

In the Supreme Court of Nevada

PHILIP MORRIS USA INC., a foreign corporation,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA, IN AND FOR THE COUNTY OF
CLARK; and the HONORABLE VERONICA M.
BARISICH,

Respondents,

and

DOLLY ROWAN, AS AN INDIVIDUAL, AS SPECIAL
ADMINISTRATOR OF THE ESTATE OF NOREEN THOMPSON;
NAVONA COLLISON, AS AN INDIVIDUAL; RUSSELL
THOMPSON, AS AN INDIVIDUAL; R.J. REYNOLDS TOBACCO
COMPANY, A FOREIGN CORPORATION; LIGGETT GROUP LLC,
A FOREIGN CORPORATION; QUICK STOP MARKET, LLC, A
DOMESTIC LIMITED LIABILITY COMPANY; JOE'S BAR, INC., A
DOMESTIC CORPORATION; THE POKER PALACE, A DOMESTIC
CORPORATION; SILVER NUGGET GAMING, LLC D/B/A
SILVER NUGGET CASINO, A DOMESTIC LIMITED LIABILITY
COMPANY; AND JERRY'S NUGGET, A DOMESTIC
CORPORATION,

Real Parties in Interest

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Case No. _____

District Court
Case No. A-19-807653-C

**PHILIP MORRIS USA INC.'S PETITION FOR
WRIT OF MANDAMUS OR, ALTERNATIVELY, PROHIBITION – APPENDIX
VOL. 13**

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49. Executives from every cigarette company except Liggett met at the Plaza Hotel on December 14, 1953. The executives discussed the following topics: (i) the negative publicity from the recent articles in the media, (ii) the need to hire a public relations firm, Hill & Knowlton, and (iii) the major threat to their corporations' economic future.

50. In an internal planning memorandum Hill & Knowlton assessed their cigarette clients' problems in the following manner:

There is only one problem -- confidence, and how to establish it; public assurance, and how to create it -- in a perhaps long interim when scientific doubts must remain. **And, most important, how to free millions of Americans from the guilty fear that is going to arise deep in their biological depths -- regardless of any pooh-poohing logic -- every time they light a cigarette.** No resort to mere logic ever cured panic yet, whether on Madison Avenue, Main Street, or in a psychologist's office. And no mere recitation of arguments pro, or ignoring of arguments con, or careful balancing of the two together, is going to deal with such fear now. That, gentlemen, is the nature of the unexampled challenge to this office.

51. On December 28, 1953, Defendants again met at the Plaza Hotel, where they knowingly and purposefully agreed to form a fake "research committee" called the Tobacco Industry Research Committee ("TIRC") (later renamed the Council for Tobacco Research ("CTR")). Paul Hahn, president of American Tobacco, was elected the temporary chairman of TIRC.

52. TIRC's *public* mission statement was to supposedly aid and assist with so-called "independent" research into cigarette use and health.

53. The formation and purpose of TIRC was announced on January 4, 1954, in a full-page advertisement called "A Frank Statement to Cigarette Smokers," published in 448 newspapers throughout the United States.

54. The Frank Statement was signed by the following domestic cigarette and tobacco product manufacturers, including Defendants herein, organizations of leaf tobacco growers, and tobacco warehouse associations that made up TIRC: American Tobacco by Paul Hahn, President;

1 B&W by Timothy Hartnett, President; Lorillard by Herbert Kent, Chairman; Defendant, Philip
2 Morris by O. Parker McComas, President; Defendant, R.J Reynolds by Edward A. Darr, President;
3 Benson & Hedges by Joseph Cullman, Jr., President; Bright Belt Warehouse Association by F.S.
4 Royster, President; Burley Auction Warehouse Association by Albert Clay, President; Burley
5 Tobacco Growers Cooperative Association by John Jones, President; Larus & Brother Company,
6 Inc. by W.T. Reed, Jr., President; Maryland Tobacco Growers Association by Samuel Linton,
7 General Manager; Stephano Brothers, Inc. by C.S. Stephano, Director of Research; Tobacco
8 Associates, Inc. by J.B. Hutson, President; and United States Tobacco by J. Whitney Peterson,
9 President.
10

11 55. In their Frank Statement to Cigarette Smokers, Defendants knowingly and intentionally
12 misled Decedent, the public, and the American government by disingenuously promising to
13 “safeguard” the health of smokers, support allegedly “disinterested” research into smoking and
14 health, and reveal to the public the results of their purported “objective” research.
15

16 56. The Frank Statement set forth the industry’s “open question” position that it would
17 maintain for more than forty years -- that cigarette smoking was not a proven cause of lung cancer;
18 that cigarettes were not injurious to health; and that more research on smoking and health issues was
19 needed. In the Frank Statement, the participating companies accepted “an interest in people’s health
20 as a basic responsibility, paramount to every other consideration in our business” and pledged “aid
21 and assistance to the research effort into all phases of tobacco use and health.” The companies
22 promised that they would fulfill the obligations they had undertaken in the Frank Statement by
23 funding independent research through TIRC, free from any industry influence. The “Frank
24 Statement” in its entirety stated as follows:
25

26 RECENT REPORTS on experiments with mice have given wide publicity to a
27 theory that cigarette smoking is in some way linked with lung cancer in human
28 beings.

