#### VIRGINIA:

# IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND John Marshall Courts Building

PHILIP MORRIS COMPANIES INC.	).
and-	); );
PHILIP MORRIS INCORPORATED,	). ):
Plaintiffs,	); );
V <sub>4</sub>	) AT LAW NO.
AMERICAN BROADCASTING COMPANIES, INC.,	); ); );
JOHN MARTIN,	). )
and	); );
WALT BOGDANICH,	); };
Defendants.	); );

### MOTION FOR JUDGMENT

Plaintiffs Philip Morris Companies Inc. and Philip Morris Incorporated, move for judgment against defendants by reason of the following:

#### **PARTIES**

ll. Plaintiff Philip Morris Companies Inc. (Philip Morris Companies) is a publicly held corporation organized and existing under the laws of the Commonwealth of Virginia, with its principal place of business in New York, New York. Philip Morris Companies is a holding company whose stock is publicly traded on the New York Stock

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Exchange. Its subsidiary corporations are primarily engaged in the tobacco, food and beer businesses, and own many of the best-known brand names in the world, including Marlboro cigarettes. Kraft food products, and Miller beer.

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- Plaintiff Philip Morris Incorporated (Philip Morris U.S.A.) is a corporation organized and existing under the laws of the Commonwealth of Virginia, with its principal-place of business in New York, New York. Philip Morris U.S.A. is a wholly owned subsidiary of Philip Morris Companies, is engaged in the domestic tobacco business and is the largest tobacco company in the United States. As is hereinafter set forth, the defamatory statements made by defendants were made without specification as between-Philip Morris Companies and Philip Morris U.S.A. and "Philip Morris" was used indiscriminately by defendants to refer both to Philip Morris Companies and Philip Morris U.S.A. Accordingly, except as otherwise indicated, the term "Philip Morris" is used in this Motion for Judgment interchangeably to refer to both Philip Morris Companies and Philip Morris U.S.A.
- 3. Defendant American Broadcasting Companies, Inc. (ABC) is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in New York, New York. ABC, a wholly owned subsidiary of Capital Cities/ABC, Inc., operates the ABC Television Network, a major American broadcast network with seven owned and operated and over 200 affiliated stations reaching 99.9% of all United States television households. ABC's telecasts are regularly broadcast in and into the Commonwealth of Virginia by numerous stations, including but not limited to ABC.

affiliate stations WRIC in Richmond, WJLA in the District of Columbia, WVEC in Hampton, WSET in Lynchburg, WHSV in Harrisonburg, WKPT in Kingsport, Tennessee, and ABC's owned and operated station WTVD in Raleigh-Durham, North Carolina. ABC's telecasts are widely viewed in the Commonwealth of Virginia and throughout the United States, and ABC derives substantial revenue from its broadcasts and other activities in Virginia. Among programs produced by ABC News for broadcast on the ABC Television Network is the news magazine program Day One launched last year. Upon information and belief, Day One has not been a successful program; its ratings have been deteriorating. With its program on Monday evening, February 14, 1994, only two weeks before the first program complained of herein, Day One's ratings fell to an all-time low.

- 4. Defendant John Martin is a Day One reporter, led Day One's "investigation" into nicotine in cigarettes, and appeared on the February 28 and March 7, 1994, broadcast segments of Day One regarding cigarettes and nicotine.
- 5. Defendant Walt Bogdanich is the producer of the February 28, and coproducer of the March 7, 1994, Day One segments on cigarettes and nicotine:

#### NATURE OF ACTION

6. This is an action to redress the massive harm caused to plaintiffs by the false and defamatory statements made by defendants on the nationally televised news magazine show Day One on February 28 and March 7, 1994, as well as on other ABC News programs. Announcing that they had "uncovered" the tobacco industry's "last best secret" "never before disclosed to consumers or the government," and asserting that their

"investigation" "could change the tobacco industry forever," defendants, through the use of sensationalized false and reckless allegations, told viewers across the nation that tobacco companies, including Philip Morris, are artificially "spiking" and "fortifying," their cigarettes sold in the United States with extraneous nicotine for the express purpose of keeping smokers "hook[ed]."

