

IN THE CHANCERY COURT OF
JACKSON COUNTY, MISSISSIPPI

MIKE MOORE,
ATTORNEY GENERAL
ex rel.,
STATE OF MISSISSIPPI,
Plaintiff,

v.

**THE AMERICAN
TOBACCO COMPANY;
AMERICAN BRANDS, INC.;**
**R.J. REYNOLDS
TOBACCO COMPANY;
RJR NABISCO, INC.;**
**BATUS CORPORATION;
BROWN & WILLIAMSON
TOBACCO CORPORATION;
PHILIP MORRIS COMPANIES,
INC.; PHILIP MORRIS
INCORPORATED
(PHILIP MORRIS U.S.A.);
LIGGETT GROUP, INC.;**
LIGGETT & MYERS, INC.;
**BROOKE GROUP, LIMITED;
LOEWS CORPORATION;
LORILLARD CORPORATION;
THE COUNCIL FOR TOBACCO
RESEARCH -- U.S.A. INC.
(SUCCESSOR TO TOBACCO
INSTITUTE RESEARCH
COMMITTEE); THE TOBACCO
INSTITUTE, INC.;**
HILL & KNOWLTON, INC.;
**CORR-WILLIAMS TOBACCO
COMPANY; GENERIC PRODUCTS CORPORATION;**
**LAUREL
CIGAR & TOBACCO
COMPANY, INC.; LONG
WHOLESALE, INCORPORATED;
THE LEWIS BEAR COMPANY;
WIGLEY AND CULP, INC.
OF GULFPORT, MISSISSIPPI;
"A" THROUGH "Z" ENTITIES
(M.R.C.P. 9(h) DEFENDANTS),**
Defendants.

COMPLAINT

Introduction

1. Mike Moore is the duly elected and present Attorney General of the State of Mississippi and,

according to law and equity, he brings this action on behalf of the Plaintiff, the State of Mississippi ("the State"). Under the Mississippi Constitution of 1890 and other positive law of the State of Mississippi, including Mississippi's common law and including, among other laws, Chapter 13, Medical Assistance for the Aged; medicaid, 43-13-1 through 43-1-145, Miss. Code Ann. (1972), the State is responsible for the health, safety and welfare of its citizens, and the Attorney General has the duty to protect the interest of the general public.

2. For many years, the State has suffered harm and has incurred significant expenses associated with the provision of necessary health care and other such necessary assistance under various State programs to certain eligible citizens numbering in the thousands who suffer, or who have suffered, from tobacco-related injuries, diseases or sickness. This civil action is founded on principles of equity and is brought under Mississippi law to avoid a multiplicity of lawsuits in recovering such damages, and for such other relief as equitably may be obtained, for the harm thus unjustly, intentionally and wrongfully done and continuing to be done to the State and to its citizens by the various defendants, who have been and continue to be unjustly enriched thereby at the expense of the State.

3. The defendants are a cartel who promote, market, distribute and sell cigarettes, and/or materially assist others in so doing, to citizens in Jackson County, Mississippi, and elsewhere throughout the State, and have done so for many years. Under various State programs, the State pays out large sums of money for the provision of necessary health care and other such necessary assistance to eligible citizens in Jackson County, Mississippi, who have been and are now being treated in the Singing River Hospital in Jackson County, Mississippi, and elsewhere throughout the State, for the treatment of tobacco-induced disease, injury and sickness, and the state has done so for many years. Thus, venue is proper in the Chancery Court of Jackson County, Mississippi.

4. The defendants are certain cigarette manufacturers and distributors and/or certain of their trade organizations, public relations firms, law firms and other such entities, with names both known and unknown, that, at all pertinent times, manufactured, tested, designed, promoted, marketed, packaged, sold, distributed, and/or placed into the stream of commerce in and into the State numerous brands of defective, unreasonably dangerous and hazardous cigarettes, or, in the course of business, materially participated with, conspired with and/or otherwise aided, abetted and assisted other in so doing.

5. At all pertinent times, the defendants purposefully and intentionally engaged in these activities, and continue to do so, knowing full well that when the State's citizens used those cigarettes as they were intended to be used, that the State's citizens would be substantially certain to suffer disease, injury and sickness, including cancer, emphysema, heart disease and other illnesses and that the State itself would be injured thereby.

6. Also at all pertinent times, the defendants purposefully and intentionally engaged in these activities, and continue to do so, knowing full well that the State would confer a benefit upon the defendants by providing or paying for health care and other necessary facilities and services for certain of the State's citizens thus harmed by the intended use of the defendant's cigarettes, and, in the absence of performance of such duty by the defendants, that the State itself thereby would be harmed.

PARTIES

Plaintiff

7. The State is a body politic governed by the Constitution and laws of the State of Mississippi, and the State is entitled to bring this action pursuant to law. This suit concerns matters of state-wide interest and is brought by the State on behalf of itself and certain of its agencies, boards and commissions, including the Medicaid Commission.

Defendants

8. The American Tobacco Company is a Delaware corporation whose principal place of business is located at 6 Stamford Forum, Stamford, Connecticut 06904, and upon whom process may be served by serving its agent authorized to receive service of process, United States Corporation Co., 506 South President Street, Jackson, Mississippi 39201, or its registered agent, U.S. Corporation Company, 32 Lockerman Square, Suite L-100, Dover, DE, 19901. The American Tobacco Company is a subsidiary or division of American Brands, Inc.

