



**IN THE DISTRICT COURT OF CLEVELAND COUNTY  
STATE OF OKLAHOMA**

**PART A**

STATE OF OKLAHOMA, ex rel., §  
 MIKE HUNTER, §  
 ATTORNEY GENERAL OF OKLAHOMA, §  
 §  
 Plaintiff, §  
 §  
 vs. §  
 §  
 (1) PURDUE PHARMA L.P.; §  
 (2) PURDUE PHARMA, INC.; §  
 (3) THE PURDUE FREDERICK COMPANY; §  
 (4) TEVA PHARMACEUTICALS USA, INC.; §  
 (5) CEPHALON, INC.; §  
 (6) JOHNSON & JOHNSON; §  
 (7) JANSSEN PHARMACEUTICALS, INC.; §  
 (8) ORTHO-McNEIL-JANSSEN §  
 PHARMACEUTICALS, INC., n/k/a §  
 JANSSEN PHARMACEUTICALS, INC.; §  
 (9) JANSSEN PHARMACEUTICA, INC., §  
 n/k/a JANSSEN PHARMACEUTICALS, INC.; §  
 (10) ALLERGAN, PLC, f/k/a ACTAVIS PLC, §  
 f/k/a ACTAVIS, INC., f/k/a WATSON §  
 PHARMACEUTICALS, INC.; §  
 (11) WATSON LABORATORIES, INC.; §  
 (12) ACTAVIS LLC; and §  
 (13) ACTAVIS PHARMA, INC., §  
 f/k/a WATSON PHARMA, INC., §  
 §  
 Defendants. §

STATE OF OKLAHOMA } S.S.  
 CLEVELAND COUNTY }  
**FILED** In The  
 Office of the Court Clerk  
 OCT 02 2018

In the office of the  
 Court Clerk MARILYN WILLIAMS

Case No. CJ-2017-816  
 JURY TRIAL DEMANDED

**NOTICE OF AUTHORITY REGARDING STATE OF TEXAS V. THE AMERICAN  
 TOBACCO COMPANY, ET AL.**

The State writes to submit to the Court copies of several decisions from the Texas Tobacco litigation that bear upon the matters before the Court for tomorrow's hearing (Wednesday October 3, 2018). Because the case was litigated prior to the use of PACER, some of the pleadings and decisions are not readily available online. Therefore, as a courtesy to the Court and the Defendants, the State respectfully provides copies of a few documents we intend to discuss tomorrow in

advance of the hearing.

### ARGUMENT AND AUTHORITIES

Contrary to the Defendants' repeated arguments, the heart of the State of Oklahoma's case is not fraud. Ex. A, *September 27, 2018 Hearing*, 58:16-19. The Defendants' aggressive promotion, spread of false information, and conspiracy to persuade doctors/patients that opioids are not addictive created a public nuisance and a crisis that this Court will be called upon to abate through a broad remedial order. The State was harmed by the conspiracy the Defendants engaged in to convince both doctors and patients that opioids were not addictive. The individual identities of doctors/patients are completely irrelevant to these claims. **The State is the sole injured party in this case.**

Defendants' tactics to try to make this case something it is not are not new. In the *State of Texas v. The American Tobacco Company, et al.* ("*Texas Tobacco*"), the defendants did the same thing. Texas asserted theories similar to those in this case. The defendants sought the individual claims data of Texas Medicaid patients. Texas refused to provide it. Defendants filed both a motion to compel and summary judgment motions on the issue, and defendants lost. Ex. B, *Order Denying Discovery of All Individuals Forming the Basis of Plaintiff's Claims*; Ex. C, *Order Regarding Motions for Summary Judgment*.

In *Texas Tobacco*, the state of Texas asserted claims under the Federal Racketeer Influenced and Corrupt Organization Act (RICO), public nuisance, common law fraud, and various other claims. See Ex. D, *Fourth Amended Petition*, at 64-110 (exhibits omitted). Similarly, here, the State of Oklahoma has asserted claims for both nuisance and common law fraud, as well as unjust enrichment and False Claim Act claims.

In the state of Texas' Fourth Amended Petition, the state of Texas alleged the following

under its RICO claim:

...The Defendants engaged in *schemes to defraud* members of the public and others regarding their tobacco products and health issues. Those schemes have involved *fraudulent misrepresentations and/or omissions reasonably calculated to deceive persons of ordinary prudence* and comprehension.

Ex. D, at 67 (emphasis added). Additionally, the state of Texas alleged the following under its Common Law Fraud Claim:

Defendants, individually and acting in concert, have committed *common law fraud*, actual and constructive. Defendants intentionally breached a legal duty to the State of Texas and/or their acts and omissions tended to deceive others, violate confidences, and cause injury to public interests.

Ex. D, at 98 (emphasis added).

There, Texas intended to prove causation through a two-step process:

1. That defendants' bad acts caused the event or occurrence sued upon—smokers beginning or continuing to consume a harmful product.
2. The event or occurrence caused the state's injury—health care expenditures attributable to that consumption.

To do this, Texas used statistical damage models to demonstrate the causal nexus between the event or occurrence and the State's injury. Ex. E, *Plaintiff's response to Defendant's Motions for Partial Summary Judgment*, at 8-9. The models also calculated the state's health-care expenditures attributable to smoking, thereby quantifying the state's damages. *Id.*

There, too, the defendants sought to rewrite the state's claims to make them about individual consumer interactions, and thus argued that they were entitled to discovery of individual smoker information. Just like here, defendants wanted to analyze each smoker who was a Medicaid recipient in the state of Texas to determine when they heard or saw defendants' false statements, how they relied upon those statements in choosing to smoke, how smoking caused them to become ill, and how the state of Texas had to pay for their increased medical costs. Ex. F, *Defendants'*

*Motion to Compel Discovery of All Individuals Forming the Basis of Plaintiff's Claims and Supporting Memorandum*, at 2-3. Texas refused to provide this information.

So the defendants moved to compel discovery of all of the individuals forming the basis of the state of Texas's claims. Similar to the Defendants here, the defendants in *Texas Tobacco* believed they were entitled to the individualized claims data. But, just like the State of Oklahoma did here, the State of Texas produced de-identified claims data of all smokers who were Medicaid recipients to the defendants. Ex. G, *The State of Texas' Response to Defendants' "Motion to Compel Discovery of All Individuals Forming the Basis of Plaintiffs' Claims"*, at 14. And there, the court denied defendants' motion to compel patient and doctor names and patient-by-patient claims data. Ex. B; Ex. H, *Order Affirming Magistrate Judge Radford's Order Denying Discovery of Individuals Forming Basis of Plaintiff's Claims*.

Then, at the summary judgment stage, the defendants filed motions for partial summary judgment on the issue of statistical sampling, as well as the use of statistical sampling to show causation. Ex. I, *Defendants' Motion for Partial Summary Judgment Based on Fibreboard*; Ex. J, *Defendants' Motion for Partial Summary Judgment Based on the State's Inability to Establish Causation*; Ex. K, *Defendants' Memorandum of Law In Support of Their Motion for Partial Summary Judgment Based on the State's Inability to Establish Causation*, (exhibits omitted). The court denied both motions and allowed the State of Texas to use statistical sampling to prove damages and causation in its case. See Ex. C.

Here, just as in Texas tobacco, the State of Oklahoma plans to prove its claims under the FCA through experts using a statistical sample. Such samples are common place in aggregate injury cases brought by a sovereign like this. Because this is an aggregate injury in which the State is the sole injured party, the individual identities of doctors and patients are completely irrelevant

and unnecessary. In *Texas Tobacco*, the court denied defendants access to the identities of individual smokers on a motion to compel. *See* Ex. B. Further, at the summary judgment level, the court found that the use of statistical sampling was sufficient to prove causation for the State of Texas' case. *See* Ex. C.

### CONCLUSION

The State respectfully requests this Court to follow the precedent set by *State of Texas v. The American Tobacco Co., et al.*, and deny Defendants' Motion to Compel Discovery Regarding Claims Data.

Respectfully submitted,



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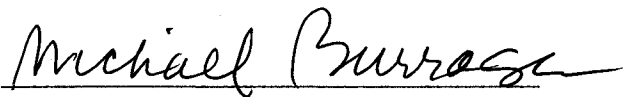
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IN THE DISTRICT COURT OF CLEVELAND COUNTY

STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel., )  
MIKE HUNTER )  
ATTORNEY GENERAL OF OKLAHOMA, )

Plaintiff, )

vs. )

Case No. CJ-2017-816

- (1) PURDUE PHARMA L.P.; )
- (2) PURDUE PHARMA, INC.; )
- (3) THE PURDUE FREDERICK )
- COMPANY; )
- (4) TEVA PHARMACEUTICALS )
- USA, INC; )
- (5) CEPHALON, INC.; )
- (6) JOHNSON & JOHNSON; )
- (7) JANSSEN PHARMACEUTICALS, )
- INC.; )
- (8) ORTHO-McNEIL-JANSSEN )
- PHARMACEUTICALS, INC., )
- n/k/a JANSSEN PHARMACEUTICALS; )
- (9) JANSSEN PHARMACEUTICA, INC.)
- n/k/a JANSSEN PHARMACEUTICALS, )
- INC.; )
- (10) ALLERGAN, PLC, f/k/a )
- ACTAVIS PLC, f/k/a ACTAVIS, )
- INC., f/k/a WATSON )
- PHARMACEUTICALS, INC.; )
- (11) WATSON LABORATORIES, INC.; )
- (12) ACTAVIS LLC; AND )
- (13) ACTAVIS PHARMA, INC., )
- f/k/a WATSON PHARMA, INC., )

Defendants. )

**EXHIBIT**  
**A**

**PORTIONS OF THIS TRANSCRIPT ARE CONFIDENTIAL  
UNDER PROTECTIVE ORDER AND UNDER SEAL**

**TRANSCRIPT OF PROCEEDINGS  
HAD ON SEPTEMBER 27, 2018  
AT THE CLEVELAND COUNTY COURTHOUSE  
BEFORE THE HONORABLE WILLIAM C. HETHERINGTON, JR.,  
RETIRED ACTIVE JUDGE AND SPECIAL DISCOVERY MASTER**

REPORTED BY: ANGELA THAGARD, CSR, RPR



1 He used to start every radio show with, Now for the rest of the  
2 story. I saw Mr. Beckworth characterize a settlement of the  
3 patent litigation as conspiracy. To me, it's a settlement of a  
4 patent litigation.