7. Following the February 28, 1994, Day One broadcast, foreseeably, the national networks and press accepted as true Day One's supposed "revelation" that the tobacco industry. "spikes" its cigarettes with extra nicotine and repeated these charges virtually daily. In what can only be described as a public frenzy, reporters, the public, government: regulators and Congressmen, "astonished" and "shocked" by Day One's "revelation," called for governmental and congressional investigation and possible new regulation. Even the President of the United States was misled and stated on an ABC Television Network program on March 19, 1994, "[T]hat really bothered me when I heard that more nicotine was going in to make sure that people were hooked." And the stock of plaintiff Philip Morris Companies and other companies having businesses engaged in the tobacco industry fell dramatically in reaction to Day One's charges and the regulators' reaction thereto. But the frenzy whipped up by Day One is based on a totally false and defamatory premise made up of whole cloth: that Philip Morris intentionally adds extraneous nicotine to the tobacco used in its cigarette manufacturing process expressly in order to "hook" smokers. As detailed below, Philip Morris does no such thing.

#### The Defamatory Day One Broadcasts

- 8. On February 28, 1994, ABC-Television aired the television program Day One: from 8:00 p.m. to 9:00 p.m. (EST). Anchor Forrest Sawyer opened the program with great fanfare, announcing: "A Day One investigation that could change the tobacco industry forever." He went on to say, "Cigarettes - they'll hook you fast and it is not just an accident of nature," and accused the cigarette companies of "artificially spiking [their]" cigarettes with nicotine." He told the audience that for nearly a year, Day One had been investigating nicotine, and that when word of Day One's "investigation" got out, the "Food and Drug Administration announced that it is now considering whether to regulate cigarettes as drugs." Then, exposé style, John Martin, the Day One reporter who led the nicotine "investigation," told the television audience that Day One was about to reveal the tobaccoindustry's "last best secret" "never before disclosedi". That "secret" turned out to be the false and defamatory claim - knowingly and/or recklessly made by defendants - that Philip Morris (as well as other cigarette manufacturers) intentionally "spik[es]" and "fortif[les]" its cigarettes with extra nicotine during the manufacturing process to keep smokers hooked...
- 9. False and defamatory statements knowingly and/or recklessly made or endorsed by defendants during the course of the February 28, 1994, Day One segment included the following:
  - a. Unidentified ABC Voice-over: There's something tobacco companies don't want you to know.

- b. Cliff Douglas (American Cancer Society): The industry manipulates nicotine, takes it out, puts it back in, uses it as if it were sugar being put in candy:
- c. Martin: Why are you artificially spiking your cigarettes with nicotine?
- d. Unidentified ABC Voice-over: Cigarettes they'll hook you fast and it is not just an accident of nature.
- e. Representative Mike Synar (Democrat, Oklahoma): They don't want anybody looking at their product so that they can doctor it, they can alter it.
- f. Unidentified ABC Voice-over: A Day One investigation that could change the tobacco industry forever.
- g. Martin: Now, a lengthy Day One investigation has uncovered perhaps the tobacco industry's last best secret how it artificially adds nicotine to cigarettes to keep people smoking and boost profits.
- h. Unidentified ABC Voice-over: The methods the cigarette companies use to precisely control the levels of nicotine is something that has never before been disclosed to consumers or the government.
- Martin: It was here in Winston-Salem, North Carolina that the manufacturing process began to change. The R. J. Reynolds Tobacco-Company pioneered a two-step process to make cigarettes more cheaply and to control the level of nicotine. Step one: it developed reconstituted tobacco, which is made from stalks and stems and other waste that it used to throw away.
  - produce eigarettes more cheaply, there are problems—poor taste and less nicotine. So here's what the companies do in step two—they apply a powerful tobacco extract containing nicotine and flavor to the reconstituted tobacco. This process, too, is meant to be secret.
- j. Martin: . . . He told us how they made this concentrated extract that is rich in nicotine.

