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TO: DISTRIBUTION **DATE:** February 17, 1995
FROM: Marge Arwady
SUBJECT: **C. I. ALERT: Castano Ruling and RJR Response**

Following is: the Business Wire SUMMARY OF THE COURT'S ORDER, (2) the most recent Associated Press wire story, (3) RJR's Statement in Response to the Court's ruling, and (4) the Business Wire report, including the Court's Certification Order.

CASTANO TOBACCO LITIGATION--SUMMARY OF THE COURT'S ORDER

Judge Okla Jones of the United District Court for the Eastern District of Louisiana has certified the largest class in the history of the law. The Court has said that a class consisting of all nicotine dependent people in the United States, its territories and possessions may proceed to trial against the tobacco industry.

Judge Jones defined nicotine dependent as cigarette smokers who have been diagnosed by a medical practitioner as nicotine dependent and those cigarette smokers who have been advised by a medical practitioner that smoking has had or will have adverse health consequences and do not thereafter quit.

The 34 page order issued by the Court specifically found that there are common factual issues which may be appropriately tried in a class action including: whether the defendants knew that cigarette smoking was addictive, whether they failed to inform cigarette smokers of the addictive nature of their products and whether the defendants took actions to addict smokers.

The judge's order gives the Castano plaintiffs the go-ahead to prove that the tobacco industry is liable to millions of nicotine dependent smokers for fraud, deceit, breach of warranty, negligence and violations of consumer protection laws. The order also allows the Castano plaintiffs to try the issue of punitive damages in their class action; this means that the jury in that case will be allowed to evaluate the egregiousness of the defendants' conduct and, if warranted, to award damages intended to punish the defendants for that conduct.

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ASSOCIATED PRESS REPORT:

"Judge Rejects Tobacco Company Attempt to Limit Lawsuit"

New Orleans--Tobacco companies lost a bid Friday to limit claims in a fraud suit that accuses them of covering up knowledge that nicotine is addictive. However, smokers' attorneys did not get all they wanted.

"This is a case in which plaintiffs claim that defendants' acts reached throughout the nation to addict cigarette smokers and keep them addicted," U.S. District Judge Okla Jones II wrote. He certified claims including fraud, negligence and punitive damage as a class action for tens of millions of smokers around the country. A decision on those questions will move the trial forward substantially, he said.

However, he said, many issues, including claims of actual damage, must be tried individually. Moreover, the class certification is conditional; he may reconsider it later.

"We won," said John P. Coale, one of about 100 attorneys who filed the suit for four New Orleans residents: a smoker's widow and three smokers who say addiction stymied their repeated attempts to quit.

R.J. Reynolds Tobacco Co., one of the companies accused of covering up information about nicotine's addictiveness and of manipulating nicotine levels to keep smokers hooked, said it will appeal Jones' order. "This is an unprecedented application of the class action rules. The order includes as a class member virtually everyone who currently smokes and many former smokers," it said in a prepared statement. "I don't see any reason to change accepted judicial practice to accommodate a small group of extremely wealthy plaintiffs' lawyers who are frustrated because juries continue to rule against them in these cases," R.J. Reynolds' attorney, Dan Donahue, said in a telephone interview.

Other tobacco companies and their attorneys either said they could not comment because they had not read the ruling or did not immediately return calls.

If the jury rules that the tobacco companies are to blame, Louisiana courts will be clogged with 40 million to 50 million individual suits from around the country, Donahue said. In the nine or 10 cases heard in the decade before this, juries have always found that the smokers were responsible for their smoking, he said.

This case will be different, said Elizabeth Cabraser, one of the plaintiffs' lawyers. "The tobacco industry will have to take responsibility for its conduct and malicious actions. The industry should receive a message that it can no longer engage in this sort of behavior," she said.

The plaintiffs got ammunition for their case from hearings last spring in which members of Congress heard testimony that tobacco officials knew that nicotine was addictive and hid this information from the public.

