

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9512 SENATE HEALTH EDUCATION & SOCIAL SERVICES

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DIVISION OF FAMILY AND YOUTH SERVICES

DHSS BRU	Component	Source	FY97 Actuals	FY98 Authorized	Governor's FY99 Rec
Family & Youth Services	Southcentral, Northern & Southeast Regions	Federal Receipts	2,174.9	2,261.0	2,731.8
		General Fund	20,082.3	8,746.4	10,723.9
		GF/MH	82.1	79.8	145.5
		Other	291.5	5,886.8	5,874.0
		Total	22,630.8	16,974.0	19,475.2
Purchased Services	Foster Care	GF/MH	1,547.9	1,547.9	1,647.9

The State Division of Family and Youth Services (DFYS) provides child protective and youth correction services. DFYS staff members screen and investigate reports of harm, and develop case plans with and for families whose children require protective services. The Division's goal is to promote family reunification or permanent placement when reunification is not possible. DFYS contracts with many non-profits to provide family support and reunification services.

Alaska does not provide cash assistance to birth families struggling to keep children in the home, except for public assistance if they are poor. Augmented foster care rates are available for children who have special needs and who are in state custody. When families of children with disabilities turn to DFYS in desperation, developmental disabilities services are not available when they need them. If the child requires more than temporary respite care, the parents must relinquish custody of the child to DFYS in order to be eligible for services needed. DFYS custody may provide the child with Medicaid to pay for special needs, depending on the child's income. When Medicaid is not available to a child in state custody, DFYS pays for services with state General Funds.

Families too often relinquish custody of their children to DFYS so their children may have Medicaid to pay for their special needs. These children are then raised by families who are subsidized to provide care. Children who have special needs such as developmental disabilities are far more likely to

be adopted rather than reunited with their families. Although 14 percent of children required foster care subsidies in the first seven months of FY94, 90 percent of children adopted received subsidies in FY93.

Children who are abused or neglected are entitled to protective services under state and federal law. Foster care is part of the protective service system. Children who have developmental disabilities may require more intensive care, and their foster care rates are augmented accordingly. The state's augmented foster care costs for children with developmental disabilities, \$216,100, is justifiably a GF/MH expense.

For more information about DFYS call Russ Webb at 465-3030.

FAMILY PRESERVATION

DHSS BRU	Component	Source	FY97 Actuals	FY98 Authorized	Governor's FY99 Rec
Purchased Services	Family Preservation	Federal Receipts	1,288.6	1,577.4	49.8
		General Fund	1,957.2	1,923.3	935.9
		Total	3,245.8	3,509.7	985.7

Grantees of the Division of Family and Youth Services (DFYS) provide respite care to children with developmental disabilities who are at risk of abuse or neglect. Grantees also provide intensive home-based and family support services to families in which children have been abused or neglected.

Families which include individuals with developmental disabilities face serious barriers to remaining intact. Many of these barriers are products of the way that existing programs deliver services. Others are barriers because services do not exist to address urgent issues. Some of these issues are listed below.

SUPPORTED PARENTING. Individuals who have developmental disabilities sometimes become parents. Most do not receive supports necessary for them to become successful parents.

BEHAVIOR MANAGEMENT. Children who have developmental disabilities may exhibit behaviors which challenge their parents as well as others. Parents of children who have fetal alcohol syndrome and other neurobiological disorders describe severe behavior problems which are not addressed appropriately in school or disability service settings. Parents wishing to build their capacities to address challenging behaviors find little training available.

HEAD START

DCRA BRU	Component	Source	FY97 Actuals	FY98 Authorized	Governor's FY99 Rec
Child Assistance	Head Start Grants	Fed Receipts	184.6	150.0	150.0
		General Fund	5,739.9	5,726.6	5,733.4
		Other	116.9	1.8	50.0
		Total	6,041.4	5,878.4	6,928.4

Head Start services provide early education in 92 communities across the state, serving 3,117 low income and/or at-risk children ages birth to five years. Head Start has operated in Alaska for 25 years. The program is administered through the state Department of Community and Regional Affairs.