9. American Brands, Inc., is a Delaware corporation whose principal place of business is located at 6 Stamford Forum, Stamford, Connecticut 06904, and upon whom process may be served by serving its agent authorized to receive service of process, Prentice-Hall Corp. System, 506 South President Street, Jackson, Mississippi 39201, or The U.S. Corporation Company, 32 Lockerman Square, Dover, Delaware 19901. American

Brands, Inc. is the parent corporation of or the successor in interest to The American Tobacco Company.

10. R.J. Reynolds Tobacco Company is a New Jersey corporation whose principal place of business is located at 4th & Main Street, Winston-Salem, North Carolina 27102, and upon whom process may be served by serving its agent authorized to receive service of process, Prentice-Hall Corp. System, 506 South President Street, Jackson, Mississippi 39201. R.J. Reynolds is a wholly-owned subsidiary of RJR Nabisco, Inc.

11. RJR Nabisco, Inc. is a Delaware corporation whose principal place of business is 1301 Avenue of the Americas, New York, New York 10015, and upon whom service of process may be served at that address by serving an officer, a managing or general agent, or other agent authorized by appointment or by law to receive service of process, pursuant to Miss. Code Ann. { 13-3-57 (Supp. 1993) and Rule 4 of the Mississippi Rules of Civil Procedure, or by service of process upon its agent authorized to receive service of process, Prentice-Hall Corporation System, Inc., 32 Lockerman Square, Suite L-100, Dover, Delaware 19901. RJR Nabisco is the parent corporation of R.J. Reynolds, Inc.

12. Batus, Inc., is a Delaware corporation with its principal place of business at 1500 Brown & Williamson Tower, Louisville, Kentucky 40202, and upon whom process may be served at that address by serving an officer, a managing or general agent, or other agent authorized by appointment or by law to receive service of process, pursuant to Miss. Code Ann. { 13-3-57 (Supp. 1993) and Rule 4 of the Mississippi Rules of Civil Procedure, or by service of process upon its agent authorized to receive service of process, The Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware 19901. Batus, Inc. is the parent corporation of Brown & Williamson Tobacco Corporation.

13. Brown & Williamson Tobacco Corporation is a Delaware corporation whose principal place of business is located at 1500 Brown & Williamson Tower, Louisville, Kentucky 40202, and upon whom process may be served at that address by serving an officer, a managing or general agent, or other agent authorized by appointment or by law to receive service of process, pursuant to Miss. Code Ann. { 13-3-57 (Supp. 1993) and Rule 4 of the Mississippi Rules of Civil Procedure, or by service of process upon its agent authorized to receive service of process, Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware 19801. Brown & Williamson Tobacco Corporation is a subsidiary or division of Batus, Inc.

14. Philip Morris Companies, Inc., is a Virginia corporation whose principal place of business is located at 120 Park Avenue, New York, New York 10016, and upon whom service of process may be served at that address by serving an officer, a managing or general agent, or other agent authorized by appointment or by law to receive service of process, pursuant to Miss. Code Ann. { 13-3-57 (Supp. 1993) and Rule 4 of the Mississippi Rules of Civil Procedure, or by serving its agent for service of process, Mr. Hill B. Welford, Jr., Esquire, 951 East Byrd Street, Richmond, Virginia 23219.

15. Philip Morris Incorporated (Philip Morris U.S.A.), a subsidiary of Philip Morris Companies, Inc., is a Virginia corporation whose principal place of business is located at 120 Park Avenue, New York, New York 10016, and upon whom service of process may be served at that address by serving an officer, a managing or general agent, or other agent authorized by appointment or by law to receive service of process, pursuant to Miss. Code Ann. { 13-3-57 (Supp. 1993) and Rule 4 of the Mississippi Rules of Civil Procedure, or by serving its agent for service of process, Mr. Hill B. Welford, Jr., Esquire, 951 East Byrd Street, Richmond, Virginia 23219.

16. The Brooke Group, Limited, the parent corporation of Liggett Group, Inc. and Liggett & Myers, Inc., is a Delaware corporation with its principal place of business at 300 North Duke Street, Durham, North Carolina, and upon whom process may be served at that address by serving an officer, a managing or general agent, or other agent authorized by appointment or by law to receive service of process, pursuant to Miss. Code Ann. { 13-3-57 (Supp. 1993) and Rule 4 of the Mississippi Rules of Civil Procedure, or by serving its registered agent for service of process, The Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware 19801.

17. Liggett Group, Inc., is a Delaware corporation whose principal place of business is located at Main & Fuller Streets, Durham, North Carolina 27702, and upon whom process may be served at that address by serving an officer, a managing or general agent, or other agent authorized by appointment or by law to receive service of process, pursuant to Miss. Code Ann. { 13-3-57 (Supp. 1993) and Rule 4 of the Mississippi Rules of Civil Procedure, or by serving its registered agent for service of process, The Corporation Service Company, 1013 Center Road, Wilmington, Delaware 19805.

18. Liggett & Myers, Inc., is a Delaware corporation whose principal place of business is located at Main & Fuller Streets, Durham, North Carolina 27702, and upon whom process may be served at that address by serving an officer, a managing or general agent, or other

agent authorized by appointment or by law to receive service of process, pursuant to Miss. Code Ann. { 13-3-57 (Supp. 1993) and Rule 4 of the Mississippi Rules of Civil Procedure, or by serving its registered agent for service of process, The Corporation Service Company, 1013 Center Road, Wilmington, Delaware 19805. Liggett & Myers, Inc., is a wholly-owned subsidiary or division of Liggett Group, Inc.

