STATE OF MINNESOTA COURT DISTRICT

COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

Case Type: Other Civil

THE STATE OF MINNESOTA,

BY HUBERT H. HUMPHREY, III,

ITS ATTORNEY GENERAL,

and

BLUE CROSS AND BLUE SHIELD

OF MINNESOTA,

Plaintiffs,

Court File No. C1-94-8565

vs.

SECOND AMENDED COMPLAINT

PHILIP MORRIS INCORPORATED,
R.J. REYNOLDS TOBACCO COMPANY,
BROWN & WILLIAMSON TOBACCO CORPORATION,
B.A.T. INDUSTRIES P.L.C.,
BRITISH-AMERICAN TOBACCO COMPANY LIMITED,
BAT (U.K. & EXPORT) LIMITED,
LORILLARD TOBACCO COMPANY,
THE AMERICAN TOBACCO COMPANY,
LIGGETT GROUP, INC.,
THE COUNCIL FOR TOBACCO RESEARCH - U.S.A., INC.,
and THE TOBACCO INSTITUTE, INC.,

Defendants.

The State of Minnesota, by its Attorney General, Hubert H. Humphrey, III, and Blue Cross and Blue Shield of Minnesota, for their complaint allege, upon information and belief, as follows:

THE NATURE OF THIS ACTION

1. This action arises out of a decades-long combination and conspiracy of willful and intentional wrongdoing by the leading cigarette manufacturers and their trade associations, which together

control virtually the entire industry in Minnesota and are defendants herein.

2. These defendants undertook a special duty to accept an interest in the public's health as a basic and paramount responsibility, to cooperate closely with those who safeguard the public health, and to conduct research and disclose to the public complete and authenticated information about smoking and health. Yet these same defendants have known for decades from their own internal studies that their products are deadly and addictive. Instead of disclosing this knowledge, these defendants intentionally chose to engage in a unified campaign of deceit and misrepresentation. This course of conduct was intended by the defendants to control and maintain their market, to maximize their profits, and to minimize their legal exposure -- all for the "self-preservation" of the industry.

3. The defendants' collective conduct has resulted in an unprecedented impact on the public health, in both human and economic terms. The death toll in one year alone from cigarette smoking equals the number of American lives lost in battles in all the wars this country has fought this century. Overwhelmingly, the new recruits in this death march are children and adolescents.

4. Despite the duration and the severity of the misconduct, the industry has enjoyed virtual immunity because of its economic and political power, its scorched-earth litigation tactics, and its fraudulent concealment of unlawful conduct. The State of Minnesota and Blue Cross and Blue Shield of Minnesota bring this action to place upon the industry the legal responsibility for the consequences of its actions. The premise of this action is that this industry -- and not the State of Minnesota, or its citizens, and not Blue Cross and Blue Shield of Minnesota, or its member groups -- should pay for the staggering health care costs caused by its actions in violation of the laws of this State.

JURISDICTION AND VENUE

5. This court has jurisdiction over the subject matter of this case pursuant to Minn. Stat. §§ 8.31, 325D.15, 325D.45, 325D.58, 325F.70, and 484.01.

6. Venue is proper in Ramsey County pursuant to Minn. Stat. §§ 325D.65 and 542.09.

THE PLAINTIFFS

7. The Attorney General, Hubert H. Humphrey, III, brings this action on behalf of the State of Minnesota pursuant to his authority under the common law, as well as Minn. Stat. §§8.01, 8.31, 325D.09-15, 325D.43-45, 325D.49-66, and 325F.67-70. The Attorney General brings this action to protect the citizens and the public health of the State of Minnesota by seeking declaratory and equitable relief and civil penalties. The Attorney General also brings this action to vindicate the State's proprietary interest in enforcing the State's rights to damages for economic injuries to the State which were caused by the unlawful actions of the cigarette industry. Such damages include but are not limited to increased expenditures for:

a. Minnesota's Medicaid plan, Medical Assistance, see Minn. Stat. § 256B.01 et seq. and 42 U.S.C. §1396 et seq. Minnesota has determined that Medical Assistance for needy persons "is hereby declared to be a matter of state concern" and that to provide such care, "a statewide program of medical assistance . . . is hereby established." Minn. Stat. §256B.01.

Under the Medical Assistance Program, the State of Minnesota pays for medical services provided to program recipients. The State of Minnesota pays a substantial share of the costs of Medical Assistance, in fact, one of the highest shares of any state Medicaid plan in the country, with the federal government bearing the remaining costs. In fulfilling its statutory duties, the State of Minnesota has expended and will expend substantial sums of money due to the increased cost of providing health care services for treatment of smoking-caused diseases. These increased expenditures have been caused by the unlawful actions of the cigarette industry.

b. General Assistance Medical Care, see Minn. Stat. § 256D.03, subd. 3. General Assistance Medical care is available to qualifying persons who are not eligible for Medical Assistance. The State of Minnesota pays for the entire cost of this care. In fulfilling its statutory duties, the State of Minnesota has expended and will expend substantial sums of money due to the increased cost of providing health care services for treatment of smoking-caused diseases. These increased expenditures have been caused by the unlawful actions of the cigarette industry.

c. MinnesotaCare, see Minn. Stat. § 256.9351 et seq., as amended by 1994 Minn. Laws, Ch. 625. MinnesotaCare provides subsidized health coverage for qualifying Minnesotans not otherwise covered by Medical Assistance. In fulfilling its statutory duties, the State of Minnesota has expended and will expend substantial sums of money due to the increased cost of providing health care services for treatment of smoking-caused diseases. These increased expenditures have been caused by the unlawful actions of the cigarette industry.

d. The State Employee Group Insurance Program. The State of Minnesota, as an employer which makes available health coverage for its approximately 60,000 employees pursuant to statutory and contractual obligations, is mandated by law to offer comprehensive and major medical health coverage and benefits that include coverage for treatment of smoking-caused diseases. The State of Minnesota has entered into contractual agreements with certain health care service providers and plans in order to make available to its employees health coverage that includes these mandated benefits. Blue Cross and Blue Shield of Minnesota operates and administers the largest and most widely-used state employee health care service plan. The State of Minnesota has paid and will pay substantial sums of money pursuant to these statutory and contractual obligations due to the increased cost of providing health care services for treatment of smoking-caused diseases. These increased expenditures have been caused by the unlawful actions of the cigarette industry.

e. The State of Minnesota has expended and will expend substantial sums of money to fund and promote wellness and healthy lifestyle programs in order to reduce health care costs, including smoking cessation. In addition, the State of Minnesota operates a program of preventive health services for state employees. These expenditures have been and will be increased by the unlawful actions of the cigarette industry.

f. The unlawful actions of the cigarette industry threaten and interfere with the statutory and contractual duties of the State of Minnesota, as described above, and with the public health of the citizens of the State of Minnesota.