Of the children Head Start serves, 30-40 percent are diagnosed with a disability, and 125 children currently in Head Start programs were previously enrolled in the Infant Learning Program. In FY99, the Mental Health Trust has granted \$50,000 for developing mental health services to meet performance standards in Head Start.

Head Start programs have identified dental care and family wellness as problems in service delivery. The Dental Health project involves oral health home visits, and incorporating Alaska-specific standards into the American Academy of Pediatric Dentistry guidelines. The Family Wellness project focuses on home environments, using kinship mapping to help families and service providers identify their strengths and support systems.

Reductions to the Head Start operating budget could require some communities to end services. The Governor's Smart Start program would expand Head Start to serve 200 additional children in communities statewide.

For more information about Head Start call Marilyn Webb at 465-4861.

HOUSING

Housing for Alaskans with disabilities, especially in rural and remote regions of the state, is considered by consumers and advocates to be an important challenge. They need to own affordable housing, and need low-interest loans with which to buy housing.

Housing must be integrated in the community. Parents and providers state that existing housing opportunities negatively impact independence, productivity, and integration of individuals with disabilities. Barriers to owning one's own housing include the requirement for down payments, an individual's ability to receive financing with limited credit, and low to no employment.

In general, programs to assist low income Alaskans with disabilities to purchase or alter their own homes have been scant and short-lived. This inadequacy affects people with disabilities and their families most acutely.

The homes that families have found adequate in the past may require substantial modification to accommodate family members with serious disabilities. Often, the family member with a disability has had to leave home and travel to a larger population center to find adequate housing.

ALASKA HOUSING FINANCE CORPORATION. Alaska Housing Finance Corporation (AHFC) has a seven-member board. AHFC assists in providing decent, safe, and sanitary housing by providing mortgage loan financing. Under federal programs, AHFC operates the state's public housing and subsidizes rents for some low income people.

AHFC also provides for financing, construction, and acquisition of public buildings to lease to the state in parts of Alaska. Its funding comes from the state and federal government, and is not included as part of the General Fund.

AHFC's Special Needs Advisory Committee is responsible for identifying and implementing ways to meet the housing needs of Alaskans with disabilities. The Council, as part of that committee, has recommended that AHFC develop new lending programs to allow individuals who have disabilities to purchase their own homes.

For FY98, the legislature approved a \$1.5 million AHFC expenditure to build three group homes for people with developmental disabilities who are leaving Harborview Developmental Center.

PUBLIC HEALTH NURSES

DHSS BRU	Component	Source	FY97 Actuals	FY98 Authorized	Governor's FY99 Rec.
State Health Services	Nursing	Federal Receipts	833.3	1,231.9	1,061.9
		General Fund	8,382.9	8,050.1	8,139.4
		Other	4,060.8	4,185.9	4,123.6
		Total!	13,277.0	13,467.9	13,524.9

An estimated 76,000 Alaskans are uninsured. About 21,000 Alaskan children have no public or private health care coverage. Health care spending in Alaska more than doubled from \$479.7 million in 1979 to \$1.597 billion in 1991. In sharp contrast to spending, Alaskans' general health ranked 46 of 50 states.

Public Health Nurses (PHNs) are the local community presence for the Division of Public health. Most PHN services are directed towards young children and their families. The system focuses on prevention, providing immunizations, EPSDT and Well Child Clinics, reproductive health services, prenatal/post-partum services, and investigations of communicable disease outbreaks such as tuberculosis. PHNs provide services through 21 Public Health Centers in over 250 Alaskan communities. One hundred PHNs served clients over 145,000 times in 1994.

Public Health Nursing services have been available statewide for over 50 years. Funding constraints have dramatically reduced the ability to provide needed training to maintain a skilled workforce, creating a major barrier to keeping up with the demand for services.

For more information about Public Health Nurses call Karen Pearson at 465-3090.

MATERNAL, CHILD, AND FAMILY HEALTH SERVICES.