19. Loews Corporation is a Delaware corporation whose principal place of business is located at 1 Park Avenue, New York, New York 10016, and upon whom process may be served at that address by serving an officer, a managing or general agent, or other agent authorized by appointment or by law to receive service of process, pursuant to Miss. Code Ann. { 13-3-57 (Supp. 1993) and Rule 4 of the Mississippi Rules of Civil Procedure.

20. Lorillard Corporation is a Delaware corporation whose registered agent for service of process is the Corporation Trust Company, 1209 Orange Street, Bloomington, Delaware 19801, and whose principal place of business is located at 1 Park Avenue, New York, New York 10016, and upon whom process may be served at that address by serving an officer, a managing or general agent, or other agent authorized by appointment or by law to receive service of process, pursuant to Miss. Code Ann. { 13-3-57 (Supp. 1993) and Rule 4 of the Mississippi Rules of Civil Procedure. Lorillard Corporation is a wholly-owned subsidiary or division of Loews Corporation.

21. 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 at that address by serving an officer, a managing or general agent, or other agent authorized by appointment or by law to receive service of process, pursuant to Miss. Code Ann. { 13-3-57 (Supp. 1993) and Rule 4 of the Mississippi Rules of Civil Procedure.

22. 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. Corp., 1633 Broadway, New York, New York 10019, with its principal place of business located at 1875 "I" Street N.W., Suite 800, Washington, D.C. 20006, and upon whom process may be served at that address by serving an officer, a managing or general agent, or other agent authorized by appointment or by law to receive service of process, pursuant to Miss. Code Ann. { 13-3-57 (Supp.

1993) and Rule 4 of the Mississippi Rules of Civil Procedure.

23. Hill & Knowlton, Inc., is a Delaware corporation whose registered agent for service of process is The Corporation Trust Company, 1209 Orange Street, Bloomington, Delaware 19801, with its principal place of business located at 420 Lexington Avenue, New York, New York 10070, and upon whom process may be served at that address by serving an officer, a managing or general agent, or other agent authorized by appointment or by law to receive service of process, pursuant to Miss. Code Ann. { 13-3-57 (Supp. 1993) and Rule 4 of the Mississippi Rules of Civil Procedure.

24. Corr-Williams Tobacco Company is a Mississippi corporation whose principal place of business is located at 442 North Mill Street, Jackson, Mississippi 39202, and upon whom process may be served by serving an officer, a managing or general agent, or its registered agent, Bill Stephens, at that address.

25. Generic Products Corporation is a Texas corporation whose registered agent for service of process is Hurbert L. Pease, 4717 Fletcher, Fort Worth, Texas 76107, with its principal place of business located at that same address, and upon whom process may be served at that address by serving an officer, a managing or general agent, or other agent authorized by appointment or by law to receive service of process, pursuant to Miss. Code Ann. { 13-3-57 (Supp. 1993) and Rule 4 of the Mississippi Rules of Civil Procedure.

26. Laurel Cigar & Tobacco Company is a Mississippi corporation whose principal place of business is located at 803 South Magnolia Street, Laurel, Mississippi 39440, and upon whom process may be served by serving an officer, a managing or general agent, or its registered agent, W.E. Elkins, at that address.

27. Long Wholesale, Incorporated is a Mississippi corporation whose registered agent for service of process is Ernest Long, 714 Highway 45 North, Meridian, Mississippi 39301, with its principal place of business located at 715 Front Street Extended, Meridian, Mississippi 39301, and upon whom process may be served at that address by serving an officer, a managing or general agent, or other agent authorized by appointment or by law to receive service of process, Rule 4 of the Mississippi Rules of Civil Procedure.

28. The Lewis Bear Company is a Florida corporation whose principal place of business is located at 4150 West Blount Street, Pensacola, Florida 32505, and upon whom process may be served by serving its registered agent, Neil P. Olack, Esq., WATKINS,

LUDLAM & STENNIS, 633 North State Street, Jackson, Mississippi 39202.

29. Wigley and Culp, Inc. of Gulfport, Mississippi is a Mississippi corporation whose principal place of business is located at 1535 29th Avenue, Gulfport, Mississippi 39501, and upon whom process may be served by serving an officer, a managing or general agent, or its registered agent, Jacqueline Culp Valentine, at that address.

30. The defendants "A" THROUGH "Z" ENTITIES (M.R.C.P. 9(h) Defendants) are business entities, both domestic and foreign within the meaning of the Mississippi Rules of Civil Procedure, whose identities are presently unknown to the State but who may be described as certain manufacturers and distributors, and/or certain of their trade organizations, public relations firms, law firms and other such entities that, at all pertinent times, manufactured, tested, designed, promoted, marketed, packaged, sold, distributed, and/or purposely placed into the stream of commerce in and into the State, various brands of cigarettes, or, in the course of business, materially participated with, conspired with and/or otherwise aided, abetted and assisted others in so doing, all to the detriment of the State as alleged herein.