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- k. Q. Martin: Why would the tobacco companies use this nicotine rich syrup?
  - A. Former R. J. Reynolds Manager (unidentified): They put nicotine in the form of tobacco extract into a product to keep the consumer happy.
  - Q. Martin: They're fortifying the product with nicotine. Is that correct?
  - A. Former R. J. Reynolds Manager (unidentified): The waste-filler—yes they are.
- ll Martin: Why are you adding nicotine to your cigarettes?
- m. Q. Martin: But how much nicotine is added? The companies control the dosage precisely according to this former R. J. Reynolds manager. (To manager) In commercially sold cigarettes, what percentage of tobacco extract is nicotine?
  - A. Former R. J. Reynolds Manager (unidentified): That really depends on what level the process calls for. In other words, I can say to you, I want it at one percent, I want it at five percent, I want it at ten percent, I want it at fifty percent.
- Martin: It's this ability to control the exact dosage of nicotine with tobacco extract that is so alarming to Dr. Greg Connelly, a Massachusetts health official.
- o. Martin: There's another way nicotine is added to cigarettes. And it begins, perhaps surprisingly, at docks like this one in Newark, New Jersey. It is here that nearly pure nicotine is brought ashore to be combined with alcohol. It's called denaturing. The mixture can then be applied to tobacco during the manufacturing process for, among other things, flavoring. As these trucking records show, Philip Morris, for example, received thousands of gallons of this alcohol mixture during the 1980s. The cigarette makers say this mixture leaves only a tiny amount of nicotine on the tobacco. Still, any kind of nicotine manipulation disturbs critics like Cliff Douglas, of the American Cancer Society.

(Emphasis added.)

- 10. On March 7, 1994, Day One again aired on the ABC-Television Network from 8:00 p.m. to 9:00 p.m. (EST). Anchor Forrest Sawyer opened the show with the comment, "We begin tonight with our continuing investigation into cigarettes and what's inside them." False and defamatory statements knowingly and/or recklessly made on endorsed by defendants during the course of the March 7, 1994, Day One segment included the following:
  - a. Unidentified ABC Voice-over: Last week, we brought you new evidence about [how] tobacco companies are manipulating nicotine in cigarettes to keep smokers smoking.
  - b. Martin: Last week, <u>Day One reported for the first time evidence that cigarette companies manipulate levels of nicotine</u>, a highly addictive drug, to keep people smoking. We found manufacturers addinicotine in carefully calibrated doses to fortify the tobacco waste products they insert in cigarettes and to replenish nicotine lost in processing.
  - c: Cliff Douglas (American Cancer Society): The public doesn't know that the industry manipulates nicotine takes it out, puts it back in, uses it as if it were sugar being put in candy. They don't have a clue.
  - d. Martin: Day One learned that two of those thirteen additives should have tipped off the government to the tobacco industry's manipulation of nicotine in cigarettes. Those two ingredients are tobacco extracts, which frequently is rich in nicotine, and nicotine sulfate, or salt.

(Emphasis added.)

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These knowingly and/or recklessly false and defamatory statements of and concerning Philip Morris made during the February 28 and March 7, 1994, Day One broadcasts were intended to be understood to mean, and were understood to mean, that during the manufacturing process Philip Morris (as well as other cigarette manufacturers) "manipulates," "spik[es]" and "forti[fies]" its cigarettes by adding significant amounts of

extraneous nicotine to its products, and that the magnitude and seriousness of this offense was such that Day: One's "revelation" of this "secret" "could change the tobacco industry forever" by bringing upon the industry draconian regulatory or congressional actions

- 12. Defendants' accusations that Philip Morris "manipulates," "fortif[ies]" and "spik[es]" its tobacco by adding nicotine during the manufacturing process are entirely false. Philip Morris does not do that.
- 13. As set forth above, Day One on its programs referred to "reconstituted tobacco," the adding of "tobacco extract," and the use of "denatured alcohol" as supposedly being implicated in the "manipulating," "fortifying" and "spiking" of cigarettes with nicotine. The true facts with respect to these processes are as follows:
  - The production of reconstituted tobacco This process was developed decades ago and is widely used throughout the cigarette manufacturing industry. It involves the utilization of the stem portion of the large tobacco leaf as well as small pieces of the leaf itself broken off during the stemming process. These natural tobacco materials are reconfigured into tobacco sheets capable of being used in the cigarette manufacturing process.

