

**UNITED STATES DISTRICT COURT:
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	FIRST AMENDED COMPLAINT
)	FOR DAMAGES
V.)	AND INJUNCTIVE AND
)	DECLARATORY RELIEF
PHILIP MORRIS, INC., et al.)	Civil Action
)	No. 99-C V-02496 (GK)
Defendants.)	

INTRODUCTION

1. This is an action to recover health care costs paid for and furnished, and to be paid for and furnished, by the federal government for lung cancer, heart disease, emphysema, and other tobacco-related illnesses caused by the fraudulent and tortious conduct of defendants; to recover from defendants, as required or responsible under a primary plan, conditional Medicare payments made by the federal government for items or services to treat lung cancer, heart disease, emphysema, and other tobacco-related illnesses caused by the fraudulent and tortious conduct of defendants; and to restrain defendants and their co-conspirators from engaging in fraud and other unlawful conduct in the future, and to compel defendants to disgorge the proceeds of their unlawful conduct.

2. This action is brought pursuant to the Medical Care Recovery Act, 42 U.S.C. § § 2651, et seq. (Count One), and the Medicare Secondary Payer provisions of Subchapter 18 of the Social Security Act, 42 U.S.C. § 1395y(b)(2)(B)(ii) & (iii) (Count Two), and the civil provisions of Chapter 96 of Title 18, United States Code, codified at 18 U.S.C. § § 1961 through 1968,

entitled Racketeer Influenced and Corrupt Organizations ("RICO"), that authorize the United States to seek a judicial order preventing and restraining certain unlawful conduct (Counts Three and Four).

3. Defendants, who manufacture and sell almost all of the cigarettes purchased in this country, and their co-conspirators have for many years sought to deceive the American public about the health effects of smoking. Defendants have repeatedly and consistently denied that smoking cigarettes causes disease, even though they have known since 1953, at the latest, that smoking increases the risk of disease and death. Defendants have repeatedly and consistently denied that cigarettes are addictive even though they have long understood and intentionally exploited the addictive properties of nicotine. Defendants have repeatedly and consistently stated that they do not market cigarettes to children while using advertising and marketing techniques to make their products attractive to children. Even though they have long understood the hazards caused by smoking and could have developed and marketed less hazardous cigarette products, defendants chose and conspired not to do so. Instead, they have knowingly marketed cigarettes -- called "low tar/low nicotine" cigarettes -- that consumers believed to be less hazardous even though consumers actually receive similar amounts of tar and nicotine as they receive from other cigarettes; and therefore these cigarettes are in fact not less hazardous than other cigarettes.

4. In all relevant respects, defendants acted in concert with each other in order to further their fraudulent scheme. Beginning not later than 1953, defendants, their various agents and employees, and their co-conspirators, formed an "enterprise" ("the Enterprise") as that term is defined in 18 U.S.C. § 1961(4). That Enterprise has functioned as an organized association-in-

fact for more than 45 years to achieve, through illegal means, the shared goals of maximizing their profits and avoiding the consequences of their actions. Each defendant has participated in the operation and management of the Enterprise, and has committed numerous acts to maintain and expand the Enterprise.

5. In order to avoid discovery of their fraudulent conduct and the possibility that they might be called to account for their conduct, defendants engaged in a widespread scheme to frustrate public scrutiny by making false and deceptive statements and by concealing documents and research that they knew would have exposed their public campaign of deceit. This scheme included making false and deceptive statements to the public and in congressional, judicial, and federal agency proceedings.

6. Defendants' tortious and unlawful course of conduct has caused consumers of defendants' products to suffer dangerous diseases and injuries. As a consequence of defendants' tortious and unlawful conduct, the Federal Government spends more than \$20 billion annually for the treatment of injuries and diseases caused by defendants' products. The effect of defendants' fraudulent scheme and wrongful conduct continues to this day; defendants are continuing to prosper and profit from their unlawful and tortious conduct; and, unless restrained by this Court, defendants are likely to continue their unlawful activities into the future.

I. JURISDICTION

7. Jurisdiction in this action is predicated upon 28 U.S.C. § § 1331, 1345, and 2201, and 18 U.S.C. § § 1964(a) and (b).

II. VENUE

8. Venue for this action is predicated upon 18 U.S.C. § 1965 and 28 U.S.C. § §

1391(b) and (c). The United States invokes the expanded service of process provisions of 18 U.S.C. § 1965(b). Each defendant cigarette company, or its predecessor or successor, has marketed cigarettes for sale in the District of Columbia and elsewhere from at least 1953 to the present. In addition, the Departments of Health and Human Services and Veterans Affairs and the Office of Personnel Management, federal agencies with their headquarters in Washington, D.C., among others, have paid for and provided health care to millions of smokers whose smoking related injuries were caused by defendants.

III. THE PARTIES

9. Plaintiff UNITED STATES OF AMERICA (the "United States"), is a sovereign and body politic.

A. Cigarette Company Defendants

10. Defendant PHILIP MORRIS, INC. ("Philip Morris") is a Virginia corporation with its principal place of business at 120 Park Avenue, New York, New York. Philip Morris is a subsidiary of PHILIP MORRIS COMPANIES, INC. At relevant times, Philip Morris has manufactured, advertised, and sold cigarettes, including Alpine, Basic, Dunhill, Benson & Hedges, Cambridge, English Ovals, Galaxy, Marlboro, Merit, Parliament, Philip Morris, Players, Saratoga, and Virginia Slims brand cigarettes throughout the United States, including in the District of Columbia. In addition, on or about January 12, 1999, Philip Morris entered into an agreement with defendant LIGGETT GROUP, INC. to purchase certain brands of cigarettes previously manufactured by Liggett, including Lark, Chesterfield, and L&M, which Philip Morris also has sold throughout the United States and in the District of Columbia. At times pertinent to this Complaint, Philip Morris, individually and through its agents, alter egos, subsidiaries,

divisions, or parent companies, materially participated in the Enterprise, and materially participated, conspired, assisted, encouraged, and otherwise aided and abetted one or more of the other defendants in the unlawful, misleading, and fraudulent conduct alleged herein, and has affected foreign and interstate commerce in the United States, including the District of Columbia.

11. Defendant R.J. REYNOLDS TOBACCO COMPANY ("Reynolds" or "RJR") is a New Jersey corporation with its principal place of business at 401 North Main Street, Winston-Salem, North Carolina. At relevant times, Reynolds has manufactured, advertised, and sold cigarettes, including Best Value, Bright Rite, Camel, Century, Doral, Magna, Monarch, More, Now, Salem, Sterling, Vantage, and Winston brand cigarettes throughout the United States, including in the District of Columbia. At times pertinent to this Complaint, Reynolds, individually and through its agents, alter egos, subsidiaries, divisions, or parent companies, materially participated in the Enterprise, and materially participated, conspired, assisted, encouraged, and otherwise aided and abetted one or more of the other defendants in the unlawful, misleading, and fraudulent conduct alleged herein, and has affected foreign and interstate commerce in the United States, including the District of Columbia.

12. Defendant BROWN & WILLIAMSON TOBACCO CORPORATION ("Brown & Williamson") is a Delaware corporation with its principal place of business at 1500 Brown & Williamson Tower, Louisville, Kentucky. Brown & Williamson is a wholly owned subsidiary, directly or indirectly, of BATUS Holdings, Inc., a Delaware corporation, and its ultimate parent company is defendant BRITISH AMERICAN TOBACCO P.L.C. At relevant times, Brown & Williamson has manufactured, advertised, and sold cigarettes, including Barclay, Bel Air, Capri, Eli Cutter, GPC, Kool, Laredo, Prime, Private Stock, Raleigh, Richland, Summit, Tall, Tareyton,

and Viceroy brand cigarettes throughout the United States, including in the District of Columbia. As a result of its acquisition of defendant AMERICAN TOBACCO COMPANY in 1994 (either directly or through BAT Industries, p.l.c., the predecessor to BRITISH AMERICAN TOBACCO P.L.C.), Brown & Williamson has succeeded to the liabilities of defendant American either by operation of law, or as matter of fact. At times pertinent to this Complaint, Brown & Williamson, individually and through its agents, alter egos, subsidiaries, divisions, or parent companies, materially participated in the Enterprise, and materially participated, conspired, assisted, encouraged, and otherwise aided and abetted one or more of the other defendants in the unlawful, misleading, and fraudulent conduct alleged herein, and has affected foreign and interstate commerce in the United States, including the District of Columbia.

13. Defendant LORILLARD TOBACCO COMPANY, INC. ("Lorillard") is a Delaware corporation with its principal place of business at 1 Park Avenue, New York, New York. Lorillard is a subsidiary of Loews Corp., a Delaware corporation. At relevant times, Lorillard has manufactured, advertised, and sold cigarettes, including Golden Lights, Harley-Davidson, Heritage, Kent, Maverick, Max, Newport, Newport Red, Old Gold, Satin, Spring, Spring Lemon Lights, Style, Triumph, and Tine brand cigarettes throughout the United States, including in the District of Columbia. At times pertinent to this Complaint, Lorillard, individually and through its agents, alter egos, subsidiaries, divisions, or parent companies, materially participated in the Enterprise, and materially participated, conspired, assisted, encouraged, and otherwise aided and abetted one or more of the other defendants in the unlawful, misleading, and fraudulent conduct alleged herein, and has affected foreign and interstate commerce in the United States, including the District of Columbia.

14. Defendant LIGGETT GROUP, INC. ("Liggett") is a Delaware corporation with its principal place of business at 700 West Main Street, Durham, North Carolina. Liggett is the successor to the tobacco interests of Liggett & Myers, Inc., and Liggett & Myers Tobacco Co. Liggett is a subsidiary of the Brooke Group, a Delaware corporation. At relevant times, Liggett has manufactured, advertised, and sold cigarettes, including Chesterfield, Decade, Dorado, Eve, Generic, Lark, L&M, Pyramid, and Stride brand cigarettes throughout the United States, including in the District of Columbia. At times pertinent to this Complaint, Liggett, individually and through its agents, alter egos, subsidiaries, divisions, or parent companies, materially participated in the Enterprise, and materially participated, conspired, assisted, encouraged, and otherwise aided and abetted one or more of the other defendants in the unlawful, misleading, and fraudulent conduct alleged herein, and has affected foreign and interstate commerce in the United States, including the District of Columbia.

15. Defendant the AMERICAN TOBACCO COMPANY ("American") is or was a Delaware corporation with its principal place of business at 1500 Brown Williamson Tower, Louisville, Kentucky. At relevant times, American manufactured, marketed, and sold American, Bull Durham, Carlton, Iceberg, Lucky Strike, Malibu, Misty, Montclair, Newport, Pall Mall, Silk Cut, Silva Thins, Sobrania, and Tareyton cigarettes throughout the United States, including in the District of Columbia. American is successor to the tobacco interests of American Brands, Inc. In 1994, American was purchased by and merged into Brown & Williamson, which has succeeded to the liabilities of American. At times pertinent to this. Complaint, American, individually and through its agents, alter egos, subsidiaries, parent companies and divisions, materially participated in the Enterprise, and materially participated, conspired, assisted,

encouraged, and otherwise aided and abetted one or more of the other defendants in the unlawful, misleading, and fraudulent conduct alleged herein, and has affected foreign and interstate commerce in the United States, including the District of Columbia.

16. Defendants PHILIP MORRIS, REYNOLDS, BROWN & WILLIAMSON, LORILLARD, LIGGETT, and AMERICAN are referred to herein collectively as the "Cigarette Companies," each of which marketed cigarettes for sale in the District of Columbia and elsewhere.

B. The Parent Company Defendants

17. Defendant PHILIP MORRIS COMPANIES, NC. ("Philip Morris Companies"), is a Virginia corporation whose principal place of business is located at 120 Park Avenue, New York, New York 10017. Philip Morris Companies is the parent corporation of Philip Morris and Philip Morris International, Inc., and has participated in the manufacture and distribution of cigarettes and tobacco products both individually and through its agents defendant Philip Morris and Philip Morris International, Inc. In acting as alleged herein, Philip Morris and Philip Morris International, Inc., have acted within the course and scope of their agency and employment, and with the knowledge, consent, permission, and authorization of Philip Morris Companies. Actions of Philip Morris were ratified and approved by the officers and managing agents of Philip Morris Companies. At times relevant herein, Philip Moms Companies has participated substantially in the management and control of Philip Morris. Through Philip Morris, Philip Morris Companies has placed cigarettes into the stream of commerce with the expectation that substantial sales of cigarettes would be made in the United States, including in the District of Columbia, and elsewhere. At times pertinent to this Complaint, Philip Morris Companies,

individually and through its agents, alter egos, subsidiaries, or divisions, materially participated in the Enterprise, and materially participated, conspired, assisted, encouraged, and otherwise aided and abetted one or more of the other defendants in the unlawful, misleading, and fraudulent conduct alleged herein, and has affected foreign and interstate commerce in the United States, including the District of Columbia.

18. Defendant BRITISH AMERICAN TOBACCO, P.L.C. ("BAT p.l.c.") is a British corporation with its principal place of business at Globe House, 4 Temple Place, London WC2R 2PG, England. BAT p.l.c. is sued directly and as successor to B.A.T. INDUSTRIES, P.L.C. ("B.A.T. Industries"). (This Complaint will refer to this defendant alternatively as "BAT p.l.c" and "BAT Industries"). Defendant Brown & Williamson is the agent of defendant BAT p.l.c. In acting as alleged herein, Brown & Williamson has acted within the course and scope of its Agency and employment, and with the consent, permission, and authorization of BAT p.l.c. Actions of Brown & Williamson were ratified and approved by the officers and managing agents of BAT p.l.c. Through a succession of intermediary corporations and holding companies, BAT p.l.c. is the sole shareholder of Brown & Williamson. At times relevant herein, BAT p.l.c. has participated substantially in the management and control of Brown & Williamson. Through Brown & Williamson, BAT p.l.c. has placed cigarettes into the stream of commerce with the expectation that substantial sales of cigarettes would be made in the United States, including in the District of Columbia. At times pertinent to this Complaint, BAT p.l.c., individually and through its agents, alter egos, subsidiaries, or divisions, materially participated in the Enterprise, and materially participated, conspired, assisted, encouraged, and otherwise aided and abetted one or more of the other defendants in the unlawful, misleading, and fraudulent conduct alleged herein, and has

affected foreign and interstate commerce in the United States, including the District of Columbia.'

19. Defendant BRITISH AMERICAN TOBACCO (INVESTMENTS) LTD. ("BAT Investments") is a British corporation whose registered office is at Millbank, Knowle Green, Staines, Middlesex, TW18 1DY, England. BAT Investments is sued directly and as successor to BRITISH AMERICAN TOBACCO COMPANY, LTD. ("BAT Co."). (This Complaint will refer to this defendant generally as "BAT Co."). At relevant times pertinent to this Complaint, BAT Co. was a parent corporation of defendant Brown & Williamson and BATUS Holdings. In acting as alleged herein, Brown & Williamson has acted within the course and scope of its agency and employment, and with the consent, permission, and authorization of BAT Co. Actions of Brown & Williamson were ratified and approved by the officers and managing agents of BAT Co. At times relevant herein, BAT Co. has participated substantially in the management and control of Brown & Williamson. At times pertinent to this Complaint, BAT Co., individually and through its agents, alter egos, subsidiaries, divisions, or parent companies, materially participated in the Enterprise, and materially participated, conspired, assisted, encouraged, and otherwise aided and abetted one or more of the other defendants in the unlawful, misleading, and fraudulent conduct alleged herein, and has affected foreign and interstate commerce in the United States, including the District of Columbia.

'By a December 17, 1999 Order of this Court, British American Tobacco p.l.c. was dismissed from this action without prejudice and B.A.T Industries p.l.c. was substituted as a defendant in place of British American Tobacco p.l.c. On September 28, 2000, this Court granted B.A.T Industries p.l.c.'s motion to dismiss for lack of personal jurisdiction. See United States v. Philip Moms. Inc., 116 F. Supp. 2d 116 (D.D.C. 2000). On January 31, 2001, this Court granted in part and denied in part the United States' motion to modify the Court's September 28, 2000 Memorandum Opinion. See United States v. Philip Morris. Inc., No. 99-cv-2496, ___ F. Supp. 2d. ___, 2001 WL 111160 (D.D.C. Jan. 31, 2001) (Order #44).

20. Defendants PHILIP MORRIS COMPANIES, BAT P.L.C., and BAT INVESTMENTS are referred to herein collectively as the "Parent Companies."