5 Everything about the 245 prescriptions that I said at  
6 every previous hearing and this one are true. They're in their  
7 complaint and the basis of their fraud claims. It's amazing to  
8 me that they cite in Exhibit 3 to their -- they list them  
9 specifically in Exhibit 3 to their complaint -- I'm sorry,  
10 their petition -- and say it in their petition, yet every time  
11 I say it, it causes a huge rise on this side of the table.

12 If they want to change their complaint to include  
13 generics, Judge, they can do it. But from our perspective, as  
14 we sit in correspondence to the Court, generics aren't part of  
15 this case. Generics weren't promoted.

16 This is a fraud case, Judge. It's a fraud case. That's  
17 what this case is. It's fraud. It's not the fact that Teva  
18 entered into a patent litigation -- or a settlement patent  
19 litigation with Purdue. It's about promotion.

20 I still don't know, because the State still won't tell me,  
21 what fraudulent misrepresentations any doctor in Oklahoma  
22 relied upon to issue any Teva prescription to any Oklahoma  
23 patient. I still don't know that. Either they can't tell me,  
24 or they won't. But they can't.

25 So when I talk about those 245 prescriptions, Judge, which

FILED-CLERK  
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
TEXARKANA DIVISION

97 JUN 27 PM 12: 27

TX EASTERN-DEAUMONT

*S. Moore*

THE STATE OF TEXAS,  
Plaintiff,

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§

CIVIL NO. 5:96-CV-0091

VS.

JUDGE: DAVID FOLSOM

THE AMERICAN TOBACCO  
COMPANY, ET AL,  
Defendants.

MAGISTRATE JUDGE:  
WENDELL C. RADFORD

ORDER DENYING DEFENDANTS'  
"MOTION TO COMPEL DISCOVERY OF ALL INDIVIDUALS  
FORMING THE BASIS OF PLAINTIFF'S CLAIMS"

Defendants' "Motion to Compel Discovery of All Individuals Forming the Basis of Plaintiff's Claims" was considered by the Court today. After considering all filings related to this motion, arguments, if any, of counsel and applicable law, the Court is of the opinion the Motion should be denied.

IT IS THEREFORE ORDERED that discovery of Medicaid recipient data and other discovery shall proceed according to this Court's prior Orders. All additional discovery of individual recipient information requested by Defendants is denied.

SIGNED THIS 27 DAY OF June, 1997.

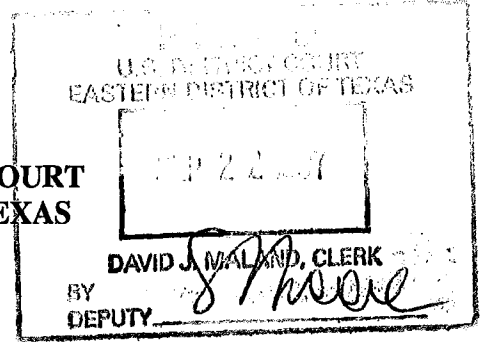
*Wendell C. Radford*  
MAGISTRATE JUDGE WENDELL C. RADFORD  
UNITED STATES DISTRICT COURT

604

B

OD 9/22/97

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TEXARKANA DIVISION



THE STATE OF TEXAS

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No. 5-96CV-91

VS.

THE AMERICAN TOBACCO  
COMPANY, et al.

**ORDER REGARDING MOTIONS FOR SUMMARY JUDGMENT**

Pending before the Court are several motions for summary judgment filed by the parties. On September 18 and 19, 1997, the Court heard argument on the motions. Having reviewed the motions, the responses and the replies, and considered argument of counsel, the Court finds the motions are not well taken, with the exception of Hill and Knowlton's motion, and makes the following rulings.

Defendants' Motion for Partial Summary Judgment on RICO Claims is hereby DENIED (entry # 731);

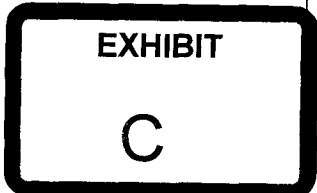
Defendants' Motion for Partial Summary Judgment on Plaintiff's Claim for Future and Punitive Damages and Disgorgement of Profits (entry # 816) is hereby DENIED;

Defendants' Motion for Partial Summary Judgment on Federal Preemption Grounds (entry # 814) is hereby DENIED;

Defendants' Motion for Partial Summary Judgment Based on *Fibreboard* (entry # 737) is hereby DENIED;

Defendants' Motion for Partial Summary Judgment Based on the State's Inability to

1139



Establish Causation (entry # 803) is hereby DENIED;

Defendants' Motion for Partial Summary Judgment on Plaintiff's Claims for Medicaid Reimbursement (entry # 729) is hereby DENIED;

Defendants' Motion for Partial Summary Judgment on Plaintiff's Claim for Damages Allegedly Paid by the Federal Government and Brief in Support (entry # 811) is hereby DENIED;

The State of Texas' Motion for Partial Summary Judgment on Mitigation of Fraud, Waster or Abuse (entry # 846) is hereby DENIED;

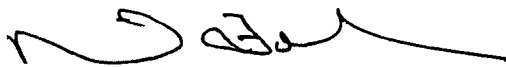
Council for Tobacco Research--U.S.A., Inc.'s Motion for Partial Summary Judgment (entry # 800) is hereby DENIED;

Hill and Knowlton, Inc.'s Motion for Summary Judgment (entry # 808) is hereby GRANTED on the State's claims under the Racketeer Influenced and Corrupt Organizations Act. Hill and Knowlton's Motion for Summary Judgment in all other respects is DENIED; and,

United States Tobacco Company's Motion for Summary Judgment (entry # 747) is hereby DENIED.

IT IS SO ORDERED.

Signed this 22<sup>nd</sup> day of September, 1997.

  
\_\_\_\_\_  
DAVID FOLSOM  
UNITED STATES DISTRICT JUDGE



disinformation and denials regarding the dangerousness of their products. The tobacco companies have unlawfully shifted the financial responsibility for their tortious and illegal conduct and for their unreasonably dangerous products to State of Texas.

This lawsuit seeks to have the tobacco companies' liability to the State judicially recognized and to restore to the State's treasury those funds spent for smoking-attributable costs by the Medicaid Program, the State Employee Retirement System, the State Employee Group Insurance Programs and charity care. This suit also seeks other damages to be determined by a jury and appropriate injunctive relief.

In particular, this lawsuit seeks to protect the future health of our children. Marketing strategies of the tobacco companies target our children to induce them to start using tobacco products. Dr. David Kessler, former Commissioner of the U.S. Food and Drug Administration, classifies the nicotine addiction of teenagers as a pediatric disease.

According to a 1994 U.S. Surgeon General's Report, more than three million American children currently smoke cigarettes and an additional one million adolescent males use smokeless tobacco. Every day, another 3,000 children become regular smokers. Eighty-two percent of adult smokers had their first cigarette before age 18, and more than half of them had already become regular smokers by that age. Reports published by the U.S. Centers for Disease Control and Prevention indicate that anyone who does not begin smoking in childhood is unlikely to begin. Of those 3,000 children who do become current regular users of tobacco products, 1,000 will die prematurely as a result of their tobacco use.

The tobacco industry has been successful in planning, implementing, executing and profiting from the largest public health crisis in U.S. history. The industry has also orchestrated the largest and most distinctive campaign of corporate misinformation in U.S. history.

The Executive Officers and Board of Trustees of the American Medical Association (AMA) stated that recently disclosed internal tobacco industry documents ". . . show us how this industry has managed to spread confusion by suppressing, manipulating, and distorting the scientific record . . . . The evidence is unequivocal - the U.S. public has been duped by the tobacco industry. No right-thinking individual can ignore the evidence."<sup>1</sup>

It is the duty and obligation of the Attorney General, as the chief law enforcement officer for the State of Texas, to bring this suit to seek reimbursement of funds expended because of the Defendants' illegal conduct and unreasonably dangerous products, to halt cigarette marketing aimed at children, to restrain the Defendants' unlawful conduct and to dispel any illusion of a "scientific controversy" regarding tobacco and health.

#### NATURE OF THE CASE

1. This is an action to recover funds expended by the State to provide medical treatment to citizens suffering from smoking-related illnesses and to seek appropriate injunctive relief against the Defendants' continuing illegal conduct. The State seeks reimbursement of funds expended by Texas pursuant to the Medicaid program created by Title XIX of the Social Security Act. The Medicaid program is a cooperative endeavor in which the Federal Government provides financial assistance to participating states to aid them in furnishing health care to needy persons. For every dollar spent on Medicaid assistance by the State, the federal government provides approximately two dollars in matching funds. The State of Texas' participation in this federal program is one of many

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<sup>1</sup>Todd, S.T., et al., The Brown and Williamson Documents: Where Do We Go From Here? *Journal of the American Medical Association*, July 19, 1995 - Vol. 274, No. 3, pp. 256-258.

programs conducted by the State to promote the general welfare of its citizens and meet its specific objective to insure that adequate and high-quality health care is available to its citizens who cannot afford it.