In order to form these tobacco materials: into sheets, it is necessary first temporarily to separate out the solubles, which would otherwise interfere with the sheet-making process. Those solubles include nicotine. Separation of the solubles is accomplished by

adding large quantities of water in order to dissolve the solubles and separate them from the fibrous part of the tobacco, which consists largely of cellulose. The fiber is then pulped with water and, using standard paper-making process; milled out as sheets. The solubles — minus potassium nitrate and excess water which have been removed, and plus certain non-nicotine containing flavors, preservatives and moisturizers which have been added — and the sheets are then recombined. The process is an entirely closed and continuous one: no nicotine whatsoever not found in the original natural tobacco materials is introduced in the production of the reconstituted tobacco sheets. Indeed, the reconstituted tobacco sheets contain approximately 20-25% less nicotine than the natural tobacco materials which are used in the process because substantial nicotine is lost in the process and is not replaced.

Sheets are chopped into small pieces to be blended with natural tobacco leaves and transported to the cigarette manufacturing plant. Because stems naturally contain only approximately 25% of the nicotine contained in the leaf portion of the tobacco plant, and because, as set forth above, substantial nicotine is lost in the reconstitution process, reconstituted tobacco sheets contain far less nicotine than natural tobacco leaf and the use of such reconstituted.

tobacco sheet in the ultimate tobacco blend serves significantly to lower the nicotine content of cigarettes. And contrary to Day One's claims, no "powerful extract containing nicotine and flavor" or any other nicotine substance is added in the process:

Nor is there anything at all "secret" about the reconstitution. process: it has long been widely used in the industry, publicly known, described in books and articles about cigarette manufacturing going back at least as far as 1967, and, indeed, is even fully described in the 1979 Surgeon General's Report on Smoking and Health, p. 14-27.

Tobacco extract — During the course of the cigarette manufacturing process, certain flavors are sprayed onto the cut tobacco — which consists of a blend of predominantly natural leaf with some reconstituted tobacco mixed in. The particular flavors used are distinctive for each cigarette brand. In recent years, a flavor package containing tobacco extract has been used by Philip Morris in a single domestic brand — Merit. This use ended at December 31, 1993, and flavor packages containing tobacco extract have not since been used in any Philip Morris domestic brand. Moreover, contrary to Day One's claim, the tobacco extract that was used was not "nicotine rich" at all. Rather, the amount of nicotine ending up in the cigarette attributable to the inclusion of tobacco extract in the flavor package.

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was maniscule to the extreme. Thus, for example, the amount of nicotine in a Merit Ultra Light menthol cigarette that was attributable to the use of such flavor package represented 1/4,500 (or 0.00021) of the nicotine otherwise in the tobacco used in the cigarette — a trace amount which is so small as not even to be measurable by standard analytical methods. This infinitesimal trace amount of nicotine did not remotely constitute the "spiking," "fortifying" or "manipulation" of the nicotine content of these cigarettes.

And as before, the fact that cigarette companies have used flavor packages containing tobacco extract during the manufacturing process of cigarettes has long been a matter of public record: it is no "secret" at all.

Denatured Alcohol — Certain flavors that are not soluble in water must be dissolved in alcohol in order to be sprayed onto the cut tobacco blend during the cigarette manufacturing process. Because pure alcohol is subject to stringent and cumbersome regulations by the Bureau of Alcohol, Tobacco and Firearms, Philip Morris uses alcohol which has been denatured with minute amounts of nicotine to render it undrinkable. Such denatured alcohol is purchased by Philip Morris from outside suppliers. The amount of nicotine contained in such denatured alcohol is minute — only 0.0002 by weight, i.e., only one part per 5,000. The flavors that are dissolved in this denatured

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alcohol themselves contain no nicotine, and the combination of these flavors with the denatured alcohol further dilutes the minute amount of nicotine present. As a result, the amount of nicotine that results from the spraying of the alcohol-dissolved flavors on the blended tobacco is again infinitesimal. By way of example, the amount of nicotine in a Merit Ultra Light menthol cigarette attributable to the use of the denatured alcohol represents 1/7,000 (or 0.00013) of the nicotine otherwise in the tobacco used in the cigarette — again, merely a trace amount which is so small as not even to be measurable by standard analytical methods. Thus, once again, the use of denatured alcohol as a flavor solvent does not remotely constitute the "spiking," "fortifying" or "manipulation" of the nicotine content of the cigarettes.

And once again, there is nothing "secret" here. It has long been a matter of public record that the Bureau of Alcohol, Tobacco and Firearms has approved the use of nicotine in denatured alcohol for this purpose, see 27 Code of Federal Regulations § 21.141; that alcohol denatured with nicotine is the only form of denatured alcohol approved by the federal government for use in the manufacture of cigarettes; and indeed, that the amount of nicotine that is contained in the alcohol is actually fixed by law at the .0002 level of dilution.