C. The Industry "Research," Public Relations, and Lobbying Defendants

21. Defendant COUNCIL FOR TOBACCO RESEARCH --U.S.A., Inc. ("CTR"), is or was a New York non-profit corporation with its principal place of business at 900 Third Avenue, New York, New York. CTR is the successor in interest to the Tobacco Industry Research Committee ("TIRC"). TIRC and CTR were not primarily "research" organizations but they were established by the Cigarette Companies to carry out their fraudulent course of conduct beginning in January 1954. At all relevant times, TIRC and CTR operated as public relations and lobbying arms of the Cigarette Companies and as agents and employees of the Cigarette Companies. They also acted as facilitating agencies and co-conspirators in furtherance of the Cigarette Companies' combination and conspiracy as described in this Complaint. In acting as alleged herein, TIRC and CTR acted within the course and scope of their agency and employment, and with the knowledge, consent, permission, and authorization of the Cigarette Companies. All actions of TIRC and CTR were ratified and approved by the officers and managing agents of each of the Cigarette Companies. At times pertinent to this Complaint, TIRC and CTR, individually and through their agents, materially participated in the Enterprise, and materially participated, conspired, assisted, encouraged, and otherwise aided and abetted one or more of the other defendants in the unlawful, misleading, and fraudulent conduct alleged herein, and have affected foreign and interstate commerce in the United States, including the District of Columbia.

22. Defendant THE TOBACCO INSTITUTE, INC. ("Tobacco Institute" or "TI") is or was a New York non-profit corporation with its principal place of business at 1875 I Street N.W.,

Suite 800, Washington, D.C. At all relevant times, the Tobacco Institute has operated as a public relations arm of the Cigarette Companies, and as an agent and employee of the Cigarette Companies. It has also acted as a participant and facilitating agent and co-conspirator in furtherance of the conspiracy of the Cigarette Companies as described in this Complaint. In acting as alleged herein, the Tobacco Institute has acted within the course and scope of its agency and employment, and with the knowledge, consent, permission, and authorization of each of the Cigarette Companies. All actions of the Tobacco Institute were ratified and approved by the officers and managing agents of the Cigarette Companies. At times pertinent to this Complaint, the Tobacco Institute, individually and through its agents, materially participated in the Enterprise, and materially participated, conspired, assisted, encouraged, and otherwise aided and abetted one or more of the other defendants in the unlawful, misleading, and fraudulent conduct alleged herein, and has affected foreign and interstate commerce in the United States, including the District of Columbia.

23. At all relevant times, each defendant was a "person" within the meaning of 18 U.S.C. §1961(3), because each defendant was "capable of holding a legal or beneficial interest in property." The Cigarette Companies, the Parent Companies, CTR, and the Tobacco Institute are referred to herein collectively as "defendants."

IV. THE FACTS

A. The Impact of Cigarette Smoking on the American Public

24. Cigarette smoking is the single largest preventable cause of premature death in the United States. Each year, millions of people suffer from smoking-related diseases, which often require a long-term course of medical and surgical treatment. Each year more than 400,000

Americans die from cigarette smoking. Nearly one in every five deaths in the United States is smoking related.

25. Each year, as a result of the diseases, illness, or injuries caused by cigarettes, the United States spends more than \$20 billion under a variety of programs to pay for or furnish medical care to smokers.

26. Cigarette smoking causes lung and other types of cancers, emphysema and other chronic lung diseases, heart attacks, strokes, and a variety of other diseases. Cigarette smoking by pregnant women is also a leading cause of low birth weight infants.

27. Cigarettes contain nicotine, which is an addictive drug. The addictiveness of cigarette smoking significantly increases the adverse health consequences of cigarette smoking.

28. Although it is illegal to sell cigarettes to children, the vast majority of adults who smoke began smoking before they were 18. Children are particularly susceptible to cigarette advertising, especially advertising that presents smoking as a rite of passage into adulthood. When they first begin to smoke, children do not believe that they will have difficulty in quitting, but because of the addictive nature of nicotine, many are unable to quit once they have started.

29. More than one million children under age 18 begin smoking each year in America. Of these children, most continue as adult smokers and will suffer from some smoking-related illness and diminished health, which will directly and indirectly have an enormous adverse effect on public welfare and the public fisc; and approximately one in three of these children who become regular smokers will die of a smoking-related disease.

B. The Formation of the Enterprise and the Nature of the Conspiracy

30. In the 1940's and early 1950's, scientific researchers published findings that indicated a relationship between cigarette smoking and diseases, including lung cancer.

31. Senior Cigarette Company executives and researchers closely monitored such research and knew that if the public came to understand that cigarette smoking causes cancer and other diseases, the Cigarette Companies' profits would decline and the industry would face the prospect of civil liability and government regulation. In response to the published research linking cigarettes and disease, in December 1953, Paul Hahn, President of American Tobacco Company, sent a telegram to the other Cigarette Company presidents, suggesting a meeting to formulate "an industry response" to the studies.

32. As a direct result of Mr. Hahn's telegram, on December 15, 1953, the chief executives of American, Brown & Williamson, Lorillard, Philip Moms, and Reynolds met at the Plaza Hotel in New York City. At that meeting, these chief executives agreed that the published studies were "extremely serious" and "worthy of drastic action." At the meeting, the chief executives determined to respond to this serious public health issue with a concerted public relations campaign intended to preserve their profits.

33. The decisions made by these chief executives at the Plaza Hotel meeting have shaped the actions of the Cigarette Companies, including companies not in attendance at the meeting, to this day. The chief executives at the Plaza Hotel agreed that the strategy they were implementing was a "long-term one" that required defendants to act in concert with each other on the current health controversy, as well as on issues that would face them in the future. This Enterprise and conspiracy still continues today.

34. The fundamental goal of the Enterprise and conspiracy was to preserve and expand the market for cigarettes and to maximize the Cigarette Companies' profits. To achieve this goal, defendants' strategy was to respond to scientific evidence of the adverse health consequences of cigarette smoking with fraud and deception. Rather than provide full disclosure to the public and in congressional, federal agency, and judicial proceedings about what they knew or learned about the dangers of cigarette smoking, defendants and their agents determined, in furtherance of this Enterprise and conspiracy, to deny that smoking caused disease and to maintain that whether smoking caused disease was an "open question," despite having actual knowledge that smoking did cause disease.

35. Defendants sought to ensure that no company -- in the United States or overseas -- - broke ranks from defendants' public posture, which was based on falsehood and deception. If any Company admitted that smoking was hazardous, that nicotine was addictive, that the delivery of nicotine was manipulated by the Cigarette Companies, that defendants' research commitment was a sham, or that the Cigarette Companies marketed to children, the conspiracy would be endangered.

To further and protect the Enterprise and conspiracy and their profits, defendants:

- made false and misleading statements to the public through press releases, advertising, and public statements, such as before Congress, that were intended to be heard by the consuming public.
- adhered to their common scheme of deception and falsehood in lawsuits, including, among other things, destroying and concealing documents.

36. Throughout the course of the Enterprise and conspiracy and to the present day, defendants have engaged in these acts knowingly and intentionally and with a common purpose.

Their own documents -- secreted in internal files and revealed only in recent years despite defendants' involvement in continuous litigation about their products for more than 45 years -- demonstrate that defendants:

- sought to create false doubt about the health effects of smoking because they knew that such doubt would influence consumers to begin or to continue smoking;
- falsely denied that nicotine was addictive and controlled the nicotine delivery of cigarettes so that they could addict new users and make it more difficult for addicted cigarette smokers to quit;
- suppressed research, destroyed documents, and took steps to prevent discovery of such documents;
- aggressively targeted children as new smokers because children fail to appreciate the hazards of smoking and the addictiveness of nicotine and are more easily induced to start an addiction that would lead to a lifetime of cigarette purchases; and
- knew that use of their product was unreasonably and unnecessarily dangerous to the lifelong customers that they sought to addict.

C. False Statements About Smoking and Disease

37. Consistent with the recommendations made in connection with the December 1953 meeting at the Plaza Hotel, defendants formed the TIRC and, on January 4, 1954, caused to be published a full-page statement to the American public called "A Frank Statement to Cigarette Smokers" in 448 newspapers in the United States. The "Frank Statement" explained that:

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

Although conducted by doctors of professional standing, these experiments are not regarded as conclusive in the field of cancer research. However, we do not believe results are inconclusive, should be disregarded or lightly dismissed. At the same time, we feel it is in the public interest to call attention to the fact that eminent doctors and research scientists have publicly questioned the claimed significance of these experiments.

Distinguished authorities point out:

That medical research of recent years indicates many possible causes of lung cancer.

That there is no agreement among the authorities regarding what the cause is.

That there is no proof that cigarette smoking is one of the causes.

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

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

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

We always have and always will cooperate closely with those whose task it is to safeguard the public health. For more than 300 years tobacco has given solace, relaxation, and enjoyment to mankind. At one time or another during those years critics have held it responsible for practically every disease of the human body. One by one these charges have been abandoned for lack of evidence.

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

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

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

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

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

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

38. Before the Frank Statement's claim that "there is no proof that cigarette smoking is one of the causes" of lung cancer, defendants knew of the published literature on smoking and health and researchers employed by the Cigarette Companies had reported the relationship between smoking and disease. Moreover, although the Cigarette Companies refrained from doing much of the basic biological research related to the effects of their products, by January, 1954, the Companies had identified the presence of carcinogenic substances in tobacco smoke. Thus, defendants were well aware of the health hazards posed by smoking.

39. Despite their knowledge, which only increased in the ensuing years, at no time did defendants disclose to the public that smoking caused disease or make public their own analyses

which confirmed the published literature. Instead, over the last forty-five years, defendants have made false and misleading statements to persuade the American public that there was an "open question" as to whether smoking caused disease. In every available regulatory, judicial, and congressional proceeding, as well as in every public forum, including through press releases and advertisements, defendants denied that smoking caused disease or claimed that there was insufficient proof that smoking caused disease.

40. The Cigarette Companies went so far as to claim that they would cease selling tobacco if they determined that smoking was harmful or would change the product in order to make certain that it was no longer harmful. For example,

- George Weissman, Vice-President of Philip Morris, told the Pioneer Press on March 31, 1954, that the cigarette industry would "stop business tomorrow" if it believed smoking was harmful.
- Bowman Gray, the head of RJR, testified before Congress in June of 1964, that "the tobacco industry is profoundly conscious of the gravity of questions concerning smoking and health." *** "If it is proven that cigarettes are harmful, we want to do something about it regardless of what somebody else tells us to do. And we would do our level best. This is just being human."

41. Even those companies that were not involved in the issuance of the Frank Statement joined, and committed acts in furtherance of, the Enterprise and conspiracy. Defendant Liggett, which joined TIRC/CTR in 1964, maintained the same false and misleading public positions as the other Cigarette Companies until 1997, when Liggett admitted that smoking is harmful, nicotine is addictive, and that the Cigarette Companies have marketed to children. The Parent Company

defendants also acted in furtherance of the Enterprise and conspiracy by committing acts as described in the Appendix to this Complaint (which Appendix is essential to determination of this action, see LCvR 5.1(g)) and by using their corporate families, particularly overseas, to keep documents and research out of reach of courts and others in the United States. For example, BAT p.l.c., by itself or through its agents, subsidiaries, or co-conspirators, has conducted significant research for Brown & Williamson on the topics of smoking, disease, and addiction. Brown & Williamson also sent to England research conducted in the United States on the topics of smoking, disease and addiction in order to remove sensitive and inculpatory documents from United States jurisdiction, and such documents were subject to the control of BAT p.l.c.

42. In addition to the false statements made by the Cigarette Companies themselves and in furtherance of their scheme to defraud, in 1958 defendants created the Tobacco Institute, a public relations organization whose function was to make certain that defendants' false and misleading positions on issues related to, among other things, the connection between smoking and disease, were kept constantly before the public, doctors, the press, and the government. At all times, defendants controlled the Tobacco Institute, including its public statements made on behalf of defendants. Examples of the Tobacco Institute's false and misleading statements are identified in the attached Appendix.

43. In contrast to defendants, who long knew and understood the adverse health effects of cigarette smoking, many members of the public did not fully appreciate the risk to their health posed by cigarettes. At all times, defendants made such false and misleading statements with the express purpose of deceiving the public and inducing smokers and non-smokers to minimize the health risks and continue or start smoking. Defendants also had full knowledge that, as their fraud

succeeded, more Americans would suffer from tobacco-related disease. Because they failed to warn consumers and lied about the health effects of smoking, many Americans, including millions of children, became addicted to cigarettes, and many people who were already smoking had more difficulty quitting, with resulting damage to their health.

D. The Myth of Independent Research

1. The "Gentleman's Agreement"

44. As a means to further the aims of the Enterprise and conspiracy and as an adjunct to their claims that there was an open question as to whether smoking causes disease, defendants -- in the "Frank Statement" and repeatedly over the 45 years since then - undertook an obligation to protect the public health by conducting and disclosing unbiased and authenticated research on the health risks of cigarette smoking. This promise was false when made, has been repeatedly reaffirmed throughout the years, and has never been fulfilled.

45. Contrary to their repeated promises, the Cigarette Companies had a "gentleman's agreement" -- so called by defendants themselves -- not to perform or commission internal research designed to investigate the relationship between smoking and health. They did not routinely employ or support scientists to conduct such research; and, in the rare instances that the companies did conduct such research internally, they did so in secret and suppressed the results, in some cases by destroying documents and in other cases by taking other steps to shield documents and materials from discovery.

46. Two components to this "gentleman's agreement" were: (1) any company discovering an innovation permitting the manufacture of an essentially "safe" cigarette would share the discovery with others in the industry; and (2) no domestic company would perform in-house

biomedical research on animals.

47. Although they recognized that research and testing were essential to evaluating the health risk posed by their products, defendants, pursuant to the "gentleman's agreement," generally did not perform biological research on smoking and health. In a secret internal communication in 1964, Philip Morris Research and Development Vice President Helmut Wakeham acknowledged the legal jeopardy inherent in defendants' joint agreement, when he (unsuccessfully) recommended that "[t]he industry should abandon its past reticence with respect to medical research. Indeed, failure to do such research could give rise to negligence charges." Despite Mr. Wakeham's warning, defendants persisted in their agreement.

48. By the late 1960's, individual companies were performing limited biological research in violation of the "gentleman's agreement." Nonetheless, the fundamental understanding and agreement remained intact: information and activities that would tend to establish the harmfulness of cigarettes would be restrained, suppressed, and concealed. This included restraining, concealing, and suppressing research on the adverse health effects of smoking, including the addictive qualities of cigarettes.

49. The biological research that the Cigarette Companies did perform was closely controlled to ensure that, if it resulted in additional evidence that smoking causes disease, it would not become public or subject to discovery in court proceedings. This control included performing much of the research outside the United States in order to keep documents and witnesses hidden and out of the reach of State and Federal courts, and by taking other steps to shield documents and materials from discovery.

50. Philip Morris, for example, conducted in-house research in Europe in order to avoid

disclosure of unfavorable results to the public. In 1970, Philip Morris purchased a research facility in Cologne, Germany, known as INBIFO. One perceived value of INBIFO was that Philip Morris could control the research conducted there; therefore, overseas experiments could be terminated at will. Philip Morris took steps to conceal this arrangement. Company scientists shipped documents from locations in the United States to Cologne for storage in order to remove unfavorable or embarrassing research results from Philip Morris' files during and in advance of litigation and thereby to avoid discovery of adverse documents. Discussing how to handle records relating to the INBIFO arrangement, senior Philip Morris scientist Thomas Osdene characterized the arrangement as follows: "Ship all documents to Cologne.... Keep in Cologne.... If important letters have to be sent please send to home & I will act on them and destroy."

51. Brown & Williamson conducted some biological research in the United States in conjunction with its English parent company, BAT p.l.c. When the company sought to avoid discovery of these documents in a number of personal injury lawsuits, Brown & Williamson sent much of the American company's biological research to England so that it would not have to be produced. Brown & Williamson sent sensitive research documents to London to avoid production in litigation, stamped scientific documents "attorney/client, work product," and edited and suppressed the minutes of scientific meetings to remove references to topics that might be the subject of litigation.

52. Brown & Williamson also endeavored in litigation brought by smokers to prevent the disclosure of research documents created by its affiliate, BAT Co., which contained information contrary to Brown & Williamson's public positions that smoking did not cause disease and that cigarettes were not addictive. To further this effort, a Brown & Williamson research

scientist received scientific reports and designated documents harmful to Brown & Williamson as protected by the attorney work product privilege.

53. Defendants also enforced the conspiracy by stopping inconsistent research efforts by any member of the group. For example, in the 1960's Reynolds established a facility in Winston-Salem, North Carolina, to research the health effects of smoking using mice. In the facility that Reynolds nicknamed the "Mouse House," Reynolds scientists researched a number of specific areas, including studies of the actual mechanism whereby smoking causes emphysema. Internally, a Reynolds-commissioned report favorably described the Mouse House work as the most important of the smoking and health research efforts because it had come close to determining the underlying mechanism of emphysema.

54. In 1970, Philip Morris' president complained to Reynolds about the work going on in the Mouse House. Despite the progress made there, Reynolds responded to the complaint by closing the Mouse House -- disbanding in one day, without notice to the staff, the entire research division, firing all 26 scientists working there, and destroying years of smoking and health research.