2. The State is required to take all reasonable measures to ascertain the legal liability of third parties to pay for care and services available under the Medicaid Act, and to seek reimbursement to the public fund to the extent of such legal liability. The State has discovered that the Defendants have been engaged in a protracted and willful course of corporate misconduct and misrepresentation in violating numerous federal and state laws, and in the actionable breach of the duties owed to the State and its citizens.
3. The Defendants are cigarette and tobacco product manufacturers, their trade associations, and public relations firms that control virtually the entire cigarette industry in Texas and the Nation. For decades, the State has incurred significant expenses associated with the provision of necessary health care and other assistance necessary under various State programs to citizens who suffer, or who have suffered, from smoking-related injuries, diseases or sickness.
4. This action is based on the deliberate and willful misconduct by Defendants toward the Nation, the State and its citizens. Some of Defendants' misconduct and offenses came to light as the result of congressional hearings in 1994 and subsequent investigation by private and public entities. The Defendants' misconduct, actions and statements are violations of the following areas of law:
  - A. **Federal Racketeer Influenced and Corrupt Organizations Act:**

Since the 1950s, the cigarette manufacturing Defendants have conducted



or participated, directly or indirectly, in the conduct of an enterprise's affairs through a pattern of racketeering activity, in violation of the federal RICO statute. The RICO enterprise is an association-in-fact composed of the Council for Tobacco Research (CTR), the Tobacco Institute (TI), Hill & Knowlton, and the Cigarette Companies' law firms and related entities. The Cigarette Companies participated in the conduct of this enterprise's affairs through a pattern of public fraud, via wire and mail fraud on a nationwide basis, and through a pattern of other racketeering injuries. Lawsuits brought by the Attorneys General of more than twenty states have uniformly characterized the Cigarette Companies' acts as public fraud. A Prosecution Memorandum to the U.S. Department of Justice by U.S. Representative Martin Meehan sets forth the basis for a federal RICO criminal prosecution against the tobacco manufacturers. A copy of the Prosecution Memorandum is attached hereto as Exhibit 1 and incorporated herein for all purposes.

- B. **Federal and State Antitrust Acts:** Beginning at least as early as the 1950s, and continuing to the present, Defendants entered into a contract, combination, or conspiracy in restraint of trade in the market for cigarettes in the United States and Texas. The Defendants have agreed to restrain and eliminate competition in that market in order to sell nicotine-laden cigarette products and nicotine delivery devices to consumers. The Defendants' conspiracy had the purpose and effect of unreasonably restricting the quality of the cigarettes manufactured and sold in the U.S.

by retarding the research, development, production, and sale of alternative products.

The conspiracy to control and maintain the market was accomplished in part by anti-competitive patent accumulation practices restraining and suppressing research on the harmful effects of smoking and the development of alternative, higher quality and safer competitive cigarettes.

Defendants also entered into contracts, combinations or conspiracies to protect the cigarette market by restraining the market for health care. The purpose of these conspiracies was to suppress and withhold information on the true causal relationship between cigarette smoking and various diseases.

Defendants' conspiratorial conduct was motivated by their desire to maintain the status quo in the cigarette industry – to perpetuate the unregulated and unfettered sale of nicotine in their products – thereby creating and maintaining a stabilized market demand through nicotine dependency in consumers.

- C. **Equitable Principles of Federal and State Common Law:** The State of Texas is entitled to assert its own claims for restitution, unjust enrichment and public nuisance against the Defendants under equitable principles of federal and Texas law. These claims reside in the State itself and are wholly independent of any claims that individual smokers may have against the Defendants. The State is not a participant in the enterprise

that has caused Texas to incur billions of dollars in health care costs. It has instead been compelled unfairly to subsidize the externalities of Defendants' activities, to the great detriment of the State's taxpaying citizens and businesses. This is not a case involving only cigarette companies and smokers. Here, an innocent third party – the State, together with all those it represents – has been forced to pay enormous sums which should in equity have been borne by Defendants. Accordingly, the State can assert independent and separate claims in its own right under equitable theories that do not depend on the State's ability to show that Defendants would be liable to individual smokers in product liability actions.

- D. **Product Liability Law:** The Defendants, at all pertinent times, designed, manufactured, marketed and placed into the stream of commerce in this and other states, unreasonably dangerous cigarettes. Defendants were negligent in that they failed to exercise reasonable care in the design, manufacture, and marketing of cigarettes. Furthermore, Defendants breached express and implied warranties relative to cigarettes. These wrongful acts and breaches of duty are legal and proximate causes of injury and damages to the State of Texas' business, finances and property that are wholly separate from the claims of individual smokers for their health injuries. Accordingly, none of the State's claims depends on its ability to show that individual smokers would be able to recover damages against the Defendants.

**JURISDICTION AND VENUE**

5. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, § 1367; 15 U.S.C. § 1331, § 1367; 15 U.S.C. § 15 and 18 U.S.C. § 1964.
6. Venue is proper in this District pursuant to 28 U.S.C. § 1391. Defendants advertised in this District, received substantial compensation and profits from the sales of cigarettes in this District, and made material misrepresentations and breached warranties in this District. Further, significant health care services were provided in this District to qualified citizens under the Medicaid Act whose necessary health care services and the expense therefore were attributable to smoking-related disease and illness.

**PARTIES**

**PLAINTIFF**

7. Plaintiff is the State of Texas. Dan Morales, Attorney General for the State of Texas, is authorized to bring this action on behalf of the State by the Texas Constitution, Art. 4 § 22; the Texas Government Code, Section 402.021, et seq.; the Texas Free Enterprise and Antitrust Act of 1983, Business and Commerce Code, Chapter 15; 42 U.S.C. 1396, et seq., also known as the Social Security Act, Chapter 7, subchapter XIX, Grants to States for Medical Assistance Programs; the Texas Medical Assistance Act, Texas Human Resources Code § 32.001, et seq.; the Sherman Antitrust Act, 26 Stat. 209(1890), codified as amended 15 U.S.C. §§ 1-7; The Clayton Antitrust Act, 38 Stat. 730(1914), codified as amended 15 U.S.C. §§ 12-27; and, the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1964.

DEFENDANTS

8. **The American Tobacco Company** is a Delaware corporation whose principal place of business is located at 1700 E. Putnam Avenue, Greenwich, Connecticut, and upon whom process may be served. The American Tobacco Company (ATC) manufactured, advertised and sold Lucky Strike, Pall Mall, Tareyton, Malibu, American, Montclair, Newport, Misty, Barclay, Iceberg, Silk Cut, Silva Thins, Sobrania, Bull Durham and Carlton cigarettes throughout the United States. On information and belief, the American Tobacco Company was purchased by Brown & Williamson who has succeeded to the liabilities of ATC by operation of law or as a matter of fact.
9. **R.J. Reynolds Tobacco Company** is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with an agent for service in the State of Texas, to-wit: Prentice-Hall Corporation System, 400 North St. Paul Street, Dallas, Texas 75201. R. J. Reynolds Tobacco Company is a wholly-owned subsidiary of RJR Nabisco, Inc. R.J. Reynolds Tobacco Company manufactures, advertises and sells Camel, Vantage, Now, Doral, Winston, Sterling Magna, More, Century, Bright Rite and Salem cigarettes throughout the United States.
10. **Brown & Williamson Tobacco Corporation ("B&W")** is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with an agent for service in the State of Texas, to-wit: C.T. Corporation Systems, 350 North St. Paul Street, Dallas, Texas 75201. Brown & Williamson Tobacco Corporation (B&W) manufactures, advertises and sells Kool, Barclay, Belair,

Capri, Raleigh, Richland, Laredo, Eli Cutter and Viceroy cigarettes throughout the United States.

11. **B.A.T. Industries P.L.C. ("B.A.T. Industries")**, prior to 1976 known as British American Tobacco Company Limited, is a British corporation with its principal place of business at Windsor House, 50 Victoria St., London, England. Through a succession of intermediary corporations and holding companies, B.A.T. Industries is the sole shareholder of B&W, British American Tobacco Co., Ltd. ("BATCo") and ATC. Through B&W, BATCo and ATC, B.A.T. Industries has placed cigarettes into the stream of commerce with the expectation that substantial sales of cigarettes would be made in the United States and in Texas. B.A.T. Industries through its agents, subsidiaries, associated companies, and/or co-conspirators, has also directed and conducted significant research for B&W on the topics of cigarette design, nicotine manipulation, smoking, disease and addiction. On information and belief, B&W also sent to England, research conducted in the United States on the topics of smoking, disease and addiction, in order to remove sensitive and inculpatory documents from United States jurisdiction, and such documents were subject to B.A.T. Industries' control. B.A.T. Industries is a participant in the conspiracy described herein, both individually and through its agents and alter egos, defendants B&W, BATCo and ATC, and has caused harm in Texas.
12. **Philip Morris, Inc. (Philip Morris U.S.A.)**, a subsidiary of Philip Morris Companies, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Virginia, with an agent for service in the State of Texas, to-

wit: C.T. Corporation Systems, 350 North St. Paul Street, Dallas, Texas 75201. Philip Morris, Inc. manufactures, advertises and sells Philip Morris, Merit, Cambridge, Marlboro, Benson & Hedges, Virginia Slims, Alpine, Dunhill, English Ovals, Galaxy, Players, Saratoga and Parliament cigarettes throughout the United States.

13. **Lorillard Tobacco Company, Inc.** is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with an agent for service in the State of Texas, to-wit: Prentice-Hall Corporation System, 400 North St. Paul Street, Dallas, Texas 75201. Lorillard Tobacco Company, Inc. is a subsidiary of Loews Corporation. Lorillard Tobacco Company, Inc. manufactures, advertises and sells Old Gold, Kent, Triumph, Satin, Max, Spring, Newport and True throughout the United States.
14. **United States Tobacco Company (UST)** is a Delaware corporation whose principal place of business is located at 100 West Putnam Avenue, Greenwich, Connecticut, and upon whom process may be served. United States Tobacco Company manufactured, advertised and sold Sano and Skis cigarettes and smokeless tobacco products throughout the United States.
15. **Hill & Knowlton, Inc.** is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with an agent for service in the State of Texas, to-wit: United Corporation Services, Inc., 466 Lexington Avenue, New York, New York. Defendant Hill & Knowlton, Inc. is an international public relations firm. Defendant Hill & Knowlton, Inc. played an active and knowing role in the conspiracy complained of, aiding the circulation

and/or publication of many false statements of the tobacco industry attributable to the Tobacco Institute Research Committee (TIRC) and the Council for Tobacco Research. Hill & Knowlton, Inc. has been the primary advertising agency responsible for dissemination of the false and misleading information in question in its capacity as the advertising and public relations agency for the Tobacco Institute, Inc. and the Cigarette Companies.