1 Although conducted by doctors of professional standing, these experiments are
2 not regarded as conclusive in the field of cancer research. However, we do not
3 believe that any serious medical research, even though its results are
4 inconclusive should be disregarded or lightly dismissed. At the same time, we
5 feel it is in the public interest to call attention to the fact that eminent doctors
6 and research scientists have publicly questioned the claimed significance of
7 these experiments.

8 Distinguished authorities point out: 1. That medical research of recent years
9 indicates many possible causes of lung cancer. 2. That there is no agreement
10 among the authorities regarding what the cause is. 3. That there is no proof that
11 cigarette smoking is one of the causes. 4. That statistics purporting to link
12 cigarette smoking with the disease could apply with equal force to any one of
13 many other aspects of modern life. Indeed the validity of the statistics
14 themselves is questioned by numerous scientists.

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

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

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

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

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

26 Many people have asked us what are we going to do to meet the public's
27 concern aroused by the recent reports. Here is the answer: 1. We are pledging
28 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
["TIRC"]. 3. In charge of the research activities of the Committee will be a
scientist of unimpeachable integrity and national reputation. In addition there will
be an Advisory Board of scientists disinterested in the cigarette industry. A
group of distinguished men [sic] 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.

1
2 57. The issuance of the “Frank Statement to Cigarette Smokers” was an effective public
3 relations step. By falsely promising the public the industry was absolutely committed to its good
4 health, the Frank Statement allayed the public’s concerns about smoking and health, reassured
5 smokers, and provided them with a misleading and false effective rationale for continuing to smoke.

6 58. The Frank Statement was but the first of hundreds, if not thousands, of statements
7 reassuring the public of the safety of cigarette smoking. The industry would push the “open
8 question” as far as the late 1990s.

9 59. For the next five decades, TIRC/CTR worked diligently, and quite successfully, to
10 rebuff the public’s concern about the dangers of cigarettes. Defendants, through TIRC/CTR,
11 invented the false and misleading notion that there was an “open question” regarding cigarette
12 smoking and health. They appeared on television and radio to broadcast this message.

13 60. TIRC/CTR hired fake scientists and spokespeople to attack genuine, legitimate
14 scientific studies. Virtually none of the so-called “research” funded by TIRC/CTR centered on the
15 immediate questions relating to carcinogenesis and tobacco. Rather than addressing the compounds
16 and carcinogens in cigarette smoke and their hazardous effect on the human body, TIRC/CTR
17 instead directed its resources to alternative theories of the origins of cancer, centering on genetic
18 factors and environmental risks.

19 61. The major initiative of TIRC/CTR, through their Scientific Advisory Board (SAB),
20 was to “create the appearance of [Defendants] devoting substantial resources to the problem without
21 the risk of funding further ‘contrary evidence.’”

22 62. TIRC/CTR’s efforts worked brilliantly and cigarette consumption rapidly increased.

23 63. In 1962, The Tobacco Institute, the public relations successor to the TIRC, began to
24 publish many advertisements, including one entitled, “Some frank words about Smoking and
25 Research,” which stated in part:
26
27
28

1 “Most scientists recognized long ago that there are no simple, easy
2 answers in cancer research. They know that the answers to fundamental
3 questions about causation can come only through persistent scientific
4 research.”

5 “The tobacco industry supports and cooperates with all responsible
6 efforts to find the facts and bring them to the public.”

7 “In that spirit, we are cooperating with the U.S. Surgeon General and
8 his special study group appointed to evaluate presently available



9 research knowledge. Similar cooperation has been offered to the
10 American Medical Association's proposed study.”

11 *“We know we have a special responsibility to help scientists determine
12 the facts about tobacco use and health.”*

13 *“The industry accepted this responsibility in 1954 by establishing the
14 Tobacco Industry Research Committee to provide research grants to
15 scientists in recognized research institutions. This research program is
16 continuing on an expanded and intensified scale.”*

17
18
19 64. In 1964, there was another dip in the consumption of cigarettes when the United States
20 Surgeon General reported that “cigarette smoking is causally related to lung cancer in men . . . the
21 data for women, though less extensive, points in the same direction.”

22
23 65. The cigarette industry's *public* response, through TIRC, to the 1964 Surgeon General
24 Report was to falsely assure the public that (i) cigarettes were not injurious to health, (ii) the industry
25 would cooperate with the Surgeon General, (iii) “more research” was needed, despite the industry's
26 own internal decision not to conduct research directly related to tobacco and health, and (iv) if there
27 were any bad elements discovered in cigarettes, the cigarette manufacturers would remove those
28 elements. As a result, cigarette consumption again began to rise.

66. Despite Defendants' *public* response, internally they were fully aware of the magnitude and depth of lies and deception they were promulgating. They knew and understood they were making fake, misleading promises that would never come to fruition. Their own internal records reveal that they knew, even back in 1964, that cigarettes were not only hazardous, but deadly:

"Cigarettes have certain unattractive side effects . . . they cause lung cancer" (Concealed Document 1963).