DHSS BRU	Component	Source	FY97 Actuals	FY98 Authorized	Governor's FY99 Rec.
State Health Services	Maternal, Child & Family Health	Federal Receipts	5,538.0	5,541.5	5,762.5
		General Fund	3,883.6	2,161.4	2,150.2
		GF/MH	73.6	70.4	100.4
		Other	770.4	1,248.9	1,733.1
		Total	10,265.6	9,022.2	9,746.2

The Section of Maternal, Child, and Family Health (MCFH) promotes optimum health outcomes for all Alaskans by coordinating with the private and public providers within the health care system. MCFH assists communities and providers to build the capacity for services designed to meet the unique needs of Alaska's families.

The Health Care Program for Children with Special Needs funds services for children with serious medical conditions who meet specific eligibility criteria. This cost can be attributed to GF/MH because the services alleviate conditions that could create more debilitating disabilities for beneficiaries.

MCFH also delivers preventive, rehabilitative, and educational services to families. These services include family planning, prenatal care and testing, early intervention, oral health, well-child programs, audiology, adolescent health, nutrition, health care programs for children with special needs, specialty clinics, and the Women, Infants, and Children nutritional supplement program.

Medical screening is available for children who are thought to be at risk for a disabling condition. Genetic screening and counseling helps families evaluate genetic conditions and family history that may lead to the birth of a child with disabilities.

For more information about MCFH call Pamela Muth at 269-3400.

MEDICAID

DHSS BRU	Component	Source	FY97 Actuals	FY98 Authorized	Governor's FY99 Rec.
Medical Assist.	Medicaid Non-Facility	Federal	66,874.5	87,036.0	104,298.8
		General Fund	55,822.6	52,826.0	52,237.5
		GF/MH	10,952.5	12,546.9	13,547.3
		Other	286.6	1,491.2	3,307.9
		Total	133,936.2	144,900.1	173,391.5
	Medicaid Facility	Federal	71,749.8	86,842.5	91,858.2
		General Fund	62,280.0	44,194.0	48,557.3
		GF/MH	9,731.2	12,648.4	12,476.6
		Total	143,761.0	143,684.9	152,892.1
	Waivered Services	Federal	5,918.6	6,894.2	11,413.4
		General Fund	2,106.3	2,237.5	1,756.6
		GF/MH		4,566.7	5,916.1
		Other	3,073.9	0.0	0.0
		Total	11,098.8	13,788.4	19,086.1

Medicaid is the health care financing program for Alaskans who are poor or have disabilities. Medicaid consists of nearly 40 percent state funding and 60 percent federal funding. The state's Medicaid plan includes a variety of services that are listed by priority. State funding limits the amount and level of service provided. In the past, some services, including eyeglasses and dental care, have not been available to adults because of limited funding.

Most Alaskans who use Medicaid cost the state less than \$1,000 per year. By contrast, most Alaskans who have disabilities require intensive medical or long-term care, which is costly. Eliminating the very services that allow these Alaskans to be productive (eye care, hearing aids) increases state costs.

MEDICAID WAIVERS AND OPTIONS. Each state may modify its Medicaid plan to better meet the needs of its citizens. Medicaid waivers assist the state in maximizing use of federal dollars. Alaska has four Home and Community Based Service waivers. One Medicaid Home and Community Based waiver may cover the costs of services in home and community based settings to

329 people who have developmental disabilities and require an institutional level of care. Other waivers cover the costs of services to adults who have physical disabilities, children with complex medical conditions, and senior citizens who require nursing home levels of care

People with developmental disabilities benefit greatly from non-facility, home and community based services. The home and community based waivers are not entitlements under the law. Waiver services have been combined into the Medicaid non-facility component. The Council recommends full funding of non-facility Medicaid services, with some waiver costs paid with GF/MHT funds.

The TEFRA Option assists families with children under age 18 who experience certain conditions and require an institutional level of care. The basis for eligibility for the TEFRA Option requires the state to consider only the child's income and assets.

For more information about Medicaid call Bob Labbe at 465-3355.