16. **The Council for Tobacco Research -- U.S.A., Inc.** (successor in interest to the Tobacco Institute Research Committee) is a non-profit corporation organized under the laws of the State of New York with its principal place of business located at 900 3rd Avenue, New York, New York 10022, and upon whom process may be served.
17. **The Tobacco Institute, Inc.** is a non-profit corporation organized under the laws of the State of New York whose agent for service of process in New York is C.T. Corporation, 1633 Broadway, New York, New York 10019, with its principal place of business located at 1876 "I" Street N.W., Suite 800, Washington, D.C. 20006.
18. **Liggett Group, Inc., (Liggett)** a subsidiary of the Brooke Group, Ltd. and operating successor of Liggett & Myers Tobacco Co. (Liggett & Myers), is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with an agent for service in the State of Texas, to-wit: Corporations Service Company, 100 Congress Avenue, Suite 1100, Austin, Texas 78701. Liggett Group, Inc. manufactures, advertises and sells Chesterfield, Decade, L&M, Pyramid, Dorado, Eve, Stride, Generic and Lark cigarettes throughout the



United States. For purposes of this Second Amended Complaint, Liggett is not a defendant but a non-defendant entity and participant in the wrongful acts set forth in this complaint.

19. The American Tobacco Company, R.J. Reynolds Tobacco Company; BATCo; B.A.T. Industries, P.L.C.; Brown & Williamson Tobacco Corporation; Philip Morris, Inc. (Philip Morris U.S.A.); Liggett Group, Inc.; Lorillard Tobacco Company, Inc.; and United States Tobacco Company are referred to hereinafter as the "Cigarette Companies."
20. The Council for Tobacco Research-U.S.A., Inc., (successor to the Tobacco Institute Research Committee) and the Tobacco Institute, Inc., collectively, are referred to hereinafter as the "Cigarette Trade Associations."
21. At all pertinent times, Defendants acted through their duly authorized agents, servants, and employees who were then acting in the course and scope of their employment and in furtherance of the business of said Defendants. At all pertinent times, the Cigarette Trade Associations and Hill & Knowlton, Inc. were the agents, servants, and/or employees of the Cigarette Companies - and acted within the scope of said agency, servitude and/or employment.
22. The Defendants listed above, and/or their predecessors and successors in interest, did business in the State of Texas; made contracts to be performed in whole or in part in Texas; and/or manufactured, tested, sold, offered for sale, supplied or placed in the stream of commerce, or, in the course of business, materially participated with others in so doing, cigarettes which the Defendants knew to be defective, unreasonably dangerous and hazardous, and which the Defendants

knew would be substantially certain to cause injury to the State, and to persons within the State, thereby negligently and intentionally causing injury to persons within the State of Texas and to the State, and as described herein, committed and continue to commit tortious and other unlawful acts in the State of Texas.

23. The Defendants and/or their predecessors and successors in interest, performed such acts as were intended to, and did, result in the sale and distribution of cigarettes in the State of Texas.
24. The term "addictive" used in this complaint is synonymous and interchangeable with the term "dependence - producing"; both terms refer to the persistent and repetitive intake of psychoactive substances despite evidence of harm and a desire to quit. Some scientific organizations have replaced the term "addictive" with "dependence - producing" to shift the focus to dependent patterns of behavior and away from the moral and social issues associated with addiction. Both terms are equally relevant for purposes of understanding the drug effects of nicotine.

**FACTUAL BACKGROUND: EVENTS LEADING TO  
DECEMBER 15, 1953 CONSPIRACY MEETING**

25. Although tobacco in various forms has been consumed by Americans for many centuries, it was not until the 19th century that an easily inhalable tobacco product, the cigarette, became widely popular. With the introduction of the Bonsack mechanized cigarette-rolling machine in 1884 by W. Duke and Sons, cigarettes were mass-produced and distributed and sold nationwide.
26. In 1881, Duke's factory produced 9.8 million cigarettes, 1-1/2 percent of the total market. But five years later, W. Duke and Sons were able to manufacture

744 million cigarettes, more than the national total in 1883. By 1890, Duke's competitors, who themselves had now become mechanized, joined forces with him to establish the American Tobacco Company. By the turn of the century, 9 out of every 10 cigarettes carried the Duke label. Shortly after the American Tobacco Company was formed, the State of North Carolina started an antitrust suit against it – and other such litigation followed. In May 1911, the American Tobacco Company was dissolved by order of the Supreme Court, to be succeeded by four large firms – Liggett and Myers, Reynolds, Lorillard, and American – plus many smaller ones.

27. The increased availability and consumption of cigarettes at the end of the 19th century corresponded with an increased incidence of lung disease and cancer.
28. The modern period of investigation into the question of smoking and health began about 1900 when an increase in what was by then recognized as cancer of the lungs was noted by vital statisticians.
29. Cigarette smoking increased dramatically in the first half of the 20th century. With the increase of cigarette smoking came an increase in lung cancer. Dr. Alton Ochsner, a New Orleans surgeon and regional medical director of the American Cancer Society, told an audience at Duke University on October 23, 1945, that "there is a distinct parallelism between the incidence of cancer of the lung and the sale of cigarettes...the increase is due to the increased incidence of smoking and that smoking is a factor because of the chronic irritation it produces."

30. In 1946, Tobacco Company chemists themselves reported concern for the health of smokers. A 1946 letter from a Lorillard chemist to its manufacturing committee states that "Certain scientists and medical authorities have claimed for many years that the use of tobacco contributes to cancer development in susceptible people. Just enough evidence has been presented to justify the possibility of such a presumption."
31. Despite the evidence showing their cigarettes caused lung disease and cancer, the Cigarette Companies failed to conduct any investigation of the smoking and health relationship for the safety of their customers. Instead, the Cigarette Companies chose sales over public health and safety. In the 1930s through the 1950s, in response to what industry spokesmen referred to as "the health scare", the Cigarette Companies made express claims and warranties as to the healthiness of their products with reckless disregard to the falsity of their claims and the consequential adverse impact on consumers. Examples of these health warranties include the following: Old Gold - "Not a cough in a Carload"; Camel - "Not a single case of throat irritation due to smoking Camels"; Philip Morris - "The Throat-tested cigarette."
32. In 1942, Brown and Williamson claimed that Kools would keep the head clear and/or give extra protection against colds.
33. In 1952, Liggett & Myers conducted a test for advertising purposes to demonstrate the absence of harmful effects of smoking Chesterfields on the nose, throat, and affected organs. The test was conducted by Arthur D. Little, Inc. and was designed so as to have no real scientific value. Nonetheless, its conclu-

sion that smoking Chesterfields had no harmful effect on the organs in question was widely publicized and the purported results used to assure the general public that Chesterfields were harmless.

34. During the 1950s, Liggett & Myers sponsored the nationally popular Arthur Godfrey radio and television show wherein health claims were made based on the alleged scientific studies assuring "smoking Chesterfields would have no adverse effects on the throat, sinuses or affected organs." Arthur Godfrey subsequently died from lung cancer caused by smoking cigarettes.
35. Earlier consumer-oriented messages from the 1930s and 1940s often carried wide-ranging medical claims that placed cigarette-touting physicians in the company of endorsers such as Santa Claus ("Luckies are easy on my throat"), movie stars, sports heroes, and steady-nerved circus stars. Similar advertisements and/or messages even appeared in medical journals, where they were directed solely at physicians. One, for example, touted the Camel cigarettes booth at the American Medical Association's 1942 Annual Meeting.
36. In the *New York State Journal of Medicine*, Chesterfield advertisements and/or messages began running in 1933. They often carried claims such as, "Just as pure as the water you drink... and practically untouched by human hands."
37. The Cigarette Companies sponsored cigarette advertisements and/or messages in the *New England Journal of Medicine*, *Journal of the American Medical Association* ("*JAMA*"), and *The Lancet* from the 1930s through the 1950s.
38. For 15 years, Philip Morris used various claims, including one it ran in *JAMA* in 1949: "Why many leading nose and throat specialists suggest, 'Change to

Philip Morris'..." In 1935, Philip Morris ran a message in the *New York State Medical Journal* touting studies that purportedly showed Philip Morris cigarettes were less irritating. An advertisement and/or message by the company in a 1943 issue of the *National Medical Journal* read: "Don't smoke, is advice hard for patients to swallow. May we suggest instead, 'Smoke Philip Morris?' Tests showed three out of every four cases of smokers' cough cleared on changing to Philip Morris. Why not observe the results for yourself?"

39. Other companies added different angles for physicians. Camel cigarettes paid tribute to medical pioneers and concluded: "Experience is the best teacher.... experience is the best teacher in cigarettes, too." Old Gold reacted to early negative medical studies with the slogan: "If pleasure's your aim, not medical claims..." Some companies hired attractive women to deliver cigarette samples to physicians and the patients in their waiting rooms.
40. The appearance of landmark studies such as the 1952 JAMA article on smoking and bronchial carcinoma by Alton Ochsner, M.D. and others prompted JAMA's decision to ban cigarette ads from their journal.
41. The health-claim advertisement and/or message campaigns by Defendants were patently false, misleading, deceptive and/or fraudulent. These campaigns were disseminated nationally in popular magazines, press, radio and television and were calculated to induce non-smokers to begin smoking and to induce smokers to continue in their addiction to their harm and injury and to the damage of the State.

