alaska has expended millions of dollars in caring for residents who have and are
4 suffering from lung cancer, cardiovascular disease, emphysema, chronic obstructive
5 pulmonary disease and a variety of other cancers and diseases that were and are caused by
6 defendants' cigarettes. The State of Alaska has also expended millions in providing health
7 care for its employees the cost of which has been increased as a result of defendants'
8 conduct.

9
10 377. Defendants have knowledge of the benefit conferred on them by the
11 State's payment of health care costs for diseases resulting from the use of tobacco products
12 sold in the State of Alaska by the defendants, which payments were foreseeable, given the
13 defendants' knowledge of the health risks of their cigarettes.

14 378. Defendants had a duty to the State and to the residents of the state:
15 (1) to disclose all material facts about their products, (2) to refrain from any agreement that
16 would restrain the development of a safer product, and (3) to refrain from targeting minors
17 in order to induce their use of tobacco products in violation of State law. As set forth
18 above, defendants intentionally breached these duties. As a result of this breach of duty and
19 the suppression of evidence, defendants have successfully avoided the medical costs
20 associated with use of their products and have passed those costs off to the State of Alaska.

21 379. Defendants have knowledge of the benefit conferred on them by the
22 State's payment of health care costs for diseases resulting from use of tobacco products sold
23 in the State of Alaska, which payments were foreseeable, given the defendants' knowledge
24 of the health risks of their tobacco products.

25 380. While the State of Alaska pays the health care costs that result from
26 the use of tobacco products as intended, defendants continue to reap billions of dollars in
profits from the sale of their cigarettes and other tobacco products.

1
2
3 381. Defendants have avoided regulations and the costs of disease, injuries
4 and deaths resulting from the normal use of their products. Defendants have been and are
5 able legally to promote the sale of cigarettes to the residents of the State of Alaska by
6 continuing to misinform the federal and state authorities about the true carcinogenic,
7 pathologic and addictive qualities of their cigarettes and other tobacco products.

8 382. In direct contradiction to and in spite of the State of Alaska's specific
9 statutory prohibitions, defendants have spent millions of dollars on programs designed to
10 encourage minors to purchase and use their cigarettes and other tobacco products.

11 383. In equity and fairness, the defendants and their agents, aiders and
12 abettors and co-conspirators, not the State of Alaska, should bear the costs of tobacco-
13 related diseases. By avoiding their own duties to stand financially responsible for the harm
14 done by their cigarettes, defendants wrongfully have forced the State of Alaska to perform
15 such duties and to pay the health care costs of tobacco-related disease. As a result,
16 defendants have been unjustly enriched to the extent that taxpayers of the State of Alaska
17 have had to pay these costs, which rightfully should be borne by defendants.

18 384. As a result of defendants' conduct, the State of Alaska has suffered and
19 will continue to suffer substantial injuries and damages for which it is entitled to relief.

20 WHEREFORE, the State of Alaska prays as follows:

21 A. That the Court adjudge and decree that defendants have engaged in the
22 conduct alleged herein.

23 B. That the Court enjoin and restrain defendants and their officers, agents,
24 servants and employees, and those in active concert or participation with them, from
25 continuing or engaging in such conduct or other conduct having similar purpose or effect.
26

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

C. That the Court order defendants to publicly 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.

D. That the Court order defendants to fund a corrective public education campaign relating to the issue of smoking and health, administered and controlled by an independent third party.

E. That the Court order defendants to fund clinical smoking cessation programs in the State of Alaska.

F. That the Court order defendants to pay restitution which would restore plaintiff to the financial position that it would be in, absent the defendants' conduct.

G. That the Court order defendants to disgorge all unjust profits from tobacco sales to minors, and from all other tobacco sales in the State of Alaska which defendants should not be allowed to retain.