- Thus, contrary to the false and defamatory statements by defendants, except for the infinitesimal trace amounts of nicotine resulting from the processes described in Paragraphs 13(b) and (c) above. Philip Morris never has, and does not now add any nicotine whatsoever in the process of manufacturing cigarettes. To claim that these processes constitute the "spiking" or "fortifying" of cigarettes with nicotine to "hook" smokers, to "keep people smoking," is an egregious falsehood. To the contrary, between the arrival of tobacco at Philip Morris' plants and its departure from the plants as packaged cigarettes; there is a very substantial loss in the percentage of nicotine in the tobacco. Thus, the only adjustment of the nicotine content of cigarettes that is involved in the manufacturing process is the reduction of nicotine levels.
- 15. The false and defamatory statements contained in Day One's broadcasts were made knowingly, recklessly, and with malice. Among other things, defendants first published, and then republished these defamatory accusations notwithstanding having been expressly advised by members of the tobacco industry, including Philip Monris, of their falsity.
- 16. These false and defamatory statements were broadcast and published in and into the Commonwealth of Virginia and throughout the United States on the ABC Television. Network.

### Additional ABC Publications of Defamatory Statements

17. On Friday, February 25, 1994, on the ABC Television Network program World News Tonight, aired from 6:30 — 7:00 p.m. (EST), anchor Peter Jennings

previewed Day One's false and defamatory purported exposé and promised viewers "a good deal more" "this Monday evening:" Jennings introduced John Martin, the featured reporter on the February 28 and March 7 Day One programs:

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- a. Jennings: The U.S. government is considering a major frontal assault on the tobacco industry. The Commissioner of the Food and Drug Administration said today that he is looking into whether cigarettes might be regulated as an addictive drug. Here is what's changed. There is now evidence that cigarette manufacturers carefully manipulate the nicotine content of their product to assure each cigarette packs a certain punch. The evidence has been uncovered by John Martin, who's been investigating the story for the ABC news program Day One.
- b. Martin: The investigation found that tobacco companies are adding to cigarettes waste products fortified with an extract that contains nicotine. As a result, the companies are able to manipulate the nicotine levels in cigarettes. The Surgeon General has determined that nicotine is a highly addictive drug. A former R.J. Reynolds manager, who requested anonymity, explained why the companies control the amount of nicotine in cigarettes.
- c. R.J. Reynolds Manager (unidentified): They put nicotine in the form of tobacco extract, into the product to keep the consumer happy.
- d. Q. Martin: They're fortifying the product with nicotine, is that correct?
  - A., R. J. Reynolds Manager (unidentified): The waste filler: Yes, they are.

(Emphasis added.)

- 18. On February 25, 1994, on the ABC Television Network program "20/20," aired from 10:00 11:00 p.m. (EST), co-host Hugh Downs introduced Forrest Sawyer, the host of Day One:
  - a. Sawyer: You'll be surprised when you learn what tobacco companies are doing with the nicotine in your cigarette.

b. Representative Mike Synar (Democrat, Oklahoma): They can doctor it, they can alter it, and they can literally jeopardize the health of the American public without having any consequence.

Sawyer: A Day One investigation Monday.

Downs: Day One Mondays at eight.

(Emphasis added.)

19: On February 28, 1994, the ABC Television Network program World News Tonight, aired from 6:30 — 7:00 p.m. (EST), was once again the vehicle for attracting an audience to that evening's Day One program. Jennings introduced John Martin:

Martin: The Day One investigation shows tobacco companies manipulate nicotine, strongly suggesting they want smokers to get the drug in controlled doses. The FDA said Friday this may be just the evidence it needs to regulate cigarettes. On Wall Street today, four major tobacco company stocks all lost value. R. J. Reynolds and Philip Morris were the two most heavily traded stocks of all those bought and sold.

(Emphasis added.)