42. During the 1950s the Cigarette Companies employed yet another method of deception in manufacturing and advertising to boost sales to counter the "health scare" – "The Filter Derby" and "Tar Wars". The Cigarette Companies manufactured filtered cigarettes that were advertised with explicit and/or implicit warranties of tar/nicotine content and health claims. The Cigarette Companies' health claims and claims as to the effectiveness of the filters in removing tar and nicotine were knowingly deceptive when made, and/or were made with reckless disregard for the health risks to the cigarette smokers.
43. In addition to conducting an industry-wide campaign of false health claim advertising during the 1930s and 1940s, certain Cigarette Companies engaged in antitrust violations that set the pattern for current violations.
44. The American Tobacco Company, Liggett & Myers Tobacco Company and R. J. Reynolds Tobacco Company are convicted violators of the Sherman Antitrust Act, 15 U.S.C. §§ 1 and 2.<sup>2</sup> In the 1930s and 1940s, ATC, Liggett & Myers and R.J. Reynolds, at that time the so-called "Big Three," had combined to restrain competition in order to control prices of leaf tobacco. The methods employed were 1) limitations and restrictions on the prices their buyers were permitted to pay for cigarettes; 2) maintenance of price ceiling agreements among them; 3) stabilization and fixing of prices through percentage buying; 4) formulation of certain grades of cigarettes so as to construct barriers to competition

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<sup>2</sup> ATC's conviction of antitrust violations was affirmed and a decree of dissolution ordered the 1911 by the Supreme Court, United States v. The American Tobacco Co., 221 U.S. 185. Included in the fourteen successor companies from ATC's break-up were ATC, Liggett & Myers, P. Lorillard Co., R.J. Reynolds Tobacco Co., and British-American Tobacco Co. ATC was convicted again of antitrust violations, along with Liggett & Myers and R. J. Reynolds Tobacco Co. in 1944. See American Tobacco Co. v. United States, 147 F.2d 93 (6th Cir. 1944), aff'd 328 U.S. 781 (1946).

and 5) combining to manipulate and raise the price of lower-grade cigarettes in order to eliminate competition from manufacturers of low-priced cigarettes.

45. By the 1950s, the Defendants had known for decades of the lethal dangers of smoking their cigarettes.
46. The course of history for the tobacco industry was forever changed in 1953. A 1953 report by Dr. Ernst L. Wynder disclosed to the scientific community and to the Cigarette Companies a definitive link between smoking and cancer. In these tests, researchers painted condensed cigarette smoke onto the backs of mice. As a result, the mice grew cancerous tumors. While previous statistical and epidemiological studies indicated a relationship between smoking and cancer, Dr. Wynder's study demonstrated a direct biological link between smoking and cancer. (Although Defendants have sought to discredit the Wynder findings, recently disclosed documents include a 1962 letter from Lorillard to Dr. Wynder regarding his work establishing smoking to be a carcinogen and the principal cause of lung cancer, which stated that Lorillard "considered [Dr. Wynder's] work above reproach, as usual.")

**THE MODERN CONSPIRACY ERA-**  
**DECEMBER 15, 1953 TO PRESENT**

47. In response to the publication of Dr. Wynder's study in 1953, the presidents of the leading cigarette manufacturers, including American Tobacco Co., R.J. Reynolds, Philip Morris, U.S. Tobacco Co., Lorillard, and Brown & Williamson Tobacco Corporation, conspired with the public relations firm of Hill and Knowlton, Inc., to form a monopolistic trust to deal with the "health scare" presented by smoking. Acting in concert at an industry strategy meeting on



December 15, 1953, at the Plaza Hotel in New York, the participants agreed to form a committee to orchestrate a public relations campaign to protect their cigarette market from the perceived threat posed by the adverse medical reports. This committee was designed to promote an offensive, pro-cigarettes stance to counter reports of health dangers caused by cigarettes. As a result of these efforts, the Tobacco Institute Research Committee (TIRC), an entity later known as the Council for Tobacco Research (CTR), was established.

48. Hill & Knowlton's notes from the December 15, 1953, meeting show that ATC executive Paul Hahn served as chairman. Defendants knowingly conspired to conceal illegal antitrust activity by avoiding the incorporation of a formal association; instead, they would work in informal committees within a front organization to be established and designated the Tobacco Institute Research Committee (later the CTR). The purpose of their meeting and conspiracy was to protect the cigarette market structure along the same lines and utilizing the same methods employed in their last such meeting in 1939, which resulted in the conviction of the "Big Three" under the Sherman Antitrust Act.
49. Although Liggett & Myers did not become a signatory member of the CTR until 1965, Liggett & Myers helped organize, support, aid and abet the conspiracy and illegal acts of the TIRC/CTR from the latter's inception through the present.
50. The TIRC immediately ran a full-page solemn advertisement and/or promise in more than 400 newspapers aimed at an estimated 43 million Americans. That

piece was entitled "A Frank Statement To Cigarette Smokers" and contained the following language:

RECENT REPORTS on experiments with mice have given wide publicity to a theory that cigarette smoking is in some way linked to 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 that any serious medical research, even though its 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:

1. That medical research of recent years indicates many possible causes of lung cancer.
2. That there is no agreement among the authorities regarding what the cause is.
3. That there is no proof that cigarette smoking is one of the causes.
4. That statistics purporting to link cigarette smoking with the disease could apply with equal force to any one of many 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 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:

1. 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.

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

3. 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.

51. In this advertisement and/or solemn promise, the participating Cigarette Companies recognized their "special responsibility" to the public and promised to learn the facts about smoking and health. The participating Cigarette Companies promised to sponsor independent research on the subject, claiming they would make health a basic responsibility, paramount to any other consideration in their business. The participating Cigarette Companies also promised to cooperate closely with public health officials. At the time these promises were made, Defendants had no intent to honor their promises. In fact, these promises so publicly and dramatically made to the public, the citizens of Texas and government regulators, have been breached over and over again.
52. After lulling the public into a false sense of security concerning smoking and health, the TIRC continued to act as a front for cigarette industry interests. Despite the initial public statements and posturing, and the repeated assertions that they were committed to full disclosure and vitally concerned with public health, the TIRC failed to make the public health a concern. Rather the TIRC, at the direction of the Cigarette Companies, acted to protect cigarette industry profits and failed to protect the public health. A coordinated, industry-wide strategy was designed to actively mislead and confuse the public about the true dangers associated with smoking cigarettes. Rather than work for the good of the public health and sponsor independent research, as it had promised, the Cigarette Companies, acting through the TIRC/CTR, concealed, undermined and distorted information coming from the scientific and medical community.

53. The Defendants, in their December 15, 1953, and subsequent meetings in forming, operating and maintaining the TIRC/CTR, knowingly replicated the framework of the "Big Three" combination in restraint of trade from the 1930s and 1940s by conspiring, agreeing and attempting to stabilize and protect their commodity's pricing structure from the "health scare" threat by, *inter alia*, 1) limiting and restricting scientific research and public dissemination of adverse product information or data from within the industry; 2) forming Ad Hoc Committees comprised of company lawyers to control jointly sponsored scientific research funded by and based upon market share percentages in order to further conspiratorial objectives and self-policing; 3) conducting an extensive disinformation campaign to contradict or neutralize legitimate science and health reports linking smoking with cancer and disease in order to stabilize and protect the cigarette market demand structure; 4) formulating combined and monopolistic opposition to any development and/or marketing of safer and/or alternative non-tobacco, non-nicotine, smoking devices by the conspirators or outsiders/non-conspirators; and 5) conspiring and combining to manipulate public and governmental awareness and responses to science adverse to the cigarette industry by a knowing, extensive and combined course of misrepresentation, deception and disinformation conducted via mail, wire, press, radio and television mediums, among others.
54. For purposes of this action, cigarettes constitute one relevant product market. The Cigarette Companies manufacture, ship and sell cigarettes throughout the United States. The market for health care, including provisions of medical

treatment and payment for such treatment, and medical and scientific research bearing upon the diagnosis, prevention and treatment of disease, constitutes another relevant market for the purposes of this action. Relevant geographic markets are the United States and the State of Texas.

55. The cigarette industry is highly concentrated, and has been one of the most concentrated industries in the United States throughout this century. Six cigarette companies dominate and control the market for cigarettes in the United States and Texas. These six cigarette companies – American Tobacco, R.J. Reynolds, Brown & Williamson, Philip Morris, Liggett, and Lorillard – have a combined market share of nearly 100% of the market.
56. This market concentration and lack of significant price competition has long enabled the cigarette industry to be one of the most profitable businesses in the United States.
57. The concentration in the industry has also benefited the Cigarette Companies and the Cigarette Trade Associations in their combination and conspiracy to control and maintain the market for cigarettes and other tobacco products.
58. All of the Defendants herein have acted pursuant to their conspiracy and agreement from 1953 without interruption until the present. Brown and Williamson, Liggett, Lorillard, Philip Morris, and the Tobacco Institute acted in furtherance of their conspiracy in their January 1996 joint submission of twelve volumes in opposition to the 1995 proposed regulations of cigarettes and nicotine by the FDA. In this joint submission, Defendants perpetuate their disinformation campaign by denying that nicotine is a drug, by denying that ciga-

rettes or smokeless tobacco are drug delivery devices, and by denying that nicotine in tobacco products is addictive.

59. The public disinformation strategy employed by the Cigarette Companies and the Cigarette Trade Associations was a strategy best described as "see no evil, hear no evil, and speak no evil" concerning the health effects of cigarette smoking. A publication called *Tobacco and Health* (later, *Tobacco and Health Research*) was created by the Cigarette Companies and the Cigarette Trade Associations and was used by them to disseminate false information and create confusion over the causal connection between cigarette smoking and disease. It was distributed to the press, doctors, and health officials. The "Criteria For Selection" of articles for publication included an example of "a report in which smoking-associated diseases are questioned."
60. The January 15, 1968, issue of *True Magazine* contained an article written by Stanley Frank called, "To Smoke or not to smoke—that *is still* the Question." The article dismissed the evidence against smoking as "inconclusive and inaccurate', and claimed that "Statistics alone link cigarettes with lung cancer... it is not accepted as scientific proof of the cause and effect." A few months later, a similar but shorter article appeared in the *National Enquirer* entitled "Cigarette Cancer Link is Bunk" written by "Charles Golden" (a fictitious name commonly used by the *Enquirer*.) The real author was Stanley Frank. Two million reprints of the *True Magazine* article were distributed to physicians, scientists, journalists, government officials, and other opinion leaders with a small card which stated, "As a leader in your profession and community, you will be in-

terested in reading this story from the January issue of *True Magazine* about one of today's controversial issues." The cost for this was paid by Brown and Williamson, Philip Morris and R. J. Reynolds. It was subsequently disclosed that author Frank had been paid \$500 to write the article by Joseph Field, a public relations professional working for Brown and Williamson. Brown and Williamson reimbursed Field for that amount.