31. The defendants listed herein, and/or their predecessors and/or their successors in interest, are either organized under the laws of (i) Mississippi or (ii) a state other than Mississippi, or (iii) are partnerships or other unincorporated associations with principal places of business both within and without Mississippi and each subject to suit under a common name, who have either obtained certificates of authority to transact business in Mississippi, or who transacted business in Mississippi without a certificate of authority, but within the contemplation of Section 13-3-57 of the Mississippi Code Annotated (Supp. 1993), the Mississippi "long-arm" statute.

32. The American Tobacco Company, American Brands, Inc., R.J. Reynolds Tobacco Company, RJR Nabisco, Inc., Batus Corporation, Brown & Williamson Tobacco Corporation, Philip Morris Companies, Inc., Philip Morris Incorporated (Philip Morris U.S.A.), Liggett Group, Inc., Liggett & Myers, Inc., Brooke Group, Limited, Loews Corporation, Lorillard Corporation and certain of the "A" through "Z" Entities (M.R.C.P. 9(h) Defendants) collectively are referred to hereinafter as "The Tobacco Companies."

33. 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 Tobacco Trade Associations."

34. Hill & Knowlton, Inc. and certain of the "A" Through "Z" Entities (M.R.C.P. 9(h) Defendants) collectively are referred to hereinafter as "The Tobacco Consultants."

35. The defendants Corr-Williams Tobacco Company, Generic Products Corporation, Laurel Cigar & Tobacco Company, Inc., Long Wholesale, Incorporated, The Lewis Bear Company, Wigley and Culp, Inc. of Gulfport Mississippi and certain of the "A" Through "Z" Entities (M.R.C.P. 9(h) Defendants) collectively are referred to hereinafter as "The Tobacco Wholesalers."

Other Allegations

36. 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 businesses of said defendants. At all pertinent times, the Tobacco Wholesalers were authorized retail and/or wholesale distributors, sellers, and/or dealers of and on behalf of the Tobacco Companies. At all pertinent times, the Tobacco Wholesalers and the Tobacco Trade Associations were the agents, servants, and/or employees of the Tobacco Companies and acted within the scope of said agency, servitude and/or employment. At all pertinent times, the Tobacco Consultants were the agents, servants, and/or employees of the Tobacco Companies and/or the Tobacco Trade Associations and acted within the scope of said agency, servitude and/or employment.

37. The defendants listed above, and/or their predecessors and successors in interest, did business in the State of Mississippi; made contracts to be performed in whole or in part in Mississippi 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 Mississippi and to the State, and as described herein, committed and continue to commit tortious and other unlawful acts in the State of Mississippi.

38. Tobacco-caused disease has killed, and continues to kill, untold millions of Americans. The Center for Disease Control (CDC) has estimated that over 400,000 persons die each year from smoking. That is 26 times more deaths than from illegal drugs and indicates that approximately one in five deaths is attributable to smoking. Thousands of Mississippi citizens die each year

as a result of smoking cigarettes. Each day, more than 3,000 young people begin to smoke -- or more than 1 million each year. Most of the new smokers who replace the smokers who quit or die prematurely from smoking-related disease are children or teens. About 90% of smokers born since 1935 started smoking before age 21 and almost 50% started before age 18.

39. The economic consequences of smoking cigarettes are equally as staggering. In May of 1993, the Office of Technology Assessment advised the United States Congress that in 1990 smoking related illnesses cost United States taxpayers a total of approximately \$68 billion, broken down as follows: \$20.8 billion in direct costs; \$6.9 billion in indirect cost for morbidity; \$40.3 billion indirect cost for mortality.

40. The State spends millions of dollars each year to provide or pay for health care and other necessary facilities and services on behalf of indigents and other eligible citizens whose said health care costs are directly caused by tobacco-induced cardiovascular disease, lung cancer, emphysema and other respiratory and other diseases.

41. The defendants have known for decades of the lethal dangers of smoking their cigarette products. By the late 1930's, based on published research, the tobacco companies had notice of the potential health hazards presented by smoking cigarettes. In 1946 Tobacco Company chemists themselves reported concern for the health of smokers. A 1953 report by Dr. Ernst L. Wynder heralded to the scientific community, and to the Tobacco Companies, a definitive link between cigarette smoking and cancer. In these tests, researchers painted condensed, puffed smoke onto the backs of mice. As a result thereof, the mice grew cancerous tumors. While previous statistical and epidemiologic studies indicated a relationship between smoking and cancer, Dr. Wynder's study was the first conclusive biological study in this regard.

42. In response to the publication of this study in 1953, the presidents of the leading tobacco manufacturers, including American Tobacco Co., R.J. Reynolds, Philip Morris, U.S. Tobacco Co., Lorillard, and Brown & Williamson Tobacco Corporation, hired the public relations firm of Hill and Knowlton, Inc., to deal with the "health scare" presented by smoking. Acting in concert, at a public relations strategy meeting, the participants decided to organize a committee to be specifically charged with the "public relations" function. This committee was engineered to take an offensive, pro-cigarette stance despite the then obvious health dangers presented 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 formed.

43. The TIRC immediately ran a full-page promotion in more than 400 newspapers aimed at an estimated 43 million Americans. That place 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 with lung cancer in human beings.

Although conducted by doctors of professional standing, these experiments are not regarded as conclusive in the field of cancer research. However, we do not believe 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 other aspects of modern life. Indeed the validity of the statistics themselves is questioned by numerous scientists.

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

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

We always have and always will cooperate closely with those whose task it is to safeguard the public health.