8. Blue Cross and Blue Shield of Minnesota is a nonprofit Minnesota corporation with its

principal place of business at 3535 Blue Cross Road, Eagan, Minnesota 55122. Blue Cross and Blue Shield of Minnesota is, with its corporate affiliates, the only nonprofit health service plan in the State of Minnesota incorporated pursuant to the Minnesota Nonprofit Health Service Plan Corporations Act, Minn. Stat. §§62C.01, et seq. This Act provides that the purpose and intent of a nonprofit health service plan is "to promote a wider, more economical and timely availability of hospital, medical-surgical, dental, and other health services for the people of Minnesota" and to "advance the public health" within the State of Minnesota. Minn. Stat. § 62C.01, subd. 2. The articles of incorporation of Blue Cross and Blue Shield of Minnesota also embrace this purpose and intent. Blue Cross and Blue Shield of Minnesota brings this action to vindicate and further these statutory and corporate directives and pursuant to the common law, as well as Minn. Stat. §§8.31, 325D.09-15, 325D.43-45, 325D.49-66, and 325F.67-70.

a. As a health service plan corporation, Blue Cross and Blue Shield of Minnesota contracts with numerous health care service providers in the State of Minnesota, including 12,000 doctors and clinics, 135 hospitals, and 6,000 allied health care providers, and is a purchaser of health care services. As a purchaser, Blue Cross and Blue Shield of Minnesota is directly liable for charges incurred in connection with smoking-related diseases.

b. Blue Cross and Blue Shield of Minnesota also contracts with groups comprised of private employers and political subdivisions in the State of Minnesota to provide prepaid health care service to employees and dependents. Blue Cross and Blue Shield of Minnesota charges and collects a fixed premium from the political subdivisions and private employers with whom it contracts.

c. Pursuant to Minnesota law, the health care service plans Blue Cross and Blue Shield of Minnesota offers to private employers and political subdivisions must contain comprehensive and major medical health coverage and benefits that include coverage for treatment of smoking-caused diseases.

d. Blue Cross and Blue Shield of Minnesota has paid and will pay substantially higher charges to its contracted health care providers due to the increased cost of providing health care services for treatment of smoking-caused diseases. These increased expenditures have been caused by the unlawful actions of the cigarette industry.

e. In addition, Blue Cross and Blue Shield of Minnesota has expended and will expend substantial sums of money to fund and promote wellness and healthy lifestyle programs in order to reduce health care costs, including Doctors Helping Smokers, a program to help physicians identify patients who smoke and encourage them to quit. These increased expenditures also have been caused by the unlawful actions of the cigarette industry.

f. The unlawful actions of the cigarette industry threaten and interfere with the statutory purpose of Blue Cross and Blue Shield of Minnesota to promote a wider and more economical availability of health care services for the people of Minnesota and to advance the public health within the State of Minnesota. In addition, the unlawful actions of the cigarette industry interfere with the contractual obligations among Blue Cross and Blue Shield of Minnesota and the health care service providers and its member groups.

g. Blue Cross and Blue Shield of Minnesota brings this action for declaratory and equitable

relief, as well as for economic damages for increased costs for health care services caused by the unlawful actions of the cigarette industry. Blue Cross and Blue Shield of Minnesota brings this action on its own behalf as a purchaser of health care services and on behalf of its fully insured groups with whom it has contracts, who have been required to pay increased premiums for health insurance and who will benefit from any recovery in this action.

THE DEFENDANTS

9. Philip Morris Incorporated ("Philip Morris") is a Virginia corporation whose principal place of business is 120 Park Avenue, New York, New York 10017.

10. R.J. Reynolds Tobacco Company ("R.J. Reynolds") is a New Jersey corporation whose principal place of business is 4th & Main Street, Winston-Salem, North Carolina 27102.

11. Brown & Williamson Tobacco Corporation ("Brown & Williamson") is a Delaware corporation whose principal place of business is 1500 Brown & Williamson Tower, Louisville, Kentucky 40202.

12a. B.A.T. Industries P.L.C. ("B.A.T. Industries"), is a British corporation with its principal place of business at Windsor House, 50 Victoria St., London. Through a succession of intermediary corporations and holding companies, B.A.T. Industries is the sole shareholder of Brown & Williamson. Through Brown & Williamson, B.A.T. Industries has placed cigarettes into the stream of commerce with the expectation that substantial sales of cigarettes would be made in the United States and in Minnesota. In addition, B.A.T. Industries conducted, or through its agents (including but not limited to the BAT Group and its members) and/or co-conspirators conducted, critical research for Brown & Williamson on the issue of smoking and health, and, in addition, was responsible through itself and its agents (including but not limited to the BAT Group and its members) and/or co-conspirators, for developing, influencing, leading and coordinating critical smoking and health issues and decisions by Brown & Williamson. Further, Brown & Williamson is believed to have sent to England research conducted in the United States on the issue of smoking and health in an attempt to remove sensitive and inculpatory documents from United States jurisdiction, and these documents were subject to the control of B.A.T. Industries. B.A.T. Industries has been involved in the conspiracy described herein and the actions of B.A.T. Industries have affected and caused harm in Minnesota.

12b. British-American Tobacco Company Limited ("BATCo") is a British corporation with its principal place of business at Millbank, Knowle Green, Staines, Middlesex TW18 IDY, England. BATCo is the former parent and current corporate affiliate of Brown & Williamson and, as such, placed cigarettes into the stream of commerce with the expectation that substantial sales of cigarettes would be made in the United States and in Minnesota. In addition, BATCo conducted, or through its agents (including but not limited to the BAT Group and its members) and/or co-conspirators conducted, critical research for Brown & Williamson on the issue of smoking and health, and, in addition, was responsible through itself and its agents (including but not limited to the BAT Group and its members) and/or co-conspirators, for developing, influencing, leading and coordinating critical smoking and health issues and decisions by Brown & Williamson. BATCo has been involved in the conspiracy described herein and the actions of BATCo have affected and caused harm in Minnesota. Currently, the ultimate parent corporation of BATCo is BAT Industries.

12c. BAT (U.K. & Export) Limited ("BATUKE") is a British corporation with its principal place of business at Millbank, Knowle Green, Staines, Middlesex TW18 IDY, England. Currently, the ultimate parent corporation of BATUKE is BAT Industries. BATUKE conducted, or through its agents (including but not limited to the BAT Group and its members) and/or co-conspirators conducted, critical research for Brown & Williamson on the issue of smoking and health. BATCo has been involved in the conspiracy described herein and the actions of BATCo have affected and caused harm in Minnesota.

13. Lorillard Tobacco Company ("Lorillard") is a Delaware corporation whose principal place of business is 1 Park Avenue, New York, New York 10016.

14. The American Tobacco Company ("American Tobacco") is a Delaware corporation whose principal place of business is 281 Tresser Boulevard, Stamford, Connecticut 06904.

15. Liggett Group, Inc. ("Liggett") is a Delaware corporation whose principal place of business is 700 Main Street, Durham, North Carolina 27702.

16. The Council for Tobacco Research - U.S.A., Inc. ("CTR"), successor in interest to the Tobacco Institute Research Committee ("TIRC"), is a nonprofit corporation organized under the laws of the State of New York with its principal place of business at 900 3rd Avenue, New York, New York 10022.

17. The Tobacco Institute, Inc. is a nonprofit corporation organized under the laws of the State of New York with its principal place of business at 1875 I Street N.W., Suite 800, Washington, D.C. 20006.

THE CONCENTRATION OF THE INDUSTRY

18. Cigarette manufacturing has been one of the most concentrated industries in the United States throughout this century. Together, Philip Morris, R.J. Reynolds, Brown & Williamson, Lorillard, American Tobacco, and Liggett comprise the Big Six cigarette manufacturers, which control virtually 100% of the market in the United States and in Minnesota. Philip Morris and R.J. Reynolds are the industry leaders, with national market shares of approximately 42% and 29%, respectively. The approximate market shares of the other Big Six manufacturers are: Brown & Williamson, 12%; Lorillard, 7%; American Tobacco, 7%, and Liggett, 3%.

19. In part because of its concentration, the cigarette industry has long been one of America's most profitable businesses, with profit margins estimated in at least the 30% range. The industry continues to harvest billions of dollars in profits each year from domestic sales alone.

20. In addition, the concentration of the industry has allowed the manufacturers and their two trade associations to engage in a decades-long conspiracy relating to the issue of smoking and health and to direct their considerable profits to further that end.