61. Other public statements by the Defendants over the years have repeated the misrepresentations that the industry was dedicated to the pursuit and dissemination of the scientific truth regarding smoking and health.
62. For example, the Tobacco Institute in 1970 ran an advertisement and/or message captioned "A Statement About Tobacco and Health," which stated:
  - a. "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."
  - b. "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."
  - c. "Scientific advisors informs 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."
  - d. "We shall continue all possible efforts to bring the facts to light."
63. Also, in 1970, the Tobacco Institute ran an advertisement or message captioned, "The question about smoking and health is still a question." In this advertisement and/or message, the Tobacco Institute stated:



- a. "[A] major portion of this scientific inquiry has been financed by the people who know the most about cigarettes and have a great desire to learn the truth... the tobacco industry."
  - b. "[T]he industry has committed itself to this task in the most objective and scientific way possible".
  - c. "In the interest of absolute objectivity, the tobacco industry has supported totally independent research efforts with completely non-restrictive funding."
  - d. "Completely autonomous, CTR's research is directed by a board of ten scientists and physicians...This board has full authority and responsibility for policy, development and direction of the research effort."
  - e. "The findings are not secret."
  - f. "From the beginning, the tobacco industry has believed that the American people deserve objective, scientific answers."
64. Again, in 1970, the Tobacco Institute stated, "The Tobacco Institute believes that the American public is entitled to complete, authenticated information about cigarette smoking and health." The Tobacco Institute further stated that, "The tobacco industry recognizes and accepts a responsibility to promote the progress of independent scientific research in the field of tobacco and health."
65. In direct contrast to what the Defendants were telling the public, a memo from Tobacco Institute vice president Fred Panzer to president Horace Kornegay dated May 1, 1972, acknowledges that the industry had employed a single strategy for nearly 20 years to defend itself on three major fronts: litigation, politics, and public opinion. This strategy consisted of "creating doubt about the health charge without actually denying it-- advocating the public's right to smoke, without actually urging them to take up the practice--encouraging objective scientific research as the only way to resolve the question of health hazard." Pan-

zer said this strategy had been successful on the litigation front and had "helped make possible an orderly retreat" on the political front, but that the situation had deteriorated on the public-opinion front. To remedy the public-opinion problem, he proposed that the industry supply the public with "ready-made credible alternatives" to the prevalent view that smoking causes cancer, such as genetic and environmental explanations for smoking-related diseases.

66. The Cigarette Companies, through the Cigarette Trade Associations, intentionally breached their promises to the American public, to the citizens of Texas and to the State to study and report independently and honestly on the health effects of smoking. Defendants caused the cancellation of press conferences where their scientists sought to inform the public, actively and wrongfully suppressed the publishing of reports concerning the health dangers presented by cigarette smoking, attacked research linking smoking to disease, and threatened professionally the researchers themselves. Their scientists were not allowed to "freely publish what they find as they choose" as a CTR director once claimed.
67. Numerous scientists formerly employed by the Cigarette Companies and the Cigarette Trade Associations have spoken out against the suppression of scientific data and the practice of deception known to exist in the tobacco industry generally. For example, in April of 1994, Dr. Victor DeNoble, a former research scientist for Philip Morris, Inc., testified before the United States House of Representatives Health & Environment Subcommittee that the Philip Morris Company in 1983 suppressed and refused to allow him or his colleague, Dr. Paul Mele, to publish or to talk publicly about the research that they had con-

ducted with respect to nicotine tolerance in rats, the potentially addictive nature of nicotine in rats, and research with respect to synthetic nicotine substances. Dr. DeNoble testified that his research demonstrated that the animals would administer nicotine to themselves and that this fact indicated that nicotine had the potential to be addictive. Dr. DeNoble testified that the focus of his research was nicotine's effect on the brain, not nicotine's effect on the flavor of tobacco in cigarettes. He further testified that his laboratory was closed and his research was terminated following the filing of a lawsuit by Rose Cipollone against Philip Morris and other cigarette companies.

68. In a similar vein, Liggett & Myers, while publicly refusing to acknowledge the validity of Dr. Wynder's tests, hired the consulting firm of Arthur D. Little, Inc. to duplicate Dr. Wynder's tests. Defendant Lorillard Corporation also duplicated Dr. Wynder's mouse tests. The results of the duplicated tests were essentially the same as Dr. Wynder's, and both Liggett & Myers and Arthur D. Little became aware by 1954 of the cancer-causing propensity of cigarettes. A Liggett & Myers researcher requested that the results of this testing be published, but Liggett & Myers would not allow it. In furtherance of the conspiracy objectives of the TIRC, the results of these additional tests were never made public.
69. The vast body of credible medical and scientific evidence identifies smoking as the leading cause of lung cancer. Cigarette industry scientific consultants also have accepted the causal association between smoking and disease.

**SAFER CIGARETTES SUPPRESSED**

70. The Cigarette Companies could have designed, manufactured and marketed a safer cigarette, but refused to do so. The need for a "safer" cigarette results from the harmful chemical compounds occurring in cigarettes and/or formed as a result of burning. These compounds include carbon monoxide, nicotine, nickel, carbon dioxide, benzene, hydrazine, formaldehyde, Polonium-210, ammonia, nicotine sulfate, Freon II, hydrogen cyanide and certain liver toxins known collectively as furans. More than forty (40) known carcinogens are found in cigarette tobacco. The Cigarette Companies artificially add chemicals and flavorings to their products that increase toxicity and/or carcinogenicity.
71. At Liggett & Myers, Dr. James Mold conducted tests to divide the components of cigarette smoke into separate entities and to interrupt the process that produces carcinogens by using a catalyst. Liggett & Myers researchers were able to produce a so-called "safer" cigarette, designated as the "XA Project" that eliminated the carcinogenic activity on mouse skin. However, Liggett & Myers did not want to be identified publicly as the source of the research behind this non-carcinogenic "safer" cigarette.
72. Liggett & Myers instructed its researchers that any meetings held that pertained to the "safer" cigarette project were to be attended by a lawyer and that all reports, notes or memoranda should go to the Liggett & Myers legal department. The "safer" cigarette was never marketed.
73. Liggett abandoned its XA Project for two apparent reasons. One was that Liggett feared that the marketing of a "safer" cigarette would be, in essence, a con-

cession that its – and the industry's – other cigarettes were not safe. Second, industry leader Philip Morris threatened to retaliate against Liggett if it broke ranks with the industry conspiracy.

74. Dr. Mold, who was assistant director of research at Liggett during the development of the safer cigarette, has provided the following overview of the XA Project and its abandonment:

- a. Dr. Mold stated that the XA project produced a safer cigarette. He stated, "We produced a cigarette which was, we felt, commercially acceptable as established by some consumer tests, which eliminated carcinogenic activity..."
- b. Dr. Mold stated that after 1975, all meetings on the project were attended by lawyers. Lawyers collected notes after all meetings. All documents were directed to the law department to cloak the documents with the attorney-client privilege. He stated, "Whenever any problem came up on the project, the Legal Department would pounce upon that in an attempt to kill the project, and this happened time and time again."
- c. Dr. Mold was asked why Liggett didn't market a safer cigarette. He stated,

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

75. A memorandum authored by an attorney at the firm of Shook, Hardy & Bacon, long-time lawyers for the cigarette industry, confirmed the industry-wide position regarding the issue of a safer cigarette.
76. The 1987 memorandum was written in the context of the marketing by R.J. Reynolds of a smokeless cigarette, Premier, that heated rather than burned tobacco. The Shook, Hardy attorney wrote that the smokeless cigarette could "have significant effects on the tobacco industry's joint defense efforts" and "(t)he industry position has always been that there is no alternative design for a cigarette as we know them." The attorney also noted that, "Unfortunately, the Reynolds announcement... seriously undercuts this component of industry's defense."

#### TOBACCO, NICOTINE AND DEPENDENCY

77. The cigarettes manufactured and sold by the Cigarette Companies contain nicotine, a highly addictive substance. The Defendants know of the difficulties smokers experience in quitting smoking and of the tendency of addicted individuals to focus on any rationalization to justify their continued smoking. The Defendants exploit this weakness and capitalize upon the known addictive nature of nicotine. An internal cigarette industry memo acknowledged in 1972: "(w)ithout nicotine...there would be no smoking...the cigarette (is) a dispenser for a dose unit of nicotine." Nicotine addiction guarantees a market for cigarettes. The addictive nature of the nicotine in cigarettes virtually eliminates personal choice in those who become addicted.

78. The industry's recognition of the extent to which nicotine – and not tobacco – defines its product is illustrated in a 1972 Philip Morris report on a CTR conference, which stated:

As with eating and copulating, so it is with smoking. The physiological effect serves as the primary incentive; all other incentives are secondary. The majority of the conferees would go even further and accept the proposition that nicotine is the active constituent of cigarette smoke. Without nicotine, the argument goes, there would be no smoking.

...

Why then is there not a market for nicotine per se, eaten, sucked, drunk, injected, inserted or inhaled as a pure aerosol? The answer, and I feel quite strongly about this, is that the cigarette is in fact among the most awe-inspiring examples of the ingenuity of man. Let me explain my conviction.

...

The cigarette should be conceived not as a product but as a package. The product is nicotine.

...

Think of the cigarette pack as a storage container for a day's supply of nicotine...Think of the cigarette as a dispenser for a dose unit of nicotine.

79. In 1962, the scientific advisor to the board of directors of British American Tobacco Company, now B.A.T. Industries, Brown & Williamson's parent company, stated that "smoking is a habit of addiction" and that "[n]icotine is not only a very fine drug, but the technique of administration by smoking has considerable psychological advantages . . ." He subsequently described Brown & Williamson as being "in the nicotine rather than the tobacco industry."