"Carcinogens are found in practically every class of compounds in smoke" (Concealed Document 1961).

"The amount of evidence accumulated to indict cigarette smoke as a health hazard is overwhelming. The evidence challenging such indictment is scant" (Concealed Document 1962).

67. Furthermore, not only did Defendants know and appreciate the dangers of cigarettes, but they were also intentionally manipulating ingredients, such as nicotine, in cigarettes to make them more addictive. Their documents reveal they knew the following:

"Our industry is based upon design, manufacture and sale of attractive dosage forms of nicotine" (Concealed Document 1972).

"We can regulate, fairly precisely, the nicotine . . . to almost any desired level management might require" (Concealed Document 1963).

"Cigarette[s] that do not deliver nicotine cannot satisfy the habituated smoker and would almost certainly fail" (Concealed Document 1966).

"Nicotine is addictive . . . We are then, in the business of selling nicotine, an addictive drug" (Concealed Document 1963).

"We have deliberately played down the role of nicotine" (Concealed Document 1972).

"Very few consumers are aware of the effects of nicotine, i.e., its addictive nature and that nicotine is a poison" (Concealed Document 1978).

"Determine minimum nicotine required to keep normal smoker 'hooked.'" (Concealed Document 1965).

"The thing we sell most is nicotine" (Concealed Document 1980).

1
2 **“Without the nicotine, the cigarette market would collapse, and**
3 **Defendants would all lose their jobs and their consulting fees”**
(Concealed Document 1977).

4 68. Defendants deliberately added chemicals such as urea, ammonia, diammonium-
5 phosphate, and other chemicals to their cigarettes. They deliberately designed cigarettes to “free-
6 base” nicotine and manipulated levels of pH in smoke to make cigarettes more addictive and easier
7 to inhale.

8 69. Defendants’ sole priority was to make as much money as quickly as possible, with no
9 concern about the safety or well-being of their customers.

10 70. In 1966, the United States Government mandated that a “Caution” label be placed on
11 packs of cigarettes stating, “Cigarette Smoking May be Hazardous to Your Health.”

12 71. The cigarette industry responded to the “Caution” label by continuing their massive
13 public relations campaign, continuing to spread doubt and confusion, and continuing to deceive the
14 public.
15

16 72. Also in 1966, the Tobacco Institute (“TI”) issued a press release where it stated on
17 behalf of the industry falsely assuring the public the following:
18

19 **“Scientists throughout the world are continuing to investigate to**
20 **learn the full facts about ‘tar’ and nicotine, and about questions**
21 **concerning tobacco and health. *The tobacco industry is supporting***
***much of this research and will continue to do so.*”**

22 73. Throughout this period, Defendants also introduced “filtered” cigarettes – cigarettes
23 falsely marketed, advertised, and promoted as delivering and/or containing “less tar” and “less
24 nicotine.”

25 74. However, internally, in Defendants’ previously concealed, hidden documents, the true
26 nature of filtered cigarettes was revealed – filtered cigarettes were just as harmful, dangerous, and
27 hazardous as unfiltered cigarettes; in fact, they were more dangerous. In a previously secret
28

document from 1976, Ernie Pepples from Brown & Williamson states, “the smoker of a filter cigarette was getting as much or more nicotine and tar as he would have gotten from a regular cigarette.”

75. Defendants continued throughout the 1970s, 1980s, and 1990s to encourage the false impression that there was a genuine and continuing controversy regarding the health hazards of smoking.

76. The tobacco industry frequently attacked the Surgeon General. For example, the industry preempted the Surgeon General’s 1979 report on national news networks, stating the report was “suspect from the start.” The industry later attacked the Surgeon General following the 1988 report on the addictive nature of cigarettes with a press release titled, “CLAIMS THAT CIGARETTES ARE ADDICTIVE CONTRADICT COMMON SENSE.”

77. Throughout the 1960s, 1970s, 1980s and 1990s, the cigarette industry, including Defendants herein, spent two hundred and fifty billion dollars on marketing efforts to promote the sale of cigarettes.

78. The cigarette industry spent more money on marketing and advertising cigarettes *in one day* than the public health community spent *in one year*.

79. Cigarette smoking was glamorized – celebrities smoked, athletes smoked, doctors smoked, politicians smoked – everyone smoked.

80. As early as the 1920s, and continuing today, cigarette manufacturers, including Defendants herein, were also intentionally targeting children. Their documents reveal:

“School days are here. And that means BIG TOBACCO BUSINESS for somebody . . . line up the most popular students”
(Concealed Document 1927).

“SUMMER SCHOOL IS STARTING . . . lining up these students . . . as consumers” (Concealed Document 1928).

1 **“Today’s teenager is tomorrow’s potential regular customer”**
2 (Concealed Document 1981).

3 **“The 14-24 age group . . . represent tomorrow’s cigarette business”**
4 (Concealed Document 1974).

5 81. Cigarette manufacturers, including Defendants herein, also targeted and preyed upon
6 minority populations in an effort to increase their market share and ultimately their profits.

7 82. Cigarettes were the number one most heavily advertised product on television until the
8 United States Government banned television advertisements in 1972.