- 20. On March 9, 1994, on the ABC Television Network program "Nightline," hosted by Ted Koppel from 11:35 p.m. to 12:00 a.m. (EST), additional false and defamatory statements were made and endorsed by defendants as follows:
  - a. Koppel: . . . [t]here is new evidence that the tobacco industry may be chemically stacking the deck. . . .
  - b. Bury (an ABC reporter): An investigation by the ABC News broadcast Day One found that cigarette companies carefully control the amount of nicotine in their cigarettes by adding precise amounts of tobacco extract which contains nicotine.
  - c: Former R. J. Reynolds Manager (unidentified): They put nicotine in the form of tobacco extract into a product to keep the consumer happy.

- d. Cliff Douglas (American Cancer Society): The public doesn't know that the industry manipulates nicotine it takes out, puts it back in, uses it as if it were sugar being put in candy.
- e. Koppel: Our sister-program, Day One, a couple days ago, did a report on the tobacco industry and the revelation of that program—and, I must say it astonished me:—and that is that you folks have actually been adding nicotine to the product, to the tobacco as a means of causing people to become more addicted to the product.
- Matthew Myers (Coalition on Smoking or Health): The recent ABC Day One report revealed substantial new information that, combined with FDA's own investigation, has brought the whole issue into a new focus. We now know that the tobacco industry consciously manipulates the level of nicotine in tobacco products to insure they they're addictive.
- g. Bury: The revelation that cigarette companies manipulate the nicotine in their products has led FDA Commissioner Kessler to conclude that cigarette manufacturers may intend that their products contain nicotine to satisfy an addiction on the part of some of their customers.

(Emphasis added.)

21. These knowingly and/or recklessly false and defamatory statements of and concerning Philip Morris set forth in Paragraphs 17 through 20 were intended to be understood to mean, and were understood to mean that during the manufacturing process. Philip Morris (as well as other cigarette manufacturers) "fortified" its cigarettes by adding significant amounts of extraneous nicotine to its product, and that the magnitude and seriousness of this offense was such that Day One's "revelation" of this "secret" would be "just the evidence [the FDA] needs to regulate cigarettes" and would subject the industry to draconian regulatory or congressional action.

- These false and defamatory statements were made knowingly, recklessly and with malice. Among other things, defendants published and republished these statements notwithstanding having been expressly advised by members of the tobacco industry, including Philip Morris, of their falsity.
- 23. These false and defamatory statements were broadcast and published in and into the Commonwealth of Virginia and throughout the United States on the ABC Television Network.

#### The March 17 ABC World News Broadcast

24. On March 17, 1994, John Martin appeared on ABC Television Network program, World News This Morning, which aired at 5:45 a.m. (EST), discussing the FDA and the tobacco industry. During the broadcast, Mr. Martin stated:

Commissioner Kessler told the sub-committee he cannot regulate cigarettes unless investigators prove tobacco companies purposely manipulate nicotine levels. But sub-committee chairman Richard Durbin said proof was at hand. He read a letter from Philip Morris President William Campbell who said his company does not add nicotine but has actually lowered it more than 50% in the last 40 years. That in itself, said Congressman Durbin, shows cigarettes are not a so-called natural product and that the nicotine level in them can and has been manipulated.

#### Representative Durbin stated:

I think the statement that Mr. Campbell is making in his defense, in fact, is enough to convict him. They have, with the tobacco and their process, the ability to set the level of nicotine in the cigarette.

After Representative Durbin's remark, Thalia Assuras, anchor, stated:

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Asked for comment by ABC News, Philip Morris had no immediate response:

(Emphasis added.)

25. This last-quoted statement was knowingly and recklessly false and defamatory. Only the previous afternoon, John Martin had spoken with a senior officer of Phillip Morris U.S.A. At that time Mr. Martin asked the senior officer, among other things, for a reaction to the statements made earlier in the day by Rep. Durbin and FDA Commissioner David Kessler relating to Philip Morris U.S.A. President William Campbell's March 3, 1994, letter to Congress. The Philip Morris senior officer expressly responded—on the record—reaffirming the accuracy of Mr. Campbell's letter and vigorously disputing the comments of Rep. Durbin and Commissioner Kessler. Nonetheless, ABC anchor Assuras, with Mr. Martin sitting by, falsely claimed exactly the opposite—that Philip Morris, "when asked for comment," "had no immediate response." This statement was knowingly false and defamatory in that it was intended to be understood, and was understood, to mean that Philip Morris was not in a position to deny the charges against it.

26. This false and defamatory statement was broadcast and published in and into the Commonwealth of Virginia and throughout the United States on the ABC Television Network.