"It is this deception that is fueling the case," said plaintiff Dianne Castano, whose husband, Peter, died of lung cancer. "How can anyone make a responsible choice if facts are deliberately kept from them? ... The tobacco industry has amassed great wealth from creating millions of nicotine-dependent smokers and they must be held accountable for their actions."

The class action part of the suit now applies to any nicotine-dependent person who has bought and smoked cigarettes made by the defendants and to their heirs, including families and significant others.

Jones defined nicotine-dependent as anyone who continues smoking in spite of a medical practitioner's warning, "which is pretty much everybody," Coale said.

The punitive damages to be set in the class action part of the suit will be only a ratio to actual damages. If a jury finds that someone was not hurt by smoking, that person cannot get any punitive damages.

Those who want to join the lawsuit do not have to have a signed note from their doctor. "Their word is enough," Coale said.

The lawsuit, claiming at least \$50,000 in damages for each plaintiff, was filed by Mrs. Castano and smokers Ernest Richard Perry Sr., T. George Solomon and Gloria Scott.

The nation's tobacco giants The American Tobacco Co. Inc.; R.J. Reynolds; Brown & Williamson Tobacco Corp.; Phillip Morris Inc.; Liggett & Myers Inc.; Lorillard Tobacco Co., Inc.; and United States Tobacco Co. and their parent companies, including RJR Nabisco Inc., were named as defendants.

It is unusual to make only part of a case a class action, Jones acknowledged. However, like the huge class action case against asbestos companies, this suit is one of a kind, he wrote.

Jones did not set a trial date. The plaintiffs' proposals for discovery, getting information from the defendants, must be submitted by March 15. The tobacco companies must file any objections by April 1. The plaintiffs must set out a plan for notifying as many potential class members as possible, the judge said.

People who think they may be part of the suit should sit back and wait until the judge signs off on the plan, said attorney Richard Heimann of San Francisco. That is likely to take at least three months, he said: One for the plaintiffs' attorneys to submit their plan, one for the tobacco companies to answer, and one for the judge to look everything over and make his decision.

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R. J. REYNOLDS STATEMENT: (via Business Wire)

"R.J. Reynolds Tobacco Says Ruling 'Inconsistent'"

Winston-Salem, N.C.-- R.J. Reynolds Tobacco Co. issued the following statement:

The court's decision to allow Castano to go forward as a class action, in our opinion, is inconsistent with class certification guidelines. If this case proceeds and is not reversed on appeal, it will prove to be an unwieldy burden on the court system. Separate cases would be required for each class member on many issues.

This is an unprecedented application of the class action rules. The order includes as a class member virtually everyone who currently smokes and many former smokers.

We intend to appeal this order.

1995 BUSINESS WIRE Report:

Louisiana U.S. District Court certifies largest class action suit in history against 16 tobacco companies

U. S. District Court Judge Okla Jones, II (Eastern District, LA.) Certifies Landmark Nationwide Nicotine-Dependent Class in Castano v. American Tobacco Company et. al.

Judge Jones Rules All Past and Present Nicotine-Dependent Smokers Can Sue 16 U.S. & British Tobacco Companies

New Orleans--When Dianne Castano decided to sue the tobacco companies for the death of her nicotine-dependent husband, Peter, she didn't know she would be speaking for tens of millions of smokers worldwide dependent on nicotine. Today, U.S. District Court Judge Okla Jones, II gave the go-ahead to proceed with a history-making, nationwide class action lawsuit against the tobacco companies. "Unlike earlier tobacco cases, the tobacco industry was able to place blame on smokers by claiming that they chose to smoke, thus inflicting harm upon themselves. In the Castano Tobacco Litigation, the tobacco industry will have to take responsibility for its conduct and malicious actions. The industry should receive a message that it can no longer engage in this sort of behavior," said Elizabeth Cabraser of Lief, Cabraser & Heimann in San Francisco, a member of the Castano Tobacco Plaintiffs' Legal Committee (PLC). Cabraser along with another PLC member, Diane Nast, of Kohn Nast & Graf, P.C. of Philadelphia, argued the case in front of Judge Jones in Dec., 1994.