9 83. When cigarettes advertising was banned on television, Defendants turned to marketing
10 in stadiums, sponsoring sporting events such as the Winston Cup and Marlboro 500, sponsoring
11 concerts, utilizing print advertisements in magazines, adding product placement in movies, and
12 more.



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19 84. Meanwhile, internally Defendants were praising themselves for accomplishing this “brilliantly
20 conceived” conspiracy which deceived NOREEN THOMPSON, millions of Americans, the
21 government, and the public health community.

22
23 **“[F]or nearly 20 years, this industry has employed a single strategy**
24 **to defend itself . . . brilliantly conceived and executed . . . a holding**
25 **strategy . . . creating doubt about the health charge without actually**
26 **denying it”** (Concealed Document 1972).
27
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1 85. In 1985, four rotating warning labels were placed on packs of cigarettes which warned,
2 for the first time, that smoking causes lung cancer, heart disease, emphysema, and may complicate
3 pregnancy.

4 86. The cigarette industry, including Defendants herein, opposed these warning labels and
5 throughout the 1980s, despite the warning labels being placed on their cigarettes, spoke publicly
6 through their representatives in the Tobacco Institute (TI) that it was allegedly still unknown whether
7 smoking cigarettes caused cancer or was addictive because, apparently, “more research was
8 needed.”

9 87. In 1988, the United States Surgeon General reported that cigarettes and other forms of
10 tobacco were addicting, and that nicotine is the drug in tobacco that causes addiction. In fact, in his
11 report, the Surgeon General compared tobacco’s addictiveness to heroin and cocaine.
12

13 88. In response, the cigarette industry, including Defendants herein, issued a press release
14 knowingly and disingenuously stating, “Claims that cigarettes are addictive is irresponsible and
15 scare tactics.”
16

17 89. Defendants continued to publicly deny the addictive nature and health hazards of
18 smoking cigarettes until the year 2000, after litigation was brought against them by the Attorneys
19 General of multiple States and their previously concealed documents were made public.
20

21 90. In 1994, CEOs from the seven largest cigarette companies, including Defendants
22 herein, testified under oath before the United States Congress that it was their opinion that it had not
23 been proven that cigarettes were addictive, caused disease, or caused one single person to die.
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91. After the industry executives testified before congress that cigarettes were not addictive and had not been proven to cause cancer, Defendants, including Philip Morris, continued to adhere to the controversy by stating both smokers and non-smokers deserve to know the facts, not innuendo, about cigarettes:

Yesterday, Philip Morris and other U.S. tobacco manufacturers helped to set the record straight by speaking before a Congressional committee...

Fact: Philip Morris does not add nicotine to its cigarettes...

Fact: Philip Morris does not "manipulate" nicotine levels...

Fact: Philip Morris does not believe cigarette smoking is addictive...

Fact: None of the ingredients added in the manufacture of cigarettes is harmful as used...

92. Despite their own intensive research and millions of internal documents describing the dangers and addictive qualities of cigarettes, Defendants negligently, willfully, maliciously, and intentionally made false and misleading statements to Congress, the public, and Decedent, NOREEN THOMPSON.

93. Even after Defendants knowingly lied during these Congressional hearings, Defendants continued, and still continue, to perpetuate their conspiracy.

94. For example, in 1997, Liggett announced that they would voluntarily place a warning label on their cigarette packages, in addition to the labels mandated by the United States government, that smoking is addictive. Defendant, Philip Morris, immediately filed a restraining order against Liggett to prevent them from adding this warning label. Then, in 1998, Liggett sold its three major

cigarette brands, L&N, Lark, and Chesterfield, to Philip Morris, which in turn immediately removed the “smoking was addictive” warning label from these products.

95. Furthermore, from 2000 through 2010, Defendants continued to mislead the public by marketing and promoting “light” and “ultra-light” cigarettes, despite knowing internally that such cigarettes were just as dangerous and addictive as “regular” cigarettes.

96. In 2010, after Defendants were required by the United States government to remove the misleading “light” and “ultra-light” labels from their cigarettes, they instead added “onserts” to their packages of cigarettes explaining that, for example, “Your Marlboro Lights pack is changing. But your cigarette stays the same. In the future, ask for ‘Marlboro in the gold pack.’”

97. Additionally, including as recently as 2018, Defendants have continued to oppose proposed FDA regulations which would reduce or eliminate nicotine in cigarettes.

98. As recently as 2019, Defendants have not admitted and still do not admit or acknowledge that nicotine in their cigarette smoke “is” addictive.

99. As recently as 2019, Defendants have not admitted and still do not admit or acknowledge that nicotine addiction can cause diseases.

100. As recently as 2019, Defendants continue to make false or misleading statements that filtered cigarettes, lights, ultra-lights and low tar are less hazardous than conventional full favored cigarettes.

101. Finally, Defendants have continued to target and prey upon children, teenagers, minorities, and other segment populations, all in the name of money.

102. Defendants, despite being rivals and competitors, locked arms and banded together to purposefully and internationally engage in an over 65-year conspiracy to deceive the public regarding the addictive nature and health hazards of cigarette smoking.