# The Harm Caused to Philip Morris by Defendants' False and Defamatory Statements

27. All of the defamatory statements specified in Paragraphs 8 through 10; 17 through 20, and 24 above were made and broadcast with actual malice by defendants

masmuch as defendants knew of their falsity or had a reckless disregard for their truth or falsity. Defendants John Martin and Walti Bogdanich are employees or agents of ABC. All acts, statements and omissions of ABC employees and agents, including but not limited to defendants Martin and Bogdanich, in connection with the preparation and broadcast of these programs, were in the course of, and within the scope of, their employment or agency with ABC.

- 28. A substantial portion of the population, including the investment community, understood defendants' statements referring to the "tobacco companies," the "tobacco industry," the "cigarette manufacturers," the "cigarette companies," or "Philip Morris" to be statements of and concerning Philip Morris Companies.
- 29. A substantial portion of the population, including the government regulators and members of Congress, understood defendants' statements referring to the "tobacco companies," the "tobacco industry," the "cigarette manufacturers," the "cigarette companies," or "Philip Morris" to be statements of and concerning Philip Morris U.S.A.
- As a direct and proximate result of the publication of the knowingly and/or recklessly false and defamatory statements set forth above, plaintiffs have suffered great harm to their reputations, trade and business. That harm is continuing. These defamatory statements:
  - a. As to plaintiff Philip Morris Companies, have resulted in the stock of such plaintiff falling sharply and have otherwise damaged plaintiff in the conduct of its trade or business, causing it injury in an amount not

presently accurately ascertainable but believed to be not less than \$2 billion.

b.

As to plaintiff Philip Morris U.S.A., have precipitated and fueled a climate of public, media, regulatory and congressional reaction against the tobacco companies, including such plaintiff, which threatens to embroil plaintiff in regulatory and congressional inquiries, heightens the prospect of regulatory or congressional action severely detrimental to plaintiff's business, heightens the prospect of passage by Congress of major increases in tobacco taxes severely detrimental to plaintiff's business, will tend to spawn additional litigation against plaintiff, undermines confidence in plaintiff's products affecting sales, and have otherwise damaged plaintiff in the conduct of its trade and business — all causing it injury in an amount not presently accurately ascertainable but believed to be not less than \$3 billion.

#### **COUNT ONE — DEFAMATION**

- 31. Plaintiffs repeat and reallege each and every allegation in Paragraphs 1 through 30 hereof.
- 32. Defendants, on the February 28, 1994, Day One broadcast segment on nicotine in tobacco, made and endorsed false and defamatory statements as set forth above.

in Paragraphs 8 and 9 hereof of and concerning plaintiffs; and engaged in the publication of those statements.

- 33. Such statements were made and endorsed by defendants with knowledge of their falsity and/or reckless disregard for the truth and have caused damage to plaintiffs as set forth above.
  - Defendants' conduct, as aforesaid, constituted defamation as against plaintiffs.

### **COUNT TWO — DEFAMATION**

- 35. Plaintiffs repeat and reallege each and every allegation in Paragraphs lithrough 34 hereof.
- Defendants, on the March 7, 1994, broadcast of Day One, made and endorsed false and defamatory statements as set forth in Paragraph. 10 hereof of and concerning plaintiffs, and engaged in the publication of those statements.
- 37. Such statements were made and endorsed by defendants with knowledge of their falsity and/or reckless disregard for the truth and have caused damage to plaintiffs as set forth above.
  - 38. Defendants' conduct; as aforesaid, constituted defamation as against plaintiffs.

#### **COUNT THREE — DEFAMATION**

39. Plaintiffs repeat and reallege each and every allegation in Paragraphs 1 through 38 hereof.

- 40. Defendants, on the February 25, 1994, broadcast of World News Tonight, made, caused to be made, and endorsed false and defamatory statements as set forth in Paragraph 17 hereof of and concerning plaintiffs; and engaged in the publication of those statements.
- 41. Such statements were made, caused to be made, and endorsed by defendants with knowledge of their falsity and/or reckless disregard for the truth and have caused damage to plaintiffs as set forth above:
  - 42. Defendants' conduct, as aforesaid, constituted defamation as against plaintiffs.

