

IN THE SUPREME COURT OF THE STATE OF NEVADA

SANDRA CAMACHO; AND ANTHONY
CAMACHO,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT OF
THE STATE OF NEVADA, IN AND FOR THE
COUNTY OF CLARK; AND THE HONORABLE
NADIA KRALL, DISTRICT JUDGE,

Respondents,

and

PHILIP MORRIS USA, INC., a foreign
corporation; R.J. REYNOLDS TOBACCO
COMPANY, a foreign corporation, individually,
and as successor-by-merger to LORILLARD
TOBACCO COMPANY and as successor-in-
interest to the United States tobacco business of
BROWN & WILLIAMSON TOBACCO
CORPORATION, which is the successor-by-
merger to THE AMERICAN TOBACCO
COMPANY; LIGGETT GROUP, LLC., a foreign
corporation; and ASM NATIONWIDE
CORPORATION d/b/a SILVERADO SMOKES &
CIGARS, a domestic corporation; LV SINGHS
NC. d/b/a SMOKES & VAPORS, a domestic
corporation,

Real Parties in Interest.

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PETITIONERS' APPENDIX
VOLUME 57 (Nos. 8697-8806)

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DISTRICT COURT

CLARK COUNTY, NEVADA

SANDRA CAMACHO, individually, and
ANTHONY CAMACHO, individually,

Plaintiffs,

vs.

PHILIP MORRIS USA, INC., a foreign
corporation; R.J. REYNOLDS TOBACCO
COMPANY, a foreign corporation,
individually, and as successor-by-merger to
LORILLARD TOBACCO COMPANY and as
successor-in-interest to the United States
tobacco business of BROWN &
WILLIAMSON TOBACCO CORPORATION,
which is the successor-by-merger to THE
AMERICAN TOBACCO COMPANY;
LIGGETT GROUP, LLC., a foreign

Case No.: A-19-807650-C
Dept. No.: IV

**DEFENDANT PHILIP MORRIS USA'S
REPLY IN SUPPORT OF ITS MOTION
FOR PARTIAL SUMMARY JUDGMENT
ON PLAINTIFFS' NEGLIGENCE
CLAIM**

**Hearing Date: July 19, 2022
Hearing Time: 9:00 a.m.**



corporation; ASM NATIONWIDE
CORPORATION d/b/a SILVERADO
SMOKES & CIGARS, a domestic corporation;
and LV SINGHS INC. d/b/a SMOKE &
VAPORS, a domestic corporation; DOES I-X;
and ROE BUSINESS ENTITIES XI-XX,
inclusive,

Defendants.

Defendant PHILIP MORRIS USA INC. (“PM USA”), by and through its counsel of
record, WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC, SHOOK, HARDY & BACON L.L.P.,
and FASI & DiBELLO, hereby submits this Reply in Support of its Motion for Partial Summary
Judgment on Plaintiffs’ Negligence Claim.¹

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs’ Response tries to distract from the fact that Mrs. Camacho did not smoke a
single PM USA brand cigarette until the 1990s. Plaintiffs cannot simply lump together evidence
from Mrs. Camacho’s entire smoking history to meet their burden against PM USA. They must
have evidence specific to PM USA’s products smoked by Mrs. Camacho and consumer
expectations of those products from the relevant time period—the 1990s. They do not. And
although they improperly try to shift the burden to PM USA, the burden of proving the existence
of a defect that caused Mrs. Camacho’s laryngeal cancer lies solely on Plaintiffs. It is Plaintiffs
who must come forward with evidence to prove each element of their claim against PM USA to
survive summary judgment. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nevada*, 123 Nev. 598,
602–03, 172 P.3d 131, 134 (2007) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 331 (1986)).
Their Response fails to identify any such evidence.

Plaintiffs have zero evidence that the alleged defects they identified make cigarettes more
dangerous than what was contemplated by the ordinary consumer, who expects that cigarettes are

¹ The arguments raised herein apply equally to Plaintiffs’ strict liability claim against PM USA because
“there is no practical difference in Plaintiffs’ negligence and strict liability claims in this case. Therefore,
the negligence claims are subsumed in the strict liability claims.” *Carter v. Ethicon, Inc.*, No. 2:20-CV-
1232-KJD-VCF, 2021 WL 1226531, at *4 (D. Nev. Mar. 31, 2021). Should the Court grant summary
judgment in PM USA’s favor on one or more grounds raised herein, summary judgment on the same
grounds would be warranted as to Plaintiffs’ strict liability claim. *Id.* at *3, *4.

1 inhalable, combustible, and addictive. Moreover, Plaintiffs continue to lack evidence that, but
2 for an alleged defect, Mrs. Camacho would have avoided her laryngeal cancer. Finally,
3 Plaintiffs' made no attempt to explain how Plaintiffs failure-to-warn theory survives when Mrs.
4 Camacho did not start smoking PM USA cigarettes until the 1990s, decades after Congress
5 preempted any claims for failure to warn post-July 1, 1969.

6 At bottom, Plaintiffs have presented the Court with no legal or factual justification for
7 denying Defendants' Motion.

8 **II. ARGUMENT**

9 **A. PM USA IS ENTITLED TO SUMMARY JUDGMENT BECAUSE PLAINTIFFS HAVE** 10 **NO EVIDENCE THAT THE PM USA CIGARETTES THAT MRS. CAMACHO SMOKED** 11 **WERE DEFECTIVE.**

12 As explained in Defendants' Reply in Support of Their Motion for Partial Summary
13 Judgment on Plaintiffs' Strict Liability Claims, which is incorporated herein, Plaintiffs have *no*
14 *evidence* to prove that the *PM USA cigarettes* Mrs. Camacho smoked were more dangerous than
15 would be contemplated by the ordinary user having the ordinary knowledge available in the
16 community *during the relevant time frame*. That dooms their negligence claim. Nor do
17 Plaintiffs identify any evidence that the alleged defects listed in their Response (that cigarettes
18 are inhalable, combustible, and addictive) make cigarettes dangerous beyond what is
19 contemplated by an ordinary consumer, who expects cigarettes to be inhalable, combustible, and
20 addictive.

21 Plaintiffs ask the Court to decline from taking "judicial notice as to when the risk
22 associated with smoking became common knowledge." (Resp. at 12-13.) But judicial notice is
23 unnecessary, and a red herring. Plaintiffs' argument about judicial notice is simply a disguised
24 attempt to shift the burden of proof to PM USA to show consumer expectations in the 1990s.
25 PM USA has no such burden to disprove the elements of Plaintiff's negligence claim. The
26 burden of proof for consumer expectations falls squarely on Plaintiff, and they have failed to
27 meet it. *Cuzze v. Univ. & Cmty. Coll. Sys. of Nevada*, 123 Nev. 598, 602-03, 172 P.3d 131, 134
28 (2007)) ("[I]f the nonmoving party will bear the burden of persuasion at trial, the party moving
for summary judgment may satisfy the burden of production by . . . 'pointing out . . . that there is



an absence of evidence to support the nonmoving party's case.'" (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 331 (1986)).

B. PM USA IS ENTITLED TO SUMMARY JUDGMENT BECAUSE PLAINTIFFS HAVE NO EVIDENCE THAT ANY DESIGN FEATURE WAS A LEGAL CAUSE OF MRS. CAMACHO'S CANCER.

Nor have Plaintiffs presented any evidence in their Response to show that any design features of the PM USA brand cigarettes that Mrs. Camacho smoked proximately caused her laryngeal cancer.

1. Federal law bars Plaintiffs' design defect theories because they would result in a *de facto* ban on cigarettes.

Plaintiffs' Response only highlights the fact that the defect they allege is nothing more than being an ordinary cigarette, which equates to seeking a *de facto* ban on cigarettes—because the only way PM USA could avoid liability is to cease making and selling traditional cigarettes. Plaintiffs' argument that PM USA should only sell a theoretical product that is not inhalable, not addictive, and not combustible is directly contrary to congressional policy—expressly recognized by the United States Supreme Court—against “the removal of tobacco products from the market.” *See FDA v. Brown & Williamson*, 529 U.S. at 137-38 (emphasis added and internal citations omitted). Plaintiffs' Response makes clear that their design-defect theory would impose liability for nothing more than manufacturing and selling cigarettes. Such a liability theory is implicitly preempted by clear Congressional policy.

Moreover, Plaintiffs have identified no evidence that such a theoretical product *could be designed, manufactured, and sold as a cigarette*, let alone that the product would be commercially feasible, much less that an uninhalable nicotine-free stick would be acceptable to consumers—much less Mrs. Camacho—as alternative to conventional cigarettes. Indeed, Plaintiffs have no evidence that the theoretical product would even be considered a cigarette. Nor could Plaintiffs offer evidence to support that assertion. As explained in Defendants' Motion to Exclude Improper Cigarette Design Opinions (filed June 17, 2022), which PM USA incorporates herein, Plaintiffs have no qualified expert witness to discuss cigarette design. The Court should therefore grant summary judgment on Plaintiffs' negligent design claims.

2. **Plaintiffs Have Failed to Identify Any Specific Design Defect that Caused Mrs. Camacho's Cancer and Instead Point to Characteristics Inherent in All Cigarettes.**

Plaintiffs have offered no evidence to prove that any alleged defect caused Mrs. Camacho's laryngeal cancer. In their Response, Plaintiffs cite the declaration of their expert, Dr. Ruckdeschel, which states that L&M (a non PM USA brand), Marlboro, and Basic cigarettes contributed to the development of Mrs. Camacho's cancer.² (Resp. at 16-17.) But the relevant question for purposes of this Motion is not whether *smoking PM USA's cigarettes* caused Mrs. Camacho's laryngeal cancer, but whether *a defect in the PM cigarettes smoked by Mrs. Camacho* caused her laryngeal cancer. Dr. Ruckdeschel offers no opinions on whether Mrs. Camacho would have avoided her laryngeal cancer if she smoked PM USA cigarettes without any of the alleged defects identified by Plaintiffs—as opposed to the risks inherent in smoking.³ Thus, Dr. Ruckdeschel's opinion does not establish legal causation for Plaintiff's negligent design claim *against PM USA*. Plaintiffs also cite to Dr. Prochaska's opinion that “[n]icotine addiction contributes substantially to causing an individual to persist in smoking with exposure to the toxin in cigarette smoke.” (Resp. at 17.) But that opinion does nothing to support Plaintiffs' negligence claim against PM USA. Mrs. Camacho claims that she was hopelessly addicted to cigarettes after her first cigarette, decades before she ever smoked a PM USA brand cigarette. *See Sandra Camacho Dep. at 195-96 (Dec. 7, 2021) (Ex. B)*. Finally, Plaintiffs try to argue that they need not show that an alleged defect caused Mrs. Camacho's laryngeal cancer, but they tellingly cite no law that excuses them from that burden here. Nevada law is to the contrary. The case they cite to excuse them from that burden, *Stackiewicz v. Nissan Motor Corp. in U.S.A.*,

² Notably, this declaration is contradictory to Dr. Ruckdeschel's deposition testimony that he had no opinions tied to the specific brands that Mrs. Camacho smoked. *See Ruckdeschel Dep. at 71-73 (April 27, 2022) (“Q. The brand of cigarette that Mrs. Camacho smoked has no bearing on your opinions in this case, right? A. Absolutely correct.”) (Ex. A)*.

³ Moreover, Plaintiffs cannot argue that Mrs. Camacho would have avoided addiction in the absence of any particular defect in PM USA brand cigarettes. Mrs. Camacho claims that she was hopelessly addicted to cigarettes after her first cigarette, decades before she ever smoked a PM USA brand cigarette. *Sandra Camacho Dep. Vol. 3 at 195-96*. Thus, she would have sought out a cigarette with nicotine—even if PM USA did not exist in 1990—and would have gotten laryngeal cancer anyway (if it was caused by cigarette smoking).



says only that the burden to identify a specific defect may be excused in cases “where other identifiable causes are absent.” 100 Nev. 443, 449, 686 P.2d 925, 928 (1984). That is not the case here where the cause of Mrs. Camacho’s injuries can be tied to something other than Plaintiffs’ alleged defects. Plaintiffs’ negligence claim remains deficient, and PM USA is therefore entitled to summary judgment.