80. Documents from a B.A.T. Industries' study called Project Hippo, uncovered only in May 1994, show that as far back as 1961, the cigarette company was actively studying the physiological and pharmacological effects of nicotine. Project Hippo reports were secretly circulated to other U.S. cigarette manufacturers and to the TIRC. B.A.T. Industries sent the reports to the officials of Brown & Williamson and R.J. Reynolds, and circulated a copy to TIRC with a request that TIRC "consider whether it would help the U.S. industry for these reports to be passed on to the Surgeon General's Committee."
81. Brown & Williamson failed to make disclosure of its research to the Surgeon General. A series of six letters and telexes exchanged by Yeaman and senior B.A.T. Industries' official A.D. McCormick between June 28 and August 8, 1963, document the company's decision not to disclose its research findings to the Surgeon General. That research, some of which was later characterized in a report in the Journal of the American Medical Association as "at the cutting edge of nicotine pharmacology," preceded the main published reports from the general scientific community by several years.
82. The industry has developed sophisticated technology to control the levels of nicotine in cigarettes in order to maintain its market. David A. Kessler, M.D., Commissioner of Food and Drugs, recently testified before a congressional committee that cigarette manufacturers can manipulate precisely nicotine levels in cigarettes, manipulate precisely the rate at which the nicotine is delivered in cigarettes, and add nicotine to any part of cigarettes.



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

Accumulating evidence suggests that cigarette manufacturers may intend this result – that they may be controlling the levels of nicotine in their products in a manner that creates and sustains an addiction in the vast majority of smokers.

...

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

...

[T]he public thinks of cigarettes as simply blended tobacco rolled in paper. But they are much more than that. Some of today's cigarettes may, in fact, qualify as high technology nicotine delivery systems that deliver nicotine in precisely calculated quantities – quantities that are more than sufficient to create and to sustain addiction in the vast majority of individuals who smoke regularly.

...

[T]he history of the tobacco industry is a story of how a product that may at one time have been a simple agricultural commodity appears to have become a nicotine delivery system.

...

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

...

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

...

[S]ince the technology apparently exists to reduce nicotine in cigarettes to insignificant levels, why, one is led to ask, does the industry keep nicotine in cigarettes at all?

...

84. In a subsequent appearance before Congress, Dr. Kessler testified that one manufacturer, Brown & Williamson, had developed a tobacco plant, code-named Y-1, with perhaps twice the nicotine content of regular tobacco. Brown & Williamson manufactured and marketed cigarettes with Y-1 tobacco in the United States in 1993.
85. The story of Brown & Williamson's development of Y-1 is one of the more egregious examples of the cigarette industry's concealment of its control and manipulation of the nicotine levels in its products.
86. On June 21, 1994, Dr. Kessler told the Waxman Subcommittee that FDA investigators had discovered that Brown & Williamson had developed a high nicotine tobacco plant, which the company called Y-1. This discovery followed Brown & Williamson's flat denial to the FDA on May 2, 1994, that it had engaged in "any breeding of tobacco for high or low nicotine levels."
87. When four FDA investigators visited the Brown & Williamson plant in Macon, Georgia on May 3, 1994, Brown & Williamson officials denied that the company was involved in breeding tobacco for specific nicotine levels. Only after the FDA had learned of the development of Y-1 in its investigation and confronted company officials with the evidence, did the company admit that it was growing and using the high-nicotine plant.

88. In fact, in a decade-long project, Brown & Williamson and B.A.T. Industries secretly developed a genetically engineered tobacco plant with a nicotine content more than twice the average found naturally in flue-cured tobacco. Brown & Williamson took out a Brazilian patent for the new plant, which was printed in Portuguese.
89. At the direction of B.A.T. Industries, through secret meetings of the Tobacco Strategy Review Team in London chaired by the Chairman and CEO of B.A.T. Industries, Brown & Williamson and a Brazilian sister company, Souza Cruz Overseas grew Y-1 in Brazil and shipped it to the United States where it was used in five Brown & Williamson cigarette brands sold in Texas, including three labeled "light." When the company's deception was uncovered, company officials admitted that close to four million pounds of Y-1 were stored in company warehouses in the United States.
90. As part of its cover-up, Brown & Williamson even went so far as to instruct the DNA Plant Technology Corporation of Oakland, California, which had developed Y-1, to tell FDA investigators that Y-1 had "never [been] commercialized." Only after the FDA discovered two United States Customs Service invoices indicating that "more than a half-million pounds" of Y-1 tobacco had been shipped to Brown & Williamson on September 21, 1992, did the company admit that it had developed the high-nicotine tobacco.
91. Y-1 is one example of an overall trend in the cigarette industry to increase the nicotine content and/or impact of its products.

92. As a result of the industry's actions, as many as 74% to 90% of smokers are addicted. Eight out of ten smokers say they wish they had never started smoking. Two-thirds of adults who smoke say they wish they could quit. Seventeen million try to quit each year, but fewer than one out of ten succeed. A high percentage of the smokers who have had surgery for lung cancer or heart attacks return to smoking, as do 40% of smokers who have had their larynxes removed.
93. Beyond its addictive qualities, nicotine is believed to contribute to cardiovascular disease and death – a fact known to the cigarette industry for many years.
94. Brown & Williamson and its parent company, British American Tobacco Company, Limited, now B.A.T. Industries, researched the health effects of nicotine and were aware early on, as reported at a B.A.T. Group Research Conference in November 1970, that “nicotine may be implicated in the aetiology [cause] of cardiovascular disease . . . .”

**DECEIT AND FRAUD-A CONTINUING CONSPIRACY  
AND COMBINATION IN RESTRAINT OF TRADE**

95. The general counsel of the major cigarette manufacturers, through joint meetings to review and direct proposals for scientific research for the entire industry, aided in the conspiracy of the tobacco industry to defraud the public on the issue of cigarettes and health.
96. The cigarette industry's combination in restraint of trade was also referred to as the "gentlemen's agreement." The "gentlemen's agreement" among the manufacturers was to suppress independent research on smoking and health. This agreement was referenced in a 1968 internal Philip Morris draft memo, which

states, "We have reason to believe that in spite of gentlemens (sic) agreement from the cigarette industry in previous years that at least some of the major companies have been increasing biological studies within their own facilities." This memo also acknowledged that cigarettes are inextricably intertwined with the health field, stating, "Most Philip Morris products both tobacco and non-tobacco are directly related to the health field."

97. The industry believed that individual companies were performing certain research on their own in addition to the joint industry research. But the fundamental understanding and agreement remained intact: any harmful information and activities would be restrained, suppressed and/or concealed. This secret agreement included restraining, suppressing and concealing research on the health effects of smoking, including the addictive qualities of nicotine, and restraining, concealing and suppressing the research and marketing of safer cigarettes.
98. The Defendants designed a litigation strategy over the years to conceal, delay and to run up consumers' expenses in a war of attrition. For example, a memo written by J. Michael Jordan, an attorney for Defendant R.J. Reynolds Tobacco Company, noted:

"(T)he aggressive posture we have taken regarding depositions and discovery in general continues to make these cases extremely burdensome and expensive for plaintiffs' lawyers, particularly sole practitioners. To paraphrase General Patton, the way we won these cases was not by spending all of Reynolds' money, but by making that other son of a bitch spend all his."

99. Additionally, corporate officials of the Cigarette Companies and the Cigarette Trade Associations have attempted wrongfully to create a privilege for various

documents that they wish to conceal by sending such documents through their legal departments and law firms in order that they might claim the documents to be protected by the attorney-client or attorney work-product privileges. A "Special Projects" division within CTR was set up to conceal research that was harmful to the cigarette industry and to promote and develop research and expert witnesses needed for the defense of tort litigation. Incriminating reports and documents contained within this division were passed through attorneys and are now claimed by the Defendants to be privileged.

100. The industry has congratulated itself on a brilliantly conceived and executed strategy to create doubt about the charge that cigarette smoking is deleterious to health without actually denying it. A 1962 memo stated that they had handled the "emergency" (of the Wynder report) effectively by treating the public health threat as a public relations problem that was solved for the self-preservation of the industry's image and profit. One Defendant's executive called the CTR the best, cheapest insurance the tobacco industry could buy, noting that without it the Cigarette Companies would have to invent CTR or would be dead.
101. Not content with the holding strategy employed by the TIRC and the CTR, the Cigarette Companies advocated a more offensive role through their lobbying arm, the Tobacco Institute (TI). This tobacco industry-supported group actively seeks to increase doubt about the negative health effects of smoking by suggesting that there are alternative explanations to the data. One "theory" detailed how individual genetic makeups predisposed individuals to illness. An-

other, the "multi-factorial hypothesis," asserted that multiple factors should be blamed, i.e., food additives, viruses, occupational hazards, air pollution or stress, for causing cancer. The cigarette industry financed, supported and encouraged the manufacture of fraudulent science.

102. However, evidence began to surface concerning the Defendants' illegal scheme. On February 6, 1992, United States District Court Judge H. Lee Sarokin for the District of New Jersey issued an opinion in Haines v. Liggett Group, Inc., Civ. Action 84-678. After reviewing 1500 documents *in camera*, Judge Sarokin noted that "In 1954, the tobacco industry promised to disseminate the results of industry-sponsored, independent scientific research for the purpose of answering the question: "Does cigarette smoking cause illness?" To fulfill its promise, the tobacco industry proffered the allegedly "independent research organization, the Council for Tobacco Research (the 'CTR'), which purportedly would examine the risks of smoking and report its findings to the public." After his review of the withheld documents, Judge Sarokin concluded:

Despite the industry's promise to engage independent researchers to explore the dangers of cigarette smoking and to publicize their findings, the evidence clearly suggests the research was not independent; that potentially adverse results were shielded under the caption of "special projects;" that the attorney-client privilege was intentionally employed to guard against such unwanted disclosure; and that the promise of full disclosure was never meant to be honored, and never was.