55. Reynolds also sought to prevent documents containing research reports contrary to the company's public positions regarding smoking and health from being disclosed in smoking and health litigation in which Reynolds was a defendant or witness. In December 1969, the Reynolds Research Department reported that it did "not foresee any difficulty in the event a decision is reached to remove certain reports from Research files. Once it becomes clear that such action is necessary for the successful defense of our present and future suits, we will promptly remove all such reports from our files.... As an alternative to invalidation [of adverse reports], we can have

the authors rewrite those sections of the reports which appear objectionable."

2. The Lack of Independence of CTR

56. Rather than perform relevant research in-house, the Cigarette Companies claimed that they would fulfill their promise to research and publish their findings about smoking and health by funding independent research through the Tobacco Industry Research Committee ("TIRC"), which was later renamed the Council for Tobacco Research ("CTR"). In the "Frank Statement" of January 1954 and repeatedly over the 45 years since then, the Cigarette Companies told the public, Congress, federal agencies, and the courts that CTR's purpose was to fund and to perform independent scientific research on the issue of smoking and health.

57. For example, in 1954, TIRC told the United States Department of Justice that its function was to fulfill the "responsibility on the part of the management of the tobacco manufacturers and others engaged in the tobacco industry to aid in the final determination of this controversy [as to whether smoking causes disease]," and that TIRC would "communicate authoritative factual information on the subject to the public." Further, TIRC assured the Department of Justice that it was "in no wise to be considered or to operate as a trade association or to participate in any activity, or give consideration to any matters, affecting the business conduct or activities of its members."

58. For example, in 1963, TIRC and TI ran an advertisement captioned, "A Statement About Tobacco and Health," which included the statements:

- "We recognize that we have a special responsibility to the public - to help scientists determine the facts about tobacco and health, and about certain diseases that have been associated with tobacco use."
- "We accepted this responsibility in 1954 by establishing the Tobacco

Industry Research Committee, which provides research grants to independent scientists. We pledge continued support of this program of research until all the facts are known."

- "Scientific advisors inform us that until much more is known about such diseases as lung cancer, medical science probably will not be able to determine whether tobacco or any other single factor plays a causative role - or whether such a role might be direct or indirect, incidental or important."
- "We shall continue all possible efforts to bring the facts to light."

59. In numerous court cases, defendants made similar claims about their search for the "truth" about smoking and disease. Indeed, in the very first personal injury suit litigated in federal court following the 1954 "Frank Statement," the Reynolds Tobacco Company stated in interrogatory answers that the purposes of TIRC was to sponsor research into the health aspects of tobacco and to advance medical knowledge on smoking and disease.

60. These and similar statements were false and misleading when made. From its inception, TIRC (later CTR) was essentially a public relations organization designed to counter adverse publicity concerning smoking and health, and not as an independent research organization dedicated to getting to the bottom of the smoking and health controversy. TIRC/CTR's true purpose, as acknowledged by Cigarette Company executives, was to provide a cover for defendants' efforts to conceal the truth about smoking and health. While TIRC/CTR served as a front for the Cigarette Companies' claim that they were committed to independent research, TIRC/CTR funds were actually funneled into research controlled by defendants and designed to advance defendants' interests in litigation.

61. TIRC/CTR's purported independence derived from the Scientific Advisory Board ("SAB"), which defendants claimed controlled TLRC/CTR's research priorities. By directing

attention to the SAB, defendants were able to appear to be furthering research efforts while their true aim was to preserve and foster false doubt about the adverse health effects of smoking in order to dissuade existing smokers from quitting and to encourage non-smokers to start.

62. Defendants and their agents falsely represented in public and in court that the SAB grant process functioned independently from industry influence and was the mechanism by which they were fulfilling the obligations they had undertaken in the "Frank Statement" and elsewhere. In fact, defendants "deliberately isolated" the SAB from the activities ongoing in other parts of CTR so that the SAB could be held out as a group of independent scientists, while CTR operated under defendants' control. The SAB controlled only a grant process for certain research, and even that process was closely controlled by the Cigarette Companies through their agents and attorneys, who helped to screen proposals, to ensure that the SAB did not approve research that might suggest a link between smoking and disease.

63. Consequently, the research that was funded through the SAB addressed general issues of cancer causation and incidence -- without a focus on smoking or its role in causing disease -- and was deliberately designed to avoid developing information on the relationship between smoking and disease or on other science that might result in findings that were harmful to defendants. Nor did other parts of TIRC/CTR fund objective research on the link between smoking and disease.

64. While defendants promoted the SAB as an "independent" board, they funneled funds through TIRC/CTR to conduct non-SAB research projects that were not objective or independent as the industry had promised, but instead were designed to conclude that there was no link between smoking and disease, and to develop favorable research and expert witnesses to

defend the industry in court. These components of TIRC/CTR were controlled by the Cigarette Companies' agents, including attorneys, and included activities known as Special Projects. TIRC/CTR Special Projects were initiated and developed by the Cigarette Companies through their agents, including outside counsel, who used them to provide research funding for scientists and doctors who might be willing to provide testimony favorable to the Cigarette Companies on smoking and health matters.

65. Special Projects were often funded when the SAB would not approve the proposed research or when the Cigarette Companies needed favorable research for litigation and wanted it done quickly. On occasion, the industry would use TIRC/CTR to publicize the results of carefully selected Special Projects-funded work that was favorable to the industry, so that the work would be more credible due to TIRC/CTR's purported independence. Defendants also planned to protect the projects funded through Special Projects by invoking the attorney-client privilege and work product doctrine. Through Special Projects, the Cigarette Companies funded many research projects that were controlled by their lawyers and intended to advance the Companies' interests in lawsuits and legislative proceedings. By design, these projects were secret unless and until defendants decided to make them public.

66. The Cigarette Companies knew that the "Special Projects" work, was neither independent science nor good science. Internal company documents express concern about the "degree to which [Special Projects] make advocacy primary and science becomes secondary," and that, to aid in litigation, the companies, through Special Projects, were funding science that was "not worth a damn."

67. When researchers funded by TIRC/CTR reached conclusions that threatened to

confirm the link between smoking and disease, the companies, at times, terminated the research and concealed the results. For example, when Dr. Freddy Homburger concluded in 1974 that his study of smoke exposure on hamsters indicated that cigarettes were addictive and caused disease, CTR Scientific Director Robert Hockett and CTR lawyer Ed Jacob threatened to cut off Dr. Homburger's funding if his paper were published without deleting the word "Cancer."

68. When Special Projects came under scrutiny in the 1990s, defendants ceased to administer Special Projects through CTR. In fact, counsel for Lorillard suggested in an internal document that using Special Projects to "purchase favorable judicial or legislative testimony... [was] perpetrating a fraud on the public." On information and belief, defendants have continued to fund such projects, but have moved them out of CTR and placed them directly under the auspices of their agents and attorneys, who had long been involved in control of CTR.

69. In addition to Special Projects, CTR maintained various "Special Accounts" for funding research projects that the Companies believed needed to be conducted for their own information, but which they did not want to be discovered, in litigation or otherwise. As with Special Projects, defendants sought to hide the existence of Special Accounts projects by taking steps to protect documents and materials from disclosure, including instructing Cigarette Company witnesses not to mention the existence of such accounts in legislative hearings.

E. Misrepresentations about Nicotine's Addictiveness and Manipulation of Nicotine Delivery

70. The primary factor that prevents cigarette smokers from quitting smoking is their addiction to nicotine, and their need for continuing intake of nicotine in order to avoid nicotine withdrawal. The addictive nature of nicotine is directly related to the harm caused by cigarettes,

because the risk from smoking increases with prolonged use.

71. Defendants and their agents have long known that nicotine is an addictive drug and have sought to hide its addictive and pharmacological qualities. They also have long recognized that getting smokers addicted to nicotine is what preserves the market for cigarettes and ensures their profits. In contrast, the average consumer has not been fully aware of the addictive properties of nicotine, and most beginning smokers - particularly children - falsely believe that they will be able to quit after smoking for a few years and thereby avoid the diseases caused by smoking. By hiding their knowledge of nicotine and making false and misleading statements concerning nicotine, defendants have induced existing smokers to continue using their products, and induced others to begin to smoke, particularly children, who believe, usually mistakenly, that they will be able to quit and avoid the diseases caused by smoking.

72. Defendants have understood nicotine's addictive properties since the early 1960's at the latest. For example, Philip Morris internally discussed methods for increasing the nicotine content of cigarettes as early as 1960. Sir Charles Ellis, scientific advisor to the board of directors of BAT Industries, asserted in a 1962 meeting attended by Brown & Williamson representatives that "smoking is a habit of addiction," and scientists in the Geneva laboratories of the International Division of the Battelle Memorial Institute reported to BAT Industries on the mechanics of nicotine addiction in 1963. BAT sponsored research at the Battelle Memorial Institute at Geneva to investigate the physiological aspects of smoking. B&W general counsel Addison Yeaman stated in 1963 that "nicotine is addictive" and that "we are... in the business of selling nicotine, an addictive drug[.]" Reynolds, understanding the importance of retaining sufficient nicotine to maintain dependence on its so-called "low tar/low nicotine" cigarettes, internally proposed in 1971

that the company undertake research into determining more exactly the "habituating level of nicotine."

73. Defendants concealed their research on the addictiveness of nicotine because they have known that revelation of that research might substantially change the market for cigarettes and result in successful lawsuits against defendants. The Cigarette Companies thus performed much of their research clandestinely, and in at least one case threatened scientists who sought to publish their research on addiction. All of this constituted a comprehensive campaign by the Cigarette Companies to keep secret their knowledge of nicotine's addictive nature. For example,

- A 1977 Philip Morris study on the withdrawal effects of nicotine was permitted to proceed only if the results were what the Cigarette Companies wanted. If not, as a Philip Morris researcher explained, "we will want to bury it."
- An internal 1978 Brown & Williamson memo discussed addictiveness of nicotine and characterized nicotine as a poison, while noting that most consumers are unaware of this. "Very few consumers are aware of the effects of nicotine, i.e. its addictive nature and that nicotine is a poison...hardly any consumers use nicotine numbers as a basis for their purchase."
- In March 1980, a Philip Morris scientist produced an internal memorandum discussing company research into the psychopharmacology of nicotine. The research was "aimed at understanding that specific action of nicotine which causes the smoker to repeatedly introduce nicotine into his body." The

internal memorandum noted that it was "a highly vexatious topic" that company lawyers did not want to become public because nicotine's drug properties, if known, would support regulation of tobacco by the federal Food and Drug Administration ("FDA"). Consequently, the memorandum observed, "[o]ur attorneys... will likely continue to insist on a clandestine effort in order to keep nicotine the drug in low profile."

- In the early 1980's, Philip Morris hired Victor DeNoble and Paul Mele to study the effects of nicotine on the behavior of rats and to research and test potential nicotine analogues. DeNoble and Mdc' s research demonstrated that nicotine was addictive and that in terms of addictiveness, "nicotine looked like heroin." In August 1983, Phillip Morris ordered DeNoble to withdraw a research paper on nicotine that had already been accepted for publication after a full peer review by the journal Psychopharmacology. Less than a year later, Philip Moms abruptly closed DeNoble's nicotine research lab. Philip Morris executives threatened DeNoble and Mele with legal action if they published or talked about their nicotine research. The animals were killed, the equipment was removed, and all traces of the former lab were eliminated.

74. As with the adverse health effects of smoking, defendants failed to warn consumers and others of the addictive nature of nicotine and made false and misleading statements to the public and others about addiction. For example,

- In 1963, when the Surgeon General was preparing his first report on

smoking and health, Brown & Williamson considered whether to provide its research indicating the addictiveness of nicotine, but withheld this research from the Surgeon General. The Surgeon General's Report did not conclude that nicotine is addictive.

- In 1988, when the Surgeon General finally concluded, based on non-industry research, that nicotine is addictive, the Tobacco Institute, on behalf of the Cigarette Companies, attacked the report by saying that "claims that cigarettes are addictive contradict common sense.... The claim that cigarette smoking causes physical dependence is simply an unproven attempt to find some way to differentiate smoking from other behaviors."

Statements such as this, frequently repeated by the Cigarette Companies and their agents, were knowingly false and misleading when made.

75. Defendants' efforts to suppress information on the addictiveness of nicotine continue today. For example, in 1997, Liggett broke ranks and began placing a statement on the packs of cigarettes manufactured by it specifically warning that smoking is addictive. On or about January 12, 1999, Philip Morris entered into an agreement with Liggett to purchase certain brands of cigarettes previously manufactured by Liggett, including Lark, Chesterfield, and L&M, each of which, at the time of their sale to Philip Morris, contained the warning concerning the addictiveness of smoking. After it purchased these brands, Philip Morris altered the packaging of Lark, Chesterfield, and L&M cigarettes to eliminate the warning concerning addictiveness. These brands of cigarettes were no less addictive after their purchase by Philip Morris than when they had been manufactured by Liggett. This alteration continued defendants' efforts to conceal from

cigarette purchasers, and from the public in general, the addictive nature of cigarette smoking.

76. As a result of the defendant's false statements denying the addictive nature of cigarettes, and their suppression of information demonstrating the addictive nature of cigarettes, more people have become addicted or remained addicted to the product. In fact, among 12-17 year old smokers, 70% regret their decision to start smoking, and 66% want to quit. Similarly, 70% of cigarette smokers would like to stop completely.

77. At the same time they were denying the addictiveness of nicotine, the Cigarette Companies were developing and using highly sophisticated technologies designed to deliver nicotine in precisely calculated ways that are more than sufficient to create and sustain addiction in the vast majority of individuals who smoke regularly. The Cigarette Companies control the nicotine content of their products through selective breeding and cultivation of plants for nicotine content and careful tobacco leaf purchasing and blending plans, and control nicotine delivery (i.e., the amount absorbed by the smoker) with various design and manufacturing techniques. For example, as explained in an internal 1973 Reynolds document:

Methods which may be used to increase smoke pH and/or nicotine "kick" include: (1) increasing the amount of (strong) burley in the blend, (2) reduction of casing sugar used on the burley and/or blend, (3) use of alkaline additives, usually ammonia compounds, to the blend, (4) addition of nicotine to the blend, (5) removal of acids from the blend, (6) special filter systems to remove acids from or add alkaline materials to the smoke, and (7) use of high air dilution filter systems. Methods 1-3, in combination, represent the Philip Moms approach, and are under active investigation [by Reynolds].

78. The Cigarette Companies have also investigated a wide variety of other additives, ingredients, and techniques aimed at improving their control of nicotine and thereby their ability to manipulate the addictiveness of cigarettes. Cigarette Companies' use of certain ingredients in their

products has been predicated on the belief that they increased the potency, absorption, or effect of nicotine.

79. The Cigarette Companies have repeatedly (and falsely) denied that they manipulate the nicotine levels and nicotine delivery in their products.

80. For example, the Cigarette Companies have sought to mislead the public about whether they manipulate nicotine by maintaining that nicotine levels follow tar levels. In his 1994 testimony before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, United States House of Representatives ("Health Subcommittee"), the Vice Chairman and Chief Operating Officer of Lorillard, Dr. Alexander Spears, stated that "[n]icotine follows the tar level," and the correlation between the two "is essentially perfect," and "shows that there is no manipulation of nicotine." In a 1981 study, however, Dr. Spears had previously stated explicitly that "low-tar" cigarettes use special blends of tobacco to keep the level of nicotine up while tar is reduced: "[T]he lowest tar segment [of product categories] is composed of cigarettes utilizing a tobacco blend which is significantly higher in nicotine." Dr. Spears did not inform Congress of his earlier statement.

81. Reynolds, Lorillard, B&W, American, and TI have also represented to the public and to the FDA that the nicotine levels in their products are purely a function of setting the tar levels of such products. American told the Health Subcommittee in an October 14, 1994 letter that "nicotine follows 'tar' delivery, i.e. high 'tar' -- high nicotine, low 'tar' -- low nicotine." Similarly, a 1994 Reynolds advertisement appearing after the Health Subcommittee hearings stated: "We do not increase the level of nicotine in any of our products in order to addict smokers. Instead of increasing the nicotine levels in our products, we have in fact worked hard to decrease 'tar' and

nicotine." (emphasis in original). The ad further touted Reynolds' use of "various techniques that help us reduce the 'tar' (and consequently the nicotine) yields of our products."

82. By falsely denying that the Cigarette Companies manipulate the delivery of nicotine levels in cigarettes, defendants furthered their common efforts to deceive the public concerning the addictive nature of nicotine and consequently of cigarettes that contain nicotine.

F. Deceptive Marketing to Exploit Smokers' Desire for Less Hazardous Products

83. The Cigarette Companies have misled consumers by marketing products that consumers believe are less harmful, even though they are not.

84. Despite the existence of evidence that smoking causes disease, the Cigarette Companies claimed in the 1940's and 50's both that their products did not cause health problems, and that cigarette smoking was good for people's health. These health claims were false and misleading and made without adequate investigation or testing of the products sold. During the 1940's and 50's, the United States Federal Trade Commission ruled that some of the Cigarette Companies' health claims were false and deceptive.

85. In response to concern among smokers about the adverse health effects of cigarette smoking, the Cigarette Companies sought to boost sales during the 1950's by advertising filtered cigarettes with explicit warranties of tar/nicotine content and health claims. These claims were also misleading and made without adequate investigation or testing of the Cigarette Companies' products.