PFD HOLD HARMLESS

DHSS BRU	Component	Source	FY97 Actuals	FY98 Authorized	Governor's FY99 Rec.
PFD Hold Harmless	PFD Hold Harmless	PFD	20,861.4	21,455.2	20,671.6

The Permanent Fund Dividend Hold Harmless program was established in 1982 as part of the legislation that helped create the Permanent Fund Dividend (PFD). State law protects public assistance recipients from having their dividend count as income or as an asset for four months each year. The hold harmless benefit is equal to the amount the individual would have received if the dividend program did not exist. The Alaska Temporary Assistance Program (ATAP), Food Stamp (FS) program, Medicaid and Adult Public Assistance (APA) are all protected by the hold harmless provision.

The Division of Public Assistance encourages recipients to use their PFDs to help attain self-sufficiency by securing reliable transportation, stable housing, or other items that help the family transition from welfare to work. Many families deposit a portion of their children's PFDs into the Advanced College Tuition program. Families with disabled or elderly members often use their PFDs to pay for medical costs not covered by Medicaid or Medicare, or to supplement basic needs such as rent and utilities.

Periodically, legislation is proposed that would eliminate the hold harmless provisions of the PFD program. Without the hold harmless provisions, many needy families would suffer an annual disruption of their public assistance which could seriously affect their ability to meet basic needs. Deletion of the hold harmless provision could result in thousands of Alaskans losing ATAP, FS, or APA benefits for a month or more each year. Many of those who lost benefits could apply for and receive General Relief, which is funded solely by state general funds.

PERSONAL ASSISTANCE

DOA BRU	Component	Source	FY97 Actuals	* FY98 Authorized	Governor's FY99 Rec.
Division of Senior Services	Home Health Services	General Fund	1,568.9	1,581.5	1,627.9
		Other	138.4	290.1	105.0
		Total	1,707.3	1,871.6	1,732.9

In FY98, Personal Assistance became part of the Division of Administration BRU, moving from the Department of Health and Social Services.

People with significant self-care and mobility limitations may require Personal Assistance Services (PAS) to transfer to and from wheelchairs, eating, personal hygiene, dressing, and other daily living needs. Personal Assistants provide most of these services. Chore Service Providers help with day-to-day chores such as grocery shopping, laundry, and washing dishes.

Medicaid pays for these services for eligible individuals when provided by personal care agencies or independent personal assistants enrolled with Medicaid. The Division of Medical Assistance and the Division of Senior Services share responsibility for management of the program.

Recent changes in federal law regarding Medicaid, and the Governor's proposed "Medicaid Buy-In" bill allow individuals with disabilities whose family income is above the Medicaid eligibility level to retain their medical coverage, through premiums based on an income sliding scale. This provides a strong work incentive for people with disabilities by allowing them to return to work without the threat of losing necessary medical coverage, including personal assistant services.

HB 348 and SB 253 would amend the definition of PAS to be consistent with changes in federal law. Should HB 348 or SB 253 pass, PAS would become more flexible and result in a more appropriate delivery of in-home services.

For more information about PAS call Susan Cook at 269-3666.

TRANSPORTATION

Because Alaska has a comparatively small number of highway miles, providing adequate transportation for its citizens is a major challenge for local and state government. Transportation is a serious barrier to integrating people with disabilities into the community. Many residents simply cannot get to and from the centers of community, employment and civic life, preventing both people with disabilities and the community from experiencing the benefits of inclusion.

For the thousands of Alaskans who experience a significant disability, this lack of adequate transportation results in risks to personal health and safety. Meaningful community inclusion for people with disabilities will not occur until there is a safe, convenient, and reliable means to get around to the places frequented by other citizens. In almost every town and city in Alaska, cuts in public transportation budgets have disproportionately affected people with significant disabilities. Inconvenient schedules of operation, long waiting periods, or no transportation services at all represent the everyday obstacles commonly faced by people with disabilities in their efforts to live and function side by side with their fellow community members.