As a result of this finding, Judge Sarokin noted:

A jury might reasonably conclude that the industry's announcement of proposed independent research into the dangers of smoking and its promise to disclose its findings was nothing but a public relations ploy – a fraud – to deflect the growing evidence against the industry, to encourage smokers to continue and non-

smokers to begin, and to reassure the public that adverse information would be disclosed.

103. Undaunted by Judge Sarokin's findings, in April, 1994, tobacco company executives asserted, under oath, that cigarettes do not cause cancer, that nicotine is not addictive and that cigarette advertising does not target new smokers. Judge Sarokin's earlier written opinion in Haines is still valid for describing the Defendants: "...despite some rising pretenders, the tobacco industry may be the king of concealment and disinformation." Recently, the fight to uncover the truth has been joined by the Food and Drug Administration (FDA).
104. On February 25, 1994, David A. Kessler, M.D., former Commissioner of the FDA, sent a letter to Scott D. Ballin, Chairman of the Coalition on Smoking Or Health, asserting:

Evidence brought to our attention is accumulating that suggests that cigarette manufacturers may intend that their products contain nicotine to satisfy an addiction on the part of some of their customers. The possible inference that cigarette vendors intend cigarettes to achieve drug effects in some smokers is based on mounting evidence we have received that: (1) the nicotine ingredient in cigarettes is a powerfully addictive agent and (2) cigarette vendors control the levels of nicotine to satisfy this addiction.
105. In response to Dr. Kessler's letter, on March 15, 1994, in a letter to *The New York Times*, James W. Johnston, Chairman and Chief Executive Officer of R.J. Reynolds, continued to assert that nicotine was not addictive. Johnston based his assertion upon the success rate of American adults who had quit smoking.
106. The Chief Executive officers of The American Tobacco Company, R.J. Reynolds Tobacco Company, Brown & Williamson Tobacco Corporation, Philip Morris, Inc., Lorillard and Liggett Group, Inc. all testified under oath before



the same Subcommittee in April of 1994 that they believed nicotine is not addictive.

107. The recent disclosures of the sworn testimony of a former research chief for Brown & Williamson Tobacco Corporation, Dr. Jeffrey S. Wigand, and former Philip Morris scientists Jerome Rivers, Dr. Ian L. Uydess and Dr. William A. Farone, directly contradict the Cigarette Companies' CEOs' testimony regarding addiction, as well as the industry's denial of nicotine manipulation.

#### TARGETING CHILDREN

108. For many years, the Defendants have engaged in a vast and misleading promotional, public relations and sham lobbying blitz that had as its goal increasing the numbers of people addicted to nicotine in cigarettes and decreasing the number of people who attempt or succeed in quitting. Their efforts have been and continue to be directed toward children. They have done so and continue to do so in contravention of their duty not to make false statements of material fact and their duty not to conceal such true facts from the public. At the cost of countless lives, the Defendants spend billions of dollars every year misleading the public and promoting the myth that smoking cigarettes do not cause cardiovascular disease, lung and other cancers, emphysema and other diseases and that smokers live healthy and vital lives. The Defendants have at all pertinent times presented and promoted smoking as an attractive, glamorous, youthful and relaxing pastime, associating it with movie stars, athletes and successful professionals.

109. Every day more than 1,200 cigarette smokers die of cigarette-related diseases. Others manage to break their addiction to nicotine and quit. In order to prevent a precipitous decline in cigarette sales, the Cigarette Companies must attract more than 3,000 new smokers each day. Children and teenagers have become the main target, and as a result of the Cigarette Companies' fraudulent and false advertising, more than 3,000 of them begin the habit every day.
110. The Defendants specifically target children. By way of example, the Joe Camel campaign waged by Defendant R.J. Reynolds Tobacco Company is intended to and has had great appeal to children. More than one million new underage smokers become addicted in the United States each year. Such efforts by the Defendants create more sales for the cigarette industry and more resulting health care costs for the State.
111. As previously alleged, the Defendants have engaged in a concerted effort to circumvent and violate the laws of the State of Texas by targeting children with sophisticated promotional schemes designed to create successive generations of addicted customers. As a result of Defendants' campaigns, it is virtually impossible for parents or law enforcement resources to control the efforts of the Defendants to make children smokers.
112. Despite the best efforts of parents, educators and the medical profession, smoking among young people has remained alarmingly constant since the late 1970s. Cigarette Companies use advertising to create a mental image associating smoking with health, glamorous and athletic lifestyles and with success and sexual attractiveness. Their advertising and marketing campaigns increase demand for

cigarettes among young people. The ease with which children and teenagers can obtain cigarettes from vending machines assures that there is a ready supply to meet this demand. Results of a Texas state-wide vending machine survey show children are successful in their attempts to purchase cigarettes 90% of the time. It has been shown repeatedly that cigarette vending machines (even those located in bars and other supposedly adult locations) are readily available to children. Within a short period of time, the young smoker becomes physiologically and emotionally dependent, i.e., addicted to tobacco. Later, as the maturing smoker begins to wish he or she could quit, advertising reinforces the practice and seeks to minimize health concerns, create doubt and confusion, which are used by smokers as an excuse to avoid the pain and discomfort of attempting to break their addiction to nicotine.

113. The advertising imagery used to promote smoking among young people particularly appeals to those with low self-esteem and emotional insecurity. Once the young person has been predisposed toward smoking, a variety of factors can precipitate actual experimentation. For many young people, the precipitating factor is being given a free pack of cigarettes by a tobacco company representative, or purchasing cigarettes in order to obtain an attractive T-shirt, baseball cap, or other gimmick used to promote cigarette smoking.
114. One of the best examples of this was the transformation of Marlboro cigarettes from a red-tipped cigarette for women to the cigarette for the 'macho cowboy'. By changing advertising imagery, Philip Morris was able to tap into a wholly new and different market. In 1950, R.J. Reynolds was the king of the cigarette

business. It sold more cigarettes than any other company. Philip Morris, though doing well on the basis of its fraudulent health-oriented advertising, was still far behind. In 1981, Philip Morris overtook R.J. Reynolds and each year has extended its lead by developing an effective marketing campaign for recruiting young new smokers to its brands. The wild spirit of the Marlboro Man captured the adolescent imagination. The children who started smoking Marlboro became tenaciously loyal customers. Soon, Marlboro became the "gold standard" of cigarettes among teenagers. Through the year 1988, nearly three-fourths of teenage smokers used Marlboro.

115. At about the time it lost market leadership to Philip Morris, R.J. Reynolds dedicated itself to a ruthless advertising campaign encouraging children and teenagers to smoke. One of the key elements of the R.J. Reynolds' strategy for attracting children was to reposition many of its cigarette brands to younger audiences. Just as Marlboro was repositioned from the women's market to the macho male market by a new advertising campaign, R.J. Reynolds has positioned its cigarette advertising campaigns to younger and younger audiences using a succession of advertising images of men engaged in extraordinary feats of physical and athletic achievements.

116. R.J. Reynolds' Vantage cigarettes entered the 1980s as a brand targeted at the health-conscious adult smoker. Advertisements were intended to assuage fears of lung cancer and other diseases and give the concerned smoker arguments for rationalizing their continuation of the addiction. Through multiple-advertising transmogrifications, Vantage cigarettes have been progressively repositioned to

ever-younger audiences. During the mid-1980s, this advertising campaign featured young, successful professionals (including architects, fashion designers, lawyers, etc.) with the slogan "The Taste of Success." These ads promoted the implication that smoking is helpful-if not essential-to success or prominence. In the late 1980s, the advertising theme for Vantage cigarettes began to feature professional-caliber athletes and auto racers. These advertisements depict physical activity requiring strength or stamina beyond that of everyday activity. Defendants sought to imply that smoking is not harmful.

117. During the 1980s, advertising for Salem cigarettes also became more youth-oriented. Whereas the dominant advertising theme for Salem cigarettes used to be clean, fresh country air during the 1980s, Salem ads became populated by muscular surfers and bikini-clad women, fun-loving "party animals" and other attractive adolescent role models. Another successful advertising campaign targeted at young people is the Lorillard Tobacco Company campaign promoting Newport cigarettes. Newport ads frequently show men and women in sexually suggestive positions always having fun, using the slogan "Alive With Pleasure."
118. Another successful advertising campaign has been the "You've Come A Long Way Baby" campaign promoting Virginia Slims cigarettes. One of the most important psychological needs of most adolescent girls is to become independent from their parents. By associating smoking with women's liberation, Philip Morris intended to create in the minds of teenage girls the vision of smoking as a symbol of autonomy and independence. Ads for Virginia Slims and other "feminine" cigarettes prey upon the natural and common insecurity and sense

of inferiority experienced by adolescents by portraying the cigarette as a crutch and a symbol of superiority and sophistication. Perhaps the most acute psychological need of adolescence is to fit in, to be accepted, to be popular. Ads for Philip Morris' Benson & Hedges cigarettes developed an image of smoking as a happy pleasure to be shared in the company of others and the easy road to instant acceptance within a group.

119. In today's culture many teenage girls perceive that a prerequisite to popularity is to be thin. Philip Morris and other Cigarette Companies capitalize upon this perception by presenting cigarette smoking as a suitable alternative to a diet for being thin. Virtually every "feminine" cigarette includes words like slim, light, super slim, ultra light, etc. The photographic imagery in cigarette advertising that targets young females universally portrays attractive young women in glamorous outfits. Smoking is thus associated with being sexy and beautiful. In cigarette ads, the air is fresh and clear; magical things happen. The reality is that cigarette smoking causes addiction, disease and death.
120. Many teenage boys fantasize about owning a powerful motorcycle. For this reason, many cigarette brands have used motorcycle imagery to encourage teenage boys to smoke. Many cigarette ads that target young boys glamorize high risk activities like hang gliding, motorcycle racing, mountain climbing, etc. Cigarette makers do this deliberately to undermine awareness that smoking is dangerous. In its campaign to attract adolescent boys to become smokers, the R.J. Reynolds Tobacco Company has made extensive use of risk-taking and danger in its advertising. By glorifying risk-taking, these ads have a more insidious