THE BEGINNING OF THE INDUSTRY CONSPIRACY ON SMOKING AND HEALTH

21. The industry conspiracy and combination began as early as the 1950s, when the cigarette manufacturers were confronted with the publication of several scientific studies which sounded grave warnings on the health hazards of cigarettes. One of the first of these studies was published

in 1952 by Dr. Richard Doll, a British researcher. Dr. Doll, in a statistical analysis, found that lung cancer was more common among people who smoked and that the risk of lung cancer was directly proportional to the number of cigarettes smoked. A second study was published in December 1953 by Dr. Ernest Wynder of the Sloan-Kettering Institute. Dr. Wynder painted the shaved backs of laboratory mice with a residue of cigarette smoke. Malignant tumors grew in 44% of the mice, providing biological confirmation of the cancer-causing properties of cigarettes.

22. The Doll and Wynder studies generated widespread public concern about the health hazards of cigarettes. Confronted with this evidence, the presidents of the leading tobacco companies met at an extraordinary gathering in the Plaza Hotel in New York City on December 15, 1953. Hill and Knowlton, a public relations agency, coordinated the meeting and later prepared a memorandum summarizing the discussions of that day. According to the Hill and Knowlton memorandum:

> a. The companies had not met together since two previous antitrust decrees had prohibited "many group activities." However, the companies viewed the current problem "as being extremely serious and worthy of drastic action."
>
> b. Another indication of the seriousness of the problem was "that salesmen in the industry are frantically alarmed and that the decline in tobacco stocks on the stock exchange market has caused grave concern. . . ."
>
> c. The problem was viewed entirely in terms of a public relations problem, as opposed to a public health concern. The industry leaders "feel that the problem is one of promoting cigarettes and protecting them from these and other attacks that may be expected in the future" and that the industry "should sponsor a public relations campaign which is positive in nature and is entirely 'pro-cigarettes.'"
>
> d. All of the leading manufacturers, except Liggett, agreed to "go along" with the public relations strategy. Liggett decided not to participate at that time "because that company feels that the proper procedure is to ignore the whole controversy."
>
> e. The group discussed forming an association "specifically charged with the public relations function."
>
> f. Hill and Knowlton was to play a central role in the industry association. "The current plans are for Hill and Knowlton to serve as the operating agency of the companies, hiring all the staff and disbursing all funds."

23. Thus, the Tobacco Industry Research Committee ("TIRC") was conceived and born. Five of the Big Six cigarette manufacturers were original members. Liggett did not join until 1964, the same year that the Surgeon General issued its first report on smoking and health and concluded that cigarette smoking was a cause of lung cancer. Also in 1964, TIRC changed its named to the Council for Tobacco Research ("CTR"). A second trade group, the Tobacco Institute, was formed by cigarette manufacturers in 1958.

REPRESENTATIONS AND UNDERTAKINGS BY THE INDUSTRY

24. At the time of forming its first trade association, the industry undertook a special and continuing duty to protect the public health by representing that it would conduct and disclose unbiased and authenticated research on the health risks of cigarette smoking. The industry knew that failure to fulfill this duty would increase the public health risks of cigarette smoking and the cost of health care.

25. The cigarette industry announced the formation of TIRC on January 4, 1954, with newspaper advertisements placed in virtually every city with a population of 50,000 or more, including Minneapolis, St. Paul, and Duluth, reaching a circulation of more than 43 million Americans. The advertisement was captioned "A Frank Statement to Cigarette Smokers" and was run under the auspices of TIRC with, inter alia, five of the Big Six manufacturers listed by name. The advertisement stated, in part, as follows:

a. "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."

b. "Although conducted by doctors of professional standing, these experiments are not regarded as conclusive in the field of cancer research."

c. "[T]here is no proof that cigarette smoking is one of the causes" of lung cancer.

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

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

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

g. "We are pledging aid and assistance to the research effort into all phases of tobacco use and health."

h. "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."

i. "In charge of the research activities of the Committee will be a scientist of unimpeachable integrity and medical repute. In addition there will be an Advisory Board of scientists disinterested in the cigarette industry."

j. "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."

26. Other public statements by the defendants over the years have repeated the representations that the industry was dedicated to the pursuit and dissemination of the scientific truth regarding smoking and health.

27. For example, the Tobacco Institute ran an advertisement captioned, "A Statement About Tobacco and Health," and stated:

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

b. "We accepted this responsibility in 1954 by establishing the Tobacco Industry Research Committee, which provides research grants to independent scientists. We pledge continued support of this program of research until all the facts are known."

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

d. "We shall continue all possible efforts to bring the facts to light."

28. Also, in 1970 the Tobacco Institute ran an advertisement captioned, "The question about smoking and health is still a question." In this advertisement, the Tobacco Institute stated:

a. "[A] major portion of this scientific inquiry has been financed by the people who know the most about cigarettes and have a great desire to learn the truth . . . the tobacco industry."

b. "[T]he industry has committed itself to this task in the most objective and scientific way possible."

c. "In the interest of absolute objectivity, the tobacco industry has supported totally independent research efforts with completely non-restrictive funding."

d. "Completely autonomous, CTR's research is directed by a board of ten scientists and physicians. . . . This board has full authority and responsibility for policy, development and direction of the research effort."

e. "The findings are not secret."

f. "From the beginning, the tobacco industry has believed that the American people deserve objective, scientific answers."

29. Again, in 1970 the Tobacco Institute stated, "The Tobacco Institute believes that the American public is entitled to complete, authenticated information about cigarette smoking and health." The Tobacco Institute further stated that, "The tobacco industry recognizes and accepts a responsibility to promote the progress of independent scientific research in the field of tobacco and health."

THE CAMPAIGN OF DECEIT AND MISREPRESENTATIONS

30. In actuality, the industry's promises of full disclosure and objective scientific research were never fulfilled. Instead, the trade associations -- dominated by public relations officials and attorneys, as opposed to independent scientists -- have served as industry fronts in a campaign of deceit and misinformation aimed at undermining the public perception of the health risks of smoking. Research was undertaken not in pursuit of the scientific truth on smoking and health but to aid the industry in its public relations and litigation battles. Research that might confirm

the health risks of smoking was concealed.

31. In 1964, the year of the first Surgeon General's report, CTR formed a "special projects division" to assist the industry in concealing unfavorable information, making a further mockery of the undertaking to conduct and disclose all of the facts relating to smoking and health. Under the auspices of the special projects division, industry research that might indict smoking as a cause of illness was diverted and shielded from the public by a fraudulent claim of attorney-client privilege. As the notes of one CTR meeting, written in 1981, stated, "When we started the CTR Special Projects, the idea was that the scientific director of CTR would review a project. If he liked it, it was a CTR special project. If he did not like it, then it became a lawyers' special project." Another memorandum from 1981 explained, "Difference between CTR and Special Four (lawyers' projects). Director of CTR reviews special projects -- if project was problem for CTR, use Special Four."

32. As with many of its strategies, the industry has been successful in using the CTR special projects division to conceal harmful information. To this day, research from the special projects division remains shielded from public scrutiny.