In some communities, one or more local agencies operate buses or lift vans for transporting elderly people and people with disabilities. Often, funding for these vehicles restricts the types of individuals who can ride them. Poor coordination among agencies with lift vans leaves unnecessary service gaps. The Department of Transportation and Public Facilities employs a Transportation Coordinator to assist communities and organizations in finding assistance to purchase vehicles, and coordinate transportation systems.

For more information call Bruce Wells at 465-6991.

Waiting lists for DD and ILP services

Analysis by Legislative District

January 1998

<i>House District</i>	<i>Senate District</i>	<i>Consumers in these communities</i>	<i>ILP Wait List</i>	<i>DD Wait List</i>
1	A	Ketchikan, Annette, Hyder	26	20
2	A	Sitka, Petersburg, Wrangell	0	18
3,4	B	Juneau, Douglas, Funter Bay	9	58
5	C	Craig, Gustavus, Yakutat	0	18
6	C	Kodiak, Port Lions, Afognak	5	13
7	D	Homer, Seldovia, Anchor Point	14	24
8	D	Seward, Soldotna, Moose Pass	12	34
9	E	Kenai, Nikiski, Salmanoff	15	14
10-23	E-L	Anchorage	22	260
24,25	L,M	Eagle River	5	28
25,26	M	Chugiak	1	10
26,28	M,N	Wasilla	8	47
27	N	Palmer	5	34
28	N	Willow, Houston	2	5
29-31	O,P	Fairbanks	10	84
32-34	P,Q	North Pole, Two Rivers, Salcha	6	20
35	R	Valdez, Delta, Cordova, Paxson	8	19
36	R	Aniak, Fort Yukon, Chitina	18	28
37	S	Barrow, Kotzebue, Shishmaref	10	13
38	S	Nome, Unalakleet, St. Marys	92	28
39	T	Bethel, Dillingham, Kwethluk	59	52
40	T	Adak, St. Paul, Sand Point	2	11
		Total	329	838

This publication is required by AS 47.80. It was released by the Governor's Council on Disabilities and Special Education, Department of Health and Social Services. It was produced at a cost of \$1.20 per copy, and printed in Anchorage, Alaska.

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

TONY KNOWLES
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

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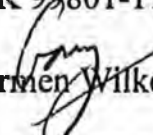
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April 14, 1997

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

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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

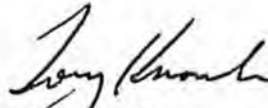
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- It has been estimated that smoking-related illnesses result in the deaths of 470 Alaskans per year.
- Smoking cigarettes accounted for more deaths in Alaska from 1992-94 than AIDS, alcohol, aircraft crashes, falls, fires, firearms, and motor vehicle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