3. Section 402A of the Restatement (Second) of Torts forecloses Plaintiffs’ design defect theories because Cigarettes are Not Defective.

Plaintiffs provide no legal or factual justification on why their claims are not prohibited under Section 402A of the Restatement (Second) of Torts, Comment i. Notably, the case that Plaintiffs’ cited (quoting the concurring opinion) to support their proposition that Comment i allows their negligence claim to survive summary judgment actually dismissed the negligence claim. *See Liggett Grp., Inc. v. Davis*, 973 So. 2d 467, 472–73 (Fla. 4th DCA 2007) (“[T]o allow this claim would be contrary to Congress’ intent to protect commerce and not to ban tobacco products. We view this claim as promoting an ‘across-the-board, Prohibition-style ban on tobacco products.’ We, therefore, hold that this claim is barred by conflict preemption.”).

Plaintiffs’ argument that cigarettes are not “good tobacco” because the nicotine is “manipulated” is a cover to hide the fact that their alleged defects (inhalation, addiction, and combustion) are expected characteristics of all cigarettes. First, the use of “additives” is a red herring because the use of additives is not even one of the defects Plaintiffs allege. Second, the “manipulation” of nicotine to allegedly cause addiction are further red herrings because Plaintiffs’ experts admit that finished cigarettes have less nicotine than the tobacco leaf naturally. *See* Trial Tr. at 2628, *In re Engle Progeny Cases Tobacco Litig. (Feldman)*, No. 08-000521 (Feb. 18, 2020) (Dr. Proctor explaining “[e]verything else being equal, when you start with a given level of nicotine, in the process of manufacturing, some of that nicotine is lost.”) (Ex. C); *see also* Kyriakoudes Dep. at 202-03, *Hensley v. R.J. Reynolds Tobacco Co, et al.*, No. 2018-010108-CA-11 (July 16, 2021) (noting that he does not know how the nicotine in cigarettes compares to the nicotine that occurs naturally in the tobacco leaf) (Ex. D). Third, their experts

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agree that additives do not increase the dangerousness or addictiveness of cigarettes.⁴

C. PLAINTIFFS' FAILURE TO WARN THEORY LIKEWISE FAILS.

Plaintiffs' Response mischaracterizes cases on whether post-1969 failure-to-warn negligence claims survive preemption. For example, *R.J. Reynolds Tobacco Co. v. Marotta*, held that all negligent failure to warn claims were barred by preemption. 214 So. 3d 590, 600 (Fla.

⁴ See Defendants' Motion to Exclude Evidence of or Argument Related to Ammonia Compounds and Other Additives or Ingredients Used in Cigarettes, filed on June 17, 2022, which PM USA incorporates herein. Dr. Proctor has repeatedly conceded that there is no scientific basis for the theory that ammonia and other additives make cigarettes more dangerous and addictive. Indeed, he has admitted that conventional cigarettes are "all equally dangerous and all equally addictive," regardless of additives. Proctor Dep. at 255-56, *McCoy v. R.J. Reynolds Tobacco Co., et al.*, No. 2008-CA-025806 (Fla. 17th Cir. Ct. Mar. 30, 2015) (emphasis added) (Ex. E); see also July 31, 2019 Proctor Dep. at 49, *In re Santa Fe Natural Tobacco Co. Mkt'g & Sales Pracs. And Prods. Liab. Litig.*, No. 1:16-MD-02695-JB-LF (D.N.M.) ("*Santa Fe* Dep.") ("To cut to the bottom line on this, the only way an additive would [] make a cigarette more dangerous is if it was, on average, more dangerous than the tobacco itself. And since tobacco itself is fairly dangerous, you know, unless you replace the tobacco with polonium or maybe coumarin, something powerful, it wouldn't really make a difference.") (emphasis added) (Ex. F); *id.* at 85 (agreeing that "[t]he danger comes from setting tobacco on fire, not from an ingredient or a flavor additive" and testifying that "[t]he additives are relatively unimportant in terms of the overall toxicity [] and harm potential of a cigarette") (emphasis added); Oct. 2, 2012 Proctor Dep. at 95, *In re Tobacco Litig.*, No. 00-C-5000 (Ohio Cnty. Cir. Ct., W.V.) (agreeing that there is a "scientific consensus" that "all conventional cigarettes that burn tobacco are equally dangerous") (emphasis added) (Ex. G). More recently, Dr. Proctor again expressly admitted that cigarettes that are made with ammonia or menthol are "not inherently" "more addicting than cigarettes that are not" and that "regardless of whether cigarettes are made with ammonia or without ammonia, they're equally dangerous and addictive." See Trial Tr. at 2254-55, *In re Engle Progeny Cases Tobacco Litig. (Neff)*, No. 07-036745(08) (Fla. 17th Cir. Ct. Mar. 12, 2019) (Ex. H); see also Trial Tr. at 806, *Rickman v. R.J. Reynolds Tobacco Co.*, No. 19CV28636 (Multnomah Cnty., Or. Cir. Ct. Feb. 11, 2021) (testifying that ammonia does "[n]ot at all" make cigarettes "more addictive") (Ex. I); Proctor Dep. at 386-87, *Hardin v. R.J. Reynolds Tobacco Co.*, No. 12-29000 CA 31 (Fla. 11th Cir. Ct. Feb. 3, 2018) (testifying that menthol cigarettes are not "inherently" or "pharmacologically" "more addictive" than non-menthol cigarettes) (Ex. J); Trial Tr. at 1536-37, *Hardin v. R.J. Reynolds Tobacco Co.*, No. 12-29000 CA 31 (Fla. 11th Cir. Ct. Feb. 13, 2018) (agreeing that menthol "in and of itself, is not addictive" and testifying that he "think[s]" that "[f]rom a pharmacologic or biologic standpoint," he is "not aware of any evidence that menthol cigarettes are more addictive than non-menthol cigarettes") (Ex. K); see also *Santa Fe* Dep. at 49 (similar).

Dr. Prochaska has admitted that she does not know if adding ammonia to cigarettes makes it more difficult for smokers to quit smoking. Prochaska Dep. at 144, *In re Engle Progeny Cases Tobacco Litig. (Calloway)*, No. 08-021770 (18) (Fla. 17th Cir. Ct. July 17, 2018) (Ex. L). She is also unaware of any studies indicating that smokers of cigarettes with added ammonia have a higher level of addiction or nicotine dependence than smokers of cigarettes without added ammonia. *Id.* at 145.

Dr. Kyriakouides is unaware of "any scientific study that concludes that it is more difficult to quit smoking a cigarette that contains additives." See Kyriakouides Dep. at 202-03, *Santos v. R.J. Reynolds Tobacco Co., et al.*, No. 08-00849 CA 10 (Fla. 11th Cir. Ct. Mar. 20, 2015) (Ex. M). He is also unaware of any statement by a public health official that cigarettes containing additives are more difficult to quit. See *id.* at 203-04. Indeed, Dr. Kyriakouides has conceded he does not "really know" "[w]hether [ammoniation] makes [cigarettes] more addictive or not . . . because [he] hasn't seen research on that" and has not done his "own experiments." Kyriakouides Dep. at 157, *Monzon v. R.J. Reynolds Tobacco Co., et al.*, No. 08-00110 CA 27 (Fla. 11th Cir. Ct. Aug. 7, 2018) (Ex. N).



2017) (“The plurality determined that the 1969 Act preempted the petitioner’s ‘claims based on a failure to warn and the neutralization of federally mandated warnings to the extent that those claims rely on omissions or inclusions in respondents’ advertising or promotions,’ but not the petitioner’s express warranty, intentional fraud and misrepresentation, and conspiracy claims.”). *Ferlanti v. Liggett Grp., Inc.*, 929 So. 2d 1172, 1173 (Fla. Dist. Ct. App. 2006), did not address whether failure-to-warn claims were preempted. Nor did *Philip Morris USA, Inc. v. Armitz*, 933 So. 2d 693, 696 (Fla. Dist. Ct. App. 2006) (“[Plaintiff] announced that he would be dropping his failure to warn claims and negligence claims entirely.”). And in *Liggett Group., Inc. v. Davis*, the Florida Fourth District Court of Appeal noted that that Plaintiff had evidence from which the jury could reasonably have concluded the ordinary consumer was not aware of the extent of the dangers of cigarettes **only before 1968** when “Congress came to recognize, as a matter of law, that warnings should and would be required on cigarette packs manufactured and sold throughout the United States.” 973 So. 2d 467, 471 (Fla. Dist. Ct. App. 2007). Plaintiffs also quoted extensively from *Harris v. R.J. Reynolds Tobacco Company*, 383 F. Supp. 3d 1315 (U.S. District Court, M.D. Fla., 2019). But nowhere does that case say that a plaintiff may survive preemption by relying on a post-1969 failure to warn. Nor did Plaintiff disclose that the case has been reversed. *See Harris v. R.J. Reynolds Tobacco Co.*, 981 F.3d 880, 889 (11th Cir. 2020).

Simply put, nothing in the express preemption clause of the Federal Cigarette Labeling and Advertising Act, *see* 15 U.S.C. §§ 1331, *et. seq.*, carves out an exception to allow Plaintiffs to bring a negligent claim for any failure to warn after 1969. Even if it did (which it does not), Plaintiffs have no evidence of any failure to warn in the 1990s when Mrs. Camacho first began smoking PM USA brand cigarettes.⁵ Plaintiffs simply have provided no legal or factual justification to show that a negligence claim based on any failure to warn could survive summary judgment.

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⁵ As stated above, any assertion that Plaintiffs’ claim is based on a failure to warn about the addictive nature of smoking fails because Mrs. Camacho claims that she was hopelessly addicted to cigarettes after her first cigarette, decades before she ever smoked a PM USA brand cigarette. *See Sandra Camacho Dep.* at 195-96.



III. CONCLUSION

Plaintiffs cite no legal arguments or factual statements that allow them to survive summary judgment. Based on the arguments outlined in their Motion, PM USA requests entry of an order granting partial summary judgment on Plaintiffs' negligence claim.

Dated this 5th day of July, 2022.

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CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of July, 2022, a true and correct copy of the foregoing
**DEFENDANT PHILIP MORRIS USA'S REPLY IN SUPPORT OF ITS MOTION FOR
PARTIAL SUMMARY JUDGMENT ON PLAINTIFFS' NEGLIGENCE CLAIM** was
electronically filed and served on counsel through the Court's electronic service system pursuant
to Administrative Order 14-2 and N.E.F.C.R. 9, via the electronic mail addresses noted below,
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Exhibit A

1 IN THE DISTRICT COURT
2 CLARK COUNTY, NEVADA
3 - - -
3 SANDRA CAMACHO, : CASE NO.
4 individually and : A-19-807650-C
5 ANTHONY CAMACHO, :
6 individually, :
7 vs. :
8 PHILIP MORRIS USA :
9 INC., a foreign :
10 corporation; R.J. :
11 REYNOLDS TOBACCO :
12 COMPANY, a foreign :
13 corporation, :
14 individually, a, and :
15 as a :
16 successor-by-merger to :
17 LORILLARD TOBACCO :
18 COMPANY and as :
19 successor-in-interest :
20 to the United States :
21 Tobacco Business of :
22 BROWN & WILLIAMSON :
23 TOBACCO CORPORATION, :
24 which is the :
25 successor-by-merger to :
26 THE AMERICAN TOBACCO :
27 COMPANY; LIGGETT :
28 GROUP, LLC, a foreign :
29 corporation; ASM :
30 NATIONWIDE CORPORATION :
31 d/b/a SILVERADO SMOKES :
32 & CIGARS, a domestic :
33 corporation, and LV :
34 SINGS, INC., d/b/a :
35 SMOKES & VAPORS, a :
36 domestic corporation; :
37 DOES I-X, and ROE :
38 BUSINESS ENTITIES :
39 XI-XX, inclusive, :
40 - - -
41 April 27, 2022
42 - - -

1 (Cont'd.)