103. This sophisticated conspiracy involved hundreds of billions of dollars spent on marketing efforts, massive deception, including lying under oath before Congress and other governmental entities, forming fake organizations with fake scientists and fake research, and creating a “brilliantly conceived” public relations campaign designed to create and sustain doubt and confusion regarding a supposed - made up - cigarette ‘controversy’ of their own invention.

104. This conspiracy is memorialized through Defendants’ own documents, authored by their own executives and scientists, including over fourteen million previously concealed records.

105. From 1953 through 2000, Defendants made false or misleading statements including but not limited to the following:

- denying that smoking “is” addictive;
- that smoking is not injurious to health;
- that it is unknown if smoking causes serious diseases;
- that scientific and medical community has not reached a consensus about the harms of smoking;
- that no one knows what causes cancer;
- that the tobacco industry made an honest effort to study the harms of smoking and a causal relationship had not need proven;

106. From 1953 through the present, Defendants made false or misleading statements including but not limited to the following:

- that filter, low tar and low nicotine, lights and ultra-light are safe, or safer than full flavor cigarettes, and/or directly and/or indirectly made statements about their safety and efficacy.

107. Throughout the same period, Defendants publicly attacked the validity of research suggesting any harmful effects from smoking.

Conspiratorial Involvement by Defendants’ Lawyers

108. Throughout this fifty-plus year conspiracy, Defendants and their co-conspirators utilized

1 attorneys – both in-house and outside counsel – to further their conspiracy. Defendants and their co-
2 conspirators consulted with these attorneys both before any litigation was contemplated, and once
3 litigation against the tobacco companies began.

4 109. Philip Morris USA Inc., R.J. Reynolds Tobacco Company, British American Tobacco
5 Company, American Tobacco Company, Lorillard Tobacco Company, Brown & Williamson Tobacco
6 Company, and Liggett Group LLC, collectively and through their general counsel, formed the Committee
7 of Counsel and/or the Counsel of Six (hereafter “CC”), whose purpose was to oversee, organize, operate,
8 and execute a conspiracy to conceal and/or misrepresent the harms and addictive nature of cigarettes.
9

10 110. Beginning in the 1950s, Philip Morris USA Inc., R.J. Reynolds Tobacco Company,
11 British American Tobacco Company, American Tobacco Company, Lorillard Tobacco Company, Brown
12 & Williamson Tobacco Company, and Liggett Group LLC, through the CC, also retained outside counsel
13 to assist them in their conspiratorial activities, which included concealing and/or misrepresenting the
14 harms of smoking and its addictive nature to the public.
15

16 111. The law firms whom Defendants retained as outside counsel included several prominent
17 law firms.

18 112. Beginning in the 1950s, the CC and the outside law firms (hereafter “Lawyers”) conspired
19 with Defendants and acted as agents, servants, representatives and/or employees of Defendants in the
20 course and scope of their agency or employment and in furtherance of the conspiracy.¹
21

22 113. The Lawyers played a central role in creating, sustaining, and perpetuating the
23 Defendants’ and the tobacco industry’s conspiracy. Some examples include, but are not limited to the
24 following:

25 a. The Lawyers directed “scientists” as to what research they should and should not
26
27

28 ¹ The allegations herein are not directed to Defendants’ current counsel and/or their representation as
part of their lawful defense in this case.

1 undertake (“new research [regarding the health effects of smoking] will have questionable
2 value, but no negative results”) (CC229); (quote from an attorney: “epidemiological
3 evidence is necessary if for no other reason than to effectively respond to anti-smoking
4 groups . . . the industry should continue to emphasize the lack of substantive proof of
5 causation”) (CC188);

- 6
- 7 b. The Lawyers were involved at every level of alleged scientific “research” pursued by
8 Defendants and the tobacco industry (“The excessive involvement of external lawyers at
9 this very basic scientific level is questionable”) (COVB11);
- 10 c. The Lawyers allegedly vetted scientific “research” papers and reports as well as public
11 relations materials to ensure the interests of the conspiracy would be protected;
- 12 d. The Lawyers improperly identified “friendly” scientific witnesses, subsidized them with
13 grants from the Center for Tobacco Research and the Center for Indoor Air Research, paid
14 them enormous fees, and often hid the relationship between those witnesses and the
15 industry;
- 16
- 17 e. The Lawyers devised and carried out document destruction policies and took shelter
18 behind baseless assertions of attorney client privilege (SHB118, SHB109, CC139);
- 19 f. The Lawyers advocated for tobacco committees to be “front” organizations; (one attorney
20 stated in 1978 that an ad hoc committee should be a broad policy making committee, not
21 just a smoking and health committee, and that the best way money was spent was on
22 “special projects” where “CTR has acted as a ‘front’”) (CC141);
- 23
- 24 g. The Lawyers chaired meetings with co-conspirators (one attorney chaired the
25 Environmental Tobacco Smoke meeting in 1988) (CC188);
- 26 h. The Lawyers presented the results of scientific studies at industry meetings (for example,
27 in 1993, one attorney presented four epidemiologic studies which were used to
28