For more than 300 years tobacco has given solace, relaxation, and enjoyment to mankind. At one time or another during those years critics have held it responsible for practically every disease of the human body. One by one these charges have been abandoned for lack of evidence.

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

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

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 industry group consisting initially of the undersigned. This group will be known as 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.

44. In this advertisement, the participating tobacco companies recognized their "special responsibility" to the public, and promised to learn the facts about smoking and health. The participating tobacco 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 tobacco companies also promised to cooperate closely with public health officials. They breached their promises thus made to the public, including their promises made to the citizens of Mississippi.

45. After thus beginning to lull the public into a false sense of security concerning smoking and health, the TIRC continued to act as a front for tobacco industry interests. Despite the initial public statements and posturing, and the repeated assertions that they were committed to full disclosure and vitally concerned, the TIRC did not make the public health a primary concern. The Tobacco Trade Associations acted at the direction of the Tobacco Companies and the Tobacco Consultants to protect tobacco industry profits, and did not act to protect the public health. In fact, there was a coordinated, industry-wide strategy designed actively to mislead and confuse the public about the true dangers associated with

smoking cigarettes. Rather than work for the good of the public health as it had promised, and sponsor independent research, the Tobacco Companies and Tobacco Consultants, acting through the Tobacco Trade Associations, refuted, undermined, and neutralized information coming from the scientific and medical community.

46. The strategy employed by the Tobacco Companies, The Tobacco Trade Associations and the Tobacco Consultants, assisted by the Tobacco Wholesalers, 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 Tobacco Companies, the Tobacco Trade Associations, and the Tobacco Consultants, and was used by them to disseminate false information. It was sent to the press, doctors, and health officials. The criteria for selecting articles included those which questioned the relationship between smoking and health.

47. The Tobacco Companies, through the Tobacco Trade Associations and on the advice of the Tobacco Consultants, intentionally breached their promises to the American public, to the citizens of Mississippi and to the State to independently and honestly study and report on the health effects of smoking. They 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. Numerous scientists formerly employed by the Tobacco Companies and the Tobacco Trade Associations have spoken out against the suppression of scientific data and the practice of deception known to exist in the tobacco industry generally.

48. For example, in April of 1994, Dr. Victor DeNoble, a former research scientist for Philip Morris Incorporated, 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 conducted 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 tobacco companies. The Chief Executive Officers of The American Tobacco Company, R.J. Reynolds Tobacco Company, Brown & Williamson Tobacco Corporation, Philip Morris Incorporated, Lorillard Corporation and Liggett Group, Inc. all testified under oath before the same Subcommittee in April of 1994 that they believed nicotine is not addictive.

49. In a similar vein, defendant Liggett & Myers, Inc., while publicly refusing to acknowledge Dr. Wynder's tests mentioned above, hired the consulting firm of Arthur D. Little, Inc., to duplicate Dr. Wynder's tests. Defendant Lorillard Corporation also duplicated those 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 Defendant Liggett & Myers would not allow it, and the results of these additional tests were never made public.

50. The vast body of evidence that identifies smoking as a leading cause of lung cancer is uncontroverted and of long standing. While reputable scientists do have questions about the specific mechanism of causality, there is virtually no disagreement that smoking is a major cause of disease. Tobacco industry scientific consultants also have accepted the causal association between smoking and disease.

51. In addition to the carcinogenic nature of tobacco itself, several thousand compounds have been found in cigarette smoke. These include, for example, carbon monoxide, nicotine, carbon dioxide, benzene, formaldehyde, Polonium-210, ammonia, nicotine sulfate, freon 11, hydrogen cyanide and certain liver toxins known collectively as "furans"; some of these have been deliberately added by the Tobacco Companies. Over forty (40) known carcinogens have been found in cigarettes as well. The defendants were aware decades ago that their cigarettes contain harmful substances and additives such as arsenic and various insecticides, yet they continue to sell and promote the sale of their cigarettes.

52. The Tobacco Companies could have designed and manufactured a safer cigarette, but refused to do so. A research director for Defendant Philip Morris Incorporated pled with that defendant to develop a safer cigarette, since he recognized that production of a low-carcinogen cigarette might be possible. In a similar

project at Defendant Liggett & Myers, Inc., Dr. James Mold conducted tests to divide the components of cigarette smoke into separate entities and to interrupt the process which produces carcinogens by using a catalyst. Defendant Liggett & Myers, Inc., researchers were able to produce a so-called "safer" cigarette which eliminated the carcinogenic activity on mouse skin. However, Defendant Liggett & Myers, Inc., did not want to be publicly identified as the source of the research behind this non-carcinogenic "safe" cigarette.

53. Defendant Liggett & Myers instructed its researchers that any meetings held that pertained to the "safe" cigarette project were to be attended by a lawyer, and that all reports, notes or memoranda should go to the Liggett & Myers, Inc., legal department. Defendant Liggett & Myers, Inc., has denied that this project had any implications with regard to the health consequences of smoking, and a report of the project was suppressed by Defendant Liggett & Myers, Inc., and was not allowed to be submitted for publication. The "safe" cigarette was never marketed.

54. The defendants have employed a strategy over the years that was and is designed to confuse the medical evidence, stonewall, delay, refuse reasonably to settle claims, and to run up plaintiffs' attorneys' fees in a war of attrition. By way of 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."