86. Consumers continued to be concerned about the adverse health effects of smoking, and, in the 1960's, the Cigarette Companies responded by developing and marketing so-called "light" or "low tar/low nicotine" cigarettes. These cigarettes are designed to generate lower tar and

nicotine on standard machine smoking tests than do other cigarettes, and they do so.

Consequently, the Cigarette Companies have marketed these products with claims such as "light" and "ultra low tar" to suggest to consumers that smokers of these products inhale less tar and nicotine than smokers of other cigarettes. Consumers therefore believe that these products are less hazardous. However, the Cigarette Companies deliberately designed these cigarettes in a way that, as actually smoked by most cigarette smokers, they typically do not actually deliver less tar or nicotine. As a result, there is no basis for believing they are safer than other cigarettes.

87. The Cigarette Companies manipulate the design of such cigarettes in order to decrease the smoking machine's intake of tar and nicotine in a way that is not replicated by human smokers. One common means by which Cigarette Companies achieve "low tar/low nicotine" levels on the standard machine tests is through the use of tiny ventilation holes in the filter. These ventilation holes are so small that they are virtually invisible except under magnification and are placed so that consumers routinely block them with their lips or fingers during smoking, but the smoking machine does not block them. Most smokers are either unaware of the use of ventilated filters on cigarettes or are unaware that blocking the vents has the effect of increasing the tar and nicotine yield of the cigarettes as they are actually smoked. In addition, as the Cigarette Companies have long known, smokers unconsciously tend to "Compensate" for a lower nicotine yield, either by inhaling more deeply or taking more puffs, so that they receive sufficient nicotine to satisfy their addiction. Thus, while the Cigarette Companies lead smokers to believe they are reducing their health risk by switching to a "low tar/low nicotine" brand, those smokers are in fact not appreciably reducing their health risk.

88. In addition to the use of ventilated filters, the Cigarette Companies have increased

the potency of the nicotine that "low tar/low nicotine" cigarettes contain by a variety of methods, including blending.

89. Despite the Cigarette Companies' knowledge that addicted smokers compensate to obtain sufficient nicotine, and that "low tar/low nicotine" cigarettes are not appreciably less hazardous than other cigarettes, the Cigarette Companies have recognized, contributed to, and exploited - for their own profit - consumers' misconception that "low tar/low nicotine" cigarettes are less hazardous.

90. By advertising "light," "ultra-light," and "low tar/ low nicotine" cigarettes, the Cigarette Companies have lulled smokers into believing that they can reduce the health risk created by cigarette smoking by switching to these "light" products, and have thereby reduced the incentive for smokers to quit smoking. The effectiveness of this marketing effort is demonstrated by the fact that "low tar/low nicotine" cigarettes now account for a substantial majority of the American cigarette market.

91. The Cigarette Companies have advertised for "low tar/low nicotine" cigarettes through misleading advertising that emphasizes the health of those pictured without expressly making health claims. The Cigarette Companies know and intend that these advertisements mislead consumers into believing that the products pictured are less hazardous than other cigarettes. Despite their knowledge that "low tar/low nicotine" cigarettes were in fact not significantly less hazardous than other cigarettes, the Cigarette Companies expressly marketed such cigarettes as a viable alternative to quitting smoking from a health standpoint. For example, in 1975, Lorillard advertised "True" cigarettes by depicting a female smoker saying, "I thought about all I'd read and said to myself, either quit or smoke True. I smoke True," as well as by depicting a

male smoker saying, "I'd heard enough to make me decide one of two things: quit or smoke True. I smoke True." Similarly, in 1976, Reynolds' advertising campaign for its Vantage cigarettes told smokers, "If you're like a lot of smokers these days, it probably isn't smoking that you want to give up. It's some of that 'tar' and nicotine you've been bearing about." The Cigarette Companies are continuing to advertise their products in the national news media in such a manner as to lull smokers into believing that they can, by using so-called "low tar/low nicotine" cigarettes, reduce their exposure to the harmful constituents of cigarette smoke, despite knowledge on the part of the Cigarette Companies that most smokers do not substantially reduce their tar and nicotine exposure by switching to them.

G. Targeting the Youth Market

92. For most of this century, it has been illegal to sell cigarettes to children in most states. Currently, it is illegal to sell cigarettes to children under the age of 18 in all states.

93. Defendants used the Tobacco Institute to shield the Cigarette Companies' advertising to minors. In 1964, defendants publicized a voluntary "cigarette advertising code" that had been agreed to by all the major cigarette manufacturers. The code prohibited advertising directed at young people or the use of celebrities or sports figures in advertisements for cigarettes. Over the next thirty years, defendants, primarily through publications of the Tobacco Institute and in congressional testimony, reiterated their pledge to avoid advertising directed at young people, while at the same time individual companies were aggressively marketing cigarettes to young people through advertising.

94. Despite the illegality of sales to children, and despite denying that they do so, the Cigarette Companies have engaged in a campaign to market cigarettes to children. The Cigarette

Companies have long known that recruiting new smokers when they are teenagers ensures a stream of profits well into the future because these new smokers will become addicted and continue to smoke for many years, and the young smokers are "replacements" for older smokers who either reduce or cease smoking or die.

95. Recognizing the profits to be had from this illegal market, the Cigarette Companies researched how to target their marketing at children and actively marketed cigarettes to children. As a result of this research -- including research conducted in the 1950's into the smoking habits of 12-year-olds -- defendants have long known that young people tend to begin smoking for reasons unrelated to the presence of nicotine in cigarette smoke, but then become confirmed, long-term smokers because they become addicted to nicotine. Defendants are further aware that although beginning smokers realize that there are some health risks associated with long-term smoking, beginning smokers almost universally fail to appreciate the addictive nature of cigarette smoking, and therefore fail to appreciate the risk that, by engaging in smoking while they are adolescents, they will become long-term smokers because of the development of an addiction to nicotine. Moreover, the earlier a person begins to smoke, the more likely it is that he or she will develop a smoking related disease.

96. The Cigarette Companies have aggressively targeted their advertising campaigns to children. Cigarette Companies' advertising glamorizes smoking and its content is intended to entice young people to smoke, for example, as a rite of passage into adulthood or as a status symbol. Among the techniques used by the Cigarette Companies to attract underage smokers were advertising in stores near high schools, promoting brands heavily during spring and summer breaks, giving cigarettes away at places where young people are likely to be present in large

numbers, paying motion picture producers for product placement in motion pictures designed to attract large youth audiences, placing advertisements in magazines commonly read by teenagers, and sponsoring sporting events and other activities likely to appeal to teenagers.

97. During the 1970's and 1980's, Reynolds' substantial market research indicated that Philip Morris, and particularly its Marlboro brand, was dominating the youth market. Reynolds recognized that, in order to maintain its profits over the long term, it was critically important to attract its own cadre of teen-age smokers. Internal Reynolds documents specifically cited the need to recruit youths as "replacement smokers." Thus, Reynolds developed the Joe Camel campaign - based on a cartoon character - to appeal to the youngest potential smokers. In 1988, Reynolds began a massive dissemination of products such as matchbooks, signs, clothing, mugs and drink can holders advertising Camel cigarettes. The advertising was effective in attracting adolescents and, as a result of the campaign, the number of teenage smokers who smoked Camel cigarettes rose dramatically.

98. Despite the overwhelming evidence that they have deliberately sought to target young people for the sale of cigarettes, defendants have denied such activities in false and misleading communications to the public, to legislative and regulatory bodies, and in judicial proceedings. For example, in 1981, Brown & Williamson denied that it geared its advertising to young people following criticism in a press report. Others have followed suit: Reynolds ran a series of advertisements in 1984 claiming that "We don't advertise to children."

99. To avoid full disclosure of its practices regarding Joe Camel, in 1991, while the Federal Trade Commission was investigating Reynolds' practices of advertising and marketing to children, Reynolds instructed its advertising agency to destroy documents in the advertising

agency's possession related to the Joe Camel campaign.

100. The Cigarette Companies have long maintained that their expenditures on advertising and promotion - more than \$68 billion between 1954 and 1997- was directed solely at persuading current smokers to switch brands, not to attracting new smokers and not to attract children. These statements were false and misleading, and were intended to ensure that they could continue to entice young people to smoke and become addicted by defeating potential efforts by parents and governmental entities to stop such marketing efforts.

101. In July 1969, the Chairman of the Tobacco Institute, Joseph F. Cullman, III, testified before a Senate Commerce subcommittee: "It is the intention of the cigarette manufacturers to avoid advertising directed to young persons... to avoid advertising which represents that cigarette smoking is essential to social prominence, success, or sexual attraction; and to refrain from depicting smokers engaged in sports or other activities requiring stamina or conditioning beyond those required in normal recreation."

102. In 1983, the Tobacco Institute published a pamphlet entitled "Voluntary Initiatives of a Responsible Industry." The pamphlet noted that "in 1964, the industry adopted a cigarette advertising code prohibiting advertising, marketing and sampling directed at young people." The pamphlet made the claim that "all companies continue to observe the principles of this code."

103. The Cigarette Companies actively targeted their marketing to children with full knowledge that sales to children were illegal, that children would not appreciate the dangers of the product or its addictiveness, that most of the children who began to smoke would become addicted, and that a significant percentage would develop smoking-related diseases or suffer premature death as a result. They denied doing so with full knowledge that such denials were false and misleading.

H. Defendants' Concerted Plan Not To Make Cigarettes Less Hazardous

104. Defendants also retained and maintained their agreement by restraining, concealing, and suppressing the research and marketing of less hazardous cigarettes. The Cigarette Companies have been and are able to develop an alternative product that is less hazardous than the products that they have been selling. Cigarettes are much more complex products than simple rolled tobacco. The Cigarette Companies manipulate their products in many ways. They add chemicals and flavorings (some of which are harmful when burned and inhaled), manipulate levels of nicotine and other chemicals, and engineer the delivery of tobacco smoke through filters, ventilation holes, and other means. At least since the early 1960's, the Cigarette Companies have been able to remove potential carcinogens and to independently alter the delivery of tar and nicotine respectively. Many alternative designs are possible, some of which are less hazardous than the cigarettes that the Cigarette Companies actually manufactured and sold.

105. By the early 1960s, defendants discovered that many specific constituents in tobacco smoke were carcinogens, or were linked to other diseases. By November 1961, Philip Morris had conducted sufficient research to conclude that a "medically acceptable low-carcinogen cigarette may be possible." Although Philip Morris never publicly released the results of this research, the research and development department at Philip Morris continued research into less hazardous cigarettes in order to be prepared to compete in the event that another cigarette company marketed such a product. Based on the extensive research it had conducted and its preparation for competition with other manufacturers, in 1964, defendant Philip Morris test marketed the Saratoga cigarette, which used a charcoal filter and which was, in their researchers' view, "superior to anything in the market place" from a health standpoint.

106. In the late 1980's, defendant Reynolds selectively marketed Premier, a smokeless cigarette that Reynolds believed was less hazardous than its conventional products. Research relevant to the development of the Premier cigarette at Reynolds dates back to the 1960's.

107. Liggett also developed, but did not market, a product that Liggett believed was a less hazardous cigarette. The product was developed through a research project called "Project XA" that had first begun in the late 1960's. After extensive research, Liggett employees believed that they had discovered which cigarette smoke constituents were carcinogens and had found a way to remove them.

108. Despite their demonstrated ability to design cigarettes that they believed were less hazardous, defendants have refused to test and/or actively promote such products, and have suppressed the marketing of such products by others, and have refused to acknowledge the possibility of a less hazardous product.

109. The Cigarette Companies' refusal to acknowledge the possibility of a less hazardous product is in part a result of their efforts to avoid liability for, among other things, negligence and product liability claims. To state that a less hazardous product could be - or has in fact been - developed would constitute an admission that the products they currently sell are hazardous, or unreasonably so. Just as they suppressed information about the health effects and addictive nature of smoking, defendants also suppressed any information they developed about less hazardous design.

110. Philip Moms' research and development of the Saratoga cigarette, for example, was intended as a scheme to defeat any effort by its competitors to market a less hazardous cigarette. A presentation to the Philip Morris Board of Directors, in October 1964, noted: "[T]he Research and

Development Department is working to establish a strong technological base with both defensive and offensive capabilities in the smoking and health situation. Our philosophy is not to start a war, but if war comes, we aim to fight well and to win." Their strategy was to develop a less hazardous product but to market it only if necessary, and to use it as a deterrent to marketing of such products by other companies. Although internal company documents demonstrate that Philip Morris researchers thought the product to be a less hazardous cigarette, Philip Morris discontinued production after the initial phase of test marketing.

111. Despite Liggett officials' belief that the cigarette developed as a result of Project XA was commercially marketable, the company never promoted the less hazardous cigarette and suppressed the research that led to its development.

112. Another reason why some of defendants did not produce and market a less hazardous cigarette was because other defendants threatened retribution in the event the company proceeded. For example, Liggett's assistant research director, Dr. James Mold, said that Liggett's president had reported that he was "told by someone in the Phillip Morris Company that if we tried to market such a product [as XA] that they would clobber us."

113. A further mechanism defendants employed to deter the development and marketing of less hazardous products was the "gentleman's agreement." The Cigarette Companies' mutual commitment to share discovery of a "safe" cigarette with all other Cigarette Companies, by design, substantially reduced the financial incentive any Cigarette Company might otherwise have had to develop and market such a product.

I. The Present and Continuing Threat

114. Defendants' conspiracy to deceive, mislead, and withhold information from the public, and from public legislative, regulatory, and judicial bodies about the adverse health effects of smoking, the addictiveness of nicotine, the manipulation of the delivery of nicotine, marketing to children, and the possibility of less hazardous designs has continued up through the present day.

115. In 1994, the chief executive officers of the Cigarette Companies testified under oath before the Health Subcommittee and once again repeated defendants' "party line." These executives knowingly provided misleading testimony regarding smoking, health, and addiction.

116. The Cigarette Company executives made these representations, among others, despite the substantial body of evidence, including information developed by the Cigarette Companies themselves dating back for many years prior to their testimony, indicating that nicotine is addictive and is the central reason why people continue to smoke, that the Cigarette Companies sought to ensure that smokers stayed addicted and that cigarettes are potentially lethal to smokers when used as intended by the Cigarette Companies.

117. In their public statements, the Cigarette Companies continued to deny that nicotine is addictive and, instead, used various misleading explanations for the role of nicotine, such as "enhances the taste of the smoke" and affects "the way it feels on the smoker's palate," and that it provides "satisfaction," "strength," "rich aroma," "mouth impact," and "pleasure," despite widespread agreement in the medical and scientific communities that the primary, if not sole, function of nicotine is to provide a pharmacological effect on the smoker that leads to addiction. According to the 1988 U.S. Surgeon General report: "The pharmacologic and behavioral processes that determine tobacco addiction are similar to those that determine addiction to drugs such as

heroin and cocaine."

118. In addition to their repetition of the same false and misleading statements discussed above, the Cigarette Companies also continued to suppress and conceal documents and information in their possession concerning, inter alia, smoking and health, addiction, the addictiveness of nicotine, the health effects of low tar and low nicotine products, the potential availability of a less hazardous product, and their efforts to market to children.

119. In January 1998, as Congress was considering comprehensive legislation that might have limited the industry's liability, the Cigarette Companies finally acknowledged that smoking may cause disease. Philip Moms Companies admitted that "a substantial body of evidence which supports the judgment that cigarette smoking plays a causal role in the development of lung cancer and other diseases in smokers." Similarly, the Chairman and CEO of RJR Nabisco, Reynolds' parent corporation, stated his belief that "smoking plays a role in causing cancer, lung cancer in some people."

120. The Cigarette Company executives also conceded that cigarettes are addictive under some accepted definitions. In early 1998, Brown & Williamson and RJR Nabisco executives agreed that nicotine is addictive under the "man in the street's definition" and as "people use the term [addiction] today." Moreover, the CEO of Brown & Williamson admitted that his personal position -- that smoking is not addictive -- was at odds with "the rest of the world," and did not dispute the "rest of the world's" use of the word addiction in relation to cigarette smoking.

121. The Cigarette Companies' careful, semantic admissions were short-lived. In the spring of 1998, during the state of Minnesota's trial against the Cigarette Companies, defendants' officials returned to the same false and misleading statements that they have always made and

denied the addictiveness of nicotine and the health effects of smoking.

122. The Cigarette Companies eventually settled their suits with the states in the fall of 1998. Despite the injunctive relief obtained by the states, defendants continue to market their products in many of the same ways they had before the settlement, and continue to keep secret research and other documents that would provide the public and regulators with a fuller understanding of the health effects of cigarettes, particularly the addictiveness of nicotine. In particular, the results of defendants' research overseas for the last few decades have not been made public.

123. Indeed, to this day, defendants are continuing to block disclosure of the very documents that reveal the deception in the Cigarette Companies' half-century false and misleading promotion of TIRC/CTR - in public, in Congress, and in court - as an independent organization designed to find out the truth about smoking and health.