The Castano Tobacco Litigation charges the tobacco companies with fraud and misrepresentation, alleging that these companies concealed from the public

facts that the amount of nicotine in manufactured cigarettes can be controlled and manipulated. The case further argues that this was done knowingly by the tobacco companies to create and sustain dependency to tobacco products. In addition, millions of advertising and promotional dollars are spent by the tobacco companies annually to target highly impressionable population segments, such as youth, women and minorities in order to ensure a next generation of smokers. An estimated three thousand new smokers are needed daily for tobacco companies to maintain their current profit margins.

Judge Jones' Class Certification Order reads as follows:

It is ordered that plaintiffs' motion for class certification is granted in part, pursuant to Fed.R.Civ.P 23(b) (3) and 23 (c) (4), only in regard to the liability issues of fraud, breach of warranty (express or implied), intentional tort, negligence, strict liability and consumer protection and punitive damages issues.

It is further ordered that plaintiffs' motion for class certification is denied in all other respects.

It is further ordered that the court defines the class as follows;

(a) All nicotine-dependent persons in the United States, its territories, possessions and the Commonwealth of Puerto Rico, who have purchased and smoked cigarettes manufactured by the defendants;

(b) the estates, representatives, and administrators, of these nicotine-dependent cigarette smokers; and,

(c) the spouses, children, relatives and "significant others" of these nicotine-dependent cigarette smokers as their heirs or survivors.

It is further ordered that "nicotine-dependent," as used in the class definition, shall be defined as:

(a) all cigarette smokers who have been diagnosed by a medical practitioner as nicotine-dependent; and/or

(b) all regular cigarette smokers who were or have been advised by a medical practitioner that smoking has had or will have adverse health consequences who thereafter do not or have not quit smoking.

It is further ordered that the forgoing certification shall be deemed conditional only and may be altered, amended or set aside at any time before a decision on the merits.

It is further ordered that, pursuant to Fed.R.Civ.P. 23 (c) (2), plaintiffs show cause as to the best notice practicable to all members of the class.

It is further ordered that plaintiffs propose a discovery plan to the United States Magistrate Judge by March 15, 1995.

It is further ordered that defendants file objections, if any, to this discovery plan with an alternative discovery plan by April 1, 1995.

It is further Ordered that the United States Magistrate Judge conduct a hearing as soon thereafter as feasible with respect to the proposed discovery plan(s) and, following this hearing, issue a Discovery Order to guide discovery in this matter. It is further ordered that the Clerk of Court establish a Pleadings Depository in accord with the decision.

Peter Castano, one of the persons for whom the case was filed, was a lifelong resident of New Orleans and began smoking as a teenager. Castano, died at the age of 47 from lung cancer leaving behind his wife, Dianne and two young children. Despite numerous attempts to quit, Castano was dependent on nicotine and unable to quit smoking cigarettes. His wife Dianne approached a longtime family friend and, in fact, Peter's best friend, Wendell Gauthier, to consider filing a lawsuit against the tobacco companies. Information uncovered in the Congressional Hearings in the Spring of 1994 opened the door for a group led by Wendell Gauthier to file the Castano lawsuit, revealing that the tobacco industry knew that nicotine was addictive and created dependency, long before they were required to post warnings on cigarette packaging, and then concealed this information from the public.

"It is this deception that is fueling the Castano case," said Dianne Castano. "How can anyone make a responsible choice if facts are deliberately kept from them? Millions of smokers may not have become dependent, may not have even started smoking, if they had known all the facts. The tobacco industry has amassed great wealth from creating millions of nicotine-dependent smokers and they must be held accountable for their actions."

Sixty law firms nationwide have each pledged \$100,000 to fund the class action litigation for the life of the case.