33. Other internal industry documents also shed light on the true nature of the trade associations, as the following quotations demonstrate by way of example:

a. "CTR began as an organization called Tobacco Industry Research Council (TIRC). It was set up as an industry 'shield' in 1954. That was the year statistical accusations relating smoking to diseases were leveled at the industry; litigation began; and the Wynder/Graham reports were issued. CTR has helped our legal counsel by giving advice and technical information, which was needed at court trials. . . . [T]he 'public relations' value of CTR must be considered and continued . . . . It is very important that the industry continue to spend their dollars on research to show that we don't agree that the case against smoking is closed . . . . "

b. "CTR is best & cheapest insurance the tobacco industry can buy and without it the Industry would have to invent CTR or would be dead."

c. "Historically, the joint industry funded smoking and health research programs have not been selected against specific scientific goals, but rather for various purposes such as public relations, political relations, position for litigation, etc. . . In general, these programs have provided some buffer to public and political attack of the industry, as well as background for litigious [sic] strategy."

d. "Historically, it would seem that the 1954 emergency was handled effectively. From this experience there arose a realization by the tobacco industry of a public relations problem that must be solved for the self-preservation of the industry."

e. "When the products of an industry are accused of causing harm to users, certainly it is the obligation of that industry to endeavor to determine whether such accusations are true or false. Money spent for such purpose should not be regarded as a charitable contribution but as a business expense -- an expense necessary to keep that industry alive. In view of the billions of dollars of annual sales of our industry our expenditures for health research has been of a minimal order."

f. "For nearly twenty years, this industry has employed a single strategy to defend itself on three major fronts -- litigation, politics, and public opinion. While the strategy was brilliantly conceived and executed over the years helping us win important battles, it is only fair to say that it is not -- nor was it intended to be -- a vehicle for victory. On the contrary, it has always been a holding strategy, consisting of . . . creating doubt about the health charge without actually denying it. . . . In the cigarette controversy, the public -- especially those who are present and potential supporters (e.g. tobacco state congressmen and heavy smokers) -- must perceive, understand, and believe in evidence to sustain their opinions that smoking may not be the causal factor."

34. Despite overwhelming scientific evidence, and the confirmation of this evidence by their own internal research, the cigarette manufacturers and their trade associations continue to this day to repeat -- over and over, in a unified stance -- that there is no causal connection between cigarette smoking and adverse health effects and that cigarette smoking is not addictive. These representations -- which are fraudulent, misleading, deceptive, and untrue -- rest at the center of the industry's ongoing conspiracy and combination to market and profit from a product it knows is deadly and addictive.

THE CONSPIRACY TO SUPPRESS RESEARCH AND PRODUCT DEVELOPMENT

The "Gentlemen's Agreement"

35. The joint efforts of the industry on the issue of smoking and health also included the general counsel of the Big Six meeting to review proposals for scientific research and the scientific directors of the Big Six meeting and acknowledging "a general feeling that an industry approach as opposed to an individual company approach was highly desirable."

36. There was also a "gentlemen's agreement" among the manufacturers to suppress independent research on the issue of smoking and health. This agreement was referenced in a 1968 internal Philip Morris draft memo, which stated, "We have reason to believe that in spite of gentlemans [sic] agreement from the tobacco industry in previous years that at least some of the major companies have been increasing biological studies within their own facilities." This memo also acknowledged that cigarettes are inextricably intertwined with the health field, stating, "Most Philip Morris products both tobacco and non-tobacco are directly related to the health field."

37. As indicated by this memo, it was believed within the industry that individual companies were performing certain research on their own, in addition to the joint industry research. But the fundamental understanding and agreement remained intact that harmful information and activities would be restrained, suppressed, and/or concealed. This included restraining, suppressing, and concealing research on the health effects of smoking, including the addictive qualities of cigarettes, and restraining, concealing, and suppressing the research and marketing of safer cigarettes.

Suppression of Liggett's Safer Cigarette

38. At least one manufacturer -- Liggett -- was successful in researching and developing a safer cigarette. But Liggett decided not to market this product after an apparent threat of retaliation by another manufacturer and after executives expressed concern that marketing a safer cigarette would imply that traditional cigarettes were not safe.

39. Liggett initiated its safer cigarette project, called XA, in 1968. After a minimal expenditure of only $14 million, Liggett was able, internally, to proclaim the project a success in 1979. By applying an additive of palladium metal and magnesium nitrate to tobacco to act as a catalyst in the burning process, Liggett found that "[c]igarette tar has been neutralized" and that there was "[n]o evidence for new or increased hazard. . . ."

40. Using this process, Liggett was able to produce cigarettes "which are believed to be of commercial quality." These cigarettes, however, were never marketed.

41. Two reasons apparently led Liggett to abandon its XA project. One was fear that the marketing of a "safer" cigarette would be, in essence, a confession that its -- and the industry's -- other cigarettes were not safe. Thus, one Liggett executive wrote that, "Any domestic activity will increase risk of cancer litigation on existing products." In addition, there was an apparent threat of retaliation from industry leader Philip Morris if Liggett broke ranks.

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

a. Mold stated that the XA project produced a safer cigarette. He stated, "We produced a cigarette which was, we felt, was commercially acceptable as established by some consumer tests, which eliminated carcinogenic activity. . . ."

b. Mold stated that after 1975, all meetings on the project were attended by lawyers, lawyers collected all notes after the meetings, and all documents were directed to the law department to maintain the attorney-client privilege. He stated, "Whenever any problem came up on the project, the Legal Department would pounce upon that in an attempt to kill the project, and this happened time and time again."

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

Avoiding an Industry War

43. Philip Morris also explored research to develop a safer cigarette, or, in the words of one memorandum to the board of directors, cigarettes with "superior physiological performance." This memorandum noted competitive pressures to produce "less harmful" cigarettes. However, the memorandum was careful to state that, "Our philosophy is not to start a war, but if war comes, we aim to fight well and to win." Philip Morris never marketed such a safer cigarette.

The Industry Position on Safer Cigarettes

44. A memorandum authored by an attorney at the firm of Shook, Hardy & Bacon, long-time lawyers for the cigarette industry, confirmed that there was an industry-wide position regarding the issue of a safer cigarette.

45. The 1987 memorandum was written in the context of the marketing by R.J. Reynolds of a smokeless cigarette, Premier, which heated rather than burned tobacco. The Shook, Hardy attorney wrote that the smokeless cigarette could "have significant effects on the tobacco industry's joint defense efforts" and that "[t]he industry position has always been that there is no alternative design for a cigarette as we know them." The attorney also noted that, "Unfortunately, the Reynolds announcement. . . seriously undercuts this component of industry's defense."

Suppression of the R.J. Reynolds "Mouse House" Research

46. For a period of time in the late 1960s, R.J. Reynolds had a state-of-the-art laboratory in Winston-Salem, nicknamed "the mouse house." Here, scientists conducted research with mice, rats, and rabbits and began to uncover promising avenues of investigation into the mechanisms of smoking-related diseases. In 1970, this entire research division was disbanded in one day, and all 26 scientists were fired without notice. Company attorneys had collected dozens of research notebooks, still undisclosed, from the biochemists several months before the firings.

Suppression of Research on Nicotine

47. In the early 1980s, researchers working at a Philip Morris laboratory in Richmond confirmed the addictive nature of nicotine and worked to develop a synthetic form of nicotine that would avoid its cardiovascular complications. However, in April 1984, the company abruptly shut the laboratory. The researchers were fired and threatened with legal action if they published their work.

48. The research was conducted by Victor J. DeNoble and his colleague Paul C. Mele, who remained silent about their work under confidentiality agreements imposed by Philip Morris until testifying in 1994 before a congressional committee in Washington.

49. The research was so secretive that laboratory animals were brought in at night, under cover. The researchers discovered that nicotine demonstrated addictive qualities and that the animals self-administered the substance, pressing levers to obtain nicotine. The researchers also discovered nicotine analogues, artificial versions of nicotine. These analogues affected the brain much like nicotine. But the analogues did not seem to produce the harmful cardiovascular effects of nicotine. Thus, rats using the analogue behaved as if they had a nicotine "high" but did not show signs of heart distress like rapid heart beat.