- 1 “merchandize the ‘positive’ progress in epidemiology”) (COVB122);
- 2 i. The Lawyers oversaw domestic smoking and health projects (for example, in 1998, one
- 3 attorney and his firm advised Philip Morris regarding whether to initially fund, and
- 4 whether to continue or discontinue funding, scientists) (SHB 109);
- 5 j. The Lawyers also worked with and coached scientists on how to be possible witness in
- 6 litigation, how to speak at legislative hearings, how to serve as consultants, and/or how to
- 7 conduct specific supposed research;
- 8 k. They further oversaw international smoking and health projects (for example, in 1991,
- 9 one attorney wrote a memo praising how the Latin American and Far East programs were
- 10 ideal because a law firm developed them in such a way “that there was no direct
- 11 association between the scientists and the tobacco industry”) (COVB130);
- 12 l. The Lawyers screened international scientists in order to eliminate those with views
- 13 opposing the conspiracy (“Candidates who have made public statements adverse to the
- 14 industry on the primary health issue generally are avoided”) (COVB124);
- 15 m. The Lawyers hid the source of the money used for special projects to make them appear
- 16 more acceptable to the public:
- 17 i. On November 15, 1978, at a CTR meeting in New York, one attorney told the
- 18 attendees that “special projects” were the best way money was spent, and said “on
- 19 these projects, CTR has acted as a ‘front.’” (CC141);
- 20 ii. On July 13, 1984, a memorandum from one attorney to another stated, “[the] non-
- 21 CTR projects fund was originally developed so that companies would not be
- 22 paying scientists directly.” (SHB118);
- 23 iii. On October 1989, a scientist from BAT, Dr. Ray Thornton, was invited by Dr.
- 24 Helmut Gaisch of PM to a meeting with the Association for Research on Indoor
- 25
- 26
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1 Air (ARIA). Dr. Thornton's record indicates PM funded ARIA, through a law
2 firm, who in turn supplied money to George Leslie, who in turn set up ARIA.
3 (COVB131);

- 4
5 iv. On April 28, 1992, an attorney wrote that Lorillard and CTR inquired about
6 funding through a law firm's special account for one Dr. Bennett Jensen. The law
7 firm proposed to give Dr. Jensen \$40,000, not for specific research or with an eye
8 to publication, but solely to maintain a good relationship with him and secure his
9 continued help in contacting other scientists. Dr. Jensen previously received CTR
10 Special Project Funds in 1988. An attorney wrote:

11 Allinder admits that [the law firm] wants to give Jensen money to
12 keep him happy and that there is no immediate value to his
13 research . . . issue raises a larger question—whether 'CTR Special
14 Projects' funds (and, after such activities were moved out of CTR,
15 joint industry funds administered through [the law firm]) were
16 used to purchase favorable judicial or legislative testimony,
17 thereby perpetrating a fraud on the public"

18 (CC119) (emphasis added);

- 19 n. The Lawyers ensured that Defendants and the tobacco industry did not directly support
20 legitimate projects related to smoking and health, and instead directed the companies
21 toward supporting alternative projects including junk science, attacks on legitimate public
22 health research, and research of scientifically implausible alternative causation theories
23 for smoking-related diseases.

24 114. The Lawyers were also crucial to the development of research the Defendants and the
25 tobacco industry funded through their selection of Directors for the Center for Tobacco Research (CTR)
26 Scientific Advisory Board (SAB) who imposed unnecessary limits on the research funded by CTR.

27 115. Additionally, the outside Lawyers went so far as to take over access to a database of
28 documents created by RJR's Research and Development division. The outside Lawyers banned the

1 tobacco companies and their in-house counsel from accessing these documents in order to conceal the
2 documents through a false assertion of alleged attorney work product privilege.

3 116. Further, the Lawyers played a major role in Defendants' witness development plans to
4 perpetuate the conspiracy's "open question" position.

5 a. For example, shortly after joining Brown & Williamson Tobacco Co. as Vice President
6 of Research and Development in 1989, Jeffrey Wigand, as part of his orientation, was
7 required to go to Kansas City, Missouri to meet for three days with lawyers from a law
8 firm for an "orientation session." At the session, Wigand was "coached by lawyers
9 regarding the company line on smoking and health, and addiction." The company line
10 was "[t]hat causation had not been proven and that nicotine had not been shown to be
11 addictive." Similar orientation meetings took place with other tobacco scientists at the law
12 firm's offices. (See SHB195, SHB106, United States v. Philip Morris USA, Inc., 449 F.
13 Supp. 2d 1, 805 (D.D.C. 2006)).

14 b. Wigand described the orientation session as follows:

15
16
17 Lawyers were instructing me, a scientist, how to interpret
18 epidemiological studies. In every instance, I was instructed that
19 the evidence in the public health domain had not satisfactorily
20 proven causation. I was told that studies that demonstrated a link
21 between smoking and cancer were fraught with errors. Moreover,
22 I was told that epidemiology could not be relied upon because it
23 was just statisticians doing guess work.