55. Additionally, corporate officials of the Tobacco Companies, the Tobacco Trade Associations and the Tobacco Consultants 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 at every opportunity 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 tobacco 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 Tobacco Defendants to be privileged.

56. 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 can buy, noting that without it the Tobacco Companies would have to invent CTR or would be dead.

57. Not content with the holding strategy employed by the TIRC and the CTR, the Tobacco Companies advocated a more offensive role through their lobbying arm, the Tobacco Institute (TI). This tobacco industry backed 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. Another, the "multi-factorial hypothesis," asserted that multiple factors should be blamed, i.e., food additives, viruses, occupational hazards, air pollution, or stress, as causing cancer. These public relations strategies have been somewhat successful in the public thinking, if not in the scientific and medical literature.

58. Cigarettes manufactured and sold by the defendants contain nicotine, a highly addictive substance. The defendants know of the difficulties that 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 additive nature of nicotine. Nicotine addiction is similar to the addictions of illegal drugs such as heroin, cocaine, and amphetamines. An internal tobacco industry memo acknowledged in 1972: "[w]ithout nicotine ... there would be no smoking ... the cigarette [is] a dispenser for a dose unit of nicotine." FDA authorities have recently recognized the mounting evidence that the tobacco companies have regularly manipulated the amount of nicotine in cigarettes to induce and satisfy this addiction.

59. For many years, the defendants have engaged in a vast and misleading promotional, public relations, and lobbying blitz which has as its goal increasing the numbers of people addicted to nicotine in cigarettes and decreasing the numbers of people who attempt or succeed in quitting. Much of their efforts in this regard have been and continue to be directed toward minors. 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 does not cause cardiovascular disease, lung

cancer, emphysema and other diseases and that smokers live healthy and vital lives. The Tobacco 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 other successful professionals, including doctors.

60. The defendants specifically target groups they deem susceptible to their efforts, such as African Americans and low income women. The defendants have even targeted minors. 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. Over one million new underage smokers are addicted in the United States each year. Such efforts by the defendants create more sales for the tobacco industry, and more resulting health care costs for the State.

61. The Tobacco Companies' cigarettes are designed, manufactured, marketed and sold by the defendants to be smoked by the consuming public.

62. Section 97-5-25 of the Mississippi Code states:

If any person sell, barter, deliver or give any cigar or cigars, cigarette or cigarettes, smoking tobacco, or snuff to any child under the age of eighteen years, unless previously authorized in writing by the parent or guardian of such child, he shall be guilty of a misdemeanor, and, on conviction, shall be fined not less than twenty dollars nor more than one hundred dollars, or imprisoned in the county jail not less than one week nor more than three months or both.

As previously alleged, the defendants have engaged in a concerted effort to circumvent and violate the laws of the State of Mississippi by targeting minors with sophisticated promotional schemes designed to create successive generations of addicted customers. It is virtually impossible for parents or law enforcement resources to control the efforts of the defendants to make children the users of cigarettes.

63. The defendants collectively sold or aided and abetted in the sale of cigarettes containing tobacco, which cigarettes were and are defective and unreasonably dangerous.

64. At all pertinent times, the defendants knew, or should have known, that the smoking of cigarettes was and is hazardous to human health.

65. The Tobacco Companies, the Tobacco Trade Associations, the Tobacco Consultants and the

Tobacco Wholesalers, through their funding and control of certain studies concerning the effects of smoking on human health, their control over trade publications, promoting, marketing, and/or through other agreements, understandings and joint undertakings and enterprises, conspired with, cooperated with and/or assisted each other in the wrongful suppression, active concealment and/or misrepresentation of the true relationship between smoking cigarettes and various diseases, all to the detriment of the public health, safety and welfare and thereby causing harm to the State.

66. Cigarettes are inherently, abnormally, and unreasonably dangerous. The health risks and costs of cigarette smoking to the citizens of the State and to the State greatly outweigh any claimed utility of cigarettes. The defendants knew or should have known of the dangers inherent in the use of their cigarettes, and that the public and the State would be harmed by the intended and foreseeable use of their cigarettes.

67. For many years, the defendants have been engaged in the business of manufacturing, testing, designing, promoting, marketing, packaging, selling, distributing, and/or placing into the stream of commerce in and into the State numerous defective, unreasonably dangerous and hazardous cigarettes, or, in the course of their business, materially have participated with, conspired with and/or otherwise aided, abetted and assisted other defendants in so doing.

68. As a direct and proximate result of the defective design, testing, manufacturing, marketing, and assembly choices and practices of the defendants, the aforesaid cigarettes were and are themselves defective and unreasonably dangerous.

69. These aforesaid cigarettes reached the users, consumers and bystanders thereof in substantially the same condition which they were in when originally manufactured, distributed and sold by the defendants. At the time the aforesaid cigarettes were sold or placed on the market, they were in a defective condition, unreasonably dangerous to users and consumers, and to bystanders in the vicinity of the users and consumers.

70. The defective condition of the aforesaid cigarettes directly and proximately caused thousands of Mississippians to suffer various tobacco-induced diseases, injuries and sicknesses, and directly and proximately caused the State to expend millions of dollars in order to provide necessary health care to these citizens, thereby damaging the State.

71. At all pertinent times, it was foreseeable by the defendants that certain of the Mississippi citizens who use the defendants' cigarettes would become ill and

suffer injury, disease and sickness as a result of using the cigarettes as the defendants intended, and it was further foreseeable by the defendants that the State would be required to expend millions of dollars each year in order to provide necessary medical treatment and facilities to those citizens so injured.

72. The Tobacco Companies, the Tobacco Trade Associations and the Tobacco Consultants have conspired together, sometimes acting through a clandestine "Special Projects" program of the Tobacco Institute Research Committee, later called the Council for Tobacco Research -- U.S.A. Inc., said conspiracy being for the purpose of and having the effect of fraudulently misleading the public, including Mississippi citizens and the State, with regard to the health risks of smoking, all for the purpose of furthering the defendants' profits from the sale of their cigarettes.

73. Specifically, and in addition to the allegations above, the Tobacco Companies, the Tobacco Trade Associations, the Tobacco Consultants, and the Tobacco Wholesalers knew of the hazards of cigarette smoking; they affirmatively and actively concealed information which clearly demonstrated the dangers of smoking and affirmatively misled the public with regard to the material and clear risks of smoking; they did so with the intent that the public would continue to purchase the defendants' cigarettes; they then well knew that the public would not be in a position to know the true risks of smoking; they then well knew that the public would rely upon the misleading information that they promulgated.

74. At all pertinent times, the aforesaid defendants purposefully and intentionally engaged in these activities, and continue to do so, knowing full well that when the State's citizens use their cigarettes as those cigarettes were and are intended to be used, that the State's citizens would be substantially certain to suffer disease, injury and sickness, including cancer, emphysema, heart disease and other illnesses, and that the State would be injured thereby, all as described above.

75. Also at all pertinent times, the defendants purposefully and intentionally engaged in these activities, and continue to do so, knowing full well that the State, in the absence of any such efforts by the defendants, would be obligated to, and would, provide health care and other necessary facilities and services for certain of the State's citizens thus harmed by the intended use of the defendants' cigarettes, and that the State itself thereby would be harmed.

76. The statements, representations and promotional schemes publicized by the defendants were deceptive, false, incomplete, misleading and untrue, and

violative of { 97-23-1, Mississippi Code Annotated (1972) and its antecedents. The defendants know, or should have known, that the said statements, representations and advertisements were deceptive, false, incomplete, misleading and untrue at the time of making such statements. The defendants had an economic interest in making such statements. The citizens of Mississippi who purchased and used the defendants' cigarettes had no knowledge of the falsity or untruth of said statements, representations and advertisements when they purchased the aforesaid cigarettes; moreover, those citizens had a right to rely on such statements, representations and advertisements. Each of the said statements, representations and advertisements were material to those citizens' purchasing the aforesaid cigarettes in that Mississippi citizens would not have purchased the aforesaid cigarettes if they had known that said statements, representations and advertisements were deceptive, false, incomplete, misleading and untrue.

77. The citizens of Mississippi and the State had a right to rely upon the representations of the Tobacco Companies, the Tobacco Trade Associations, the Tobacco Consultants and the Tobacco wholesalers, but were directly and proximately injured by such reliance, all as described above.

**COUNT ONE
RESTITUTION/
UNJUST ENRICHMENT**

78. The State realleges and incorporates herein the foregoing allegations of this Complaint.

79. Many of the State's citizens who are afflicted with tobacco-related diseases are poor, undereducated, and unable to provide for their own medical care. These citizens rely upon the state to provide their medical care, which reliance results in an extreme burden on the taxpayers and the financial resources of this State. Yet, these very citizens, along with our youth, are targeted by tobacco promotional techniques. Mississippi taxpayers have thus unofficially expended hundreds of millions of dollars in caring for their fellow citizens who have and are suffering from lung cancer; cardiovascular disease; emphysema; chronic obstructive pulmonary disease; and a variety of other cancers and diseases that were and are caused by cigarettes. While Mississippi is perhaps the poorest state in the Union in per capita income, Mississippians lead the nation in their incidence of coronary heart disease, a disease which is directly related to cigarette smoking.

80. While the State and its various agencies and institutions are struggling to pay for the health care

costs of tobacco, the tobacco cartel continues to reap billions of dollars in profits from the sale of cigarettes. Tax revenues generated by the cigarette smokers help defray but a tiny fraction of the health care costs resulting from tobacco use in this state.

81. The defendants are able legally to promote the sale of their cigarettes to the citizens of Mississippi by continuing to misinform the federal and State authorities about the true carcinogenic, pathologic and addictive qualities of cigarettes. Instead of honestly disclosing the genuine health risks of smoking cigarettes, the tobacco companies have spent billions in slick, sophisticated marketing tactics designed to make smoking appear to be glamorous to our youngsters.

82. In equity and fairness, it is the defendants, not the taxpayers of Mississippi, who should bear the costs of tobacco inflicted diseases. By avoiding their own duties to stand financially responsible for the harm done by their cigarettes, the defendants wrongfully have forced the State of Mississippi to perform such duties and to pay the health care costs of tobacco-related disease. As a result, the defendants have been unjustly enriched to the extent that Mississippi's taxpayers have had to pay these costs.