124. The Cigarette Companies, who hold 99% of the market for cigarettes in the United States, pose a continuing threat to the health and well-being of the American public and there is every reason to believe that they will continue with their fraudulent and unlawful conduct.

125. The effects of defendants' conspiracy will be felt for many years into the future, and the Cigarette Companies continue to benefit from their fraudulent statements, and suppression of information. Smokers remain addicted and will be far into the foreseeable future, and they, as well as the federal government, will be forced to furnish and pay for medical care and treatment for smoking-related diminished health, diseases, illnesses, and injuries well into the next century - all while the tobacco companies continue to earn enormous profits from addicted smokers.

V. DEFENDANTS' LIABILITY FOR THE UNITED STATES' HEALTH CARE COSTS

A. Count One: Liability Under The Medical Care Recovery Act

126. The United States of America realleges and incorporates by reference in this Count the allegations contained in Sections I. through IV., above, and in the Appendix to this Complaint, as if fully set forth herein.

127. The Medical Care Recovery Act, 42 U.S.C. § 2651, et seq. authorizes the United States to recover the reasonable value of certain hospital, medical, surgical, or dental care and treatment. Pursuant to the Medical Care Recovery Act, the United States is entitled to recover for such care or treatment under circumstances creating a tort liability upon a third person.

128. Each year, the United States, pursuant to various statutory entitlement programs, furnishes and pays for hospital, medical, surgical, and dental care (hereinafter collectively referred to as "health care services") for numerous current and former consumers of the Cigarette Companies' products. The statutes pursuant to which the United States furnishes and pays for such health care costs include, but are not limited to,

(1) the Medicare statute, Subchapter XVIII of the Social Security Act, 79 Stat. 290, as amended, 42 U.S.C. § 1395 et seq. pursuant to which the Health Care Financing Administration ("HCFA"), which is part of the Department of Health and Human Services, pays for certain health care services, including, but not limited to, the costs of hospital care, post-hospital care, home health services, and hospice care as well as services rendered by physicians and other health care practitioners, for tens of millions of eligible beneficiaries, including, but not limited to, individuals over the age of 65, individuals with disabilities, and individuals with end-stage renal disease

(hereinafter referred to as the "Medicare Program");

(2) Chapter 17 of Title 38 of the United States Code, 38 U.S.C. § 1701 et seq., pursuant to which the Department of Veterans Affairs ("VA"), through the Veterans Health Administration ("VHA") and the Civilian Health and Medical Program for the VA ("CHAMPVA"), provides and pays for inpatient and outpatient health care services for veterans and their dependents and survivors as well as nursing home care for many veterans (hereinafter referred to as the "VA Health Benefits Program");

(3) Chapter 55 of Title 10 of the United State Code, 10 U.S.C. § 1071 et seq., pursuant to which the Department of Defense ("DOD") provides and pays for health care services, through military hospitals, clinics, and other facilities and through the Civilian Health and Medical Program for the Uniformed Services ("CHAMPUS"), and the newer program known as TRICARE, for millions of current members and certain former members of the uniformed services and their dependents (hereinafter referred to as the "Military Health System" or "MHS");

(4) the Federal Employees Health Benefits Act ("FEHBA"), 5 U.S.C. § 8901 et seq., pursuant to which the United States, through the Office of Personnel Management ("OPM"), pays for a large portion of the cost of the health care services provided to millions of Federal Government employees and certain other individuals (hereinafter referred to as the "Federal Employees Health Benefits Program" or "FEHBP").

129. Pursuant to these statutes and to other laws, the United States furnishes and pays for, and will in the future be authorized and required to continue to furnish and pay for, hospital, medical, surgical and dental care for diseases, illnesses, and injuries resulting from cigarette

smoking. Care provided for the diseases, illness, and injuries caused by cigarette smoking and furnished or paid for by the United States has a reasonable value of more than \$20 billion per year.

130. The cigarette smokers on whose behalf the United States furnishes or pays for hospital, medical, surgical, and dental care have been injured or suffer disease under circumstances that create a tort liability upon defendants. That tort liability arises as follows:

1. Defendants' Liability for Fraud (Fraudulent Misrepresentation, Concealment, and Nondisclosure)

131. Defendants and their co-conspirators have engaged in a consistent course of conduct through which they have fraudulently misled past, present and prospective smokers, governmental authorities, and other members of the public. Defendants and their co-conspirators have made false and misleading statements that there is no causal connection between cigarette smoking and adverse health effects or that there is an open question as to whether smoking causes disease. They have made false promises to conduct and disclose objective research on the issue of smoking and health, and they have fraudulently concealed information relating to the issue of smoking and health. Defendants and their co-conspirators have made affirmative material misrepresentations, have omitted material facts, and have concealed material information concerning the health risks associated with smoking cigarettes, particularly "light" or "low tar/low nicotine" cigarettes. They have made false and misleading statements and concealed material information concerning both the addictiveness of nicotine and their own manipulation of the nicotine delivery in cigarettes. They have falsely denied marketing cigarettes to children.

132. At the time that these false or misleading statements and representations were made, defendants and their co-conspirators knew or should have known that their statements were

materially fraudulent, false or misleading, and they intentionally omitted or concealed material information. Additionally or in the alternative, defendants and their co-conspirators made the statements recklessly with conscious disregard for the truth or falsity of their representations to the public.

133. Defendants and their co-conspirators had superior access to information about smoking and health, had made public promises to be completely forthcoming with such information and made misleading partial disclosure as to these issues. They had therefore assumed a duty to disclose to government regulators and to the public material facts concerning the relationship between cigarette smoking and disease generally, including material facts about the addictiveness of nicotine, their own manipulation of the nicotine delivery in cigarettes, and the health risks associated with cigarettes, including "light" or "low tar/low nicotine" cigarettes. Defendants also had a legal duty to disclose their efforts and ability to research, develop, and market a less hazardous and less addictive cigarette. They had a duty not to market their products to children. Nevertheless, defendants and their co-conspirators intentionally or recklessly failed to disclose or deliberately concealed those material facts from the public and from governmental agencies.

134. Defendants and their co-conspirators committed hundreds, and perhaps thousands, of acts involving material fraudulent misrepresentations, fraudulent concealment, and fraudulent nondisclosures over the course of the last forty-five years. Defendants' and their co-conspirators' acts of concealment took a number of forms, many of which are unknown to Plaintiff because such actions and concealment are within the exclusive knowledge of defendants. The United States is unable to allege in full the numerous advertisements, press releases, and other communications that defendants and their co-conspirators released over the past forty-five years because the United

States does not have access to this information. Indeed, it is defendants themselves who are in the best position to know the contents of each and every such misrepresentation and fraudulent statement. Specific examples of the material fraudulent misrepresentations, fraudulent concealment, and fraudulent nondisclosure of defendants and their co-conspirators include, but are not limited to, the acts set forth in Section IV, above, and in the Appendix to this Complaint, which are alleged and relied upon here as if fully set forth herein.

135. Defendants and their co-conspirators made these and other fraudulent misrepresentations and omissions intending to deceive consumers, and to induce members of the public and governmental agencies to believe that cigarettes are not addictive and to believe that cigarettes are not dangerous to health or to harbor false doubts about the health risks of cigarettes. By making the false and misleading representations and omissions, defendants and their co-conspirators intended to create a false controversy about smoking and disease and to induce smokers and prospective smokers to buy and smoke cigarettes. Defendants and their co-conspirators also intended to discourage smokers from reducing their consumption of cigarettes and from trying to quit smoking.

136. Members of the public believed in the truth and completeness of the statements made by defendants and their co-conspirators. They relied upon the statements by defendants and their co-conspirators, including statements that created a false controversy about smoking and disease, and demonstrated that reliance by purchasing and smoking cigarettes, and by refraining from trying to quit or reduce their consumption of cigarettes. The belief in and reliance upon defendants' and their co-conspirators' representations by members of the public was intended by defendants and was both justifiable and reasonable.

137. As a direct and proximate result of the fraudulent misrepresentations, omissions, and concealment by defendants and their co-conspirators, individually and collectively, members of the public began to smoke and continued smoking and, as a result, they suffered harm. Among other things, smokers experienced diminished overall health and an increased risk of disease and illness, and endured smoking-related diseases, and injuries. Among those who suffered injury as a result of defendants' and their co-conspirators' fraudulent conduct are persons for whom the United States was authorized and required to furnish and pay for, has furnished and paid for, and will furnish and pay for, hospital, medical, surgical, or dental care and treatment under various federal programs, including those referred to in the third numbered paragraph of Section V. A., above.

2. Defendants' Liability for Violations of State Consumer Protection Statutes (Unfair, Unconscionable, and Deceptive Acts or Practices)

138. All of the states and the District of Columbia have consumer protection statutes that prohibit unfair, unconscionable, deceptive and misleading trade practices directed toward consumers, and private consumers may recover damages for conduct that violates these statutes. See Ala. Code Ann. § 8-19-1 et seq.; Alaska Stat. § 45.50.471 et seq.; Ariz. Rev. Stat. § 44-1521 et seq.; Ark. Code Ann. § 4-88-101 et seq.; Cal. Civ. Code § 1750 et seq.; Colo. Rev. Stat. § 6-1-101 et seq.; Conn. Gen. Stat. § 42-110a et seq.; Del. Code tit. 6 §§ 2511 et seq., 2531 et seq.; D.C. Code § 28-3901 et seq.; Fla. Stat. §§ 501.201 et seq., 817.40 et seq.; Ga. Code § 10-1-390 et seq.; Haw. Rev. Stat. §§ 480-1 et seq.; Idaho Code § 48-601 et seq.; Ill. Rev. Stat. ch. 815 §§ 505, 510; Ind. Code § 24-5-0.5-1 et seq.; Iowa Code §§ 714.16 et seq., 611.21; Kan. St. Ann. § 50-623 et seq.; Ky. Rev. Stat. §§ 367.110 et seq., 517.020, 517.030, 446.070; La. Rev. Stat. § 51:1401 et seq.; Me. Rev. Stat. tit. 5 § 205A et seq.; Md. Corn. Law Code § 13-101 et seq.; Mass. Gen Laws ch. 93A; Mich.

Comp. Laws §§ 445.901 et seq., 445.356 et seq.; Minn. Stat. §§ 8.31, 325D.09 et seq., 325D.44 et seq., 325F.67, 325F.68 et seq.; Miss. Code § 75-24-1 et seq.; Mo. Rev. Stat. § 407.010 et seq.; Mont. St. Ann. § 30-14-101 et seq.; Neb. Rev. Stat. §§ 59-1601 et seq.; Nev. Rev. Stat §§ 41.600 et seq., 598.0903 et seq.; N.H. Rev. Stat. § 358-A:1 et seq.; N.J. Stat. Ann. § 56:8-2 et seq.; N.M. Stat. § 57-12-1 et seq.; N.Y. Gen. Bus. Law §§ 349, 350; N.C. Gen. Stat. § 75-1.1 et seq.; N.D. Cent. Code §§ 51-15-01 et seq., 51-12-01 et seq.; Ohio Rev. Code §§ 1345.01 et seq.; 4165; Okla. Stat. tit. 15 § 751 et seq.; Okla. Stat. tit. 78 § 51 et seq.; Or. Rev. Stat. § 646.605 et seq.; Pa. Stat. tit. 73 § 201-1 et seq.; R.I. Gen. Law § 6-13.1-1 et seq.; S.C. Code § 39-5-10 et seq.; S.D. Codified Laws Ann. § 37-24-1 et seq.; Tenn. Code Ann. § 47-18-101 et seq.; Tex. Bus. & Com. Code § 17.41 et seq.; Utah Code §§ 13-11-1 et seq., 13-11A-1 et seq.; Vt. Stat. tit. 9 § 2451 et seq.; Va. St. §§ 59.1-196 et seq., 18.2-216, 59.1-68.3; Wash Rev. Code § 19.86.010 et seq.; W. Va. Code § 46A-6-101 et seq.; Wis. Stat. §§ 100.18, 100.20; and Wyo. Stat. § 40-12-101 et seq.

139. The conduct of defendants and their co-conspirators, as set forth above, violated their duty imposed upon them by the above-cited statutes to refrain from engaging in unfair, deceptive, and unconscionable trade practices. In particular, the knowingly fraudulent misrepresentations, fraudulent omissions, and fraudulent concealment of material facts described in Section IV, above, and in the Appendix to this Complaint, had the capacity, tendency, or effect of deceiving or misleading consumers and constituted unfair, deceptive, and unconscionable trade practices for which defendants were and are subject to tort liability under the above-cited statutes.

140. Defendants and their co-conspirators made false and misleading statements that there is no causal connection between cigarette smoking and adverse health effects or that there is an open question as to whether smoking causes disease. They have made false promises to conduct

and disclose objective research on the issue of smoking and health, and they have fraudulently concealed information relating to the issue of smoking and health. Defendants and their co-conspirators have made affirmative material misrepresentations, have omitted material facts, and have concealed material information concerning the health risks associated with smoking cigarettes, particularly "light" or "low tar/low nicotine" cigarettes. They have made false and misleading statements and concealed material information concerning both the addictiveness of nicotine and their own manipulation of nicotine delivery in cigarettes. They have falsely denied marketing cigarettes to children. In so doing, defendants further violated their duties under the state consumer protection statutes to refrain from representing that their products are of a particular standard, grade, or quality when they are not, from representing that their cigarettes have characteristics, ingredients, uses, or benefits that they do not have, and from engaging in false and misleading advertising.

141. Defendants and their co-conspirators further engaged in unconscionable conduct prohibited by the state consumer protection statutes by knowingly and intentionally causing cigarettes to be marketed and sold to the vulnerable population of children, in part by: (a) designing their marketing campaigns with the intent that children be induced by defendants' advertisements to smoke cigarettes; (b) engaging in other conduct with the purpose of causing children to smoke; (c) concealing that their marketing was designed to encourage children to smoke and publicly claiming that they discouraged children from smoking; and (d) concealing that their products are addictive and harmful, and defrauding and misleading the public, including children, on these subjects.

142. Defendants' and their co-conspirators' knowing violations of their duty under the state consumer protection statutes to refrain from engaging in unfair, unconscionable, deceptive, and misleading trade practices had the tendency to deceive consumers. Consumers relied upon

defendants' and their co-conspirators' misleading and deceptive statements to their detriment by purchasing and smoking cigarettes, or by refraining from trying to quit, or by failing to reduce their consumption of cigarettes. Consumers suffered harm from smoking. Among other things, consumers who smoke have experienced diminished overall health and an increased risk of disease and illness, and endured smoking-related diseases, and injuries. Among those who suffered injury as a result of defendants' and their co-conspirators' tortious and unlawful conduct are persons for whom the United States has furnished or paid for, and will furnish and pay for, hospital, medical, surgical, or dental care and treatment under various federal programs, including those referred to in the third numbered paragraph of Section V. A., above.

3. Defendants' Liability for Breach of Manufacturers' Duties, Including Failure to Warn, Failure to Test, Sale of Defective and Unreasonably Dangerous Products (Strict Liability, Negligence, and Breach of Implied Warranty)

143. All states and the District of Columbia impose duties on manufacturers and suppliers of products intended for human use and consumption, to exercise reasonable care and to refrain from selling products that are defective or unreasonably dangerous when used as intended by foreseeable users of the product. The Cigarette Companies' duties included the duty to test their products adequately to determine that they were safe for their intended use; to design their products so that, when used as intended, they were reasonably fit and safe for their foreseeable users; and to warn foreseeable users of dangers related to their products' use. The Cigarette Companies have also impliedly warranted that their products had been adequately tested and were not defective or unreasonably dangerous when used as intended by foreseeable users.

144. In breach of their duty and implied warranty, the Cigarette Companies manufactured and supplied products that were defective and unreasonably dangerous when used as intended by

foreseeable users of their product. The Cigarette Companies' products were defective, unreasonably dangerous, and not fit for ordinary use when they left the possession of the Cigarette Companies. The cigarettes manufactured by the Cigarette Companies were expected to, and did, reach the consumer in substantially unchanged condition from that in which they were manufactured. The Cigarette Companies have had superior knowledge and access to information about their products and knew that consumers, particularly children whom they targeted, were unaware of the full range of health risks caused by the companies' products, including addictiveness, the companies' manipulation of their products, and the effects such manipulation would have on the users' health.

145. The Cigarette Companies manufactured and sold cigarettes that, when used as intended, caused a large percentage of users to become addicted and to develop often fatal diseases, including lung cancer, emphysema, stroke, and heart disease.

146. Rather than testing to determine whether their products were safe for their intended use or how hazardous their cigarette products were, the Cigarette Companies, along with their co-conspirators, deliberately designed a research program so as to avoid determining the full scope of the dangers posed by their products, and acted to suppress and terminate research that threatened to expose the health dangers and addictiveness of smoking.