///
///
///

ATTORNEY GENERAL, STATE OF ALASKA
DIMOND COURTHOUSE
P.O. BOX 110300, JUNEAU, ALASKA 99811
PHONE: 465-3600

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

H. That the Court order such other and further relief as the Court deems just, necessary and appropriate.

DATED: April 14, 1997.

STATE OF ALASKA

By: Bruce M. Botelho
BRUCE M. BOTELHO
ATTORNEY GENERAL

By: Douglas D. Gardner
Douglas D. Gardner
Assistant Attorney General

By: Daveed A. Schwartz
Daveed A. Schwartz
Assistant Attorney General

THIS MATTER IS FORMAL
ASSIGNED TO
LARRY R. WEEKS
SUPERIOR COURT JUDGE

ATTORNEY GENERAL, STATE OF ALASKA
DIMOND COURTHOUSE
P.O. BOX 110300, JUNEAU, ALASKA 99811
PHONE: 465-3600

COMPLAINT FOR INJUNCTIVE RELIEF,
DAMAGES, RESTITUTION, DISGORGEMENT,
PENALTIES AND OTHER RELIEF

ATTORNEY GENERAL, STATE OF ALASKA
 DIMOND COURTHOUSE
 P.O. BOX 110300, JUNEAU, ALASKA 99811
 PHONE: 465-3600

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

TABLE OF CONTENTS

| | <u>PAGE</u> |
|---|-------------|
| I. INTRODUCTION | 1 |
| A. The Defendants' Unlawful Conduct | 3 |
| B. The Damages Caused by Defendants' Unlawful Conduct | 7 |
| 1. Health care costs | 7 |
| 2. Targeting minors in violation of state law | 8 |
| C. The Objectives of This Action | 9 |
| II. JURISDICTION AND VENUE | 10 |
| III. THE PARTIES | |
| PLAINTIFF | 10 |
| DEFENDANTS | 10 |
| IV. CONSPIRACY ALLEGATIONS | 16 |
| V. ADDITIONAL JURISDICTIONAL ALLEGATIONS REGARDING BAT INDUSTRIES, P.L.C. | 16 |
| VI. FACTUAL ALLEGATIONS | 20 |
| A. Background | 20 |
| B. The Cartel's Pre-Conspiracy Advertising and Promotional Activities: False Claims of Health and Safety | 22 |
| C. The 1953 "Big Scare" and Beginning of the Industry Conspiracy to Suppress the Truth and Curtail Competition | 23 |
| D. Representations and Special Undertakings by the Industry | 29 |
| E. Repeated False Promises to the Public | 32 |
| F. The True Nature of the TIRC: A Front for the Tobacco Cartel | 40 |
| G. Role of the CTR as a "Front" for Disseminating False Information ... | 44 |
| H. Beyond 1953: The Continuing Conspiracy to Restrain Trade | 51 |

COMPLAINT FOR INJUNCTIVE RELIEF,
 DAMAGES, RESTITUTION, DISGORGEMENT,
 PENALTIES AND OTHER RELIEF

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

| | | |
|----|--|-----|
| 1. | The "Gentlemen's Agreement" | 51 |
| 2. | Suppression of Liggett's "Safer" Cigarette | 53 |
| 3. | Brown & Williamson's Efforts to Develop a Safer Cigarette ... | 55 |
| 4. | Philip Morris: Avoiding an Industry War | 56 |
| 5. | Reynolds' Safer Product | 57 |
| 6. | The Industry Position on "Safer" Cigarettes | 58 |
| 7. | Suppression of the R.J. Reynolds "Mouse House" Research ... | 60 |
| 8. | Suppression of Philip Morris Research on Nicotine Analogues | 60 |
| I. | History of Industry Knowledge that Smoking is Harmful | 61 |
| J. | Industry Knowledge of the Addictive Nature of Nicotine | 70 |
| 1. | Industry Statements and Documents Reveal the Tobacco Companies' Long-Standing Knowledge that Nicotine is a Powerful and Addictive Drug | 70 |
| 2. | Long-Standing Industry Awareness of the Difficulty Smokers Have in Quitting Underscores the Tobacco Companies' Knowledge of Addiction | 78 |
| K. | Suppression and Concealment of Research on Nicotine Addiction ... | 82 |
| L. | The Industry's Secret Manipulation of Nicotine Levels | 84 |
| 1. | Tobacco Leaf Growing | 87 |
| 2. | Leaf Purchasing | 90 |
| 3. | Leaf Blending | 91 |
| 4. | Additional Evidence of Nicotine Manipulation | 92 |
| M. | Maintaining the Market Through Sales to Minors | 97 |
| 1. | The Increasing Addiction of Minors: A Predicate to Continuing Industry Profits | 97 |
| 2. | The Use of Appealing Images | 102 |