83. Wherefore, premises considered, the State prays for relief and judgment against the defendants, jointly and severally, as follows:

- a. for damages in an amount which is sufficient to provide restitution and repay the State for the sums the State has expended on account of the defendants' wrongful conduct, with said amount to be determined at trial;
- b. for damages in restitution for the sums of money to be paid by the State in the future on account of the defendants' wrongful conduct;
- c. for pre-judgment interest, as well as the State's reasonable attorneys' fees, expert witness fees and other costs of this action;
- d. for punitive damages in such amount as will sufficiently punish the defendants for their conduct and as will serve as an example to prevent a repetition of such conduct in the future;
- e. for such other and further extraordinary equitable, declaratory and/or injunctive relief as permitted by law as necessary

- to assure that the State has an effective remedy; and
- f. for such other and further relief, as the Court deems just and proper, to which the State may be entitled.

**COUNT TWO
INDEMNITY**

84. The State realleges and incorporates herein the foregoing allegations of this Complaint.

85. As a direct and proximate result of the breaches of duty and omissions of the defendants as alleged above, the State was obligated to pay and has paid millions of dollars in the past for the provision of necessary medical care, facilities and services for certain of those aforementioned Mississippi citizens injured by the defendants' cigarettes and unable to afford and otherwise obtain such necessary medical care, facilities and services.

86. The state was legally obligated to pay the aforementioned sums and did not conduct itself in any wrongful manner in being so obligated to pay and in paying the aforementioned sums.

87. In all fairness and justice and to prevent an unjust enrichment, the defendants should indemnify the State for the provision of necessary medical care, facilities and services for those aforementioned citizens injured by the defendants' cigarettes.

88. Wherefore, premises considered, the State prays for relief and judgment against the defendants, jointly and severally, as follows:

- a. for damages in an amount which is sufficient to provide restitution and re-pay the State for the sums the State has expended on account of the defendants' wrongful conduct, with said amount to be determined at trial;
- b. for damages in restitution for the sums of money to be paid by the State in the future on account of the defendants' wrongful conduct;
- c. for pre-judgment interest, as well as the State's reasonable attorneys' fees, expert witness fees and other costs of this action;

- d. for punitive damages in such amount as will sufficiently punish the defendants for their conduct and as will serve as an example to prevent a repetition of such conduct in the future;
- e. for such other and further extraordinary equitable, declaratory and/or injunctive relief as permitted by law as necessary to assure that the State has an effective remedy; and
- f. for such other and further relief, as the Court deems just and proper, to which the State may be entitled.

**COUNT THREE
COMMON LAW
PUBLIC NUISANCE**

89. The State realleges and incorporates herein the foregoing allegations of this Complaint.

90. By their wrongful conduct as alleged above, the defendants have intentionally and unreasonably interfered with the public's right to be free from unwarranted injury, disease and sickness, and have caused damage to the public health, the public safety and the general welfare of the citizens of Mississippi, and have thereby wrongfully caused the State to expend millions of dollars in support of the public health and welfare.

91. Wherefore, premises considered, the State prays for injunctive relief and judgment against the defendants, Jointly and severally, as follows:

- a. for damages in an amount which is sufficient to provide restitution and re-pay the State for the sums the State has expended on account of the defendants' wrongful conduct, with said amount to be determined at trial;
- b. for damages in restitution for the sums of money to be paid by the State in the future on account of the defendants' wrongful conduct;
- c. for pre-judgment interest, as well as the State's reasonable attorneys' fees, expert witness fees and other costs of this action;
- d. for punitive damages in such amount as will sufficiently punish the defendants

for their conduct and as will serve as an example to prevent a repetition of such conduct in the future;

- e. for such other and further extraordinary equitable, declaratory and/or injunctive relief as permitted by law as necessary to assure that the State has an effective remedy; and
- f. for such other and further relief, as the Court deems just and proper, to which the State may be entitled.

**COUNT FOUR
INJUNCTIVE RELIEF**

92. The State realleges and incorporates herein the foregoing allegations of this Complaint.

93. The defendants have, for many years, engaged in, encouraged, aided and abetted an intentional and unconscionable campaign to promote the distribution and sale of cigarettes to children thereby creating successive generations of addicted customers who ultimately become the victims of smoking-related illnesses. Such conduct is a violation of the laws of the State of Mississippi which prohibit the sale of cigarettes to minors imposes untold human suffering on the citizens of the State of Mississippi, and has created a health care burden for the state totalling hundreds of millions of dollars.

94. It is necessary and essential to stop the defendants from promoting the sale of their cigarettes to minors, a remedy which can only be effectively accomplished by enjoining the defendants from not only promoting the sale of their cigarettes to minors, but additionally in engaging in aiding, abetting or encouraging the sale or distribution of cigarettes to minors.

95. Enjoining the defendants from promoting the sale of their cigarettes to minors is necessary to prevent substantial injury to the affected minors, such substantial injury being the danger that the minors would become addicted to cigarettes and thereby have their health and their lives placed in danger from smoking cigarettes.

96. If such injunction enjoining the defendants from promoting the sale of their cigarettes to minors is not granted, the minors who are allowed to purchase cigarettes will be irreparably harmed in that they will likely become addicted to cigarettes and they will be

substantially certain to suffer adverse health consequences.

97. It is in the public interest to enjoin the defendants from promoting the sale of their cigarettes to minors.

98. Wherefore, premises considered, the State prays for relief and judgment against the defendants, jointly and severally, as follows:

for a prohibitory injunction to be issued against the defendants to prohibit them from promoting the sale of their cigarettes to minors.

Dated: May 23, 1994

Respectfully submitted,
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