147. The Cigarette Companies knew or should reasonably have known, in light of methods available at the time of manufacture, about less hazardous, feasible alternative designs for their products. Despite the feasibility of less hazardous alternative designs for their products, the Cigarette Companies failed to research or adopt such less hazardous alternatives, and did instead fail to reduce by a meaningful amount the harmful components of tobacco smoke in the cigarettes they sold to the public; and misled the public by marketing so-called "low tar/low nicotine"

cigarettes that, defendants well knew, were not significantly lower in tar or nicotine not less hazardous as smoked by defendants' customers.

148. Prior to the time that warnings were specifically required by the federal government under the Public Health Cigarette Smoking Act of 1969 and despite knowledge by the Cigarette Companies, many years before the addition of such warnings, that smoking posed serious health hazards, the Cigarette Companies also failed to warn the foreseeable users of their products of the dangers associated with the use of those products, including the extremely addictive nature of nicotine and the high risk of disease and death. Instead of warning of such dangers, the Cigarette Companies, along with their co-conspirators, actively sought to stifle or contradict, and thereby, neutralize any such warnings that might be issued by other entities and further intentionally directed their marketing toward children and adolescents, who would be less likely to be aware of cigarettes' dangerous and addictive properties or able to appreciate the risks of smoking. The presence of an adequate warning, including a warning about the addictive properties of nicotine, would have limited injuries caused by use of the Cigarette Companies' products.

149. The extreme dangers of disease and death caused by using the Cigarette Companies' products, including the risk that consumers would become addicted and thus unable to stop smoking before developing smoking-caused diseases, were known or reasonably should have been known to the Cigarette Companies.

150. The true nature of the health risks of smoking cigarettes were beyond that reasonably contemplated by the ordinary smoker, and in particular beyond that contemplated by the ordinary beginning smoker who was not yet dependent upon nicotine. The full range of health risks of smoking cigarettes was beyond that contemplated by children, whom defendants targeted with their

marketing. Moreover, the true risks of their products, as designed, engineered, and marketed by defendants, were not open or obvious to consumers, particularly children.

151. Because defendants had available to them means to reduce the hazards of cigarette smoking but chose not to develop or effectively implement them, the extreme danger of the design of the cigarettes manufactured by the Cigarette Companies - including the danger of diseases arising from their long term use - substantially outweighed the utility of the design.

152. The Cigarette Companies failed to use reasonable care in testing the safety of the cigarettes manufactured by them, in designing the cigarettes manufactured by them, and, in providing instructions to users and, prior to the enactment of the Public Health Cigarette Smoking Act of 1969, in providing adequate warnings concerning the use of the cigarettes manufactured by them.

153. The Cigarette Companies' breach of their duties and implied warranty was done in reckless and wanton disregard of the safety of cigarette smokers, and with actual knowledge of the fact that the conduct of the Cigarette Companies would cause serious illness or death to large numbers of cigarette smokers.

154. As a direct and proximate result of the breach of their duties and implied warranty by the Cigarette Companies, individually and collectively, millions of users of the Cigarette Companies' products have suffered and will continue to suffer physical harm. Among other things, smokers experienced diminished overall health and an increased risk of disease and illness, and endured smoking-related diseases, injuries, and death. Among those who suffered injury as a result of Defendants' tortious conduct are persons for whom the United States has furnished or paid for, and will furnish and pay for, hospital, medical, surgical, or dental care and treatment under various

federal programs, including those referred to in the third numbered paragraph of Section V. A., above.

4. Defendants' Liability For Negligent Performance of Voluntary Undertakings

155. Defendants, along with their co-conspirators, deliberately and voluntarily made statements to the public and to governmental agencies, public officials, and others who advance and protect the public health, in which they made the following undertakings: (a) to accept an interest in the public's health as a basic and paramount responsibility; (b) to cooperate closely with those who safeguard the public health; (c) to aid and assist the research effort into all phases of tobacco use and health; (d) to continue research and all possible efforts until all the facts are known; and (e) to provide complete and authenticated information about cigarette smoking and health.

156. These statements were made to reassure the public of the safety of defendants' products and their commitment to ensure that defendants' products were as safe as possible. In fact, however, defendants had no intention of determining the safety of their products, advising their customers of their safety, or ensuring that their products were as safe as possible. Defendants, acting in concert, used these promises to gain credibility for their false and misleading statements, and intended to create a false controversy about the relationship between smoking and disease.

157. By making such undertakings, defendants voluntarily assumed duties under the laws of the states and the District of Columbia to render services for the protection of the public health. Defendants owed and continue to owe these duties to the consumers and potential consumers of cigarettes, including consumers and potential consumers for whom the United States is obligated or authorized to pay costs of health care. Defendants also owed and continue to owe these duties to governmental agencies, public officials, and others who advance and protect the public health.

158. Defendants intended consumers and government officials to rely upon them to fulfill their publicly stated commitment, and recognized or should have recognized that truly independent research and full disclosure consistent with that publicly stated commitment was necessary to protect the health of the consumers and potential consumers of cigarettes.

Defendants realized that their conduct would affect the smoking behavior and health of millions of Americans.

159. Defendants have failed to exercise reasonable care in the performance of their undertaking. Through such failure, they have breached and continue to breach their assumed duties. Defendants' failure to exercise reasonable care has increased and continues to increase the risk of physical harm to consumers and potential consumers of cigarettes, including those for whom the United States is obligated to pay costs of health care.

160. As a direct and proximate result of defendants' failure to exercise reasonable care in the performance of their undertaking, cigarette smokers have suffered and will continue to suffer physical harm. Among other things, smokers have experienced diminished overall health and an increased risk of disease and illness, and have endured smoking-related diseases, and injuries. Among those who suffered injury as a result of defendants' tortious conduct are persons for whom the United States has furnished or paid for, and will furnish and pay for, hospital, medical, surgical, or dental care and treatment under various federal programs, including those referred to in the third numbered paragraph of Section V. A., above.

5. Defendants' Liability for Civil Conspiracy

161. At all times material to this action, defendants participated in a civil conspiracy among themselves, and with other persons known and unknown, the purposes of which were, *inter alia*: (a) to conceal knowledge of the harmful effects of cigarette smoking from the public, the

medical and scientific community, and governmental authorities; (b) to create an illusion of conducting scientific research on cigarettes and cigarette smoking so as to mislead the public concerning the health effects of smoking and the industry's knowledge of those health effects; (c) to create an illusion of a genuine scientific controversy concerning whether smoking was harmful to health, when no such genuine controversy actually existed; (d) to mislead the general public, the medical and scientific community, and governmental authorities concerning the addictive properties of nicotine; (e) to mislead the general public, the medical and scientific community, and governmental bodies about the actual nicotine and tar delivery of supposedly "low tar" and "low nicotine" cigarettes as they are actually smoked, in order to mislead smokers into believing that switching to such cigarettes was a reasonable alternative to smoking cessation; (f) to suppress research into smoking and health; (g) to prevent development and marketing of less hazardous products; (h) to market cigarettes to minors in order to insure a lucrative future market for cigarettes; (i) to mislead the public concerning their efforts to market cigarettes to minors, and to interfere with effective anti-youth smoking efforts; and (j) to maintain a market for their defective and unreasonably dangerous products.

162. During the course of the conspiracy, the conspirators, acting in concert, engaged in numerous concerted acts to further the purposes of the conspiracy, including but not limited to those described in Section LV., above, and in the Appendix to this Complaint.

163. Each act of the conspiracy was ratified by the other co-conspirators, who acted as each other's agents in carrying out the conspiracy.

164. As a direct and proximate result of the conduct of defendants, numerous smokers have suffered illness or disease, with respect to whom the United States has furnished or paid for,

and will furnish and pay for, hospital, medical, surgical, or dental care and treatment under various federal programs.

165. Each defendant is jointly and severally liable for the torts of the other members of the conspiracy which were committed in furtherance of the goals of the conspiracy.

B. Count Two: Liability under The Medicare Secondary Payer Provisions

166. The United States of America realleges and incorporates by reference in this Count the allegations contained in Sections I. through IV., and Section V.A., above, and in the Appendix to this Complaint, as if fully set forth herein.

**Factual Allegations in Support of the United States'
Medicare Secondary Payer Cause of Action**

167. Defendants now maintain, and have maintained for several decades, liability insurance plans or programs, as follows:

- a. In the first half of the 1900's, Defendants apparently generally chose a plan of insurance under which they were entirely self-insured against liability arising from their manufacture, sale, and promotion of tobacco products.
- b. Just as published research reports in the 1940's and 1950's prompted Defendants to form a RICO enterprise and embark on a pattern of racketeering activity, such reports also prompted Defendants to explore the possibility of obtaining liability insurance coverage for the harms caused by tobacco products. Defendants were somewhat reluctant to abandon this plan of self-insurance.

- c. In an August 8, 1957 letter to A.H. Galloway, the president of R.J. Reynolds Tobacco Company, H.C. Wolf of Corporate Insurance Services, Inc., stated: "I can appreciate the reasons your Industry prefers handling its own claims, as opposed to purchase of products coverage with an Insurance Company becoming involved."
- d. Defendants found that insuring against the risks posed by tobacco products was an expensive proposition. In a July 17, 1958 letter to Galloway entitled "PRODUCTS LIABILITY " Baxter Gentry of Johnson & Higgins, an insurance brokerage, stated: "We are not surprised that you and your associates have concluded that the cost quoted is too high." Gentry explained that the cost (\$1 million of coverage for \$40,000) was attributable in part to the fact that "the underwriters take a more serious view of the health hazard than do we, however, their knowledge on the subject comes mainly from reading 'scare' articles in the press."
- e. As H.C. Wolf predicted in his 1957 letter, "[t]he cancer scare is in its infancy, and the need for catastrophe protection by the Industry as a whole seems to be in the next ten year period."
- f. Notwithstanding this prediction, at least some Defendants resisted purchasing insurance coverage through the early 1960's. In a June 17, 1963 letter, William R. Lybrook of R.J. Reynolds Tobacco Company Wrote to a current or prospective R.J. Reynolds shareholder as follows:

This is to acknowledge your recent letter in

which you inquired as to whether this Company has products liability insurance.

We have never carried such insurance but have chosen to be self-insurers in this field.

- g. Several events in the mid 1960's may have prompted Defendants to seek out insurance coverage. First, January 1964, saw the publication of "Smoking and Health: Report of the Advisory Committee of the Surgeon General of the Public Health Service." Second, in July 1965, the Federal Cigarette Labeling and Advertising Act, Pub. L. 89-92, was enacted. It took effect January 1, 1966. The Surgeon General's report raised awareness of the dangers of smoking. The Labeling Act required Defendants to warn consumers: "Caution Cigarette Smoking May Be Hazardous to Your Health."
- h. For whatever reason, in the mid-1960's, Defendants obtained, in earnest, insurance policies that explicitly insured against the risk of injury from their tobacco products. For example, R.J. Reynolds Tobacco Company obtained coverage from Employers' Surplus Lines Insurance Company, Policy No. 508753 (Sayre & Toso, Inc. Underwriting Managers). This "claims made" policy provided coverage from 9/1/64 to 6/15/67. The policy paid "on behalf of the Assured, all sums to which the Assured shall become legally obligated to pay as damages because of bodily injury, sickness, or disease, including mental anguish resulting therefrom, allegedly arising out of the use or consumption over a period of days, weeks, months or longer of any tobacco or tobacco products manufactured, processed, sold, handled, or distributed by

the Assured."

- i. Under the terms of this policy, Employers' Surplus Lines Insurance Company was "liable only for the excess of loss over \$600,000 ultimate net loss in respect of each person and subject to that same limit for each person." Moreover, the policy was "capped," i.e., it did not cover claims in excess of \$5,500,000 ultimate net loss in the aggregate in any one policy year.
- j. Other Defendants had similar plans of insurance and self-insurance. For example, Philip Morris obtained a "TOBACCO HEALTH LIABILITY POLICY" from St. Paul Fire and Marine Insurance Company. This "claims made" policy covered January 1, 1973 to January 1, 1976. Under this policy, Philip Morris "retained" the risk of \$1,000,000 for each occurrence, and bore the risk for liability in excess of \$10,000,000. This policy explicitly provided coverage for liability "on account of: Bodily injury, sickness, or disease, including death resulting therefrom alleged to have been caused by the smoking or use of tobacco in any form to which this policy applies."
- k. Developing a plan of insurance and self-insurance was also a topic of discussion among Defendants. For example, at a January 4, 1978 meeting attended by counsel representing all Defendants, one attendee's notes reflect that:

Greer [Liggett] backed by Stevens [Lorillard] raised the question of product liability insurance. Liggett has a basic policy with an American company and an umbrella policy with Lloyds. Some of the insurance firms in the umbrella coverage are pulling

out. Greer says his premiums are huge and that he cannot get total coverage at the umbrella level.

Temko [Tobacco Institutel made some vague allusions to various efforts by the drug industry, the medical device industry and others to self-insure.. and so on.....

Mr. Henson [American] suggested that each counsel explore the matter in-house and meet later... This was agreed to.

Another attendee's notes reflect that, "Holtzman [Philip Monis] and Henson [American] reminded the group that many years ago the industry had considered an industry insurance company and declined to go that route."

1. In sum, while the exact nature of Defendants' various plans of insurance, including self-insurance, varied, Defendants all:
 - i. recognized the risks associated with their manufacture, sale, and promotion of tobacco products;
 - ii. considered the possibility of insuring against such risks through contract, agreement, or arrangement with one another, and or, third party insurers;
 - iii. made the business decision to:
 - (1) continue to manufacture, sell, and promote tobacco products; and
 - (2) obtain partial third party insurance; and/or
 - (3) self-insure, in whole or in part, against this risk. For example, a Lorrilard Interoffice Memo entitled "Tobacco Health

Hazards - Insurance," dated 2/23/90, and shows a "\$] 250,00 per person deductible" under a Liberty Mutual Insurance Company policy, with a \$1 million dollar per person aggregate, and further shows a Weavers Underwriters umbrella policy covering in excess of \$2 million per person. The memo explains that because "[n]either Liberty nor Weavers were interested in closing the 'gap' between the two policies [,] [e]ffective January 1, 1990 it was decided to self- insure the Weavers coverage as outlined above.". See also RJR Response to Comprehensive Request No.17 ("Reynolds states that it is unaware of having asserted or made any claims for insurance coverage for or requested a defense of potential, actual, or threatened lawsuits concerning 'smoking and health or ETS.'").

The Nature of the United States' MSP Cause of Action

168. In 1980, Congress first enacted what have come to be referred to as the MSP provisions of the Medicare Act.

- a. The 1980 MSP provisions made Medicare secondary to, inter alia, self-insured liability policies or plans' but did not provide the United States with an explicit cause of action to protect the rights provided to the government under the MSP provisions.
- b. In 1984, Congress considered, and in fact enacted, further amendment to the

MSP provisions. The House Report explained:

Present Law

Under the current law, the Medicare Program may make benefits payments for services for which other third party insurance programs (e.g., workers' compensation, auto or liability insurance, and group health plans) are ultimately liable for some or all of the costs. However, the Secretary does not now have the right of subrogation, to become a party to claims against other liable parties or to recover directly from such parties.

Explanation of Provision

The bill establishes the statutory right of Medicare to recover directly from a liable third party, if the beneficiary himself does not do so, and to pay a beneficiary, or on the beneficiary's behalf pending recovery where such third party is not expected to pay promptly. The bill would also permit the Secretary to recover directly from the third party whether or not the beneficiary brings suit to recover and subrogate to the United States the right of the individual or anyone else to payment from the third party

H.R. Rep. No. 98-432 (Pt. II) at 1803 (1984) reprinted in 1984 U.S.S.C.A.N. 697, 1417. See also Deficit Reduction Act of 1984, Pub. L. No. 98-369, § 2344, 98 Stat. 494, 1096 (1984)

- c. It is facially plain that since 1984, the MSP provisions have provided the United States with both a direct statutory action, independent of the rights of the Medicare beneficiary, see 42 U.S.C. § 1395y(b)(2)(B)(ii), and a subrogation right. See 42 U.S.C. § 1395y(b)(2)(B)(iii). The United States brings this action solely pursuant to its direct and independent right of action.
- d. Pursuant to its independent right of action, "[i]n order to recover" a conditional payment "for such an item or service [that the United States has

paid for under the Medicare program], the United States may bring an action against any entity which is required or responsible. . . to make payment with respect to such item or service (or any portion thereof) under a primary plan." 42 U.S.C. § 1395y(b)(2)(B)(ii). As a result of the tortious and unlawful conduct described herein, Defendants are required and responsible to make payment for items or services (or some portion thereof) under a primary plan, for the health care costs of Medicare beneficiaries that were caused by such tortious and unlawful conduct.

169. The United States has made conditional payments for items and services for Medicare beneficiaries whose injuries and diseases were caused by Defendants' tortious and unlawful conduct, and is entitled to reimbursement from Defendants for these conditional payments.

Medicare as a Secondary Payer under the MSP Provisions

170. Pursuant to the Medicare Secondary Payer ("MSP") provisions of the Medicare Act, 42 U.S.C. § 1395y(b), these payments by the United States are "conditioned on reimbursement" by primary plans, including self-insured liability plans. 42 U.S.C. § 1395y(b)(2) (A)(ii) & (B)(i).

- a. If the United States "has information that services for which Medicare benefits have been claimed are for treatment of an injury or illness that was allegedly caused by another party, a conditional Medicare payment may be made." 42 C.F.R. § 411.52
- b. A "[c]onditional payment" means a Medicare payment for services for which another payer is responsible." 42 C.F.R. § 411.21
- c. A "[t]hird party payer" means an insurance policy, plan, or program

that is primary to Medicare." Id.

- d. A "[p]lan means any arrangement, oral or written, by one or more entities, to... assume legal liability for injury or illness." Id.
- e. "'Liability insurance' means insurance (including a self-insured plan) that provides payment based on legal liability for injury or illness... . It includes, but is not limited to . . . product liability insurance and general casualty insurance." 42 C.F.R. § 411.50 (b).
- f. The definition of "'[s]elf-insured plan' [includes] a plan under which... a private... entity[] carries its own risk instead of taking out insurance with a carrier." Id.
- g. On information and belief, the United States alleges that Defendants are primary plans from whom repayment is required for items or services paid for by the United States for the care and treatment of Medicare beneficiaries injured by Defendants' products.
- h. To the extent that Defendants are self-insured for claims the United States has against Defendants for items or services provided to Medicare beneficiaries, they are liable as primary plans. Moreover, notwithstanding the possibility of insurance coverage, to the extent that Defendants do not claim against such insurance, but instead pay any liability out of pocket, such payments constitute liability insurance payments under the MSP provisions. 42 C.F.R. § 411.50(b) ("Liability insurance payment" [includes] . . . an out of pocket payment, including a payment to cover a deductible required by a

liability insurance policy, by any individual or other entity that carries liability insurance or is covered by a self-insured plan.")

WHEREFORE, Defendants are primazy plans from whom repayment is required for items or services paid for by the United States for the care and treatment of Medicare beneficiaries injured by Defendants' tortious and unlawful conduct.

VI. DEFENDANTS' LIABILITY FOR VIOLATIONS OF THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS STATUTE

A. Count Three: Violation of Title 18, United States Code, Section 1962(c)

**Conducting the Affairs of the Enterprise
Through a Pattern of Racketeering Activity**

171. The United States of America realleges and incorporates by reference in this Count the allegations contained in Sections III and IV, above, and in the Appendix to this Complaint, as if fully set forth herein.

172. From at least the early 1950's and continuing up to and including the date of the filing of this complaint, in the District of Columbia and elsewhere, defendants,

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LORILLARD, LIGGETT, AMERICAN, PHILIP MORRIS
COMPANIES, BAT PLC, BAT INVESTMENTS, COUNCIL FOR
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and others known and unknown, being persons employed by and associated with the Enterprise described in Section VI. B., below, did unlawfully, knowingly, and intentionally conduct and participate, directly and indirectly, in the conduct, management, and operation of the affairs of the

aforementioned Enterprise, which was engaged in, and the activities of which affected, interstate and foreign commerce, through a pattern of racketeering activity consisting of numerous acts of racketeering in the District of Columbia and elsewhere, indictable under 18 U.S.C. §§ 1341 (mail fraud) and 1343 (wire fraud), including, but not limited to, the acts of racketeering alleged in the Appendix to this Complaint which are incorporated by reference and realleged as if fully set forth herein, in violation of 18 U. S. C. § 1962 (c).

B. The Enterprise Manner and Means

173. From at least the early 1950s, and continuing up to and including the date of the filing of this complaint, in the District of Columbia and elsewhere, defendants

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and others known and unknown, including agents and employees of defendants, collectively have constituted an "enterprise," as that term is defined in 18 U.S.C. § 1961(4), that is, a group of business entities and individuals associated in fact, which was engaged in, and the activities of which affected, interstate commerce and foreign commerce. Each defendant participated in the operation and management of the Enterprise.

174. The Enterprise functioned as a continuing unit for more than 45 years to achieve shared goals through unlawful means including the following: (1) to preserve and enhance the market for cigarettes and defendants' own profits, regardless of the truth, the law, or the health consequences to the American people; (2) to deceive consumers into starting and continuing to

smoke by maintaining that there was an open question as to whether smoking causes disease, despite the fact that defendants knew otherwise; (3) to deceive consumers into starting and continuing to smoke by undertaking an obligation to do everything in its power, including fund independent research, in order to determine if smoking causes cancer or other diseases, while concealing and suppressing relevant research and funding biased or irrelevant research; (4) to deceive consumers into becoming or staying addicted to cigarettes by maintaining that nicotine is not addictive, despite the fact that defendants knew that nicotine is addictive; (5) to deceive consumers into becoming or staying addicted to cigarettes by manipulating the design of cigarettes and the deiveiy of nicotine to smokers, while at the same time denying that they engaged in such manipulation; and (6) to deceive consumers, particularly parents and children, by claiming that they did not market to children, while engaging in marketing and advertising with the intent of addicting children into becoming lifetime smokers.

175. The Enterprise came into existence not later than December 15, 1953, at the above-described meeting at the Plaza Hotel in New York~ New York. The participants agreed at that meeting to conduct a false and misleading public relations and advertising campaign to deceive consumers and others about the health effects of cigarettes in order to protect the profits of Cigarette Companies. In furtherance of the Enterprise, the participants agreed to form TIRC (later CTR), a New York non-profit corporation that was falsely held out to the public as an independent research organization that would consider whether smoking caused disease. In reality, TIRC was created. as the centerpiece of a public relations campaign to protect the cigarette market from the perceived threat posed by adverse medical reports.

176. The Enterprise has pursued a course of conduct of deceit and misrepresentation and

conspiracy to defraud the public, to withhold from the public facts material to the decision to purchase and use tobacco products, to promote and maintain sales of tobacco products, and the profits derived therefrom, as well as to shield themselves from public, judicial, and governmental scrutiny. The fraudulent, misleading and unlawful efforts of the Enterprise have continued from its inception to the present and threaten to continue into the future.

177. The participants in this Enterprise have repeatedly utilized advertisements and promotions, and have made numerous other public statements through the mails and in broadcasts and other media, Congressional hearings, and other public appearances as part of a concerted and coordinated campaign to reaffirm their January 1954 promise to put people's health before every other consideration in their business, and to support and reveal unbiased and trustworthy research to answer questions about smoking and health. Defendants and their co-conspirators used the Enterprise to make these material fraudulent representations to induce public acceptance of their representations, to avoid civil liability, and to conceal their efforts to misrepresent, suppress, distort, and confuse the facts about the health dangers of tobacco products, including nicotine addiction.

178. Behind the shield of its public disinformation campaign and the false claims that TIRC/CTR would conduct unbiased research and publicly reveal all results thereof, the Enterprise has repeatedly concealed, suppressed, and/or misrepresented the material facts concerning that research. The Enterprise, through CTR and other entities supported by defendants, suppressed negative health and addiction research results from the public. In some cases, members of the Enterprise shut down research before final data could be obtained and reported. The participants in the Enterprise also funded research studies designed to buttress defendants' knowingly fraudulent claims that the causal link between smoking and disease remained an "open question."

179. The participants in the Enterprise have not disclosed, and have denied, contrary to fact, that the Cigarette Companies manipulate and control the content, delivery, and potency of nicotine in their products to create and sustain consumers' addiction to tobacco products.

180. The Enterprise has further suppressed the development, testing, and marketing of less hazardous cigarettes, while fraudulently maintaining that cigarettes are safe and that there are no safer alternatives to their products.

181. The formation, existence, and actions of the Enterprise were essential to the success of the campaign of deceit, concealment, and misinformation. The constituent members of the Enterprise were aware that, unless they agreed to act and acted as an enterprise, their sales of tobacco products would substantially decrease, and accordingly, the profits of the Cigarette Companies would substantially diminish. The participants were also aware that, if the truth about the health effects of smoking, the addictiveness of nicotine, and the Cigarette Companies' targeting of children became known, profits would have substantially decreased, and the future of the cigarette industry would have been threatened.

182. At all relevant times, the Enterprise has existed separate and apart from defendants' racketeering acts and their conspiracy to commit such acts. The Enterprise has an ascertainable structure and purpose beyond the scope and commission of defendants' predicate acts. It has a consensual decision making structure that is used to coordinate strategy, manipulate scientific data, suppress the truth about the consequences of smoking, and otherwise further defendants' fraudulent scheme.

183. The Enterprise is an ongoing organization whose constituent elements function as a continuing unit in maximizing the sales of the products of all of the Cigarette Companies,

misleading the public, the Congress, federal agencies, and the courts as to the health hazards of cigarettes, concealing and suppressing the truth concerning the addictive properties of nicotine and of the Cigarette Companies' control of nicotine delivery, marketing to children, and carrying out other elements of defendants' scheme. The Enterprise continues actively to disguise the nature of defendants' wrongdoing and to conceal defendants' participation in the conduct of the Enterprise in order to avoid and/or minimize their exposure to criminal and civil penalties and damages.

184. In order to further the conspiracy and as part of their Enterprise that was engaged in a pattern of racketeering activity, defendants formed the TIRC (later CTR) and the Tobacco Institute. Each of these organizations furthered the goals of the Enterprise in numerous ways:

- They served as a principal channel of communication among defendants to ensure that the companies continued to espouse the party line and to react to new threats to the industry.
- They served to provide a uniform voice to propagate defendants' and their co-conspirators' false and misleading material statements about smoking and health, defendants' commitment to research, and other issues.
- They provided an "independent" front for defendants' activities. CTR, for example, was used by defendants to claim falsely that they were funding independent research into smoking and health. Similarly, the Cigarette Companies were able to market to youth and to deny doing so under the cover of TPs print campaign which purported to discourage children from smoking.
- They were mechanisms for enforcing the conspiracy and ensuring that all

defendants continued to participate in the Enterprise. Defendants and/or their attorneys were in constant contact with each other through CTR and TI. The numerous committees and boards that exercised control over TI and CTR provided regular opportunities for defendants' agents to meet and to ensure that defendants were continuing to act in concert.

185. At all times, CTR and TI were controlled by the Cigarette Companies and their agents and employees. Defendants controlled each organization directly and through the web of committees made up of representatives of the Cigarette Companies and outside counsel. Over time, defendants' in-house and outside counsel took on a greater role in controlling the activities of TIRC/CTR and TI. Although CTR and TI have been or will be dissolved, on information and belief, the functions they have served continue to be served by the Companies' agents and employees.

186. TIRC/CTR's Board of Directors was comprised of the Presidents of the member Cigarette Companies. TIRC/CTR was funded by the member companies, and the TIRC/CTR Board of Directors approved the annual budget of the organization. The Board handled administrative matters and was responsible for ensuring the necessary funds were available to maintain TIRC/CTR. TIRC/CTR also had a Scientific Director and a scientific staff. The Scientific Director and the TIRC/CTR scientific staff were selected by representatives of defendants.

187. TIRC/CTR's Industry Technical Committee ("ITC"), made up of the Research Directors of the various member companies, and representatives of Hill & Knowlton, a public relations firm that at various times represented both TIRC/CTR and TI, selected the first members of the SAB. Subsequent appointments were approved by TIRC/CTR's Chairman, a position that

was usually filled by a retired tobacco company president or general counsel.

188. Defendants, through their attorneys and other agents, took an active role in controlling TIRC/CTR's research and other priorities. The Research Liaison Committee ("RLC"), formed in 1974, approved projects and monitored all phases of TIRC/CTR, including approving grants. The RLC had grant approval authority. The Cigarette Companies' in-house attorneys operated through the "Committee of Counsel," a group that included the General Counsel of each Cigarette Company, along with outside counsel who represented the Cigarette Companies. The Committee of Counsel also reviewed and controlled TIRC/CTR's research priorities. Outside counsel for the Cigarette Companies even administered some of TIRC/CTR's research funds through Special Projects and Special Accounts, in order to funnel money to the development of expert witnesses.

189. The Tobacco Institute (TI) is or was a non-profit organization formed in January 1958 whose member companies were manufacturers of tobacco products, including the five largest Cigarette Companies. TI was formed, at least in part, in response to a growing resentment by some SAB members of the public relations functions of the SAB and TIRC/CTR

190. TI served as defendants' propaganda arm and was controlled by defendants. As part of the Enterprise, TI served to disseminate defendants' "party line" on issues such as smoking and health, regardless of what defendants knew.

191. TI was run by a variety of Committees, which were made up of representatives from the Cigarette Companies, each of whom initially had two members on TI's Executive Committee. The Executive Committee had the "final voice on TI matters" and TI's statements. TI's Management Committee met six to eight times per year to direct its activities, and its

Communications Committee cleared TI's advertisements. Through these Committees, defendants, through their agents and attorneys, controlled TI and set policy, including the misleading and fraudulent statements about material matters made by TI. Over time, this structure changed somewhat, but defendants always maintained control over TI's activities.

192. The Cigarette Companies funded TI as well. The member companies paid dues to TI "based on a set membership fee and then an additional fee was added based on the number of cigarettes the member company had manufactured in the previous year."

193. The Cigarette Companies also exercised control over TI through the Committee of Counsel. The Committee of Counsel assisted TI in setting strategy, preparing witnesses on smoking and health issues, briefings, reviewing press releases, advertisements, and other public statements, and "follow-up" activities.

194. TI's stated goal was to bring "about a greater awareness that the cigarette controversy is not a closed question" -- i.e. to provide misleading information on the issue of smoking and health. TI took an active role in designing, writing, and seeking the publication of advertisements for defendants' products and prepared literally hundreds of advertisements from 1958 to 1998 that advanced defendants' primary position that "the question of smoking and health is still a question." TI regularly issued public statements questioning or disputing statements from health organizations that smoking caused disease and reiterating defendants' positions on other issues.

195. TI produced scores of witnesses for testimony in Congress, the courts, and state legislatures to advocate the false and misleading industry line - often without noting sponsorship by the Cigarette Companies or TI. TI also sponsored radio and TV campaigns. TI lobbied on behalf of the Cigarette Companies to prevent the release of public information about the effect of

cigarettes on public health. TI also furthered the Enterprise by coordinating the Cigarette Companies' position with those of tobacco companies throughout the world.

196. Despite the fact that TI was formed in order to distance TIRC/CTR from defendants' public relations activities, after TI was created, TIRC/CTR continued its public relations functions, and continued to retain public relations counsel.

197. Although CTR purported to be "independent," TI and TIRC/CTR often worked together to advance defendants' positions. TI used TIRC/CTR's research material to further the goal of maintaining defendants' "open controversy" position.

198. In furtherance of their common goals, including preserving, protecting, and enhancing the market for cigarettes, the Cigarette Companies jointly created and funded TIRC/CTR and TI. By the Cigarette Companies' frequent and continuous interaction as controlling participants on the boards, committees, and other structures within TIRC/CTR and TI, defendants and others have constituted an association-in-fact enterprise as defined in 18 U.S.C. § 1961(4).

199. On information and belief, by frequent and continuous communications among, and coordinated activities of, defendants and their agents that continue to the present day, defendants and others continue to constitute an association-in-fact enterprise as defined in 18 U.S.C. § 1961(4).

C. Count Four: Violation of Title 18, United States Code, Section 1962(d); Conspiracy to Violate Title 18, United States Code, Section 1962(c)

**Conspiracy to Conduct the Affairs of the Enterprise
Through a Pattern of Racketeering Activity**

200. The United States of America realleges and incorporates by reference in this Count the allegations contained in Sections I. through IV., and in Section VI. B., above, and in the Appendix to this Complaint, as if fully set forth herein.

201. From at least the early 1950's up to and including the date of the filing of this Complaint, in the District of Columbia and elsewhere, defendants,

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and others known and unknown, being persons employed by and associated with the Enterprise described in Section VI. B., above, did unlawfully, knowingly and intentionally combine, conspire, confederate, and agree together with each other, and with others whose names are both known and unknown, to conduct and participate, directly and indirectly, in the conduct of the affairs of the aforementioned Enterprise, which was engaged in, and the activities of which affected, interstate and foreign commerce, through a pattern of racketeering activity consisting of multiple acts indictable under 18 U.S.C. §§ 1341 and 1343, in violation of 18 U.S.C. § 1962(d).

202. **The Enterprise Manner and Means:** Section VI. B, above, is incorporated by reference and realleged as if fully set forth herein.

203. Each defendant agreed that at least two acts of racketeering activity would be committed by a member of the conspiracy in furtherance of the conduct of the Enterprise. It was part of the conspiracy that defendants and their co-conspirators would commit numerous acts of racketeering activity in the conduct of the affairs of the Enterprise, including, but not limited to, the acts of racketeering set forth in the Appendix, in the District of Columbia and elsewhere.