50. By 1983, the research was becoming particularly problematic. A number of personal injury cases had been filed against the industry, with nicotine dependence a critical issue. In June 1983, DeNoble was called to the Philip Morris headquarters in New York to brief top executives. Following the meeting, company lawyers visited the lab and reviewed research notebooks. There were discussions of shifting the research out of the company, perhaps to DeNoble and Mele as outside contractors or to a lab in Switzerland, to distance Philip Morris from the results.

51. Finally, in April 1984, the researchers were abruptly told to halt their work, kill all rats, and turn in their security badges. The researchers also were forced to withdraw a paper on the

addictive qualities of nicotine, even after it had been accepted for publication by a scientific journal.

BROWN & WILLIAMSON: CONFIRMING CAUSATION, REMOVING "DEADWOOD"

52. Recently, a series of Brown & Williamson documents was disclosed which set forth the far-ranging deceptions of that company in particular, and of the industry in general.

53. Brown & Williamson, as with the other manufacturers, was aware early on of the dangers of cigarettes. Indeed, a Brown & Williamson review of published statistical research, including the 1952 report by Dr. Doll, noted that the studies offered "frightening testimony from epidemiological studies."

54. By 1957, one of Brown & Williamson's British affiliates, which conducted much of the health research for the U.S. company -- was using the code name "zephyr" for cancer. For example, in a March 1957 report, the British affiliate stated, "As a result of several statistical surveys, the idea has arisen that there is a causal relation between zephyr and tobacco smoking, particularly cigarette smoking."

55. In 1962, Brown & Williamson's London-based parent company conducted a meeting of its worldwide subsidiaries in Southampton, England. A transcript of the meeting reveals the following remarks:

a. One researcher stated that "smoking is a habit of addiction" and that "[n]icotine is not only a very fine drug, but the technique of administration by smoking has considerable psychological advantages." (Several years later, in 1967, the researcher admitted that the company "is in the nicotine rather than the tobacco industry.")

b. Another research executive "thought we should adopt the attitude that the causal link between smoking and lung cancer was proven because then at least we could not be any worse off."

c. Another researcher stated that "no industry was going to accept that its product was toxic, or even believe it to be so, and naturally when the health question was first raised, we had to start denying it at the P.R. level. But by continuing that policy, we had got ourselves into a corner and left no room to maneuver. In other words, if we did get a breakthrough and were able to improve our product, we should have to about-face, and this was practically impossible at the P.R. level."

d. The chairman of Brown & Williamson's British affiliate stated that it "was very difficult when you were asked as chairman of a tobacco company to discuss the health question on television. You had not only your own business to consider but the employees throughout the industry, retailers, consumers, farmers growing the leaf, and so on. And you were in much too responsible a position to get up and say, 'I accept that the product which we and all our competitors are putting on the market gives you cancer,' whatever you might think privately."

e. The chairman also stated that if the company manufactured safer brands, "how to justify continuing the sale of other brands? . . . It would be admitting that some of its products

already on the market might be harmful. This would create a very difficult public relations situation."

56. The next year, in 1963, Brown & Williamson engaged in an internal debate over whether to disclose what it knew about the adverse effects of smoking to the Surgeon General, who was preparing his first official report on cigarettes. Some of the documents generated by Brown & Williamson as part of this process were shared with its London-based parent company, as well as other cigarette manufacturers and TIRC/CTR. In fact, Addison Yeaman, who was then general counsel at Brown & Williamson and who authored some of the most critical memoranda from this time, subsequently became a director of CTR.

57. Yeaman wrote in a 1963 analysis that:

a. "[N]icotine is addictive."

b. "We are, then, in the business of selling nicotine, an addictive drug. . . . ."

c. Cigarettes "cause, or predispose, lung cancer. . . . "

d. "They contribute to certain cardiovascular disorders. . . ."

e. "They may well be truly causative in emphysema, etc. etc."

58. Yeaman suggested that Brown & Williamson "accept its responsibility" and disclose the hazards of cigarettes to the Surgeon General. He noted that this would allow the company to openly research and develop a safer cigarette.

59. Yeaman warned, however, that one danger of candid disclosure was that jurors would learn that the cigarette companies knew of the hazards of their products and had the means to make safer cigarettes -- but didn't. Yeaman noted that this might cause an "emotional reaction" in jurors. Ultimately, Yeaman's suggestion for full disclosure was rejected.

60. Subsequently, Brown & Williamson continued to conduct -- and conceal -- biological research. Some of these research projects confirmed causation.

61. The more sensitive research was often undertaken by Brown & Williamson's British affiliates, acting on behalf of both companies. Much of the work was performed at a British laboratory called Harrogate, which performed work for a number of cigarette manufacturers, and some of this research was shared with these other companies and the Tobacco Institute.

62. Brown & Williamson also attempted to develop a safer cigarette or, in the words of an internal document, "a device for the controlled administration of nicotine." There were at least two safer cigarette projects, Project Ariel, which focused on heating rather than burning tobacco, and Project Janus, which focused on isolating and removing the harmful elements of tobacco. At least some of the work was performed by Battelle laboratories in Frankfurt. By the end of the 1970s, however, in a pattern that was repeated throughout the industry, Brown & Williamson closed its research labs and halted work on a safer cigarette.

63. In 1985, a Brown & Williamson attorney recommended that much of its medical research be declared "deadwood" and shipped to England. The attorney stated that, "I have marked with an X

documents which I suggested were deadwood in the behavioral and biological studies area. I said that the B series are Janus series studies and should also be considered deadwood." The attorney further suggested that the research, development, and engineering department also "should undertake to remove the deadwood from its files."

INDUSTRY CONTROL OF NICOTINE LEVELS

64. Nicotine is recognized as addictive by major medical organizations including: the Office of the U.S. Surgeon General, the World Health Organization, the American Medical Association, the American Psychiatric Association, the American Psychological Association, and the American Society of Addiction Medicine. The cigarette industry has long been aware of the addictive qualities of nicotine, although it continues to this day its public denials. However, internally the cigarette manufacturers quite explicitly view the cigarette as a high technology nicotine delivery system.

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

> "As with eating and copulating, so it is with smoking. The physiological effect serves as the primary incentive; all other incentives are secondary. The majority of the conferees would go even further and accept the proposition that nicotine is the active constituent of cigarette smoke. Without nicotine, the argument goes, there would be no smoking."
>
> . . .
>
> "Why then is there not a market for nicotine per se, to be eaten, sucked, drunk, injected, inserted or inhaled as a pure aerosol? The answer, and I feel quite strongly about this, is that the cigarette is in fact among the most awe-inspiring examples of the ingenuity of man. Let me explain my conviction.
>
> "The cigarette should be conceived not as a product but as a package. The product is nicotine."
>
> . . .
>
> "Think of the cigarette pack as a storage container for a day's supply of nicotine. . . . Think of the cigarette as a dispenser for a dose unit of nicotine."

66. Accordingly, the industry has developed sophisticated technology to control the levels of nicotine in order to maintain its market. David A. Kessler, M.D., Commissioner of Food and Drugs, recently testified before a congressional committee that cigarette manufacturers can manipulate precisely nicotine levels in cigarettes, manipulate precisely the rate at which the nicotine is delivered in cigarettes, and add nicotine to any part of cigarettes.

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

> a. "Accumulating evidence suggests that cigarette manufacturers may intend this result -- that they may be controlling smokers' choice by controlling the levels of nicotine in their products

in a manner that creates and sustains an addiction in the vast majority of smokers."