ATTORNEY GENERAL, STATE OF ALASKA
 DIMOND COURTHOUSE
 P.O. BOX 110300, JUNEAU, ALASKA 99811
 PHONE: 465-3600

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

| | | |
|---------|--|-----|
| 3. | Use of Youth Oriented Locations for Promotional and Advertising Materials | 105 |
| 4. | Reynolds: "Old Joe Camel" | 106 |
| 5. | U.S. Tobacco: "Old Enough to Chew" | 108 |
| 6. | Philip Morris: Competing for the Minor Market | 109 |
| 7. | Philip Morris' Admission that it has Targeted Minors | 110 |
| N. | Smokeless Tobacco Products | 111 |
| O. | The Human Toll of Cigarette Smoking | 112 |
| 1. | Health Effects of Cigarette Smoking | 112 |
| 2. | Health Effects of Smokeless Tobacco Products | 117 |
| P. | The Injury to the State of Alaska as a Direct and Foreseeable Consequence of Defendants' Unlawful Conduct | 117 |
| Q. | Fraudulent Concealment | 119 |
| VI. | CLAIMS FOR RELIEF | 122 |
| COUNT 1 | | 122 |
| | (Violation of AS 45.50.471) | |
| | UNLAWFUL MARKETING AND TARGETING MINORS | |
| COUNT 2 | | 125 |
| | (Violation of AS 45.50.471) | |
| | CONTRIBUTING TO THE DELINQUENCY OF MINORS | |
| COUNT 3 | | 127 |
| | (Violation of AS 45.50.471) | |
| | UNFAIR AND DECEPTIVE ACTS OR PRACTICES | |
| COUNT 4 | | 130 |
| | UNREASONABLE RESTRAINT OF TRADE UNDER THE ALASKA MONOPOLIES AND RESTRAINT OF TRADE ACT, AS 45.50.562; AND UNFAIR METHOD OF COMPETITION UNDER THE ALASKA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION ACT, AS 45.50.471. [Equitable Relief Under AS 45.50.580 and AS 45.50.501] | |

COMPLAINT FOR INJUNCTIVE RELIEF,
 DAMAGES, RESTITUTION, DISGORGEMENT,
 PENALTIES AND OTHER RELIEF

ATTORNEY GENERAL, STATE OF ALASKA
DIMOND COURTHOUSE
PO BOX 110300, JUNEAU, ALASKA 99811
PHONE: 465-3600

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

COUNT 5 134
UNREASONABLE RESTRAINT OF TRADE UNDER THE ALASKA
MONOPOLIES AND RESTRAINT OF TRADE ACT, AS 45.50.562
[Treble Damages and Equitable Relief Under AS 45.50.580]

COUNT 6 136
NEGLIGENCE

COUNT 7 140
NEGLIGENCE PER SE

COUNT 8 141
CONSPIRACY

COUNT 9 146
UNJUST ENRICHMENT RESTITUTION

COMPLAINT FOR INJUNCTIVE RELIEF,
DAMAGES, RESTITUTION, DISGORGEMENT,
PENALTIES AND OTHER RELIEF