D. THE PATTERN OF RACKETEERING ACTIVITY

Racketeering Acts Related to The Mail And Wire Fraud Scheme

204. **Racketeering Acts 1 through 116:** The following sub-paragraphs a. through n. are realleged as a part of each of Racketeering Acts Nos. I through 116 relating to mail fraud and wire fraud set forth in the Appendix to the Complaint.

a. From at least as early as December 1953, and continuing until the time of filing of this complaint, in the District of Columbia and elsewhere, defendants and others known and unknown did knowingly and intentionally devise and intend to devise a scheme and artifice to defraud, and obtain money and property from, members of the public by means of material false and fraudulent pretenses, representations, and promises, and omissions of material facts, knowing that the pretenses, representations, and promises, were false when made.

b. It was part of said scheme and artifice that the Cigarette Companies would and did sell products for purchase by smokers that were represented to pose no proven substantial risk of disease, and that were not addictive, and that smoking was a matter of free choice by adults, when in fact, cigarette smoking posed substantial health risks, that nicotine in cigarettes is highly addictive, and that the Cigarette Companies had targeted children as "replacement smokers" for adult smokers who either reduced or ceased smoking or had died.

c. It was further part of said scheme and artifice that defendants and their co-conspirators would and did maintain sales and profits of the Cigarette Companies, by concealing, and suppressing material information regarding the health consequences associated with smoking, including that cigarette smoking posed substantial health risks, that nicotine in cigarettes is highly addictive, that they had the ability to manipulate and manipulated nicotine delivery, and that the

Cigarette Companies had targeted children as "replacement smokers" for adult smokers who either reduced or ceased smoking or had died.

d. It was further part of said scheme and artifice that, in order to conceal the health risks of cigarette smoking and the addictiveness of nicotine, defendants and their co-conspirators would and did make false representations and misleading statements in national publications, would and did falsely represent that defendants would fund and conduct objective, scientific research, and disclose the results of such research. to resolve concerns about tobacco-related diseases, would and did falsely represent that defendants did not target children for sales of cigarettes, would and did suppress and destroy documents to hide adverse research results, would and did misrepresent and fail to disclose their ability to manipulate and the manipulation of nicotine delivery and the addictive qualities of cigarettes, would and did conceal the availability of less hazardous and less addictive cigarettes, and would and did misrepresent their actions to government personnel and others and in judicial proceedings.

e. It was further part of said scheme and artifice that defendants and their co-conspirators would seek to impair, impede, and defeat government authorities' ability to understand the actual risks of cigarette smoking and the addictiveness of nicotine, and to impair, impede, and defeat governmental efforts to regulate and control the manufacture and distribution of cigarettes, and to impair, impede, and defeat parties in litigation from learning the adverse health effects and addictiveness of cigarette smoking, in that defendants and their co-conspirators would and did attempt to cover up their knowledge of the adverse health risks of smoking, the addictiveness of nicotine, and their efforts to recruit children as smokers, and would and did misrepresent that adverse health effects of smoking and addictiveness were unknown or unproven;

and would and did attempt to prevent to the public, Congress, courts and government officials from uncovering those activities.

f. It was further part of said scheme and artifice that defendants' communications directed toward government officials and courts would be and were designed to preserve and increase the market for cigarettes while concealing the deleterious health effects caused by smoking cigarettes. Examples of such communications include defendants' communications with government agencies, and communications with congressional subcommittees, members, and staff, as well as their communications among themselves regarding what should not be disclosed to government agencies and to courts and Congress.

g. It was further a part of said scheme and artifice that defendants communicated to the public nationwide in newspapers, magazines, and other periodicals that were distributed through the mails, as well as through the broadcast media, to deceive the public.

h. It was further part of said scheme and artifice that defendants would cause assurances and guarantees that the Cigarette Companies were seeking answers to public health issues to be disseminated by mail and by interstate wire transmissions.

i. It was further part of said scheme and artifice that defendants would take and receive and cause to be taken and received from the mails communications concerning research relating to the health effects of smoking.

j. It was further part of said scheme and artifice that defendants and their co-conspirators would mail and otherwise distribute press releases and other public statements addressing public health concerns and commenting on particular research issues.

k. It was a further part of said scheme and artifice that defendants and their

co-conspirators would and did misrepresent, conceal, and hide and cause to be misrepresented. concealed, and hidden, the purpose of, and acts done in furtherance of, the scheme to defraud.

l. It was a further part of said scheme and artifice, and in furtherance thereof, that defendants would and did communicate with each other and with their co-conspirators and others, in person, by mail, and by telephone and other interstate and foreign wire facilities, regarding health effects of smoking, health research and research into the effects of nicotine, and ways to suppress such information, and regarding ways to identify and target children for the sale of cigarettes.

m. For the purpose of executing and attempting to execute the scheme and artifice described herein, defendants and their co-conspirators would and did: knowingly place and cause to be placed in any post office or authorized depository for mail matter, matters and things to be sent and delivered by the United States Postal Service (and its predecessor, the United States Post Office Department); took and received therefrom such matters and things; and knowingly caused to be delivered by mail according to the direction thereon, and at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter and thing, in violation of 18 U.S.C. § 1341, including, but not limited to, the instances set forth in Racketeering Acts 1 through 102 of the Appendix to the Complaint. **[Mail Fraud Acts]**

n. For purposes of executing and attempting to execute that scheme and artifice, defendants and their co-conspirators would and did knowingly transmit and cause to be transmitted in interstate and foreign commerce by means of wire, radio and television communication writings, signs, signals, pictures and sounds (collectively "transmissions") in violation of 18 U.S.C. § 1343, including, but not limited to, the transmissions set forth in Racketeering Acts 103 through 116 of the

Appendix to the Complaint. **[Wire Fraud Acts]**

205. Racketeering Acts Nos. 1 through 116 appearing in the Appendix to this Complaint are realleged and incorporated by reference into the Complaint as if fully set forth herein.

E. Summary of the Racketeering Acts Charged Against Each Defendant

206. Set forth below is a chart indicating those Racketeering Acts, in which each defendant that is named in this Complaint in its individual capacity, personally participated. Each of these Acts was committed pursuant to and in furtherance of the above-described Enterprise, and such Acts include false and misleading statements, as well as other uses of the mails and wire transmissions, to further and execute defendants' scheme and artifice to defraud. The Racketeering Acts are set forth in the attached Appendix, which is incorporated by reference and realleged as if fully set forth herein:

<u>DEFENDANT</u>	<u>RACKETEERING ACTS</u>	<u>VIOLATIONS</u>
PHILIP MORRIS	1,2,3,5,6,7,8, 10, 12, 13, 16,17,18,19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 31, 33, 34, 35, 38, 40,41,42,43,44, 46, 47, 48, 49, 56, 58, 59, 66, 67, 70, 73, 77, 79, 81, 87, 88, 91, 93, 98, 100, 105, 108, 109, 114	18 USC § 1341 18 USC § 1343
REYNOLDS	1,2,3,4,5,6,7,8, 10, 12, 13, 17, 18,21, 22,23,24,26,27,28,29,31,33,34,35,36, 38, 39, 42,43,44,46, 49, 56, 61, 62, 64, 65, 66, 67, 68, 70, 73, 76, 77, 79, 81, 82, 83, 84, 85, 86, 87, 88, 89, 91, 93, 94, 96, 97, 98, 99, 102, 104, 107, 110	18 USC § 1341 18 USC § 1343
BROWN & WILLIAMSON	1,2,3,5,6,7,8,10,11,12,13,17,18,21, 22, 23, 24, 27, 28, 29, 30, 31, 32, 33, 34, 35, 38, 42, 43, 44, 45, 46, 49, 50, 51, 52, 53, 54, 55, 56, 57, 60, 63, 66, 67, 70, 73, 77, 79, 81, 87, 88, 91, 93, 98, 103, 106,115,116	18 USC § 1341 18 USC § 1343

<u>DEFENDANT</u>	<u>RACKETEERING ACTS</u>	<u>VIOLATIONS</u>
LORILLARD	1,2,3,5,6,7, 8,10,12,13,17,18, 21, 22, 23, 24, 27, 28, 29, 31, 33,34,35, 37, 38,42, 43,44, 46, 49, 56, 66, 67, 70, 73, 77,79, 81,87,88,91,93,98,104,111	18 USC § 1341 18 USC § 1343
LIGGETT	13, 17,22, 28,31,38,44, 66, 67, 70, 73, 77,88,112	18 USC § 1341 18 USC § 1343
AMERICAN	1,2,3,5,6, 7, 8, 10, 12, 13, 17, 18,21,22, 23, 24, 27, 29, 31, 33, 34, 35, 38, 42, 43, 44, 46, 49, 56, 66, 67, 70, 73, 77, 79, 81, 87, 88, 90,91,93,98,113	18 USC § 1341 18 USC § 1343
PHILIP MORRIS COMPANIES	69, 71, 72, 74, 75, 78, 80, 92, 95	18 USC § 1341 18 USC § 1343
BAT PLC (BAT INDUSTRIES)	55,59,101,108	18 USC § 1341 18 USC § 1343
BAT INVESTMENTS (BAT Co.)	11, 30, 50, 51, 53, 54, 57, 60, 63, 103, 106	18 USC § 1341 18 USC § 1343
COUNCIL FOR TOBACCO RESEARCH/ TOBACCO INDUSTRY RESEARCH COMMITTEE	2, 9, 13, 14, 15, 17, 22, 25, 31, 38, 44, 66, 67, 70,73,77, 88,98	18 USC § 1341 18 USC § 1343
TOBACCO INSTITUTE	3, 5, 6,7,8,10,12,18,21,23,24, 27, 29, 33, 34, 35, 42, 43, 46, 49, 56, 79, 81, 87, 91, 93	18 USC § 1341 18 USC § 1343

F. Equitable Relief Is Necessary to Prevent and Restrain Defendants' Unlawful Conduct in the Future

207. Defendants' affirmative and intentional acts of fraudulent concealment, suppression, and denial of the facts as alleged above has continued unabated over a span of many decades. Defendants have maintained a unified scheme to thwart public awareness of adverse scientific and medical information concerning the health risks of cigarette smoking by suppressing and subverting

medical and scientific research. They have concealed and denied the addictive properties of nicotine and the Cigarette Companies' manipulation of the levels of nicotine in their products. They have misrepresented the tobacco industry's targeting of youth smokers and their endeavors to exploit the addictive properties of nicotine to maintain a market for cigarettes -- all through an uninterrupted pattern of fraudulent and deceitful conduct aimed at maintaining a market for their products and increasing industry profits at the expense of the smokers they endeavored to deceive.

208. The pattern of defendants' conduct reflects an unwillingness to concede, and affirmative efforts to conceal from the public, from courts, and from regulatory bodies, pertinent and properly available information concerning the dangers of their products. After a span of more than forty-five years of deception and fraud, it would be unreasonable to believe that defendants will voluntarily cease their unlawful conduct, or that their pattern of racketeering activity will cease without intervention by this Court.

209. Unless restrained, defendants will continue their attempts to keep internal information from public disclosure. They will refuse to admit, and continue to conceal, the fact that smoking cigarettes causes disease and kills and that the nicotine in their products is addictive. Affirmative relief is required to ensure that defendants fulfill their duty to disclose non-public information over which defendants have had exclusive control, and which is crucial to the consuming public in making informed purchasing decisions. Equitable relief is necessary to ensure an end to defendants' continued efforts to confuse and mislead the public concerning the health consequences of smoking and the addictive nature of nicotine, and to end their deceptive campaign to induce children and minors to become addicted and subject to a high risk of disease.

210. Defendants' violations of 18 U.S.C. § 1962, and their continuing pattern of

racketeering acts will continue in connection with the affairs of the Enterprise unless this Court implements the relief requested below.

VII. PRAYER FOR RELIEF

WHEREFORE, the United States of America prays for relief and judgment against all defendants, jointly and severally, as follows:

A. Remedies at Law:

Awarding damages, along with pre-judgment and post-judgment interest as provided by law, to the United States of America, pursuant to Counts One and Two, for defendants' tortious and wrongful acts, as alleged above, as follows:

1. Under Count One, awarding the United States money damages for an amount that is sufficient to provide restitution and repay the United States for the sums it has spent or will spend, constituting, as provided by law, the reasonable value of hospital, medical, surgical, and dental care and treatment furnished and to be furnished, paid for and to be paid for, by the United States to or on behalf of beneficiaries of various federal programs including those referred to in the third numbered paragraph of Section V. A., above, as a result of the wrongful conduct of defendants, which amount is to be determined at trial by a jury. The United States has suffered and in the future will continue to incur substantial monetary damages as a result of this same conduct. An actual, justiciable controversy exists between plaintiff and defendants regarding the ultimate legal and financial responsibility for these future medical expenditures.

2. Under Count Two, awarding the United States money damages for an amount that is sufficient to provide restitution and repay the United States for the sums it has spent or will spend, past and present, pursuant to the United States' right, independent of the rights of Medicare

beneficiaries, to recover compensation for the costs that the United States has paid, pursuant to the Medicare Program, to reimburse health care providers for treating Medicare beneficiaries suffering from diseases and other health problems as a result of defendants' wrongful and unlawful conduct, which payments HCFA has made but with respect to which defendants are "required or responsible ... to make payment," as provided by law (42 U.S.C. § 1395y(b)(2)(B)(ii) & (iii)), which amount is to be determined at trial by a jury. The United States has suffered and in the future will continue to incur substantial monetary damages as a result of this same conduct. An actual, justiciable controversy exists between plaintiff and defendants regarding the ultimate legal and financial responsibility for these future medical expenditures.

3. Awarding the United States the costs of this suit, together with such other and further relief as may be necessary and appropriate.

B. Equitable Remedies:

Pursuant to the provisions of 18 U.S.C. § 1964, that this Court issue an Order and Judgment, jointly and severally, against defendants, providing the following relief:

1. That this Court order that all of the defendants who are found to have violated 18 U.S.C. § 1962, disgorge all proceeds derived from any violation of 18 U.S.C. § 1962.

2. That this Court issue a permanent injunction that will do the following:

a. Prohibit each defendant and its successors, officers, employees, and all persons acting in concert with each defendant, from committing any act of racketeering, as defined in 18 U.S.C. § 1961(1), and from associating directly or indirectly, with any other person known to them to be engaged in such acts of racketeering or with any person in concert or participation with them.

b. Enjoin and restrain each defendant and all other persons in concert with each defendant from participating in any way, directly or indirectly, in the management and/or control of any of the affairs of CTR and TI, or, if either CTR or TI has been or becomes dissolved, any successor entities of CTR and TI, or other entity affiliated with CTR and TI, known to them to be engaged in acts of racketeering, and from having any dealings about any matter that relates directly or indirectly to the management and/or control of CTR and TI or any successor or affiliated entities known to them to be engaged in acts of racketeering.

c. Enjoin each defendant and persons in concert with each defendant from making false, misleading or deceptive statements or representations concerning cigarettes.

d. Prohibit each defendant and its agents from engaging in any public relations endeavor that misrepresents, or suppresses information concerning, the health risks associated with cigarette smoking or the addictive nature of nicotine, and from associating with any other persons for the purpose of engaging in such conduct.

e. Order each defendant to disclose, disseminate, and make available to the Department of Justice and such public health and regulatory authorities as the Court may select, all documents relating to research previously conducted directly or indirectly by themselves and their respective agents, affiliates, servants, officers, directors, employees, and all persons acting in concert with them, that relate to the health consequences of cigarette smoking and nicotine addiction, and the ability to develop less hazardous cigarettes.

f. Order each defendant to fund, but have no part of or influence over the control of or decision making relating to, a legitimate and sustained corrective public education campaign, administered and controlled by an independent third party, relating to the public health issues of

cigarette smoking and nicotine addiction.

g. Order each defendant to disclose, disseminate, and make available to the Department of Justice and such public health and regulatory authorities as the Court may select, all documents relating to marketing or advertising campaigns that target and/or encourage children to purchase and consume cigarettes; enjoin each defendant from engaging in any such campaigns in the future; and order each defendant to provide mechanisms to ensure compliance.

h. Order each defendant to make corrective statements regarding the health risks of cigarette smoking and the addictive properties of nicotine in future advertising, marketing, and promotion of their tobacco products.

i. Order each defendant to fund, but have no part of or influence over the control of or decision making relating to, sustained cessation programs including the provision of medically approved nicotine replacement therapy for dependent smokers.

j. Order each defendant to fund, but have no part of or influence over the control of or decision making relating to, a sustained educational campaign devoted to the prevention of smoking by children.

3. That this Court award the United States the costs of this suit, together with such other and further relief as may be necessary and appropriate to prevent and restrain further violations of 18 U.S.C. § 1962, and to end the ongoing wrongful conduct of defendants.

C. DECLARATORY RELIEF:

Pursuant to 28 U.S.C. § 2201, that this Court declare that defendants are liable, jointly and severally, for future costs of hospital, medical, surgical, or dental care and treatment (including prostheses and medical appliances) to be furnished, or to paid for, by the United States resulting


from the past tortious and wrongful conduct of defendants.

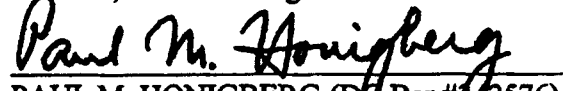
VIII. DEMAND FOR JURY TRIAL

211. The United States of America demands a trial by jury on all issues so triable under Counts One and Two in this action.

Dated: February 28, 2001

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