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

c. "The public thinks of cigarettes as simply blended tobacco rolled in paper. But they are much more than that. Some of today's cigarettes may, in fact, qualify as high technology nicotine delivery systems that deliver nicotine in precisely calculated quantities --quantities that are more than sufficient to create and to sustain addiction in the vast majority of individuals who smoke regularly."

d. "The history of the tobacco industry is a story of how a product that may at one time have been a simple agricultural commodity appears to have become a nicotine delivery system."

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

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

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

68. In a subsequent appearance before Congress, Dr. Kessler testified that one manufacturer, Brown & Williamson, had developed a tobacco plant code-named Y-1 with perhaps twice the nicotine content of regular tobacco. Brown & Williamson manufactured and marketed cigarettes with Y-1 tobacco in the United States in 1993.

69. As a result of the industry's actions, as many as 74% to 90% of smokers are addicted. Eight out of 10 smokers say they wish they had never started smoking. Two-thirds of adults who smoke say they wish they could quit. Seventeen million try to quit each year, but fewer than one out of ten succeed. A high percentage of smokers who have had surgery for lung cancer or heart attacks return to smoking, as do 40% of smokers who have had their larynxes removed.

70. Beyond its addictive qualities, nicotine is believed to contribute to cardiovascular disease and death -- a fact of which the cigarette industry has long been aware.

MAINTAINING THE MARKET THROUGH SALES TO MINORS

71. In addition to ensuring a captive market through the addiction of its customers, the cigarette industry has maintained its sales -- and replaced the hundreds of thousands of smokers who die each year -- by the knowing attraction of children and adolescents.

72. Smoking begins primarily during childhood and adolescence. Ninety percent of male smokers begin smoking before age 18. Each day more than 3,000 American teenagers start smoking. The Surgeon General summarized the problem in her 1994 report:

a. "Nearly all first use of tobacco occurs before high school graduation; this finding suggests that if adolescents can be kept tobacco-free, most will never start using tobacco."

b. "Most adolescent smokers are addicted to nicotine and report that they want to quit but are

unable to do so . . . ."

c. "Cigarette advertising appears to increase young people's risk of smoking by affecting their perceptions of the pervasiveness, image, and function of smoking."

d. In 1990, cigarette advertising and promotional expenditures were almost $4 billion, making cigarettes the second most promoted consumer products, after automobiles, in the U.S.

73. The most notorious recent example of the industry targeting of minors is the Joe Camel advertising campaign conducted by R.J. Reynolds. When R.J. Reynolds began this cartoon campaign in 1988, Camel's share of the children's market was only 0.5%. In just a few years, Camel's share of this illegal market has increased to 32.8%, representing sales estimated at $476 million per year. Another indication of the phenomenal success of this marketing campaign is the fact that in a recent survey of six-year-olds, 91% of the children could correctly match Old Joe with a picture of a cigarette, and both the silhouette of Mickey Mouse and the face of Old Joe were nearly equally well recognized by almost all children.

74. All defendants are aware of the fact that smoking begins primarily among youth who are not yet 18 years of age.

THE INTENT AND EFFECT OF THE INDUSTRY'S UNLAWFUL CONDUCT

75. The cigarette manufacturers and their trade associations knew that their unlawful conduct, as outlined above, would cause millions of persons to begin to smoke, primarily in their youth and adolescence; would cause millions of persons to continue to smoke; would cause adverse health effects in millions of smokers; would cause the cost of medical care to increase dramatically; and would impact the insurance market in the United States as well as in the State of Minnesota. In fact, these defendants had the intent to cause all of the above, as intent is defined by Minnesota law.

The Human Toll of Cigarette Smoking

76. As a direct result of the unrestrained and unlawful conduct of the cigarette industry, cigarette smoking has become the most pervasive public health issue of our time and the single most preventable cause of death in our society. Cigarette smoking is the most extensively documented cause of disease ever investigated in the history of biomedical research. Cigarettes kill when used as intended, and there is no known level of safe consumption.

77. The number of deaths caused by smoking -- more than 400,000 each year in the United States, or one out of every six deaths -- surpasses the combined totals for alcohol, suicide, homicide, AIDs, cocaine, heroine, and motor vehicles. At least one out of every four regular cigarette smokers dies of smoking-related diseases. In Minnesota, smoking-related diseases cause more than 6,000 deaths a year -- from diseases including cardiovascular (heart disease and stroke), cancer, emphysema, asthma, and bronchitis.

The Economic Toll of Cigarette Smoking

78. In addition to the human toll, the economic costs of cigarette smoking, and, in particular,

health care expenditures from smoking-attributable diseases, amount to an unacceptable burden on society and the State of Minnesota.

79. The State of Minnesota has developed a statistical model to obtain data on smoking-attributable deaths and diseases and the economic impact of smoking. The Centers for Disease Control (CDC) has updated the Minnesota model and distributed it for use in virtually every state, as well as a number of foreign countries. In Minnesota, the data shows that more than $350 million a year is spent in this State each year to pay the health care expenses for cigarette-caused death and disease. This does not include the indirect costs of smoking to the State of Minnesota, such as loss of income from smokers whose illnesses render them unable to work. Nationwide, the CDC data shows that the estimated health care costs for smoking-attributable diseases are $50 billion. These costs have been increasing at a precipitous rate, more than doubling in the period from 1987 to 1993.

THE NEED FOR A REMEDY

80. Despite the egregiousness of their conduct and the toll -- human and economic -- wreaked by the cigarette manufacturers and their trade associations, the industry has enjoyed virtual immunity from regulation and successful litigation.

81. In the courts, the industry has not paid any damages, despite 40 years of litigation on smoking and health. In large part, the success of the industry has been founded on the industry's heretofore sanctioned litigation tactics. As one tobacco industry lawyer wrote in 1988:

> "[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 [R.J. Reynold]'s money, but by making that other son of a bitch spend all of his."

82. The industry's immunity also is attributable to its success in fraudulently suppressing harmful information. For example, Joseph A. Califano, Secretary of Health, Education and Welfare during the Carter Administration, stated recently that had he known in 1979 what the tobacco companies knew and been privy to their research on addiction and their ability to manipulate the amount of nicotine in cigarettes, "the 1979 surgeon general's report would have found cigarettes addictive, and we would have moved to regulate them. Unfortunately, the president of the United States, the secretary of HEW and the surgeon general were all victims of the concealment campaign of the tobacco companies."

83. Thus, the campaign of concealment continues, and cigarettes have remained virtually unregulated, avoiding regulation under the federal Food, Drug and Cosmetic Act, the Consumer Product Safety Act, the Hazardous Substances Act, the Fair Labeling and Packaging Act, and the Toxic Substances Act, as well as state statutes.

CAUSES OF ACTION

COUNT ONE -- UNDERTAKING OF SPECIAL DUTY

(For Plaintiff the State of Minnesota only)

84. Plaintiffs reallege paragraphs 1 through 83.

85. Defendants assumed a special responsibility and duty to render services for the protection of the public health and a duty to those who advance and protect the public health, including the State of Minnesota and Blue Cross and Blue Shield of Minnesota, by their representation and undertaking to accept an interest in the public's health as a basic and paramount responsibility; to cooperate closely with those who safeguard the public health; to aid and assist the research effort into all phases of tobacco use and health; to continue research and all possible efforts until all the facts were known; and to provide complete and authenticated information about cigarette smoking and health.

86. Defendants recognized that their undertaking was necessary for the protection of the public health and that their conduct would affect the smoking habits and health of millions of Americans, the cost of medical care, and the operations of the insurance market.

87. Defendants have breached and continue to breach their special responsibility and duty through their failure to exercise reasonable care in performance of their undertaking. Defendants' failure to exercise such reasonable care increased the risk of harm and the cost of health care.