# **COUNT FOUR — DEFAMATION**

- 43. Plaintiffs repeat and reallege each and every allegation in Paragraphs 1 through 42 hereof.
- 44. Defendants; on the February 25, 1994, broadcast of 20/20, made, caused to be made, and endorsed false and defamatory statements as set forth above in Paragraph 18 hereof of and concerning plaintiffs, and engaged in the publication of those statements.
- 45. Such statements were made, caused to be made, and endorsed by defendants with knowledge of their falsity and/or reckless disregard for the truth and have caused damage to plaintiffs as set forth above.
  - 46. Defendants' conduct, as aforesaid, constituted defamation as against plaintiffs.

## **COUNT FIVE — DEFAMATION**

- 47: Plaintiffs repeat and reallege each and every allegation in Paragraphs 1 through 46 hereof.
- 48. Defendants, on the February 28, 1994, broadcast of World News Tonight, made, caused to be made, and endorsed false and defamatory statements as set forth above in Paragraph 19 hereof of and concerning plaintiffs, and engaged in the publication of those statements.
- 49. Such statements were made; caused to be made; and endorsed by defendants with knowledge of their falsity and/or reckless disregard for the truth and have caused damage to plaintiffs as set forth above:
  - 50. Defendants' conduct, as aforesaid, constituted defamation as against plaintiffs.

#### COUNT SIX — DEFAMATION

- 51. Plaintiffs repeat and reallege each and every allegation in Paragraphs 1 through 50 hereof.
- 52. Defendants, on the March 9, 1994, broadcast of Nightline, made, caused to be made, and endorsed false and defamatory statements as set forth above in Paragraph 20 hereof of and concerning plaintiffs, and engaged in the publication of those statements:
- 53. Such statements were made, caused to be made, and endorsed by defendants with knowledge of their falsity and/or reckless disregard for the truth and have caused damage to plaintiffs as set forth above.

54. Defendants' conduct, as aforesaid, constituted defamation as against plaintiffs:

# COUNT SEVEN — DEFAMATION (as against defendants ABC and John Martin)

- 55. Plaintiffs: repeat and reallege each and every allegation in Paragraphs I. through 54 hereof.
- 56. On March 17, defendants ABC and John Martin, on ABC World News, made, caused to be made, and endorsed a knowingly and/or recklessly false and defamatory statement as set forth above in Paragraph 24 hereof.
- 57... Such statement was made, caused to be made, and endorsed by such defendants with knowledge of its falsity and/or reckless disregard for the truth.
- 58. Such defendants' conduct, as aforesaid, constituted defamation as against plaintiffs.

## **COUNT EIGHT — PUNITIVE DAMAGES**

- 59. Plaintiffs repeat and reallege each and every allegation in Paragraphs 1 through 58 hereof:
- 60. Defendants conduct as aforesaid was malicious and affected the public generally. Defendants are therefore liable for punitive damages.

WHEREFORE, plaintiffs Philip Morris Companies Inc. and Philip Morris Incorporated demand judgment against defendants:

I.	In favor of plaintiff Philip Morris Companies Inc. for compensatory damages
	mean amount not less than \$2 billion;

- III. In favor of plaintiff Philip Morris: Incorporated for compensatory, damages in an amount not less than \$3 billion;
- III. In favor of both plaintiffs for punitive damages in the amount of \$5 billion;
- IV. For attorneys' fees and the costs of this suit;
  - V. For such other relief as the Court may deem just.

Plaintiffs demand trial by jury.

PHILIP MORRI	S C	OMP.	ANTES	INC.
PHILIP MORRI	SID	<b>VCOR</b>	PORA"	rrn

Ву					
	Lewis T. Booker				
Ву					
,	Lonnie D. Nunley, III				

Lewis T. Booker (VSB No. 5261).
Lonnie D. Nunley III (VSB No. 25366).
Brian V. Otero (VSB No. 31570).
HUNTON & WILLIAMS.
Riverfront Plaza, East Tower.
951 East Byrd Street.
Richmond, Virginia. 23219-4074.
Telephone: (804) 788-8200.

Counsel

#### Of Counsel:

Herbert M. Wachtell
Norman Redlich
Barbara Robbins
Meir Feder
WACHTELL, LIPTON, ROSEN & KATZ
51 West 52nd Street
New York, New York 10019
Telephone: (212) 403-1000

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