2

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- - -

4

April 27, 2022

5

- - -

6

7

Oral remote deposition of

8

JOHN C. RUCKDESCHEL, M.D., taken pursuant

9

to notice, was held via Zoom

10

Videoconference, beginning at 9:04 a.m.,

11

on the above date, before Michelle L.

12

Gray, a Registered Professional Reporter,

13

Certified Shorthand Reporter, Certified

14

Realtime Reporter, and Notary Public.

15

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17

- - -

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23 Group, LLC

24

1 1964, do you have any reason to dispute
2 that?

3 A. No.

4 MR. DELLABETTA: Objection.

5 BY MS. KENYON:

6 Q. Mrs. Camacho got her first
7 cigarette from her girlfriend?

8 A. That's what she said.

9 MR. DELLABETTA: Objection.

10 THE WITNESS: I wasn't
11 there.

12 BY MS. KENYON:

13 Q. Based on your review of her
14 testimony?

15 A. Yes.

16 Q. And the first cigarette that
17 Mrs. Camacho smoked made her cough and
18 she didn't like it?

19 A. That's the rumor.

20 Q. In your review of the
21 materials, did you take note of any
22 particular brands that Mrs. Camacho
23 smoked?

24 A. I did -- her predominant

1 brands were L&M, Marlboro, and Basic.

2 Q. The brand of cigarette that
3 Mrs. Camacho smoked has no bearing on
4 your opinions in this case, right?

5 A. Absolutely correct.

6 Q. So it doesn't matter whether
7 it was filtered or non-filtered cigarette
8 that she smoked?

9 A. No.

10 Q. In your notes on
11 Mr. Camacho's deposition, you included a
12 comment about filters. You do not have
13 an expert opinion on filtered cigarettes,
14 right?

15 A. No. I think the comment
16 related to the fact that he or she felt
17 that filtered cigarettes were safer for
18 her. And I just made note of it and went
19 on from there. It does not enter my
20 opinion at all because they're all toxic.

21 Q. So you don't have an expert
22 opinion on what Mr. and Mrs. Camacho knew
23 or thought about smoking, right?

24 A. Well, my expert opinion, I

1 guess, is tempered by what I read in the
2 depositions. And she liked to smoke,
3 couldn't stop. They talked at least at
4 one point about the use of filtered
5 cigarettes as, quote-unquote, safer. But
6 that was about it.

7 To me it has no -- she kept
8 smoking, she smoked for over 50 years --
9 pack-years, so it's sort of irrelevant
10 whether she opined about the safety or
11 the lack thereof. She still smoked.

12 Q. Whether she smoked a
13 filtered, non-filtered, or full-flavored
14 or light cigarette, that has no bearing
15 on your opinions in this case, right?

16 A. None whatever.

17 Q. And the nicotine level or
18 additives in the cigarette doesn't matter
19 to you, right?

20 A. Not from a causation point
21 of view. It matters quite a bit to me
22 that there was enhancement of nicotine
23 levels over time. But that's not
24 relevant to her causation issues.

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CERTIFICATE

I HEREBY CERTIFY that the witness was duly sworn by me and that the deposition is a true record of the testimony given by the witness.

It was requested before completion of the deposition that the witness, JOHN C. RUCKDESCHEL, M.D., have the opportunity to read and sign the deposition transcript.



MICHELLE L. GRAY,
A Registered Professional
Reporter, Certified Shorthand
Reporter, Certified Realtime
Reporter and Notary Public
Dated: April 29, 2022

(The foregoing certification of this transcript does not apply to any reproduction of the same by any means, unless under the direct control and/or supervision of the certifying reporter.)

Exhibit B

1

DISTRICT COURT

2

CLARK COUNTY, NEVADA

3

SANDRA CAMACHO,)
individually, and ANTHONY)

4

CAMACHO, individually,) CASE NO.:
A-19-807650-C

5

Plaintiffs,)

6

vs.)

7

PHILIP MORRIS USA INC., a)
foreign corporation; R.)

8

J. REYNOLDS TOBACCO)

9

COMPANY, a foreign) DEPOSITION OF
corporation,) SANDRA CAMACHO
individually, and as) VOL. III

10

successor-by-merger to)

LORILLARD TOBACCO COMPANY)

11

and as)

successor-in-interest to)

12

the United States tobacco)

business of BROWN &)

13

WILLIAMSON TOBACCO)

CORPORATION, which is the)

14

successor-by-merger to)

THE AMERICAN TOBACCO)

15

COMPANY; LIGGETT GROUP,)

LLC, a foreign)

16

corporation; ASM)

NATIONWIDE CORPORATION)

17

d/b/a SILVERADO SMOKES &)

CIGARS, a domestic)

18

corporation; and LV)

SINGHS INC. d/b/a SMOKES)

19

& VAPORS, a domestic) DEPOSITION OF

corporation; DOES I-X;)

20

and ROE BUSINESS ENTITIES) SANDRA CAMACHO

XI-XX, inclusive,)

21

Defendants.) VOLUME III

22

))

23

Taken on Tuesday, December 7, 2021

At 9:06 a.m.

24

Las Vegas, Nevada

25

Reported By: Karen L. Jones, CCR NO. 694

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VIDEOTAPED DEPOSITION OF SANDRA CAMACHO

VOLUME III

Taken on Tuesday, December 7, 2021

Through a translator

By a Certified Stenographer

At 9:06 a.m.

At 531 Morning Mauve Avenue

Las Vegas, Nevada

Reported By: Karen L. Jones, CCR NO. 694

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Also Present:

20

21 Gian Sapienza, Legal Videographer
22 Dwayne Parrette, Translator/Reader
Anthony Camacho

23

24

25

1 with your girlfriends?

2 A. Yes.

3 Q. Did you enjoy socializing and smoking
4 with your girlfriends?

5 MS. WALD: Form.

6 THE WITNESS: My first cig I did because
7 it was the cool thing to do then.

8 BY MS. KENYON:

9 Q. My question is a little bit different.
10 Did you enjoy socializing and smoking
11 with your girlfriends?

12 A. No.

13 Q. Then why did you do it?

14 A. Because I was addicted to them.

15 Q. When do you think you were first
16 addicted to cigarettes?

17 A. After the first hour. Because I wanted
18 more.

19 Q. Are you saying you were addicted after
20 your first cigarette?

21 MS. WALD: Form. Asked and answered.

22 THE WITNESS: Yes.

23 BY MS. KENYON:

24 Q. When did you first learn that cigarette
25 smoking could be addictive?

1 A. I do not remember.

2 Q. What does it mean to you to be addicted
3 to cigarettes?

4 A. To want one after another.

5 Q. Being addicted doesn't mean that a
6 smoker cannot quit, correct?

7 MS. WALD: Form.

8 THE WITNESS: I tried many times to
9 quit.

10 BY MS. KENYON:

11 Q. And you did, in fact, permanently quit
12 over four years ago, correct? And you did, in fact,
13 quit permanently over four years ago, correct?

14 A. Yes. It will be four years ago I quit
15 because of cancer.

16 Q. Regardless, you did permanently quit,
17 correct?

18 MS. WALD: Object to form. Asked and
19 answered.

20 It's okay, Sandra. Sandra, relax. It's
21 okay. It's okay. Calm down. Just answer the
22 question.

23 THE WITNESS: Yes.

24 BY MS. KENYON:

25 Q. Even though you believed you were

Exhibit C

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT IN
AND FOR BROWARD COUNTY, FLORIDA

CASE NO.: 08-000521 (14)
JUDGE CARLOS A. RODRIGUEZ

IN RE: ENGLE PROGENY CASES
TOBACCO LITIGATION

Pertains to: LAURA SHIFRIN FELDMAN, as
Personal Representative of the Estate
of RITA SHIFRIN

Case No. 08-000521

TRANSCRIPT OF PROCEEDINGS
JURY TRIAL
Volume 16, Pages 2579 - 2812

DATE TAKEN: February 18, 2020
TIME: (1:45) 1:53 p.m. - 6:06 p.m.
PLACE: Broward County Courthouse
201 S.E. 6th Street
Fort Lauderdale, Florida
BEFORE: Carlos A. Rodriguez, Circuit Judge

This cause came on to be heard at the time and
place aforesaid, when and where the following
proceedings were stenographically reported by:

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17 Barbara Cohen, Plaintiff

18 Bendja Bedejuste, paralegal, Schlesinger Law Offices

19 Keith Brett, video technician

20 Jennifer Buso, video technician

21 Summer Shinnars, paralegal, Shook, Hardy & Bacon

1 **Q. Regardless of whether cigarettes are made**
2 **with ammonia or without ammonia, they are equally**
3 **dangerous and addictive, right?**

4 A. So long as there's ceteris paribus in
5 there, because so long as they're made with
6 flue-cured tobacco and meant to be inhaled, and so
7 long as they have a certain level of nicotine
8 sufficient to create and sustain addiction, then what
9 you said is true, but those are big ifs.

10 **Q. You agree that throughout the entire**
11 **manufacturing process the level of nicotine that was**
12 **in the plant is lessened every step of the way, isn't**
13 **it?**

14 A. Everything else being equal, when you start
15 with a given level of nicotine, in the process of
16 manufacturing, some of that nicotine is lost.

17 **Q. Okay. You agree that the smoke from**
18 **cigarettes in the 1800s was not profoundly less**
19 **addictive than the smoke of cigarettes today?**

20 A. Right. So long as it's made from sugary
21 high-nicotine tobacco, that's true.

22 **Q. And you agree, sir, that smoke from**
23 **roll-your-own cigarettes is at least as addictive as**
24 **the smoke from cigarettes made by Philip Morris or**
25 **R.J. Reynolds, right?**

Exhibit D

1 IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
2 CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

3 MICHELLE HENSLEY,

4 Plaintiff,

5 Vs. Case No. 2018-010108-CA-11

6 R. J. REYNOLDS TOBACCO
7 COMPANY, et al.,

 Defendant.

9 THE DEPOSITION OF DR. LOUIS KYRIAKOUDAS
10 July 16, 2021

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PATRICIA A. NILSEN, RMR, CRR, CRC

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1 The deposition of DR. LOUIS
2 KYRIAKOUCES, taken on behalf of the Defendants,
3 pursuant to Notice on July 16, 2021, beginning at
4 approximately 9:07 a.m. CST in the offices of Regus
5 Business Centers.

6 This deposition is taken in
7 accordance with the terms and provisions of the
8 Florida Rules of Civil Procedure. All objections
9 are reserved except as to form.

10 The signature of the witness is
11 reserved.

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19 Stenographically Reported By:

20 PATRICIA A. NILSEN, RMR, CRR, CRC
21 TN Certified Court Reporter
22
23
24
25

1 I'm trying to answer your question. I just --
2 it's -- your question is too broad --
3 Q. It is.
4 A. -- to give an affirmative answer, because
5 there's so many variables.
6 Q. Let me fix it.
7 A. Yeah, okay.
8 Q. Okay?
9 A cigarette, you know, brand of cigarette,
10 is made from a particular blend?
11 A. Yes.
12 Q. A blend of tobacco --
13 A. Yes.
14 Q. -- right?
15 That blend is made by taking plants from
16 the field, right?
17 A. Yes.
18 Q. Drying them?
19 A. Yes.
20 Q. Curing them?
21 A. Yes.
22 Q. Going through the manufacturing process?
23 A. Yes. Which, for most modern cigarettes, I
24 should point out, involves reconstituted leaf.
25 Q. Then put into a -- a rolled cigarette,

1 right?

2 A. Yes.

3 Q. And in that process, the amount of
4 nicotine in the final product of a particular blend
5 is less than the amount of nicotine in the plant on
6 a per gram basis, right? Because of the drying and
7 the curing process and the processing?

8 A. That could be the case.

9 Q. Well, it is the case. Right?

10 A. I'm not sure. To be honest with you, I'm
11 not -- because of all the variables, I really
12 couldn't say yes or no.

13 And I'm not trying to be evasive; I'm
14 just -- you know, it's -- you know, you've got
15 reconstituted leaf. You have parts of the plant
16 have different amounts of nicotine in them, the
17 higher leaves; the stems and stalks have less
18 nicotine in them than the leaf material. It used
19 to be that they would strip out the stems and
20 stalks. Then they went to reconstituted leaf,
21 beginning in the '50s, generally -- you know,
22 there's lots of -- there's just so many variables,
23 I -- I really couldn't give an answer to that.
24 Q. With reconstituted tobacco, you could give
25 an answer, couldn't you?

Exhibit E

IN CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

JOHN McCOY,

Plaintiff,

vs.

Case No. 2008-CA-025806

R. J. REYNOLDS TOBACCO COMPANY,
Individually, and as successor
by merger to BROWN & WILLIAMSON
TOBACCO CORPORATION, individually,
and as Successor by merger to
THE AMERICAN TOBACCO COMPANY,
a foreign corporation, et al.,
Defendants.

_____/

DEPOSITION OF ROBERT PROCTOR, PhD.

Monday, March 30, 2015

9:05 a.m. - 6:26 p.m.

REPORTED BY MARY P. RADO CY, RPR, CSR #3355

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8

9 ALSO PRESENT:

10 David Manzo, Videographer

11

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1 Q. Any commercially-available --

2 A. Your typical cigarette.

3 Q. And not denicotinized cigarettes either, right?

4 A. Right.

5 Q. So during the years that Mrs. McCoy was
6 smoking, can you say or were there any conventional
7 cigarettes on the market that were less addictive than
8 Camel cigarettes?

9 A. I'd say, generally, no; that built into your
10 question is an assumption essentially of conventionality
11 and all of the cigarettes at that time that were
12 conventional were designed to create and sustain
13 addiction and were roughly equally addictive and equally
14 likely to cause lung cancer and every other disease
15 attached to smoking.

16 Q. So at the beginning of the deposition, you
17 recited for me some of the brands that Ms. Chambers told
18 you about and Mrs. McCoy may have smoked at different
19 times.

20 A. Right.

21 Q. For all of those brands, can you tell me
22 whether there was ever another conventional cigarette on
23 the market that was less addictive or less dangerous in
24 terms of disease causation than any of the brands that
25 Mrs. McCoy smoked?

1 A. Generally, no, because the way you've defined
2 the question of a conventional cigarette, they are all
3 almost identical.

4 Q. Would the same answer be true if I asked you
5 during the 1930's to 2005, was there any cigarette on the
6 market that was less addictive or less dangerous than a
7 Lucky Strike cigarette?

8 A. By definition of a conventional cigarette,
9 we've built into that the criteria that make them roughly
10 all equally dangerous and all equally addictive.

11 Q. So the same would be true for cigarettes like
12 Winston, Vantage, Kool, Salem and Taryton and so forth.

13 A. Yes.

14 Q. Are you familiar with the chemical called acid
15 aldehyde?

16 A. Yes.

17 Q. Would you agree that acid aldehyde is naturally
18 present in the smoke of burning tobacco?

19 A. Yes.

20 Q. Would you agree that the factors that determine
21 the acid aldehyde concentration in smoke are primarily
22 sugars?

23 A. Yes. It's both naturally and artificially,
24 just to make that clear.

25 By saying it's naturally, I did not mean it was

Exhibit F

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

IN RE: SANTA FE
NATURAL TOBACCO COMPANY
MARKETING & SALES
PRACTICES AND PRODUCTS No. 1:16-MD-02695-JB-LF
LIABILITY LITIGATION

_____/

DEPOSITION OF ROBERT N. PROCTOR, Ph.D.
Palo Alto, California
Wednesday, July 31, 2019

Reported by:
Natalie Y. Botelho
CSR No. 9897

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

IN RE: SANTA FE
NATURAL TOBACCO COMPANY
MARKETING & SALES
PRACTICES AND PRODUCTS No. 1:16-MD-02695-JB-LF
LIABILITY LITIGATION

_____/

Videotaped deposition of ROBERT N.
PROCTOR, Ph.D., taken on behalf of Defendants, at
1755 Embarcadero Road, Palo Alto, California,
beginning at 12:08 p.m. and ending at 5:15 p.m. on
Wednesday, July 31, 2019, before NATALIE Y. BOTELHO,
Certified Shorthand Reporter No. 9897.

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18 Also Present:
19 DOUG KLOTE, analyst, Jones Day
20 KEIGO PAINTER, Videographer
21
22
23
24
25

1 A. Yes.

2 Q. Smoke from cocoa used as a flavorant when
3 burned could be hazardous?

4 A. Sure.

5 Q. Down below, it talks about licorice. In
6 the course of your testimony over the years, you've
7 talked about licorice a few times, right?

8 A. Yes.

9 Q. And when burned, it may be a precursor for
10 a carcinogen, correct?

11 A. Yeah. It doesn't say much, but, yeah,
12 that's what it says.

13 Q. I mean, all things being equal, would a --
14 if you took cocoa and licorice out of your
15 cigarette, would that make it safer?

16 A. No, no. I think those are trivially
17 hazardous. To cut to the bottom line on this, the
18 only way an additive would be -- make a cigarette
19 more dangerous is if it was, on average, more
20 dangerous than the tobacco itself. And since
21 tobacco itself is fairly dangerous, you know, unless
22 you replace the tobacco with polonium or maybe
23 coumarin, something powerful, it wouldn't really
24 make a difference.

25 Q. And yet if a person read -- just grabbed

1 third subtitle. And they say the answer is,
2 "Ingredients in tobacco products may affect public
3 health in several ways such as increasing the
4 attractiveness, addictiveness, and toxicity of a
5 well-established harmful drug."
6 A. Sure, yeah, especially if by "ingredients"
7 you include the flue-cured tobacco.
8 Q. I mean, so -- so this is 2014. So the
9 World Health Organization, they're not saying, as
10 you've explained, that, look, this is a mountain in
11 a molehill. The danger comes from setting tobacco
12 on fire, not from an ingredient or a flavor
13 additive.
14 A. Well, that is true, yeah. The additives
15 are relatively unimportant in terms of the overall
16 toxicity --
17 Q. Right.
18 A. -- and harm potential of a cigarette.
19 Q. But yet in their World Health Organization
20 fact sheet just recently from 2014, instead of
21 saying that, they go out of their way to have a
22 separate section that says the ingredients they add
23 make them -- can make them more toxic and more
24 addictive.
25 MR. HABERMAN: Objection.

85

Exhibit G

1 IN THE CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA

2 ---o0o---

3 IN RE: TOBACCO LITIGATION CIVIL ACTION NO. 00-C-5000

4 (INDIVIDUAL PERSONAL INJURY CASES) (Judge Arthur M. Recht)

5 _____

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8

9

10 DEPOSITION OF ROBERT NEEL PROCTOR, Ph.D.

11 Tuesday, October 2, 2012

12 Pages 1 - 171

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17

18

19 REPORTED BY: LYNNE LEDANOIS, CSR NO. 6811

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20

21

22

23

24

25

1 scientific community is that all cigarettes are equally
2 dangerous; correct?

3 A I --

4 Q Let me restate that.

5 That all conventional cigarettes that burn
6 tobacco are equally dangerous.

7 A Okay. I think I would say that's the
8 scientific consensus, yes. I don't think everyone would
9 agree with that, but I think it's definitely the
10 dominant view.

11 Q Can you identify for me any public health
12 authority that takes the position that providing
13 instructions like those contained in deposition Exhibit
14 5 will result in a safer cigarette product?

15 A I don't recall any public health body taking a
16 position on that one way or the other.

17 Q Dr. Proctor, you're aware that -- you're
18 familiar with the FDA's regulatory authority over
19 cigarettes, aren't you?

20 A Yes, I am.

21 Q You're aware that the enabling act that gave
22 the FDA authority over cigarette products mandated that
23 new warnings be given with respect to the health risk of
24 cigarettes; right?

25 A Right.

Exhibit H

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION (08)

JUDGE DAVID A. HAIMES

IN RE: ENGLE PROGENY CASES
TOBACCO LITIGATION

Pertains to: DEBORAH NEFF, as
Personal Representative of the
Estate of DOROTHY MILINKOVICH

Case No.: 07-036745(08)

TRANSCRIPT OF PROCEEDINGS
JURY TRIAL
Volume 13, Pages 2165 - 2443

DATE TAKEN: March 12, 2019
TIME: (1:00) 1:19 p.m. - 6:12 p.m.
PLACE: Broward County Courthouse
201 S.E. 6th Street
Fort Lauderdale, Florida 33301
BEFORE: DAVID A. HAIMES, Circuit Court Judge

This cause came on to be heard at the time and
place aforesaid, when and where the following
proceedings were stenographically reported by:

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5 JOSH ALEXANDER

6

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1 Q. And another way -- I mean we were just
2 discussing that ammonia can be used as an additive
3 in cigarettes with the ammoniated, reconstituted
4 tobacco?

5 A. Yeah, I mentioned that. It's used to
6 strengthen the sheet that's running over those fast
7 rollers, so it assists in the machinability of the
8 product.

9 Q. Right.

10 And let's be clear, you're not saying
11 that cigarettes that are made with ammonia are any
12 more addicting than cigarettes that are not?

13 A. No, no, not inherently. It increases
14 the potency, but what it does is makes it more
15 deceptive. In other words, you could have a very
16 low-nicotine cigarette on a robot. You can
17 free-base it and it will pump it up back into the
18 addictive realm. So it makes it more deceptive but
19 not necessarily more addictive.

20 Q. Now regardless of whether cigarettes are
21 made with ammonia or without ammonia, they're
22 equally dangerous and addictive, aren't they?

23 A. Yeah, that's right. Another way to say
24 that is it would be a myth to think that an
25 additive-free cigarette was any safer or any less

1 deadly.

2 Q. Interestingly, the National Cancer
3 Institute and other research actually did research
4 to see whether ammonia compounds could help make a
5 safer cigarette?

6 MR. GDANSKI: Objection. It's
7 bolstering. It's hearsay. Predicate. Lack
8 of foundation.

9 MR. PERSONS: I'll just withdraw it.
10 I'll move on to something else.

11 THE COURT: Okay.

12 THE WITNESS: I liked that question too.

13 MR. GDANSKI: Sorry, Doc.

14 BY MR. PERSONS:

15 Q. Let's talk about polonium-210.

16 A. Okay.

17 Q. You mentioned polonium-210 the other
18 day. R.J. Reynolds and Philip Morris did not add
19 polonium-210 to their cigarettes, did they?

20 A. Not deliberately. It comes in through
21 the manufacturing process as a result of the
22 superphosphates used for fertilizer.

23 The superphosphates contain uranium
24 which decays to lead which decays to polonium and
25 that radioactive isotope either vascularly through

Exhibit I

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

PATRICIA ANN RICKMAN and)
JASON RICKMAN,)
)
Plaintiffs,)
vs.) Case No. 19CV28636
)
R.J. REYNOLDS TOBACCO)
COMPANY, INC., a foreign)
corporation,)
Defendant.)
)
)

TRANSCRIPT OF PROCEEDINGS
Volume 4, MORNING SESSION
Pages 712 to 862
Thursday, February 11, 2021
9:00 a.m.
Multnomah County Courthouse
1200 Southwest 1st Avenue
Portland, Oregon

BEFORE: Honorable Judith H. Matarazzo
REPORTED BY: Deborah L Cook, RPR, CSR
Oregon CSR No. 04-0389

* * *

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* * * *

1 A. Even more than that. You can do more than
2 that.

3 Q. I think you mentioned certain different
4 ways it's used when in reconstituted tobacco --

5 A. That's how it was discovered, yeah, to
6 strengthen the sheet as it's rolling out on these
7 enormous machines.

8 Q. And I want to be clear, Dr. Proctor, you
9 are not saying that cigarettes that are made with
10 ammonia are any more addicting than cigarettes that
11 are not --

12 A. Not inherently, no.

13 Q. So when you talked about making nicotine
14 more potent, or input, or kick, or something like
15 that, you didn't mean to suggest that ammonia makes
16 cigarettes more addictive --

17 A. Not at all. Anything that makes it more
18 pleasant makes it -- arguably more addictive. Even
19 ash trays make it more addictive in the sense it
20 makes it's easier to smoke. Price makes it more
21 addictive. Addiction is also a social process
22 having to do with availability. Joe Camel makes it
23 more addictive. But apart from those things,
24 toxicologically, what you say is true.

25 Q. We will talk about Joe Camel and many of

Exhibit J

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO.: 12-29000 CA 31

JOYCE HARDIN, as Personal
Representative of the Estate of
THOMAS B. HARDIN, deceased,

Plaintiff,

vs.

R.J. REYNOLDS TOBACCO COMPANY,

Defendant.

_____/

600 Brickell Avenue, Suite 3800
Miami, Florida 33131
Saturday, 9:59 a.m. - 4:06 p.m.
February 3, 2018

VIDEOTAPED DEPOSITION OF

ROBERT N. PROCTOR, PH.D.

VOLUME 2
Pages 263 through 507

Taken before Gina Rodriguez, RPR, CRR,
Notary Public in and for the State of Florida at
Large, pursuant to Notice of Taking Deposition filed
in the above cause.

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10 Company:

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16 ALSO PRESENT:

17 Sandra Solis, Videographer

18 Robyn Hughes, Paralegal

19

20

21

22

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1 non-menthol cigarettes?

2 A. I'm just not sure on that. I know the FDA
3 has come out saying that the menthol does make them
4 addictive -- more addictive.

5 My view is that anything that facilitates
6 use increases addiction. So if menthol makes it
7 easier to use or easier to start, that could make it
8 more addictive. In the same way that if you make
9 cigarettes more expensive, I think they become less
10 addictive. Or if you make them cheaper, they become
11 more addictive. Or availability through something
12 like a vending machine makes them more addictive,
13 just because it facilitates use.

14 So that's kind of a complication I would
15 like to throw that into the mix.

16 Q. In terms of just a direct effect on a
17 cigarette-per-cigarette basis, you're not saying that
18 menthol cigarettes are more addictive than
19 non-menthol cigarettes?

20 A. Well, not inherently, but I do think that
21 by facilitating use, they may become, as a result,
22 more addictive, more easy -- easier to use, and,
23 therefore, more likely to be used, and, therefore, in
24 that sense, more addictive.

25 Q. Okay.

1 A. But I don't know that pharmacologically --
2 I don't believe that pharmacologically they're made
3 more addictive.

4 So I would distinguish those kind of two
5 different aspects, the sort of behavioral use,
6 availability question, and then the toxicologic,
7 pharmacologic aspect. And I think those are -- that
8 is an important distinction you can make.

9 Q. Let me -- let me ask it to you that way.
10 That's what I was about to change the question to.

11 From a pharmacologic or biologic
12 standpoint in terms of taking smoke and nicotine
13 into your body and how your body processes that and
14 so forth, you're not aware of any evidence that
15 menthol cigarettes are any more addictive than
16 non-menthol cigarettes?

17 A. Well, again, I'm not sure about that. I --
18 I think that's true, but the FDA may have a different
19 point of view.

20 But I would distinguish that pharmacologic
21 aspect from the behavioral aspect, and I think the
22 behavioral aspect is more important.

23 Q. Okay. Well, in terms of the behavioral
24 aspect being more important, you're aware that
25 Mr. Hardin didn't initiate smoking with a menthol

Exhibit K

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO.: 12-29000 CA 31

JOYCE HARDIN, as Personal
Representative of the Estate of
THOMAS B. HARDIN, deceased,

Plaintiff,

vs.

R.J. REYNOLDS TOBACCO COMPANY,

Defendant.

_____/

TRANSCRIPT OF JURY TRIAL PROCEEDINGS

VOLUME 15 (Pages 1502 - 1638)

DATE TAKEN: February 13, 2018
TIME: 9:52 a.m.
PLACE: Miami-Dade County Courthouse
73 West Flagler Street
Miami, Florida 33130
6-3
BEFORE: SPENCER EIG, Circuit Judge

This cause came on to be heard at the time and
place aforesaid, when and where the following
proceedings were stenographically reported by:

Gina Rodriguez, RPR, CRR, CCP

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22

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25

1 "potency," to increase the potency of nicotine, or to
2 enhance or create a kick or jolt from nicotine.

3 But to be clear, you're not saying that
4 cigarettes made with ammonia are any more addictive
5 than cigarettes that do not use ammonia, right?

6 A. No, I'm not saying that they're inherently
7 more addictive.

8 Q. One thing you did talk about yesterday or
9 in your direct examination was about menthol?

10 A. Yes.

11 Q. And that's an example of an additive,
12 right?

13 A. It is.

14 Q. Now, menthol, in and of itself, is not
15 addictive, correct?

16 A. Yes, I don't believe that it alone would be
17 addictive.

18 Q. All right. And the historical record
19 demonstrates that people who smoke menthol cigarettes
20 do not smoke any more cigarettes per day than people
21 who smoke non-menthol cigarettes?

22 A. I think that's true. I didn't really look
23 at that carefully.

24 Q. From a pharmacologic or biologic standpoint
25 in terms of taking smoke and nicotine into your body

1 and how your body processes and that so forth, you're
2 not aware of any evidence that menthol cigarettes are
3 more addictive than non-menthol cigarettes?

4 A. Well, again, I'm not sure about that. I --
5 I think that's true.

6 Q. Do you have any evidence that Mr. Hardin,
7 because this is his case, that he had any difficulty
8 quitting menthol versus non-menthol cigarettes?

9 A. I don't. And I wouldn't.

10 Q. One of the things you talked about
11 yesterday, or one of the things you talked about on
12 direct examination, was denicotinizing or removing
13 the nicotine from tobacco in cigarettes?

14 A. Yes.

15 Q. And I think you talked about a document
16 from 1935 from the American Tobacco Company?

17 A. Right. Where they talk about having the
18 habit to take the nicotine out.

19 Q. That was actually a document meant for the
20 public, wasn't it?

21 A. Yeah, it's a published advertorial, is the
22 word I used for it. It is kind of an eight-page
23 description of the processes going on at the American
24 Tobacco Company.

25 Q. And one of the things -- I mean, the

Exhibit L

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

---oOo---

IN RE: ENGLE PROGENY CASES
TOBACCO LITIGATION

Pertains to: MARVINE CALLOWAY
as Personal Representative of
the Estate of JOHNNIE CALLOWAY

Case No. 08-021770 (18)

_____/

VIDEOTAPED DEPOSITION OF JUDITH PROCHASKA, PH.D.

Taken before NICOLE HATLER

CSR No. 13730

July 17, 2018

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 Michael Powers
7 David Stomp
 Marisa Raymos, videographer
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1 the con -- Society for Research on Nicotine and
2 Tobacco that I was president of for this past year.
3 For that meeting, I collaborated with FDA on a
4 number of sessions.

5 Q. No. I said -- I'm sorry. I meant to ask
6 you: Have you ever collaborated on an actual
7 research project?

8 A. Research project. With people at the FDA?

9 Q. Who are experts in cigarette design.

10 A. No.

11 Q. Does adding ammonia to a cigarette make it
12 more difficult for the smokers of that cigarette to
13 quit smoking?

14 A. I don't know. I don't know that that's
15 been studied as an outcome.

16 Q. Can you identify for me any tobacco
17 industry document indicating that use of ammonia
18 technology in the cigarette makes it more difficult
19 for a smoker to quit?

20 A. No.

21 Q. Have you seen any peer-reviewed studies
22 which found that smokers of cigarettes with added
23 ammonia are less likely to quit than smokers of
24 cigarettes without added ammonia?

25 A. No.

1 Q. And you've never done any independent
2 research on whether smokers of cigarettes with
3 added ammonia are less likely to quit smoking than
4 smokers of cigarettes without ammonia, have you?

5 A. No.

6 Q. Are you familiar with any studies
7 indicating that smokers of cigarettes with added
8 ammonia have a higher level of addiction or
9 nicotine dependence than smokers of cigarettes
10 without added ammonia?

11 A. No.

12 Q. Can you identify for me all the brands of
13 cigarettes that Mr. Calloway smoked that had added
14 ammonia?

15 MS. CHAMBERS: Object to form.

16 THE WITNESS: So he's been smoking since
17 1948. So some might not have had ammonia when he
18 initially was smoking them but then had ammonia
19 added over time. So Marlboro, Winston, Camel, I
20 think Parliament. I think most of these would --
21 at least those would fall into that category.

22 BY MR. FURR:

23 Q. Has it been scientifically established that
24 adding ammonia to a cigarette makes that cigarette
25 more addictive?

Exhibit M

1 IN THE CIRCUIT COURT OF THE 11TH
2 JUDICIAL CIRCUIT, IN AND FOR
3 MIAMI-DADE COUNTY, FLORIDA
4 GENERAL JURISDICTION DIVISION

5 CASE NO: 08-00849 CA 10

6 REBECCA SANTOS, as Personal
7 Representative of the Estate of Renato
8 Santos, for the use and benefit of DOLORES
9 SANTOS, the decedent's widow,
10 Plaintiff,

11 VS.

12 R.J. REYNOLDS TOBACCO COMPANY, et al.,
13 Defendants.

14 _____/

15 DEPOSITION OF LOUIS KYRIAKOUCES, Ph.D.

16
17
18
19 Taken at the Hilton Garden Inn Gulfport
20 Airport, 14108 Airport Road, Gulfport,
21 Mississippi, on Friday, March 20, 2015,
22 beginning at 10:00 a.m.

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ATTORNEYS FOR DEFENDANT

R.J. REYNOLDS TOBACCO CO.

REPORTED BY:

MONICA SCHROEDER, RPR, CRR, CSR #1285

COURT REPORTER & NOTARY PUBLIC

1 A. When I've gone to the website of
2 Reynolds, I have looked up Winston. And I don't
3 have that memorized, but there's quite a long list
4 of constituent components, additives, ingredients,
5 whichever word you prefer to use, in Winston,
6 Camel, yes.

7 Q. So you believe that Winston does contain
8 additives?

9 A. Oh, yes, flavorings, ammonia salts,
10 things like that, yes. It's in the Winston.
11 I'd have to go -- I'd have to look up the
12 -- today, I would have to look up the website
13 because there is those drop-down menus that
14 identify the brand and then tells you what's in
15 it. They're required to do that now.

16 Q. Was there ever a period of time when
17 Winston, to your knowledge, based on the
18 historical record, did not contain additives?

19 A. To my knowledge, no. I think -- from the
20 beginning of the brand, I think it's always had --
21 you know, it's a complex recipe.

22 Q. Based on your review of the historical
23 documents, are you aware of any scientific study
24 that concludes that it is more difficult to quit
25 smoking a cigarette that contains additives?

1 A. I'm not aware of any study like that
2 because it's my understanding that basically all
3 cigarettes are highly engineered, complex devices.

4 So my first question is, how would you do
5 a study like that? Because, you know, what is the
6 cigarette that is just pure tobacco, and pure
7 non-flue-cured tobacco? I don't know the answer
8 to the question that I just posed.

9 Q. You asked a question, and you don't know
10 the answer to it?

11 A. I don't know the answer. I don't know
12 everything.

13 MR. KEEHFUS:

14 Let the record reflect that we're having
15 a moment of levity in a long day.

16 Q. So, I'm sorry, you are not aware of a
17 scientific study concluding it's more difficult to
18 quit smoking a cigarette that contains additives?

19 A. Right. I just haven't looked into that
20 issue in terms of -- there may be research on
21 that. If there is, I'm not aware of it, and don't
22 intend to testify, anyway, on that aspect of it.

23 Q. Based on your historical research and
24 review of the public documents, are you aware of
25 any statements by public health officials that

1 conclude that it's more difficult to quit smoking
2 a cigarette that contains ingredients?

3 A. I am not aware either way.

4 Q. Are you familiar with the Winston Red Box
5 brand?

6 A. Is that a contemporary brand? I'm not.
7 Yes. Is it something that's sold now?

8 Q. It's something that is sold now.

9 A. No. I'm not familiar with it.

10 Q. If Reynolds did sell a cigarette today
11 that contained just tobacco and water, would you
12 say that that would be a responsible thing for a
13 manufacturer to do?

14 A. I don't know. I mean, I couldn't answer
15 that question because, I mean, tobacco, itself, is
16 complicated. You know, tobaccos have varying
17 levels of sugars within them. You have recipes.

18 So I do know that no cigarette is made of
19 tobacco cut out of the field and wrapped in paper.
20 All tobacco is processed.

21 So I identified the problem with the
22 cigarette, in my own personal opinion, is the fact
23 that it delivers addictive nicotine to the user
24 through the inhalation process. So if Reynolds
25 created a cigarette that lacked -- that didn't

Exhibit N

Deposition of DR. LOUIS
KYRIAKOUCES, taken at the offices of Regus,
2615 Medical Center Pkwy., Suite 1560,
Murfreesboro, Tennessee, at 9 a.m. (CST) on
the above date before Stephanie A. Faulkner,
LCR, CRI, CPE, Tennessee Licensed Court
Reporter, pursuant to the Florida Rules of
Civil Procedure.

A P P E A R A N C E S

On Behalf of the Plaintiff:

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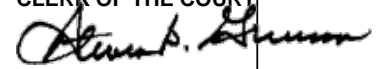
1 filter or a certain portion would be caught
2 in the filter.

3 So that's a long winded answer, but
4 that's the function of ammonia. Whether it
5 makes it more addictive or not, I don't
6 really know, because I haven't seen research
7 on that and I haven't, obviously, done my own
8 experiments.

9 But it is clear that the purpose of
10 the addition of ammonia compounds, one way or
11 the other that I described earlier, had with
12 it one function was to ensure that smokers
13 got a -- nicotine through a filter --
14 nicotine in the gas phase through the filter
15 in a particularly potent form that, as R.J.
16 Reynolds described it, has more kick. So
17 it's a cigarette with more quick, as the
18 industry describes it.

19 Whether that's more addicting or
20 not, that's more of a medical question.
21 Until I see research -- and that research may
22 be out there, I don't know. But I haven't
23 seen it, so I can't say. They say it has
24 more kick.

25 Q. So you don't have the information



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Attorneys for Defendant Liggett Group LLC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

SANDRA CAMACHO, individually, and
ANTHONY CAMACHO, individually,

Plaintiffs,

vs.

PHILIP MORRIS USA, INC., a foreign
corporation; R.J. REYNOLDS TOBACCO
COMPANY, a foreign corporation,
individually, and as successor-by-merger to
LORILLARD TOBACCO COMPANY and as
successor-in-interest to the United States
tobacco business of BROWN &
WILLIAMSON TOBACCO CORPORATION,
which is the successor-by-merger to THE
AMERICAN TOBACCO COMPANY;
LIGGETT GROUP, LLC., a foreign
corporation; and ASM NATIONWIDE
CORPORATION d/b/a SILVERADO
SMOKERS & CIGARS, a domestic
corporation, and ROE BUSINESS ENTITIES
XI-XX, inclusive.

Defendants.

Case No. A-19-807650-C
Dept. No. IV

**LIGGETT GROUP LLC'S REPLY IN
SUPPORT OF ITS MOTION FOR
PARTIAL SUMMARY JUDGMENT
ON PLAINTIFFS' NEGLIGENCE
AND STRICT LIABILITY CLAIMS**

Defendant Liggett Group LLC (“Liggett”), by and through its undersigned counsel, hereby submits its reply in support of Liggett’s Motion for Partial Summary Judgment on Plaintiffs’ Negligence and Strict Liability Claims (“Motion”), and in support states:

ARGUMENT

I. LIGGETT IS ENTITLED TO SUMMARY JUDGMENT ON PLAINTIFFS’ FAILURE TO WARN CLAIMS

1. Plaintiffs’ Post-1969 Failure to Warn Claims Are Preempted by Federal Law

Plaintiffs concede that post-1969 failure-to-warn claims based on advertising and promotional materials are preempted by the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. §§ 1331, *et. seq.* (“FCLAA”). *See* Pl. Resp. at 5. Nonetheless, without any facts to support their contention, Plaintiffs claim *their* post-1969 claims are not preempted under FCLAA because they are based on Liggett’s failure to disclose voluntary and research activities. *Id.* at 6. As set forth in Liggett’s Motion, *any* claim that Liggett failed to warn Ms. Camacho after July 1, 1969 is expressly preempted by the FCLAA and therefore, summary judgment is warranted in Liggett’s favor. *See Wood v. Safeway, Inc.*, 121 P.3d 1026, 1030 (2005) (non-movant “may not rest upon general allegations and conclusions” to defeat summary judgment).

2. Plaintiffs’ Pre-1969 Failure to Warn Claims Fail as a Matter of Law

a. There was No Special Relationship Between Liggett and Mrs. Camacho Giving Rise to a Duty to Disclose

Plaintiffs contend that Liggett voluntarily assumed a duty to disclose to Mrs. Camacho all information in its possession regarding the health effects of smoking. Such a duty to disclose can arise in circumstances where there is a special or fiduciary relationship between a plaintiff and a defendant. *See Wiley v. Redd*, 110 Nev. 1310, 1316, 885 P.2d 592, 596 (1994). The smoking and health cases Liggett relies on in its Motion make clear there is no special relationship between a cigarette manufacturer (like Liggett) and an ultimate consumer (like Mrs. Camacho) as a matter of law. *See* Liggett Motion at 7. Each of the cases relied on by

1 Plaintiffs in opposition to Liggett’s motion is distinguishable. None of those cases found the
2 existence of a special relationship existed in an arm’s length transaction such as that here. *See*
3 *Mackintosh v. California Fed. Sav. & Loan Ass’n*, 113 Nev. 393 (1997) (special relationship
4 found between a purchaser of a home and savings and loan association that acted as both
5 vendor and lender in the transaction giving rise to a duty to disclose on behalf of the
6 association).

7 Plaintiffs further improperly rely on *Dow Chemical* to argue that there was a special
8 relationship between Mrs. Camacho and Liggett. In that case, the plaintiffs sued the parent
9 company of a breast implant manufacturer (which tested and advised the manufacturer about the
10 implant) for failure to warn regarding the dangers of silicone used in the implant and argued that
11 parent company’s duty arose out of a special relationship between the parties. *Dow Chem.*
12 *Co. v. Mahlum*, 114 Nev. 1468, 1502, 970 P.2d 98, 120 (1998), *overruled in part on other*
13 *grounds by GES, Inc. v. Corbitt*, 117 Nev. 265, 21 P.3d 11 (2001). Although, as Plaintiffs
14 here note, the court in *Dow Chemical* found that a duty to disclose may in some circumstances
15 arise in arm’s length transactions, the high court found no such relationship between the
16 parties in that case, and therefore found no duty to disclose to the plaintiff. *Id.* at 1468 (finding
17 no relationship of any kind between the parties to support a duty to disclose). Likewise, no
18 special relationship between Liggett and Plaintiffs existed here. Moreover, *Dow Chemical*
19 makes clear that superior knowledge alone is not sufficient to establish a duty to disclose. *Id.*
20 at 1487.

21 Accordingly, Plaintiffs’ negligence and strict liability claims based on an alleged
22 failure-to-warn fails because there is no “special relationship” between Liggett and Mrs.
23 Camacho.

24 **b. There is No Evidence that Liggett’s Alleged Failure to Warn Harmed Mrs.**
25 **Camacho**

26 Plaintiffs’ warning claims arising before July 1, 1969 also fail because there is no
27 evidence that Mrs. Camacho would not have started smoking or would have quit between
28 1964 and July 1, 1969 but for Liggett’s failure to provide additional warnings. *See Rivera v.*

1 *Philip Morris, Inc.*, 125 Nev. 185, 187, 209 P.3d 271, 273 (2009).

2 The two Liggett ads Plaintiffs included in their response in support of their claims do not
3 contain any health claims or false information, and more importantly, had no bearing on her
4 decision to smoke Liggett's L&M cigarettes. (S. Camacho Dep. at 240-41 ("Q. Do you recall
5 seeing any advertisements for L&M cigarettes? A. I smoked L&M because a girlfriend gave
6 it to me.")).¹ Although Plaintiffs also quote testimony where Mrs. Camacho claims she would
7 have quit sooner or not started smoking if she knew that cigarettes were harmful, that generic,
8 self-serving assertion does not establish liability against Liggett in light of her actions and
9 smoking behavior. *See* Pl. Resp at 11.

10 The truth is this: despite the issuance of the 1964 Surgeon General's Report before she
11 starting smoking, the presence of *multiple* warnings that appeared on every pack of cigarettes
12 Ms. Camacho allegedly smoked after 1966, and repeated urging by her family and physicians
13 to stop smoking throughout the years, *she opted not to heed any of those warnings. See*
14 Liggett Motion at 9-10. On these facts, Plaintiffs cannot establish any warning between 1964
15 and July 1, 1969 would have caused Mrs. Camacho to act differently and thereby avoid her
16 injury. *See Rivera*, 125 Nev. at 187, 209 P.3d at 273 (2009).

17 **II. LIGGETT IS ENTITLED TO SUMMARY JUDGMENT ON PLAINTIFFS'**
18 **DESIGN DEFECT CLAIMS**

19 To prevail on their design defect claim Plaintiffs must show that the product's design
20 rendered it "dangerous to an extent beyond that which would be contemplated by the ordinary
21 consumer who purchases it with the *ordinary knowledge common to the community* as to its
22 characteristics." *Ward v. Ford Motor Co.*, 99 Nev. at 48, 657 P.2d 99 Nev. 99 Nev. 47, 48,
23 657 P.2d 95, 96 (1983) (citation omitted) (emphasis added). As more fully set forth in
24 Liggett's Motion, Plaintiffs must prove that that a design choice by Liggett or design feature
25 of Liggett's L&M cigarettes between 1964 and 1990—something *beyond* the *well-known*
26 inherent dangers of cigarettes—made L&M cigarettes more dangerous than the ordinary

27 ¹ Cited excerpts from the deposition of Sandra Camacho are attached hereto as Composite
28 Exhibit A.

1 consumer would anticipate, and that those design choices or features proximately caused Mrs.
2 Camacho's injury. *See* Liggett's Motion at 16. Plaintiffs have proffered no such evidence
3 here.

4 Instead, Plaintiffs identify inhalability, addiction and combustion as the three
5 principle defects in cigarettes generally. *See* Pl. Opp. at 15-20. Plaintiffs rely on the opinions
6 of Drs. Robert Proctor (a historian), Louis Kyriakouides (a historian), and Judith Prochaska
7 (a psychologist) to support their design defect claims, however, none of these witnesses are
8 qualified cigarette design or defect causation experts. *See* Defendants' expert motions filed
9 June 17, 2022. Significantly, none of these expert witnesses identified in their reports an
10 alleged *specific* defect in any of the cigarettes Mrs. Camacho smoked, including Liggett's
11 L&M brand, beyond the inherent characteristics of *all* conventional cigarettes in the market.

12 Simply put, Plaintiffs cannot show that any of Liggett's *cigarette design choices*—as
13 opposed to smoking in general—was a legal cause of Mrs. Camacho's alleged injury.
14 Without any connection between Mrs. Camacho's injury and L&M's *design*, Plaintiffs'
15 design defect claims fail.

16 CONCLUSION

17 For the reasons stated in Liggett's motion and herein, Liggett is entitled to partial
18 summary judgment on Plaintiffs' negligence and strict liability claims.

19 DATED this 5th day of July, 2022.

20 LEWIS ROCA ROTHGERBER CHRISTIE LLP

21 /s/ J Christopher Jorgensen

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Attorneys for Liggett Group LLC

CERTIFICATE OF SERVICE

Pursuant to Nev.R.Civ. Rule 5(b) and E.D.C.R. 8.05, I caused a true and correct copy of the foregoing **LIGGETT GROUP LLC’S REPLY IN SUPPORT OF ITS MOTION FOR PARTIAL SUMMARY JUDGMENT ON PLAINTIFFS’ NEGLIGENCE AND STRICT LIABILITY CLAIMS** to be served via the Court’s Odyssey EFile & Serve system, which will send an electronic copy to all interested parties. The date and time of the electronic service is in place of the date and place of deposit in the mail.

DATED this 5th day of July, 2022.

/s/ Annette Jaramillo
An employee of Lewis Roca
Rothgerber Christie LLP

EXHIBIT A

DISTRICT COURT
CLARK COUNTY, NEVADA

SANDRA CAMACHO,)	
individually, and ANTHONY)	
CAMACHO, individually,)	CASE NO.:
)	A-19-807650-C
Plaintiffs,)	
)	
vs.)	
)	
PHILIP MORRIS USA INC., a)	
foreign corporation; R.)	
J. REYNOLDS TOBACCO)	
COMPANY, a foreign)	DEPOSITION OF
corporation,)	SANDRA CAMACHO
individually, and as)	VOL. III
successor-by-merger to)	
LORILLARD TOBACCO COMPANY)	
and as)	
successor-in-interest to)	
the United States tobacco)	
business of BROWN &)	
WILLIAMSON TOBACCO)	
CORPORATION, which is the)	
successor-by-merger to)	
THE AMERICAN TOBACCO)	
COMPANY; LIGGETT GROUP,)	
LLC, a foreign)	
corporation; ASM)	
NATIONWIDE CORPORATION)	
d/b/a SILVERADO SMOKES &)	
CIGARS, a domestic)	
corporation; and LV)	
SINGHS INC. d/b/a SMOKES)	
& VAPORS, a domestic)	DEPOSITION OF
corporation; DOES I-X;)	
and ROE BUSINESS ENTITIES)	SANDRA CAMACHO
XI-XX, inclusive,)	
)	VOLUME III
Defendants.)	
)	

Taken on Tuesday, December 7, 2021

At 9:06 a.m.

Las Vegas, Nevada

Reported By: Karen L. Jones, CCR NO. 694

1 you?

2 A. No.

3 Q. Did you ever discuss cigarette
4 advertising with anyone?

5 A. No.

6 Q. Did you ever buy a particular brand of
7 cigarette because of an advertisement?

8 A. I smoked filter cigarettes thinking they
9 were safer.

10 Q. My question was different. Did you ever
11 buy a particular brand because of an advertisement?

12 A. I only remember billboard. Nothing
13 else.

14 Q. You never saw an ad that said filtered
15 cigarettes were safer, correct?

16 MS. WALD: Form.

17 BY MS. KENYON:

18 Q. Is that correct?

19 A. I do not remember. I do not remember.

20 Q. Do you recall seeing any advertisements
21 for Marlboro cigarettes?

22 A. I do not remember.

23 Q. Do you recall seeing any advertisements
24 for L&M cigarettes?

25 MS. WALD: Are you doing okay? Are you

1 understanding the questions?

2 THE WITNESS: I smoked L&M because
3 girlfriend gave it to me.

4 BY MS. KENYON:

5 Q. Right. So the only reason that you
6 smoked an L&M cigarette was because a girlfriend
7 gave it to you, correct?

8 A. And it was filter.

9 Q. So my question is, you never saw an ad
10 for L&M cigarettes, correct?

11 A. I do not remember.

12 Q. Did you ever see an ad for Basic
13 cigarettes?

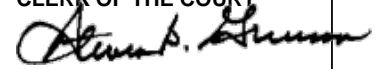
14 A. I do not remember.

15 MS. WALD: Whenever you're at a good
16 stopping point, I think she might be getting
17 confused. By the way you're answering these
18 questions, it seems like you're getting a little
19 confused.

20 MS. HENNINGER: Yep.

21 MS. WALD: We've been going two hours
22 and 30 minutes today, so I think this might be a
23 good stopping point for the day.

24 MS. KENYON: All right. We'll go off
25 the record.



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11 *Attorneys for Defendant Liggett Group LLC*

12
13 **DISTRICT COURT**
14 **CLARK COUNTY, NEVADA**

15 SANDRA CAMACHO, individually, and
16 ANTHONY CAMACHO, individually,

17 Plaintiffs,

18 vs.

19 PHILIP MORRIS USA, INC., a foreign
corporation; R.J. REYNOLDS TOBACCO
COMPANY, a foreign corporation,
20 individually, and as successor-by-merger to
LORILLARD TOBACCO COMPANY and as
successor-in-interest to the United States
21 tobacco business of BROWN &
WILLIAMSON TOBACCO CORPORATION,
22 which is the successor-by-merger to THE
AMERICAN TOBACCO COMPANY;
23 LIGGETT GROUP, LLC., a foreign
corporation; ASM NATIONWIDE
24 CORPORATION d/b/a SILVERADO
SMOKES & CIGARS, a domestic corporation;
25 and LV SINGHS INC. d/b/a SMOKES &
VAPORS, a domestic corporation; DOES I-X;
26 and ROE BUSINESS ENTITIES XI-XX,
inclusive,

27 Defendants.
28

Case No. A-19-807650-C
Dept. No. IV

**DEFENDANT LIGGETT GROUP LLC'S
NOTICE OF ADOPTION OF AND
JOINDER IN DEFENDANTS' REPLY IN
SUPPORT OF MOTION FOR PARTIAL
SUMMARY JUDGMENT ON
NEGLIGENCE CLAIMS**

Defendant Liggett Group LLC (“Liggett”) hereby gives notice to the parties and the Court of its adoption of and joinder in Defendants’ Reply in Support of Motion for Partial Summary Judgment on Negligence Claims.

Dated this 5th day of July, 2022.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

/s/ J Christopher Jorgensen

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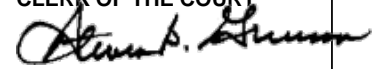
Attorneys for Liggett Group LLC

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. Rule 5(b) and E.D.C.R. 8.05, I caused a true and correct copy of the foregoing **DEFENDANT LIGGETT GROUP LLC'S NOTICE OF ADOPTION OF AND JOINDER IN DEFENDANTS' REPLY IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT ON NEGLIGENCE CLAIMS** to be served via the Court's EFiled system, which will send an electronic copy to all interested parties. The date and time of the electronic service is in place of the date and place of deposit in the mail.

DATED this 5th day of July, 2022.

/s/ Annette Jaramillo
An employee of Lewis Roca
Rothgerber Christie LLP



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11 *Attorneys for Defendant Liggett Group LLC*

12
13 **DISTRICT COURT**
14 **CLARK COUNTY, NEVADA**

15 SANDRA CAMACHO, individually, and
16 ANTHONY CAMACHO, individually,

17 Plaintiffs,

18 vs.

19 PHILIP MORRIS USA, INC., a foreign
corporation; R.J. REYNOLDS TOBACCO
COMPANY, a foreign corporation,
20 individually, and as successor-by-merger to
LORILLARD TOBACCO COMPANY and as
successor-in-interest to the United States
21 tobacco business of BROWN &
WILLIAMSON TOBACCO CORPORATION,
22 which is the successor-by-merger to THE
AMERICAN TOBACCO COMPANY;
23 LIGGETT GROUP, LLC., a foreign
corporation; ASM NATIONWIDE
24 CORPORATION d/b/a SILVERADO
SMOKES & CIGARS, a domestic corporation;
25 and LV SINGHS INC. d/b/a SMOKES &
VAPORS, a domestic corporation; DOES I-X;
26 and ROE BUSINESS ENTITIES XI-XX,
inclusive,

27 Defendants.
28

Case No. A-19-807650-C
Dept. No. IV

**DEFENDANT LIGGETT GROUP LLC'S
NOTICE OF ADOPTION OF AND
JOINDER IN DEFENDANTS' REPLY IN
SUPPORT OF MOTION FOR PARTIAL
SUMMARY JUDGMENT ON PUNITIVE
DAMAGES CLAIM**

Defendant Liggett Group LLC (“Liggett”) hereby gives notice to the parties and the Court of its adoption of and joinder in Defendants’ Reply in Support of Motion for Partial Summary Judgment on Punitive Damages Claim.

Dated this 5th day of July, 2022.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

/s/ J Christopher Jorgensen

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Attorneys for Liggett Group LLC

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. Rule 5(b) and E.D.C.R. 8.05, I caused a true and correct copy of the foregoing **DEFENDANT LIGGETT GROUP LLC'S NOTICE OF ADOPTION OF AND JOINDER IN DEFENDANTS' REPLY IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT ON PUNITIVE DAMAGES CLAIM** to be served via the Court's EFiled system, which will send an electronic copy to all interested parties. The date and time of the electronic service is in place of the date and place of deposit in the mail.

DATED this 5th day of July, 2022.

/s/ Annette Jaramillo

An employee of Lewis Roca
Rothgerber Christie LLP

A-19-807650-C Sandra Camacho, Plaintiff(s)
vs.
Philip Morris USA Inc, Defendant(s)

August 29, 2022 10:30 AM All Pending Motions

HEARD BY: Krall, Nadia COURTROOM: RJC Courtroom 03C

COURT CLERK: Burchfield, Pharan

RECORDER: Burgener, Melissa

REPORTER:

PARTIES PRESENT:

Alexandra L Sorenson	Attorney for Defendant
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Daniel F. Polsenberg	Attorney for Defendant
Dennis L. Kennedy	Attorney for Defendant
Fan Li	Attorney for Plaintiff
Hassia T Diolombi	Attorney for Defendant
J. Christopher Jorgensen	Attorney for Defendant
Kelly A Luther	Attorney for Defendant
Maria Ruiz	Attorney for Defendant
Matthew S. Granda	Attorney for Plaintiff
Peter M Henk	Attorney for Defendant
Ursula M. Henninger	Attorney for Defendant

JOURNAL ENTRIES

John Uustal, Esq., admitted Pro Hac Vice, on behalf of Plaintiffs Sandra Camacho and Anthony Camacho also present.

COURT NOTED having read everything. COURT FURTHER NOTED any additional argument after this Court has made its ruling, will be before the Nevada Supreme Court.

PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT ON PLAINTIFFS' MEDICAL CAUSATION CLAIM

Arguments made by Mr. Li and Mr. Roberts. COURT STATED its FINDINGS and ORDERED, Motion DENIED; and Mr. Roberts to prepare the Order.

DEFENDANT R.J. REYNOLDS TOBACCO COMPANY'S MOTION FOR SUMMARY JUDGMENT ON PLAINTIFFS' CLAIMS FOR DECEPTIVE TRADE PRACTICES AND CIVIL CONSPIRACY

Arguments made by Mr. Kennedy and Mr. Li. COURT STATED its FINDINGS and ORDERED, Motion GRANTED; and Mr. Roberts to prepare the Order.

DEFENDANT LIGGETT GROUP LLC'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON

Printed Date: 8/31/2022

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Minutes Date:

August 29, 2022

Prepared by: Pharan Burchfield

PLAINTIFFS' CLAIMS FOR FRAUDULENT MISREPRESENTATION AND FRAUDULENT CONCEALMENT AND NOTICE OF ADOPTION OF AND JOINDER IN DEFENDANT PHILIP MORRIS USA INC.'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON PLAINTIFFS' CLAIMS FOR FRAUDULENT MISREPRESENTATION AND FRAUDULENT CONCEALMENT
Arguments made by Ms. Ruiz and Mr. Li. COURT STATED its FINDINGS and ORDERED, Motion GRANTED; and Ms. Ruiz to prepare the Order.

LIGGETT GROUP LLC'S PARTIAL MOTION FOR SUMMARY JUDGMENT ON PLAINTIFFS' CLAIM PURSUANT TO THE NEVADA DECEPTIVE TRADE PRACTICES ACT
Arguments made by Ms. Luther and Mr. Li. COURT STATED its FINDINGS and ORDERED, Motion GRANTED; and Ms. Luther to prepare the Order.

DEFENDANT LIGGETT GROUP LLC'S MOTION FOR JUDGMENT ON THE PLEADINGS AS TO PLAINTIFFS' CLAIMS FOR CIVIL CONSPIRACY AND MEMORANDUM OF LAW IN SUPPORT AND JOINDER IN CO-DEFENDANTS' MOTION FOR PARTIAL SUMMARY ON PLAINTIFFS' CLAIMS FOR CONSPIRACY
Arguments made by Ms. Ruiz and Mr. Li. COURT STATED its FINDINGS and ORDERED, Motion GRANTED; and Ms. Ruiz to prepare the Order.

DEFENDANT LIGGETT GROUP LLC'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON PLAINTIFFS' NEGLIGENCE AND STRICT LIABILITY CLAIMS
Arguments made by Ms. Luther and Mr. Li. COURT STATED its FINDINGS and ORDERED, Motion DENIED IN PART and GRANTED IN PART; and Mr. Luther to prepare the Order.

DEFENDANT ASM NATIONWIDE CORPORATION'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON PLAINTIFFS' PUNITIVE DAMAGES CLAIM
Statements made by Mr. Roberts and Mr. Li. COURT STATED its FINDINGS and ORDERED, Motion MOOT; and Mr. Roberts to prepare the Order.

DEFENDANTS PHILIP MORRIS USA INC. AND R.J. REYNOLDS TOBACCO COMPANY'S MOTION FOR JUDICIAL NOTICE . . . DEFENDANT LIGGETT GROUP LLC'S JOINDER IN PHILIP MORRIS USA INC. AND R.J. REYNOLDS TOBACCO COMPANY'S MOTION FOR JUDICIAL NOTICE
Arguments made by Mr. Henk and Mr. Li. COURT STATED its FINDINGS and ORDERED, Motion DENIED; and Mr. Henk to prepare the Order.

DEFENDANTS PHILIP MORRIS USA AND R.J. REYNOLDS TOBACCO COMPANY'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON PLAINTIFFS' PUNITIVE DAMAGES CLAIM . . . DEFENDANT LIGGETT GROUP LLC'S JOINDER IN PHILIP MORRIS USA INC. AND R.J. REYNOLDS TOBACCO COMPANY'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON PLAINTIFFS' PUNITIVE DAMAGES CLAIM
Arguments made by Mr. Roberts and Mr. Li. COURT STATED its FINDINGS and ORDERED, Motion GRANTED; and Mr. Roberts to prepare the Order.

DEFENDANT PHILIP MORRIS USA INC.'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON PLAINTIFFS' CLAIMS FOR FRAUDULENT MISREPRESENTATION AND FRAUDULENT CONCEALMENT . . . DEFENDANT LIGGETT GROUP LLC'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON PLAINTIFFS' CLAIMS FOR FRAUDULENT MISREPRESENTATION AND FRAUDULENT CONCEALMENT AND NOTICE OF ADOPTION OF AND JOINDER IN DEFENDANT PHILIP MORRIS USA INC.'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON PLAINTIFFS' CLAIMS FOR FRAUDULENT MISREPRESENTATION AND FRAUDULENT CONCEALMENT
Arguments made by Mr. Roberts and Mr. Li. COURT STATED its FINDINGS and ORDERED, Motion GRANTED; and Mr. Roberts to prepare the Order.

DEFENDANTS PHILIP MORRIS USA INC. AND R.J. REYNOLDS TOBACCO COMPANY'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON PLAINTIFFS' CLAIMS FOR DECEPTIVE TRADE PRACTICES AND CIVIL CONSPIRACY . . . DEFENDANT LIGGETT GROUP LLC'S MOTION FOR JUDGMENT ON THE PLEADINGS AS TO PLAINTIFFS' CLAIMS FOR CIVIL CONSPIRACY AND MEMORANDUM OF LAW IN SUPPORT AND JOINDER IN CO-DEFENDANTS' MOTION FOR PARTIAL SUMMARY ON PLAINTIFFS' CLAIMS FOR CONSPIRACY

Arguments made by Mr. Henk and Mr. Li. COURT STATED its FINDINGS and ORDERED, Motion GRANTED; and Mr. Henk to prepare the Order.

DEFENDANT PHILIP MORRIS USA INC.'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON PLAINTIFFS' NEGLIGENCE CLAIM

Arguments made by Mr. Henk and Mr. Li. COURT STATED its FINDINGS and ORDERED, Motion GRANTED; and Mr. Henk to prepare the Order.

DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT ON PLAINTIFFS' STRICT LIABILITY CLAIMS

Statements made by Mr. Henk and Mr. Li. COURT STATED its FINDINGS and ORDERED, Motion DENIED; and Mr. Li to prepare the Order.

DEFENDANTS PHILIP MORRIS USA INC., R.J. REYNOLDS TOBACCO COMPANY, AND ASM NATIONWIDE CORPORATION'S MOTION IN LIMINE NO. 1 TO EXCLUDE IMPROPER ADVERTISING OPINIONS . . . DEFENDANT LIGGETT GROUP LLC S NOTICE OF ADOPTION OF AND JOINDER IN DEFENDANTS PHILIP MORRIS USA INC. AND R.J. REYNOLDS TOBACCO COMPANY S MOTION TO EXCLUDE IMPROPER ADVERTISING OPINIONS

Arguments made by Ms. Sorenson and Mr. Li. COURT STATED its FINDINGS and ORDERED, Motion DENIED WITHOUT PREJUDICE; and Mr. Li to prepare the Order.

DEFENDANTS PHILIP MORRIS USA INC., R.J. REYNOLDS TOBACCO COMPANY, AND ASM NATIONWIDE CORPORATION'S MOTION IN LIMINE NO. 2 TO EXCLUDE IMPROPER CIGARETTE DESIGN OPINIONS . . . DEFENDANT LIGGETT GROUP LLC'S NOTICE OF ADOPTION OF AND JOINDER IN DEFENDANTS' MOTION TO EXCLUDE IMPROPER CIGARETTE DESIGN OPINIONS

Arguments made by Mr. Henk and Mr. Li. COURT STATED its FINDINGS and ORDERED, Motion DENIED WITHOUT PREJUDICE; and Mr. Li to prepare the Order.

DEFENDANTS PHILIP MORRIS USA INC., R.J. REYNOLDS TOBACCO COMPANY, AND ASM NATIONWIDE CORPORATION'S MOTION IN LIMINE NO. 3 TO PRECLUDE CERTAIN TYPES OF TESTIMONY AND CONDUCT FROM PLAINTIFFS' EXPERT ROBERT PROCTOR, PH.D. . . . DEFENDANT LIGGETT GROUP LLC'S NOTICE OF ADOPTION OF AND JOINDER IN DEFENDANTS' MOTION TO PRECLUDE CERTAIN TYPES OF TESTIMONY AND CONDUCT FROM PLAINTIFFS' EXPERT ROBERT PROCTOR, PH.D.

Arguments made by Ms. Sorenson and Mr. Li. COURT STATED its FINDINGS and ORDERED, Motion DENIED WITHOUT PREJUDICE; and Mr. Li to prepare the Order.

DEFENDANTS PHILIP MORRIS USA INC., R.J. REYNOLDS TOBACCO COMPANY, AND ASM NATIONWIDE CORPORATION'S MOTION IN LIMINE NO. 4 TO PRECLUDE PLAINTIFFS' EXPERT WITNESSES FROM READING DOCUMENTS AND ADVERTISEMENTS TO THE JURY OR, ALTERNATIVELY, TESTIFYING REGARDING THE MEANING AND INTENT OF COMPANY DOCUMENTS . . . DEFENDANT LIGGETT GROUP LLC'S NOTICE OF ADOPTION OF AND JOINDER IN DEFENDANTS' MOTION TO PRECLUDE EXPERT TESTIMONY REGARDING THE MEANING AND INTENT OF COMPANY S DOCUMENTS

Arguments made by Mr. Henk and Mr. Li. COURT STATED its FINDINGS and ORDERED,

Motion DENIED; and Mr. Li to prepare the Order.

DEFENDANTS PHILIP MORRIS USA INC., R.J. REYNOLDS TOBACCO COMPANY, AND ASM NATIONWIDE CORPORATION'S MOTION IN LIMINE NO. 5 TO LIMIT THE TESTIMONY OF DR. JOHN RUCKDESCHEL . . . DEFENDANT LIGGETT GROUP LLC'S NOTICE OF ADOPTION OF AND JOINDER IN DEFENDANTS' MOTION TO LIMIT THE TESTIMONY OF DR. JOHN RUCKDESCHEL

Arguments made by Ms. Diolombi and Mr. Li. COURT STATED its FINDINGS and ORDERED, Motion DENIED; and Mr. Li to prepare the Order.

DEFENDANTS PHILIP MORRIS USA INC., R.J. REYNOLDS TOBACCO COMPANY, AND ASM NATIONWIDE CORPORATION'S MOTION IN LIMINE NO. 6 TO EXCLUDE TESTIMONY OF DR. LOUIS KYRIAKOUES CONCERNING REGULATORY MATTERS . . . DEFENDANT LIGGETT GROUP LLC'S NOTICE OF ADOPTION OF AND JOINDER IN DEFENDANTS' MOTION TO EXCLUDE TESTIMONY OF DR. LOUIS KYRIAKOUES CONCERNING REGULATORY MATTERS

Arguments made by Ms. Diolombi and Mr. Li. COURT STATED its FINDINGS and ORDERED, Motion DENIED; and Mr. Li to prepare the Order.

DEFENDANTS PHILIP MORRIS USA INC., R.J. REYNOLDS TOBACCO COMPANY, AND ASM NATIONWIDE CORPORATION'S MOTION IN LIMINE NO. 7 TO EXCLUDE EVIDENCE OF AND ARGUMENT RELATED TO AMMONIA COMPOUNDS AND OTHER ADDITIVES OR INGREDIENTS USED IN CIGARETTES . . . DEFENDANT LIGGETT GROUP LLC'S NOTICE OF ADOPTION OF AND JOINDER IN DEFENDANTS' MOTION TO EXCLUDE EVIDENCE OF AND ARGUMENTS RELATED TO AMMONIA COMPOUNDS AND OTHER ADDITIVES OR INGREDIENTS USED IN CIGARETTES

Arguments made by Mr. Henk and Mr. Li. COURT STATED its FINDINGS and ORDERED, Motion DENIED; and Mr. Li to prepare the Order.

COURT FURTHER ORDERED, matter CONTINUED.

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