88. As a direct and proximate result of defendants' conduct, plaintiffs have suffered and will continue to suffer substantial injuries and damages.

COUNT TWO -- MINNESOTA ANTITRUST LAW

Conspiracy to Unreasonably Restrain Trade and Commerce

89. Plaintiffs reallege paragraphs 1 through 83.

90. Minn. Stat. § 325D.51 provides:

> A contract, combination, or conspiracy between two or more persons in unreasonable restraint of trade or commerce is unlawful.

91. Beginning at least as early as the 1950s, and continuing until the present date, defendants entered into a contract, combination, or conspiracy in unreasonable restraint of trade and commerce in the market for cigarettes in Minnesota in violation of Minn. Stat. § 325D.51. The market for cigarettes in Minnesota is directly related to and inextricably intertwined with health care.

92. This contract, combination, or conspiracy had the purpose and effect of restraining competition in the market for cigarettes in Minnesota and controlling the market for cigarettes in Minnesota through restraining and suppressing research on the harmful effects of smoking; restraining and suppressing the dissemination of information on the harmful effects of smoking; and restraining and suppressing the research, development, production, and marketing of a higher quality and safer cigarette. This has resulted in millions of persons beginning and continuing to smoke, causing adverse health effects in millions of smokers, causing the cost of medical care to increase dramatically, and impacting the health insurance market in the United States as well as in the State of Minnesota.

93. As a direct (or indirect) result of defendants' unlawful activity, plaintiffs have suffered and

will continue to suffer substantial injuries and damages to their businesses and property.

94. Unless enjoined from doing so, defendants will continue to violate this statute.

COUNT THREE -- MINNESOTA ANTITRUST LAW

Monopolization of the Cigarette Market in Minnesota

95. Plaintiffs reallege paragraphs 1 through 83.

96. Minn. Stat. § 325D.52 provides:

> The establishment, maintenance, or use of, or any attempt to establish, maintain, or use monopoly power over any part of trade or commerce by any person or persons for the purpose of affecting competition or controlling, fixing or maintaining prices is unlawful.

97. Defendants collectively have at all times material to this complaint maintained a monopoly over the sale of cigarettes in Minnesota and used their monopoly power to affect competition in the sale of cigarettes in Minnesota in violation of Minn. Stat. § 325D.52. The market for cigarettes in Minnesota is directly related to and inextricably intertwined with health care.

98. Beginning at least as early as the 1950s, and continuing until the present date, defendants maintained and used their monopoly power to affect competition by restraining and suppressing research on the harmful effects of smoking; restraining and suppressing the dissemination of information on the harmful effects of smoking; and restraining and suppressing the research, development, production, and marketing of a higher quality and safer cigarette. This has resulted in millions of persons beginning and continuing to smoke, causing adverse health effects in millions of smokers, causing the cost of medical care to increase dramatically, and impacting the health insurance market in the United States as well as in the State of Minnesota.

99. As a direct (or indirect) result of defendants' unlawful activity, plaintiffs have suffered and will continue to suffer substantial injuries and damages to their businesses and property.

100. Unless enjoined from doing so, defendants will continue to violate this statute.

COUNT FOUR -- CONSUMER FRAUD

101. Plaintiffs reallege paragraphs 1 through 83.

102. Minn. Stat. § 325F.69, subd. 1, provides:

> The act, use, or employment by any person of any fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby, [is an unlawful practice].

103. Defendants, by engaging in the conduct described above, violated and continue to violate Minn. Stat. § 325F.69, subd. 1. Defendants' wrongful conduct includes, by way of example:

> a. Defendants' fraudulent, misleading, and deceptive statements and practices relating to the issue of smoking and health, including intentional misrepresentations that there is no causal

connection between cigarette smoking and adverse health effects and that cigarette smoking is not addictive;

b. Defendants' fraudulent, misleading, and deceptive statements and practices relating to the industry's false promises to conduct and disclose objective research on the issue of smoking and health;

c. Defendants' fraudulent concealment of information relating to the issue of smoking and health and failure to disclose material facts, including intentional concealment and failure to disclose.

104. As a direct and proximate result of defendants' wrongful activity, plaintiffs have suffered and will continue to suffer substantial injuries and damages.

105. Unless enjoined from doing so, defendants will continue to violate this statute.

COUNT FIVE -- UNLAWFUL TRADE PRACTICES

106. Plaintiffs reallege paragraphs 1 through 83.

107. Minn. Stat. § 325D.13 provides that, "No person shall, in connection with the sale of merchandise, knowingly misrepresent, directly or indirectly, the true quality, ingredients or origin of such merchandise."

108. Defendants, by engaging in the conduct described above, violated and continue to violate Minn. Stat. § 325D.13. Defendants' wrongful conduct includes, by way of example:

a. Defendants' misrepresentations relating to the issue of smoking and health, including knowing misrepresentations that there is no causal connection between cigarette smoking and any adverse health effects and that cigarette smoking is not addictive;

b. Defendants' misrepresentations that they would conduct and disclose objective research into the issue of smoking and health, including knowing misrepresentations;

c. Defendants' fraudulent concealment of information relating to the issue of smoking and health and failure to disclose material facts, including knowing concealment and failure to disclose.

109. As a direct and proximate result of defendants' wrongful activity, plaintiffs have suffered and will continue to suffer substantial injuries and damages.

110. Unless enjoined from doing so, defendants will continue to violate this statute.

COUNT SIX -- DECEPTIVE TRADE PRACTICES

111. Plaintiffs reallege paragraphs 1 through 83.

112. Minn. Stat. § 325D.44, subd. 1, provides in part:

A person engages in a deceptive trade practice when, in the course of business, vocation, or occupation, the person:

(5) Represents that goods or services have . . . characteristics, ingredients, uses, benefits . . . that they do not have . . . .

(7) Represents that goods or services are of a particular standard, quality, or grade, . . . if they are of another.

(13) Engages in any other conduct which similarly creates a likelihood of confusion or of misunderstanding.

113. Defendants, by engaging in the conduct described above, violated and continue to violate Minn. Stat. § 325D.44. Defendants' wrongful conduct includes, by way of example:

a. Defendants' fraudulent, misleading, and deceptive statements and practices relating to the issue of smoking and health, including intentional misrepresentations that there is no causal connection between cigarette smoking and adverse health effects and that cigarette smoking is not addictive;

b. Defendants' fraudulent, misleading, and deceptive statements and practices relating to the industry's false promises to conduct and disclose objective research on the issue of smoking and health;

c. Defendants' fraudulent concealment of information relating to the issue of smoking and health and failure to disclose material facts, including intentional concealment and failure to disclose.

114. As a direct and proximate result of defendants' wrongful activity, plaintiffs have suffered and will continue to suffer substantial injuries and damages.

115. Unless enjoined from doing so, defendants will continue to violate this statute.

COUNT SEVEN -- FALSE ADVERTISING

116. Plaintiffs reallege paragraphs 1 through 83.

117. Minn. Stat. § 325F.67 provides in part:

Any person, firm, corporation, or association who, with intent to sell or in anywise dispose of merchandise . . . directly or indirectly, to the public, for sale or distribution, or with intent to increase the consumption thereof, . . . makes, publishes, disseminates, circulates, or places before the public, or causes, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in this state, in a newspaper or other publication, or in the form of a book, notice, handbill, poster, bill, label, price tag, circular, pamphlet, program, or letter, or over any radio or television station, or in any other way, an advertisement of any sort regarding merchandise . . or anything so offered to the public for use, consumption, purchase, or sale, which advertising contains any material assertion, representation or statement of fact which is untrue, deceptive, or misleading, shall, whether or not pecuniary or other specific damage to any person occurs as a direct result thereof . . . . be guilty [of an unlawful practice].

118. Defendants, by engaging in the conduct described above, violated and continue to violate

Minn. Stat. § 325F.67. Defendants' wrongful conduct includes, by way of example:

a. Defendants' untrue, deceptive, and misleading statements and practices relating to the issue of smoking and health, including intentional misrepresentations that there is no causal connection between cigarette smoking and adverse health effects and that cigarette smoking is not addictive;

b. Defendants' untrue, deceptive, and misleading statements and practices relating to the industry's false promises to conduct and disclose objective research on the issue of smoking and health;

c. Defendants' fraudulent concealment of information relating to the issue of smoking and health and failure to disclose material facts, including intentional concealment and failure to disclose.

119. As a direct and proximate result of defendants' wrongful activity, plaintiffs have suffered and will continue to suffer substantial injuries and damages.

120. Unless enjoined from doing so, defendants will continue to violate this statute.

COUNT EIGHT -- RESTITUTION

Performance of Another's Duty to the Public

121. Plaintiffs reallege Paragraphs 1 through 83.

122. Defendants assumed and owe a duty to pay for the harm caused by their wrongful conduct, yet defendants have repeatedly refused to do so. Instead, these defendants embarked on a campaign of denial, subterfuge, and deceit to deny responsibility and to avoid paying for the consequences of the harm they have caused.

123. Plaintiffs have been and will be required by statutory and contractual obligations to expend large sums of money to pay for the harm caused by the wrongful conduct of defendants. Plaintiffs have the intent to charge and recoup from defendants these sums of money. Plaintiffs' expenditures are immediately necessary to protect the public health and safety.

124. As a result of defendants' wrongful activity, plaintiffs have borne a duty that -- in law, equity, and fairness -- ought to have been borne by defendants.

COUNT NINE -- RESTITUTION

Unjust Enrichment

125. Plaintiffs reallege paragraphs 1 through 83.

126. Defendants, through their wrongful conduct as described above, have reaped substantial and unconscionable profits from the sale of cigarettes in Minnesota. These cigarette sales, in turn, have resulted in increased health care costs directly attributable to cigarette smoking.

127. Without justification, defendants have failed to pay for the consequences of their unlawful conduct.

128. As a result, plaintiffs have been required to pay for the medical costs stemming from defendants' unlawful acts. Plaintiffs have borne a duty that -- in law, equity, and fairness -- ought to have been borne by defendants.

129. In equity and good conscience, it would be unjust for defendants to enrich themselves at the expense of plaintiffs.

CONSPIRACY

130. Plaintiffs reallege Paragraphs 1 through 83.

131. Beginning at least as early as the 1950s, and continuing until the present day, defendants entered into a conspiracy with the intentional and unlawful purpose and effect of restraining and suppressing research on the harmful effects of smoking; restraining and suppressing the dissemination of information on the harmful effects of smoking; engaging in affirmative misrepresentations on the harmful effects of smoking; and restraining and suppressing the research, development, production, and marketing of a safer cigarette. In furtherance of defendants' conspiracy, defendants lent encouragement, substantial assistance, and otherwise aided and abetted each other with respect to these wrongful acts.

132. As a direct and proximate result of defendants' unlawful conspiracy, plaintiffs have suffered and will continue to suffer substantial injuries and damages.

133. As a result of defendants' conspiracy, defendants are vicariously and jointly and severally liable with respect to each cause of action described above in Counts One through Nine above.

PUNITIVE DAMAGES

133a. Plaintiffs reallege paragraphs 1 through 133. The acts of the defendants, as set forth above, demonstrate a willful indifference to the rights or safety of others, entitling the plaintiffs herein to an award of punitive damages pursuant to Minn. Stat. § 549.20.

PRAYER FOR RELIEF

134. Wherefore, plaintiffs pray that this Court issue an order and judgment:

a. Declaring that defendants have engaged in consumer fraud, unlawful trade practices, deceptive trade practices, false advertising, unreasonable restraints of trade, and use of monopoly power to affect competition in violation of the laws of the State of Minnesota;

b. Enjoining defendants and their respective agents, servants, officers, directors, employees, and all persons acting in concert with them, directly or indirectly, from engaging in consumer fraud, unlawful trade practices, deceptive trade practices, false advertising, unreasonable restraints of trade, and use of monopoly power to affect competition in violation of the laws of the State of Minnesota;

c. Ordering defendants to disclose, disseminate, and publish all research previously conducted directly or indirectly by themselves and their respective agents, affiliates, servants, officers, directors, employees, and all persons acting in concert with them, that relates to the issue of smoking and health;

d. Ordering defendants to fund a corrective public education campaign relating to the issue of smoking and health, administered and controlled by an independent, third party;

e. Ordering defendants to take reasonable and necessary affirmative steps to prevent the distribution and sale of cigarettes to minors under the age of 18;

f. Ordering defendants to fund clinical smoking cessation programs in the State of Minnesota;

g. Ordering the manufacturing defendants to dissolve the Council for Tobacco Research and the Tobacco Institute, or, in the alternative, to divest their ownership, sponsorship, and/or membership in the Council for Tobacco Research and the Tobacco Institute;

h. Ordering defendants to disgorge all profits from sales of cigarettes in Minnesota;

i. Ordering defendants to pay restitution;

j. Awarding damages in excess of $50,000 to each plaintiff, for past and future damages caused by the defendants' actions in violation of the laws of the State of Minnesota;

k. Trebling damages awarded to each plaintiff for violations of the Minnesota Antitrust Law, pursuant to Minn. Stat. § 325D.57;

l. Awarding damages in excess of $50,000.00 to each plaintiff as and for punitive damages pursuant to Minn. Stat. § 549.20.

m. Awarding reasonable attorneys' fees, together with costs and disbursements, pursuant to Minn. Stat. §§8.31, subd. 3a, 325D.57, and 325D.45; and

n. Granting such other legal or equitable relief, including attorneys' fees, as the Court deems just and equitable.

135. In addition, the State of Minnesota prays for the following order and judgment:

a. Awarding civil penalties in an amount equal to $25,000 for each separate violation of the consumer fraud, unlawful trade practices, deceptive trade practices, and false advertising laws alleged herein, pursuant to Minn. Stat. §§8.31, subd. 3 and 645.24; and

b. Awarding civil penalties in an amount equal to $50,000 for each separate violation of the Minnesota Antitrust Law, pursuant to Minn. Stat. §§325D.56 and 645.24.

PLAINTIFFS HEREBY DEMAND A JURY TRIAL

FOR ALL OF THE ISSUES PLED HEREIN SO TRIABLE.

DATED: January 6, 1998.

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

By /s/Michael V. Ciresi
Michael V. Ciresi (#16949)

By /s/Roberta B. Walburn
Roberta B. Walburn (#152195)

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SPECIAL ATTORNEYS FOR THE STATE OF MINNESOTA AND ATTORNEYS FOR BLUE CROSS AND BLUE SHIELD OF MINNESOTA

ACKNOWLEDGMENT

The allegations in this complaint are well grounded in fact and are warranted by existing law or a good faith argument for its extension, modification, or reversal. Plaintiffs bring this complaint in good faith and not for any improper purposes. Plaintiffs acknowledge that costs, disbursements, and reasonable attorney and witness fees may be awarded to defendants pursuant to Minn. Stat. § 549.21, subd. 2 or the Rules of Civil Procedure if there is an affirmative finding to the contrary.

/s/Roberta B. Walburn
Roberta B. Walburn