24 c. In addition, an attorney from the same law firm sent a letter to a fellow attorney on briefing
25 research associate and chemist Dr. Alex Spears (who would later become Lorillard's
26 CEO) for a conversation with physician and medical news reporter Dean Edell:

27 CTR Special Projects, non-CTR projects and the Industry
28 Research Committee are obviously sensitive. Dr. Spears should be
prepared to respond to questions in a way that does not lead Edell
into these areas. In particular, Dr. Spears should try to avoid
references to the role of attorneys. However, this should not

1 become too awkward . . . Dr. Spears should attempt to divert the
2 question. (Emphasis added.)

- 3 d. Further, on January 12, 1967, another attorney at the same firm wrote to several other
4 industry attorneys asking them for written comments regarding special projects and
5 congressional hearings. (SHB111.) Two attorneys wrote back stating they hoped
6 materials being developed by TIRC/CTR head Tom Hoyt for various Special Projects
7 would be useful in developing a witness to emphasize the importance of multivariant
8 analysis over univariant ones. The two attorneys also recommended development of two
9 witnesses who could comment upon diseases other than lung cancer. They would present
10 the position that the claimed associations have not been proven to be causal. As to one
11 such potential witness, Dr. Pratt, they noted that while he had potential, he would require
12 “considerable work” before he would be prepared to appear before Congress. (SHB112).
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15
16 **FIRST CLAIM FOR RELIEF**

17 **(WRONGFUL DEATH - NEGLIGENCE)**

18 **Dolly Rowan as Personal Representative of the Estate of Noreen Thompson and Dolly Rowan**
19 **as Heir of Noreen Thompson Against Defendants R.J. Reynolds, and Liggett**

20 117. Plaintiffs repeat and reallege the allegations as contained in paragraphs 1 through 116
21 and incorporate the same herein by reference.

22 118. Plaintiffs bring this wrongful death claim based on Defendants’ negligence as set forth
23 below against R.J. Reynolds and Liggett.

24 119. Plaintiff, DOLLY ROWAN, is the heir of NOREEN THOMPSON.

25 120. Plaintiff, NAVONA COLLISON, is the heir of NOREEN THOMPSON.

26 121. Plaintiff, RUSSELL THOMPSON, is the heir of NOREEN THOMPSON.
27
28

122. Plaintiffs, DOLLY ROWAN, NAVONA COLLISON, and RUSSELL THOMPSON, bring this cause of action pursuant to NRS 41.085(4), as the heirs of NOREEN THOMPSON.

123. Plaintiff, DOLLY ROWAN, is the Special Administrator and Personal Representative of the Estate of NOREEN THOMPSON.

124. Plaintiff, DOLLY ROWAN, brings this claim pursuant to 41.085(5) as the Special Administrator and Personal Representative of the Estate of NOREEN THOMPSON.

125. Defendants owed a duty to the general public, including Decedent, to manufacture, design, sell, market, promote, and/or otherwise produce a product and/or any of its component parts safe and free of unreasonable and harmful defects when used in the manner and for the purpose it was designed, manufactured, and/or intended to be used.

126. Decedent was exposed to and did inhale smoke from cigarettes which were designed, manufactured, marketed, distributed, and/or sold by Defendants.

127. Each exposure to Defendants' cigarettes caused Decedent to inhale smoke which caused her to become addicted to cigarettes, and further caused her to develop lung cancer and suffer severe bodily injuries and death.

128. Defendants were negligent in all the following respects, same being the proximate and/or legal cause of NOREEN THOMPSON'S injuries and death, including but not limited to:

- a. designing and manufacturing an unreasonably dangerous and deadly product;
- b. designing and manufacturing cigarettes to be addictive;
- c. designing and manufacturing cigarettes to be inhalable;
- d. manipulating the level of nicotine in cigarettes to make them more addictive;
- e. genetically modifying nicotine in tobacco plants;
- f. blending different types of tobacco to obtain a desired amount of nicotine;
- g. engineering cigarettes to be rapidly inhaled into the bloodstream;

- h. adding chemicals and other deadly, poisonous compounds to cigarettes;
- i. adding and/or manipulating compounds such as urea, ammonia and diammonium phosphate to Defendants' cigarettes to "free-base" nicotine;
- j. marketing and advertising "filter" and "filtered" cigarettes as safe;
- k. marketing and advertising "light" and "ultra light" cigarettes as safe, low nicotine, and low tar;
- l. adding "onserts" to packages of cigarettes even after the United States government banned marketing of "light" and "ultra-light" cigarettes;
- m. manipulating levels of pH in Defendants' cigarettes;
- n. targeting children who could not understand or comprehend the seriousness or addictive nature of nicotine and smoking;
- o. targeting minority populations such as African Americans, Hispanics, and women, such as NOREEN THOMPSON, to obtain a greater market share to increase their profits;
- p. failing to develop and utilize alternative designs, manufacturing methods, and/or materials to reduce and/or eliminate harmful materials from cigarettes;
- q. continuing to manufacture, distribute, and/or sell cigarettes when Defendants knew at all times material that its products could cause, and in fact were more likely to cause, injuries including, but not limited to, emphysema, throat cancer, COPD, laryngeal cancer, lung cancer, and/or other forms of cancer when used as intended;
- r. making knowingly false and misleading statements to Plaintiff, the public, and the American government that cigarettes were safe and/or not proven to be dangerous;
- s. failing to remove and recall cigarettes from the stream of commerce and the marketplace upon ascertaining that said products would cause disease and death.

129. Additionally, prior to July 1, 1969, Defendants failed to warn and/or inadequately warned foreseeable users, such as NOREEN THOMPSON, of the following, including but not limited to:

- a. failing to warn and/or adequately warn foreseeable users, such as NOREEN THOMPSON, of the dangerous and deadly nature of cigarettes;
- b. failing to warn foreseeable users, such as NOREEN THOMPSON, that users could develop fatal injuries including, but not limited to, emphysema, COPD, throat cancer, laryngeal cancer, lung cancer, and/or other forms of cancer, as a result of smoking and/or inhaling smoke from Defendants' cigarettes;
- c. failing to warn foreseeable users, such as NOREEN THOMPSON, that the use of cigarettes would more likely than not lead to addiction, habituation, and/or dependence;
- d. failing to warn foreseeable users, such as NOREEN THOMPSON, that quitting and/or limiting use of cigarettes would be extremely difficult, particularly if users started smoking at an early age;
- e. failing to disclose to consumers of cigarettes, such as NOREEN THOMPSON, the results of genuine scientific research conducted by and/or known to Defendant that cigarettes were dangerous, defective, and addictive.

130. Defendants breached said aforementioned duties of due and reasonable care in that they produced, designed, manufactured, sold, and/or marketed defective cigarettes, and/or any of their component parts, which contained risks of harm to the user/consumer and which were reasonably foreseeable to cause harm in the use or exercise of reasonable and/or ordinary care.

131. NOREEN THOMPSON'S aforementioned injuries arose out of and were connected to the way Defendants' designed, manufactured, marketed, distributed, and/or sold its products.

1 132. The aforementioned damages of NOREEN THOMPSON were directly and
2 proximately and/or legally caused by Defendants' negligence, in that they produced, sold,
3 manufactured, and/or otherwise placed into the stream of intrastate and interstate commerce, cigarettes
4 which they knew, or in the exercise of ordinary care should have known, were deleterious and highly
5 harmful to NOREEN THOMPSON'S health and well-being.
6

7 133. Defendants, prior to selling and/or distributing the cigarettes to which NOREEN
8 THOMPSON was exposed, knew or should have known that exposure to cigarette smoke was harmful
9 and caused injuries including, but not limited to, lung cancer, pharyngeal cancer, laryngeal cancer,
10 emphysema, COPD, heart disease, and other forms of cancer, and/or result in death.
11

12 134. Defendants' negligence and/or wrongful acts were the actual and proximate or legal
13 cause of NOREEN THOMPSON'S injuries and death. Plaintiffs, DOLLY ROWAN, NAVONA
14 COLLISON, and RUSSELL THOMPSON, have sustained damages consisting of the loss of
15 NOREEN THOMPSON'S love, companionship, comfort, affection, society, and moral support, and
16 has suffered great emotional and psychological loss, all in amounts in excess of Fifteen Thousand
17 Dollars (\$15,000.00). As NOREEN THOMPSON'S heirs, DOLLY ROWAN, NAVONA
18 COLLISON, and RUSSELL THOMPSON seek these damages pursuant to NRS 41.085(4).
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20 135. As a further actual and proximate or legal result of Defendants' negligence, NOREEN
21 THOMPSON endured pain, suffering, and/or disfigurement. As NOREEN THOMPSON'S heirs,
22 DOLLY ROWAN, NAVONA COLLISON, and RUSSELL THOMPSON seek general damages for
23 this pain, suffering, and/or disfigurement pursuant to NRS 41.085(4) in an amount in excess of Fifteen
24 Thousand Dollars (\$15,000.00).
25

26 136. As a further actual and proximate or legal result of Defendants' negligence, NOREEN
27 THOMPSON'S estate incurred special damages, to include medical expenses and funeral expenses,
28 in an amount in excess of Fifteen Thousand Dollars (\$15,000.00). As personal representative of

1 NOREEN THOMPSON'S Estate, DOLLY ROWAN seeks these special damages pursuant to NRS
2 41.085(5).

3 137. Defendants' conduct was despicable and so contemptible that it would be looked down
4 upon and despised by ordinary decent people and was carried on by Defendants with willful and
5 conscious disregard for the safety of anyone in the community.
6

7 138. Defendants' outrageous and unconscionable conduct warrants an award of exemplary
8 and punitive damages pursuant to NRS 42.005, in an amount appropriate to punish and make an
9 example of Defendants, and to deter similar conduct in the future. As personal representative of
10 NOREEN THOMPSON'S estate, DOLLY ROWAN seeks exemplary and punitive damages pursuant
11 to NRS 41.085(5).
12

13 139. To the extent NRS 42.007 is applicable to Defendants' conduct, Defendants are
14 vicariously liable for punitive damages arising from the outrageous and unconscionable conduct of
15 their employees, agents, and/or servants, as set forth herein.

16 140. The actions of Defendants have forced Plaintiffs to retain counsel to represent them in
17 the prosecution of this action, and they are therefore entitled to an award of a reasonable amount as
18 attorneys' fees and costs of suit.
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