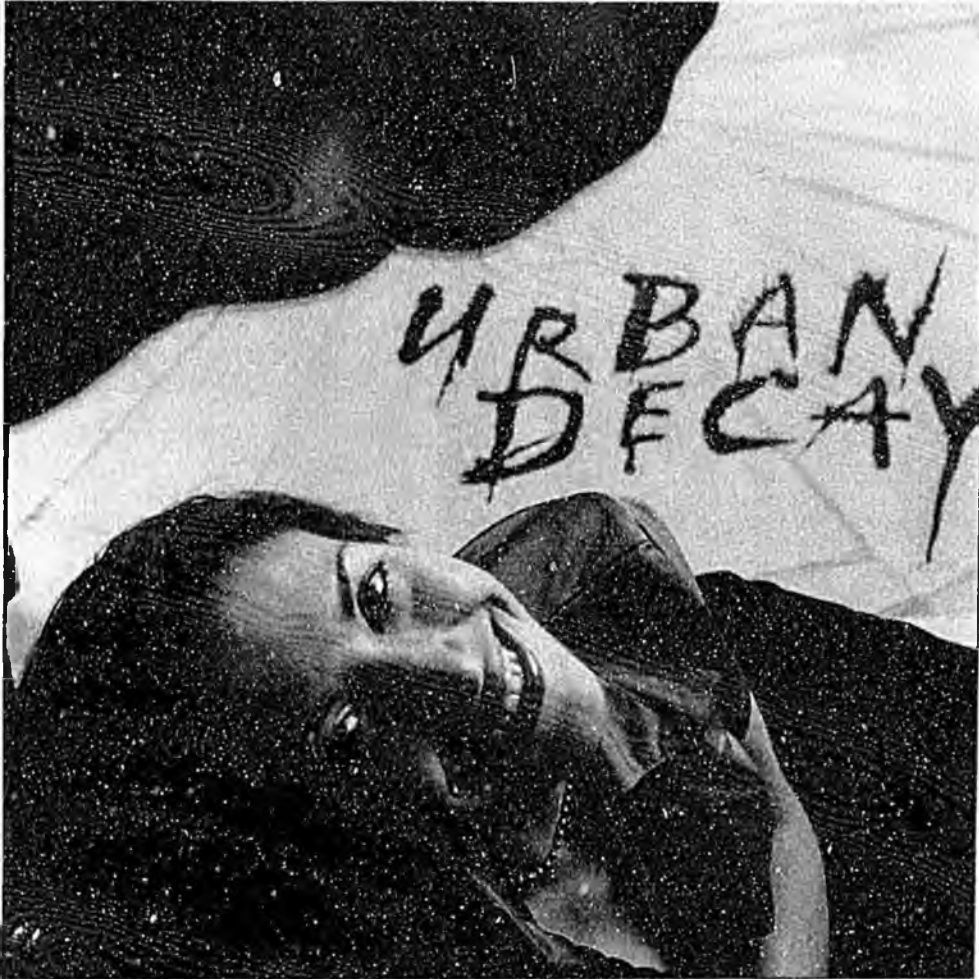
With PETER KATEL and JENNIFER LACH

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.

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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

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THE ARIZONA

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Friday, March 21, 1997

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Phoenix, Arizona

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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.

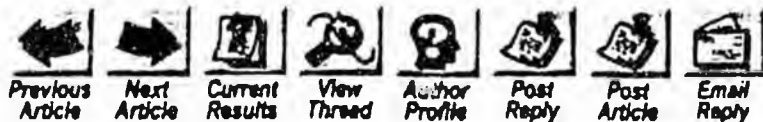
They have shown for years that if you hire enough lawyers and lobbyists, enrich enough politicians, and blow enough smoke, the truth can be covered up, twisted, shoved out of sight.

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.

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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 states, 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\$oig@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.

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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.

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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.

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1
2
3 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
4 FIRST JUDICIAL DISTRICT AT JUNEAU

5 THE STATE OF ALASKA,)

6 Plaintiff,)

7 vs.)

8 PHILIP MORRIS, INCORPORATED; R.J.)
9 REYNOLDS TOBACCO CO.; AMERICAN)
10 TOBACCO CO., INC.; BROWN &)
11 WILLIAMSON TOBACCO CORP.;)
12 LIGGETT & MYERS, INC.; LORILLARD)
13 TOBACCO CO., INC.; UNITED STATES)
14 TOBACCO COMPANY; B.A.T.)
15 INDUSTRIES, P.L.C.; BRITISH AMERICAN)
16 TOBACCO COMPANY, LTD.; HILL &)
17 KNOWLTON, INC.; THE COUNCIL FOR)
18 TOBACCO RESEARCH - U.S.A., INC.; and)
19 TOBACCO INSTITUTE, INC.. foreign)
20 corporations.)

21 Defendants.)

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

APR 14 1997

By _____ Dep:

No. 1JU-97- 915 CI

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

24 I. INTRODUCTION

25 1. The State of Alaska, through Attorney General Bruce M. Botelho, on
26 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

PAGE 1

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

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Rev. 6/98

Central Microfilm Services
Department of Education
State of Alaska

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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

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- 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

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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.
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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

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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

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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

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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
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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

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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,
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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.

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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.

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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.

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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,

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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,
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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.

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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

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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

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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.

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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...)

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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

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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

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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.
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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

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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."
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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

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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.)

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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.

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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."
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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."

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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."

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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").

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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.

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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.)

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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

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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

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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

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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

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

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

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

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

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

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

(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

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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: