

IN THE CIRCUIT COURT OF THE  
NINTH JUDICIAL CIRCUIT, IN AND  
FOR ORANGE COUNTY, FLORIDA

CASE NO. 1997-CA-004541-O

COMPLEX BUSINESS LITIGATION

BRINDA COATES, Individually and as Personal  
Representative of the Estate of LOIS STUCKY,

Plaintiff,

v.

R. J. REYNOLDS TOBACCO COMPANY,

Defendant.

**SEVENTH AMENDED COMPLAINT**

1. **Plaintiff**, BRINDA COATES, individually, and as personal representative of the Estate of LOIS STUCKY, is presently and/or has at all times material hereto been a resident of the State of Florida. At the time of and/or prior to her death, Lois Stucky, was at all times material hereto a resident of the State of Florida. On or about March, 1997, the decedent, Lois Stucky, was diagnosed with pneumonia and subsequently oat cell lung cancer.
2. On April 3, 1998, the decedent, Lois Stucky, died from lung cancer as a result of consumption of cigarettes manufactured and sold by the Defendant. The Personal Representative of the Estate of Lois Stucky is her sister, BRINDA COATES, 2500 Lee Road, Unit 128, Winter Park FL 32789. She seeks damages on behalf of the survivors of Lois Stucky. The survivors of Lois Stucky are sister, Brinda Coates, daughters Elaine Stucky and Zelma Stucky, and son, Randall Stucky.
3. **Cigarette manufacturing defendants.** The following "cigarette manufacturer defendant" was a foreign corporation doing business in the state of Florida, who at times material to this action designed, manufactured, advertised, marketed, and sold cigarette products for human consumption which proximately caused injury to Plaintiff's decedent: R.J. REYNOLDS TOBACCO COMPANY.
4. **Jurisdiction.** This is an action for damages in excess of Fifteen Thousand Dollars (\$15,000.00). Cigarette manufacturer defendant is subject to the jurisdiction of this court pursuant to §48.181 and/or §48.193, §48.191, FLORIDA STATUTES, their previous enactments, and other statutes, because at times material to this action:

- a. defendant operated, conducted, engaged in, or carried on a trade, business or business venture within Florida; to wit the distribution and sale of cigarette products, which trade, business or business venture is connected to or incidental to the matters of this suit;
  - b. defendant were engaged in substantial and not isolated activities in Florida;
  - c. defendant had an office or agency in Florida;
  - d. defendant transacted business from a business office in Florida;
  - e. defendant, through brokers, jobbers, wholesalers or distributors, sold a product or products that caused harm to persons in the state of Florida;
  - f. defendant conducted advertising activities in the state of Florida;
  - g. defendant intentionally availed themselves of the Florida market;
  - h. defendant conducted other activities presently unknown in the state of Florida which subject them to jurisdiction.
5. **Cigarette products.** Plaintiff's decedent purchased and used cigarette products designed, manufactured, advertised and marketed by cigarette manufacturer defendant at times material to this complaint.
6. **Propensity for harm.** Defendant's cigarette products, when used as intended, were highly likely to cause, or contribute to in substantial fashion, the following human illnesses, injuries, and conditions, including but not limited to:
- a. broncho genic carcinoma or lung cancer of all cell types.
  - b. chronic obstructive pulmonary disease of all types, including emphysema, chronic bronchitis, and irreversible airway obstruction.
  - c. cardiovascular disease including atherosclerosis and its consequences, including myocardial infarction (heart attack), cerebrovascular accident (stroke), peripheral vascular disease, aneurysm, and other conditions.
  - d. cancers of the kidney, bladder, brain, larynx, and other organs.
  - e. genetic damage to cells of the airways, lungs, and other organs.
  - f. impairment of lung function.

- g. other types of injuries.
7. So highly likely were the serious health consequences of defendant's cigarette products that over one in three foreseeable users would be expected to suffer premature death or serious impairment.
  8. At all times material hereto, the ordinary consumer, including the Plaintiff's decedent, did not in the exercise of ordinary diligence know of the likelihood of, or the severity of, the risks from defendant's cigarette products, which risks are outlined above.
  9. The defendant's cigarette products, when used as intended, were highly likely to induce in foreseeable users a state of addiction, habituation, habit formation, and/or dependence, characterized by users' great difficulty in terminating or restricting their chronic use.
  10. There were no material alterations to or modifications of the cigarettes manufactured by the Defendant or Defendant's predecessors between the time of their manufacture and the time the decedent smoked them.
  11. The risks of harm to foreseeable users, as listed in the above paragraphs, would increase in any of the following circumstances:
    - a. greater cumulative consumption, including rate of consumption and length of time the product was consumed.
    - b. beginning use at an early age in life.
  12. At all times material hereto, defendant conducted an aggressive marketing and advertising campaign intended to induce, encourage, suggest, and reinforce foreseeable users to purchase their cigarette products. Such marketing and advertising occurred in printed media, on television, radio, billboards and by other means.
  13. Plaintiff's decedent purchased and used defendant's cigarette products within the state of Florida and in other jurisdictions at times material to this complaint.
  14. Plaintiff's decedent used the defendant's cigarette products in the intended manner and without significant change in their condition from purchase.
  15. Plaintiff's decedent was induced to purchase the cigarette products, relied upon the manufacturer's superior knowledge regarding cigarette products and was impliedly or expressly instructed in their use by defendant's advertising, marketing and other efforts.

16. Plaintiff affirmatively alleges that Plaintiff's decedent may have been comparatively negligent in regard to the allegation contained herein.
17. As a direct and proximate result of Plaintiff's decedent's use of the defendant's cigarette products, Plaintiff's decedent suffered developed lung cancer from which she died. Plaintiff admits Decedent may have been at fault, but not one hundred percent (100%) at fault for causing his/her cigarette related injuries. It is admitted that Decedent's acts or omissions involving the frequency and duration of Decedent's smoking cessation attempts may have been a partial cause of injury in addition to or in combination with the acts or omissions constituting liability for same on the part of the Defendant. As a result, Plaintiff seeks apportionment of damages between Decedent's survivors, and Estate, and the Defendant.
18. As a direct and approximate result of the conduct of the defendant and/or the defective nature of the product as outlined above, decedent suffered lung cancer which resulted in her death. Decedent's survivors has suffered the following damages:
  - a. The estate seeks damages for the survivors for the value of lost support and services from the date of the decedent's injury to her death with interest, and future loss of support and services from the date of death and reduced to present value.
  - b. The estate also seeks damages for the surviving children of Decedent for lost parental companionship, instruction, and guidance and for mental pain and suffering from the date of the injury.
19. As a direct and proximate cause of the conduct of the defendant and/or the defective nature of this product as outlined above, the estate of the decedent, through the decedent's estate, claims damages to the following:
  - a. Earnings from the decedent from the date of her injury to the date of her death, with interest;
  - b. Loss of net accumulations beyond death, reduced to present value;
  - c. As a direct and proximate result of buying and consuming and becoming addicted to the Defendant's products, the Plaintiff's decedent expended a large amount of money in buying the said product. The Plaintiff's decedent suffered a direct and proximate financial loss as a result thereof.
  - d. The estate also seeks damages for medical expenses, funeral expenses, loss for earnings from the date of injury to the date of death less lost support of survivors, with interest.

## **COUNT I**

**NEGLIGENCE OF CIGARETTE MANUFACTURER DEFENDANT**  
**R.J. REYNOLDS TOBACCO COMPANY**

Plaintiff realleges paragraphs (1) through (18) as though fully set out and in addition

20. At times material to this action, the Defendant, RJ. REYNOLDS TOBACCO COMPANY, actually knew, or in the discharge of ordinary care, should have known of the following:
  - a. that the harms listed in paragraphs 6 and 9 above would or might occur if the products were used as intended.
  - b. that the harms listed above would more likely be experienced if users did not restrict their intake of defendant's cigarette products, or if they began to use the products at an early age.
  - c. that use of the products as intended was likely to lead to addiction, habituation, or dependence.
  - d. that termination or limitation of use would be exceedingly difficult if consumption was initiated and that this difficulty would increase as cumulative consumption increased.
  - e. that developing knowledge before and after 1970 demonstrated that previous users are at great risk of harm (as listed in above paragraphs 6 and 9 and should seek medical monitoring.
  - f. that defendant could test and evaluate the cigarette product for harmful or addictive properties and establish a reasonably safe dose for foreseeable users.
  - g. that there were feasible improvements in design, composition, or manufacture of cigarette products such as to materially decrease the foreseeable risk to users.
  
21. Defendant at times material had the following legal duties to users who consumed the products:
  - a. a duty to foreseeable users of defendant's cigarette products to warn of the likelihood, probability, or foreseeability that the harms listed in paragraphs 6 and 9 above would or might occur if the products were used as intended.
  - b. a duty to foreseeable users to warn that the harms listed above would be more likely experienced if users did not restrict their intake of defendant's cigarette products, and/or to provide some guidelines on reasonably safe

dosage or amount of consumption, and a duty to warn that use of the product at an early age was most harmful.

- c. a duty to warn foreseeable users that use of the product as intended was likely to lead to addiction, habituation, or dependence.
  - d. a duty to warn users that termination or limitation of use would be exceedingly difficult if consumption was initiated and that this difficulty would increase as cumulative consumption increased.
  - e. a continuing duty to warn previous users of developing knowledge demonstrating that previous users are at great risk of harm (as listed in above paragraphs 6 and 9) and should seek medical monitoring.
  - f. a duty to test, evaluate and conduct scientific research on their cigarette products for harmful or addictive properties and to establish a reasonably safe dose for foreseeable users.
  - g. a duty to design, manufacture, and sell a product that when used as intended was reasonably safe for foreseeable users.
  - h. a duty to make such feasible improvements in design, composition, or manufacture, of cigarette products such as to materially decrease the foreseeable risk to users.
  - i. a duty to disclose to consumers of cigarette products the results of their own and other scientific research known to them which indicated that use of cigarette products exposed users to a great risk of harm (as listed in paragraph 6 and 9).
  - j. a duty to warn previous users, users and foreseeable users through non-advertising and non-promotional communications of the dangers listed in paragraph 6 and 9.
  - k. a duty to promote and/or advertise their cigarette product in a manner which did not mislead, or misrepresent to consumers, the true health dangers posed by use of the product as intended.
22. Defendant negligently breached one or more of the duties to users including Plaintiff's decedent in one or more of the following ways:
- a. in failing to warn or warn adequately of the likelihood, probability, or foreseeability that the harms listed in paragraph 9 above would or might occur if the products were used as intended.

- b. in failing to warn or warn adequately that the harms listed above would be more likely experienced if users did not restrict their intake of defendant's cigarette products. and/or in failing to provide some guidelines on reasonably safe dosage or amount of consumption, and/or in failing to warn that use of the product at an early age was exceedingly harmful.
  - c. in failing to warn or warn adequately that use of the product as intended was likely to lead to addiction, habituation, or dependence.
  - d. in failing to warn or warn adequately that termination or limitation of use would be exceedingly difficult if consumption was initiated and that this difficulty would increase as cumulative consumption increased.
  - e. in failing to warn or warn adequately of developing knowledge demonstrating that previous users are at great risk of harm (as listed in above paragraphs 6 and 9) and should seek medical monitoring.
  - f. in failing to test, test adequately, or conduct scientific research on their cigarette products for harmful or addictive properties, and in failing to establish a reasonably safe dose for foreseeable users.
  - g. in designing, manufacturing, and selling a product that when used as intended was not reasonably safe for foreseeable users.
  - h. in failing to make such feasible improvements in design, composition, or manufacture, of its cigarette products such as to materially decrease the foreseeable risk to users.
  - i. in failing to disclose to Plaintiffs decedent and other foreseeable users of their cigarette products of the defendant's own scientific and other scientific research known to them which disclosed that use of cigarette products as intended caused a great risk of harm as described in paragraph 6.
  - j. in failing to warn or adequately warn previous users, users and foreseeable users through non-advertising and non-promotional communications of the dangers listed in paragraph 6 and 9.
  - k. in failing to promote and/or advertise their cigarette product in a manner which did not mislead or misrepresent to Plaintiffs decedent and other foreseeable users, the true health dangers posed by use of the product as intended.
23. The Plaintiff is also entitled to punitive damages pursuant to *First Interstate Development Corporation v. Ablanado*, 511 So.2d 536 (Fla. 1987), *Owens Corning Fiberglass Corporation v. Ballard*, 749 So.2d 483 (Fla. 1999) or both

because the Defendant's conduct was fraudulent, wanton, intentional, and/or reckless.

WHEREFORE, BRINDA COATES, individually, and as personal representative of the Estate of LOIS STUCKY seeks damages from the Defendant on behalf of the estate and on behalf of the survivors of the deceased and as provided in the Florida Wrongful Death Act, seeks punitive damages , costs, and such other relief as the Court may deem appropriate and demands a jury trial on all issues so triable.

**COUNT II**  
**STRICT LIABILITY OF DEFENDANT CIGARETTE MANUFACTURERS**  
**R.J. REYNOLDS TOBACCO COMPANY**

Plaintiff realleges paragraphs (1) through (18), and as though fully set out and in addition thereto alleges:

24. Defendant's cigarette products were defective and unreasonably dangerous to foreseeable users for the following reasons:
  - a. the cigarette products when used as intended caused or contributed to the illnesses listed in above paragraph 6.
  - b. the cigarette products were addictive, habituating, habit-forming, and once used caused physical and psychological dependence.
  - c. the cigarette products failed to perform as safely as an ordinary consumer would expect when used as intended or in a manner reasonably foreseeable by the Plaintiffs decedent.
  - d. the risk of danger from the design of defendant's cigarette product outweighed the benefits obtained with the use of the products.
  - e. defendant's cigarette products did not contain sufficient warnings as alleged in count I, *supra*, or alternatively, were labeled with inadequate warnings.
  - f. defendant's cigarette products failed to contain sufficient instructions for use or for safer use, including but not limited to the following:
    - i. Directions to smoke fewer cigarettes
    - ii. Directions on how to smoke to reduce carcinogenic dosage
    - iii. Directions to avoid blocking vent holes
    - iv. Directions to attempt to quit smoking

- v. Directions to use lower tar cigarettes
  - vi. Directions to avoid compensatory smoking
  - vii. Directions regarding the uncertainty of health gains in low yield (CO, tar, and/or nicotine) cigarettes
  - viii. Directions to avoid smoking entire cigarettes
  - ix. Directions to avoid exceeding the addiction threshold
  - x. Directions to avoid smoking while in the presence of children
  - xi. Directions to seek regular physical examinations
- g. The cigarettes were otherwise defective in design in one or more of the following respects:
- i. Insufficient reduction in tar and other carcinogens by dilution and filtration
  - ii. Lack of distinctly marked vent holes
  - iii. Lack of stop smoking markings
  - iv. Excessive in nicotine delivery
  - v. Failure to utilize substitute and/or expanded cigarette
  - vi. Failure to utilize smaller cigarettes
  - vii. Failure to package fewer cigarettes per pack
  - viii. Failure to contain product information data sheets.
  - ix. Failure to list accurately and legibly the ingredients contained within the cigarette and the smoke there from, including known carcinogens.
  - x. In being designed to yield fewer carcinogens when measured by artificial means, than was actually received in the lung of cigarette smokers.

- xi. The tobacco therein was treated with ammonia causing the nicotine to be transformed into freebase, thereby increasing the addictiveness of the product.
25. The Plaintiff is also entitled to punitive damages pursuant to *First Interstate Development Corporation v. Ablanado*, 511 So.2d 536 (Fla. 1987), *Owens Corning Fiberglass Corporation v. Ballard*, 749 So.2d 483 (Fla. 1999) or both because the Defendant's conduct was fraudulent, wanton, intentional, and/or reckless.

WHEREFORE, BRINDA COATES, individually, and as personal representative of the Estate of LOIS STUCKY, seeks damages from the Defendant on behalf of the estate and on behalf of the survivors of the deceased and as provided in the Florida Wrongful Death Act, seeks punitive damages, costs, and such other relief as the Court may deem appropriate and demands a jury trial on all issues so triable.

**COUNT III**  
**INTENTIONAL MISREPRESENTATION (CONCEALMENT)**  
**R.J. REYNOLDS TOBACCO COMPANY**

Plaintiffs reallege paragraphs (1) through (18) as though fully set out and in addition thereto alleges:

26. At all relevant times, the defendant, R. J. REYNOLDS TOBACCO COMPANY, as the manufacturer and seller of cigarette products, was in a position of knowledge regarding the dangerousness of those products greater than that of its customers and potential customers, including the plaintiffs decedent. Additionally, the defendant had overwhelmingly greater financial resources (gained from the manufacture and sale of cigarette products) than its customers and potential customers, including the plaintiffs decedent. Due to its greater knowledge and greater financial resources, and due to the hazards which the defendant knew were posed by the normal and intended Use of its product, the defendant owed its customers and potential customers, including the plaintiffs decedent, a duty to accurately and completely disclose to them information which it possessed or could have reasonably obtained regarding the dangers of the use of its cigarette products and to refrain from the dissemination of misleading and inaccurate information to them.
27. Moreover the defendant through its agents, alter egos and servants assured and promised the plaintiff's decedent that the defendant would truthfully and accurately disclose relevant information regarding the health risks associated with consuming the defendant's cigarettes.

Specifically the Tobacco Industry Research Committee (TIRC), which was at all relevant times an agent or alter ego of the defendant stated in over 400 newspapers circulated throughout North America including newspapers read

regularly by the plaintiffs decedent on January 4, 1954 in a statement entitled "A Frank Statement to Cigarette Smokers:"

- a. "We accept an interest in people's health as a basic responsibility, paramount to every other consideration in our business."
- b. "We always have and always will cooperate closely with those whose task it is to safeguard the public health."
- c. "Regardless of the record of the past, the fact that cigarette smoking today should even be suspected as a cause of a serious disease is a matter of deep concern to us."
- d. "We are pledging aid and assistance to the research effort into all phases of tobacco use and health."
- e. "For this purpose we are establishing a joint industry group ... known as the TOBACCO INDUSTRY RESEARCH COMMITTEE."
- f. "In charge of the research activities of the Committee will be a scientist of unimpeachable integrity and national repute. In addition there will be an Advisory Board of scientists disinterested in the cigarette industry. A group of disinterested men from medicine, science, and education will be invited to serve on this board. These scientists will advise the Committee on its research activities."
- g. "This statement is being issued because we believe the people are entitled to know where we stand on the matter and what we intend to do about it."

By making the above statements in addition to other such statements made to the defendant's customers, the defendant assumed voluntarily the duty otherwise imposed upon it by law to fully and honestly disclose to the plaintiffs decedent all relevant and material information regarding the health consequences of cigarette smoking and to refrain from making false and misleading statements in that regard.

28. Nonetheless, the defendant, R. J. REYNOLDS, INC., by and through its officers, employees, and/or agents engaged in an ongoing and continuous campaign to disseminate false and misleading information to its customers and potential customers, including the plaintiffs decedent, and to withhold from them relevant and material information regarding the dangers of consuming its cigarette products. Specifically, the defendant, through its agents and or alter egos made the following misrepresentations or concealments.

- a. Stated through its agent the Tobacco Industry Research Committee (TIRC) in over 400 newspapers throughout North America including

newspapers regularly read by the plaintiff's decedents on January 4, 1954 in an statement entitled "A Frank Statement to Cigarette Smokers" that:

- i. "Recent reports on experiments with mice have given wide publicity to a theory that cigarette smoking is in some way linked with lung cancer in human beings.
  - ii. "Although conducted by doctors of professional standing, these experiments are not regarded as conclusive in the field of cancer research. However, we do not believe that any serious medical research, even though its results are inconclusive, should be disregarded or lightly dismissed. At the same time we feel it is in the public interest to call attention to the fact that eminent doctors and research scientists have publically questioned the claimed significance of these experiments. "
  - iii. "Distinguished authorities point out:
    - (1) That medical research of recent years indicates many possible causes of lung cancer.
    - (2) That there is no agreement among authorities regarding what the cause is.
    - (3) That there is no proof that cigarette smoking is one of these causes.
    - (4) That statistics purporting to link cigarette smoking with the disease could apply with equal force to anyone of many other aspects of modem life. Indeed the validity of the statistics themselves is questioned by numerous scientists."
  - iv. "We believe the products we make are not injurious to health."
  - v. "For more than 300 years tobacco has given solace, relaxation, and enjoyment to mankind. At one time or another during those years critics have held it responsible for practically every disease of the human body. One by one these charges have been abandoned for lack of evidence."
29. In fact, the defendant knew or should have known on January 4, 1954 that:
- a. The referenced experiments were valid and produced correct conclusions.
  - b. Objective and disinterested scientists did not question the significance of the experiments.
  - c. Cigarette smoking was indeed the cause of lung cancer.
  - d. Cigarettes were certainly injurious to smokers' health.

30. As time progressed, the defendant discovered more and more irrefutable evidence that their cigarettes directly caused not only lung cancer but also many other serious diseases. Nonetheless the defendant did nothing to correct the false and misleading information which it had disseminated on January 4, 1954 and continued to disseminate thereafter.
31. For example, Dr. Victor DeNoble testified in April, 1994, before the United States House of Representatives that as a research scientist for Philip Morris he had performed certain experiments on the effect of nicotine on the brains of rats. He had discovered that nicotine was an addictive drug. Philip Morris, according to DeNoble has suppressed his finding, would not allow their publication and eventually closed his laboratory and terminated his research. None of Dr. DeNobles findings were ever disclosed to the defendant's customers including the plaintiff's decedent.
32. The defendant performed extensive research on a safer cigarette. However, the information derived there from was never disclosed to the plaintiff's decedent or other similarly situated persons. Philip Morris produced a memorandum in this regard to the effect that "Our philosophy is not to start a war [by producing a safe cigarette], but if war comes, we aim to fight well and to win." Defendant Philip Morris told representatives of Liggett & Myers, another cigarette manufacturer, that if they marketed a safe cigarette, "they would clobber us", according to James Mold, former assistant director of research at Liggett. Mold stated further that Liggett had indeed developed a safe cigarette which was commercially feasible but failed to market it after receiving threats from Philip Morris. In a 1987 memorandum, one of defendant R.J. REYNOLDS attorneys noted that the marketing of a safe cigarette undercuts the industry's legal defense that a safe cigarette cannot be made.
33. At all relevant times after 1954 there existed within the tobacco industry a "gentlemen's agreement" that no health related research would be conducted by individual companies as opposed to joint efforts as referenced in the 1954 newspaper publication. The real purpose of the "gentlemen's agreement" was to facilitate the control, concealment, and suppression of information coming from the research from consumers like the plaintiffs decedent. As stated in a 1968 Philip Morris internal memo: "We have reason to believe that in spite of the gentleman's [sic] agreement from the tobacco industry in previous years that at least some of the major companies have been increasing biological studies within their own facilities."
34. In the late 1960's, despite the "gentlemen's agreement" defendant, R.J. REYNOLDS developed its own research facility known internally as the "mouse house." Therein REYNOLDS scientists conducted experiments on rats related to the connection between cigarettes and diseases such as lung cancer. Suddenly, however, in 1970, the entire laboratory was shut down, all the scientists were fired

in mass and their research materials confiscated. The results of these efforts were systematically concealed from cigarette smokers such as the plaintiff's decedent.

35. The defendant has known since before 1954 that its cigarette products addict their Consumers through nicotine. As stated in a 1972 Philip Morris memo from a CTR conference: "... nicotine is the active constituent of cigarette smoke. Without nicotine ... there would be no smoking Think of the cigarette pack as a storage container for a days supply of nicotine Think of the cigarette as a dispenser for a dose of nicotine." Nonetheless chief executives of both R.J. REYNOLDS and Philip Morris testified as late as April, 1994, before the United States Congress that nicotine is not addictive.
36. Not only did the defendant know that its cigarettes are addictive, it deliberately manipulated nicotine levels to foster and maintain addiction of their customers, including the plaintiffs decedent. This occurred at all relevant times but especially from the 1960's onward. In the mid 60's Marlboro, a Philip Morris product, began to rapidly gain market share from the previous leader Winston of R.J. REYNOLDS. REYNOLDS researchers gradually discovered that Philip Morris had developed a process of adding ammonia to Marlboro thus enhancing the potency and availability of the nicotine. Especially concerned that Marlboro was thereby capturing large percentages of the critical youth smokers, REYNOLDS quickly developed its own ammonia based nicotine enhancing system. This was marketed as the now familiar filtered camel pushed by the infamous "Joe Camel." The defendant at all relevant times withheld and concealed information from cigarette smokers including the plaintiffs decedent involving: 1) adding nicotine to its products, (2) developing strains of plants containing excessive levels of nicotine, (3) treating reconstituted tobacco with nicotine salts and other compounds which the defendant knew would increase the addictiveness of tobacco, and (4) treating cigarettes with ammonia compounds to transform nicotine into a freebase form. At the time of withholding such information, the defendant knew or should have known that such information contradicted its statements regarding the safety and health of using its products, that such information was otherwise material to its customers and potential customers, including the plaintiff's decedent, and that such persons would otherwise reasonably rely upon such misstatements.
37. With regard to the defendant's promise to share information about cigarettes and health with smokers, Judge H. Lee Sarokin of the United States District Court for the District of New Jersey stated in Haines v. Liggett Group, Inc., Civ. Action 84-678 that: "A jury might reasonably conclude that the industry's announcement of proposed independent research into the dangers of smoking and its promise to disclose its findings was nothing but a public relations ploy-- a fraud -- to deflect the growing evidence against the industry, to encourage smokers to continue and non smokers to begin, and to reassure the public that adverse information would be disclosed."

38. The defendant not only withheld and suppressed relevant and material information from smokers such as the plaintiff's decedent as described above, but also positively misled them by the distribution of false information, none of which has ever been corrected or neutralized by this defendant.
39. At all relevant times, when the defendant made the above referenced misrepresentations either by concealment or by direct false statement, the defendant knew or should have known that such statements or concealments were material to persons such as the plaintiff's decedent in making decisions on smoking and that such persons would rely and did rely upon the defendant's false statements and concealments.
40. The above mentioned representations by the defendant were false and misleading. They were material facts. They were made intentionally by this defendant.
41. At all times material hereto, the defendant intended to induce the Plaintiff's decedent to act on the said misrepresentations and to buy its products and to consume its products becoming addicted to its product, thus creating a source of income for the Defendant.
42. The Plaintiff's decedent reasonably relied on the above mentioned misrepresentations by the defendant and purchased the products, consumed the products, and ultimately suffered the diseases and abnormalities as alleged, as a result of consuming the product.
43. The abovementioned activities of the defendant constituted fraud and/or deceit.
44. The Plaintiff is also entitled to punitive damages pursuant to *First Interstate Development Corporation v. Ablanado*, 511 So.2d 536 (Fla. 1987), *Owens Corning Fiberglass Corporation v. Ballard*, 749 So.2d 483 (Fla. 1999) or both because the Defendant's conduct was fraudulent, wanton, intentional, and/or reckless.

WHEREFORE, BRINDA COATES, individually, and as personal representative of the Estate of LOIS STUCKY, seeks damages from the Defendant on behalf of the estate and on behalf of the survivors of the deceased and as provided in the Florida Wrongful Death Act, seek punitive damages, costs, and such other relief as the Court may deem appropriate and demands a jury trial on all issues so triable.

**COUNT IV**  
**NEGLIGENT MISREPRESENTATION (CONCEALMENT)**  
**R.J. REYNOLDS TOBACCO COMPANY**

Plaintiff realleges paragraphs (1) through (18) as though fully set out and in addition thereto alleges:

45. At all relevant times, the defendant, R.J. REYNOLDS TOBACCO COMPANY, as the manufacturer and seller of cigarette products, was in a position of knowledge regarding the dangerousness of those products greater than that of its customers and potential customers, including the plaintiffs decedent. Additionally, the defendant had overwhelmingly greater financial resources (gained from the manufacture and sale of cigarette products) than its customers and potential customers, including the plaintiffs decedent. Due to its greater knowledge and greater financial resources, and due to the hazards which the defendant knew were posed by the normal and intended use of its product, the defendant owed its customers and potential customers, including the plaintiffs decedent, a duty to accurately and completely disclose to them information which it possessed or could have reasonably obtained regarding the dangers of the use of its cigarette products and to refrain from the dissemination of misleading and inaccurate information to them.
  
46. Moreover the defendant through its agents, alter egos and servants assured and promised the plaintiff's decedent that the defendant would truthfully and accurately disclose relevant information regarding the health risks associated with consuming the defendant's cigarettes. Specifically the Tobacco Industry Research Committee (TIRC, which was at all relevant times an agent or alter ego of the defendant, stated in over 400 newspapers circulated throughout North America including newspapers read regularly by the plaintiffs decedent on January 4, 1954, in a statement entitled "A Frank Statement to Cigarette Smokers:"
  - a. "We accept an interest in people's health as a basic responsibility, paramount to every other consideration in our business."
  - b. "We always have and always will cooperate closely with those whose task it is to safeguard the public health."
  - c. "Regardless of the record of the past, the fact that cigarette smoking today should even be suspected as a cause of a serious disease is a matter of deep concern to us."
  - d. "We are pledging aid and assistance to the research effort into all phases of tobacco use and health."
  - e. "For this purpose we are establishing a joint industry group ... known as the TOBACCO INDUSTRY RESEARCH COMMITTEE."
  - f. "In charge of the research activities of the Committee will be a scientist of unimpeachable integrity and national repute. In addition there will be an Advisory Board of scientists disinterested in the cigarette industry. A group of disinterested men from medicine, science and education will be invited to serve on this board. These scientists will advise the Committee on its research activities."

- g. "This statement is being issued because we believe the people are entitled to know where we stand on the matter and what we intend to do about it."

By making the above statements in addition to other such statements made to the defendant's customers, the defendant assumed voluntarily the duty otherwise imposed upon it by law to fully and honestly disclose to the plaintiffs decedent all relevant and material information regarding the health consequences of cigarette smoking and to refrain from making false and misleading statements in that regard.

- 47. Nonetheless, the defendant, R. J. REYNOLDS, INC., by and through its officers, employees, and/or agents engaged in an ongoing and continuous campaign to disseminate false and misleading information to its customers and potential customers, including the plaintiffs decedent, and to withhold from them relevant and material information regarding the dangers of consuming its cigarette products. Specifically, the defendant, through its agents and or alter egos made the following misrepresentations or concealments:

- a. Stated through its agent the Tobacco Industry Research Committee (TIRC) in over 400 newspapers throughout North America, including newspapers regularly read by the plaintiffs decedents on January 4, 1954, in an statement entitled "A Frank Statement to Cigarette Smokers" that:

- i. "Recent reports on experiments with mice have given wide publicity to a theory that cigarette smoking is in some way linked with lung cancer in human beings."

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

- iii. "Distinguished authorities point out:

- (1) That medical research of recent years indicates many possible causes of lung cancer.

- (2) That there is no agreement among authorities regarding what the cause is.

- (3) That there is no proof that cigarette smoking is one of these causes.

- (4) That statistics purporting to link cigarette smoking with the disease could apply with equal force to anyone of many

other aspects of modern life. In deed the validity of the statistics themselves is questioned by numerous scientists."

- iv. "We believe the products we make are not injurious to health."
  - v. "For more than 300 years tobacco has given solace, relaxation and enjoyment to mankind. At one time or another during those years critics have held it responsible for practically every disease of the human body. One by one these charges have been abandoned for lack of evidence."
48. In fact, the defendant knew or should have known on January 4, 1954 that:
- a. The referenced experiments were valid and produced correct conclusions.
  - b. Objective and disinterested scientists did not question the significance of the experiments.
  - c. Cigarette smoking was indeed the cause of lung cancer.
  - d. Cigarettes were certainly injurious to smokers' health.
49. As time progressed, the defendant discovered more and more irrefutable evidence that its cigarettes directly caused not only lung cancer but also many other serious diseases. Nonetheless the defendant did nothing to correct the false and misleading information which it had disseminated on January 4, 1954 and continued to disseminate thereafter.
50. For example, Dr. Victor DeNoble testified in April, 1994 before the United States House of Representatives, that as a research scientist for Philip Morris he had performed certain experiments on the effect of nicotine on the brains of rats. He had discovered that nicotine was an addictive drug. Philip Morris, according to DeNoble has suppressed his finding, would not allow their publication and eventually closed his laboratory and terminated his research. None of Dr. DeNobles findings were ever disclosed to the defendant's customers, including the plaintiff's decedent.
51. The defendant performed extensive research on a safer cigarette. However, the information derived there from was never disclosed to the plaintiff s decedent or other similarly situated persons. Philip Morris produced a memorandum in this regard to the effect that "Our philosophy is not to start a war [by producing a safe cigarette], but if war comes, we aim to fight well and to win." Philip Morris told representatives of Liggett & Myers, another cigarette manufacturer, that if they marketed a safe cigarette, "they would clobber us," according to James Mold, former assistant director of research at Liggett. Mold stated further that Liggett had indeed developed a safe cigarette which was commercially feasible but failed to market it after receiving threats from defendant Philip Morris. In a 1987

memorandum, one of defendant R.J. REYNOLDS attorneys noted that the marketing of a safe cigarette undercuts the industry's legal defense that a safe cigarette cannot be made.

52. At all relevant times after 1954 there existed within the tobacco industry a "gentlemen's agreement" that no health related research would be conducted by individual companies as opposed to joint efforts as referenced in the 1954 newspaper publication. The real purpose of the "gentlemen's agreement" was to facilitate the control, concealment and suppression of information coming from the research from consumers like the plaintiffs decedent. As stated in a 1968 Philip Morris internal memo: "We have reason to believe that in spite of the gentleman's [sic] agreement from the tobacco industry in previous years that at least some of the major companies have been increasing biological studies within their own facilities."
53. In the late 1960's, despite the "gentlemen's agreement" defendant. R.J. REYNOLDS developed its own research facility known internally as the "mouse house." Therein REYNOLDS scientists conducted experiments on rats related to the connection between cigarettes and diseases such as lung cancer. Suddenly, however, in 1970, the entire laboratory was shut down, all the scientists were fired in mass and their research materials confiscated. The results of these efforts were systematically concealed from cigarette smokers such as the plaintiff's decedent.
54. The defendant has known since before 1954 that its cigarette products addict their consumers through nicotine. As stated in a 1972 Philip Morris memo from CTR conference: "... nicotine is the active constituent of cigarette smoke. Without nicotine ... there would be no smoking Think of the cigarette pack as a storage container for a day's supply of nicotine Think of the cigarette as a dispenser for a dose of nicotine." Nonetheless chief executives of both R.J. REYNOLDS and Philip Morris testified as late as April, 1994, before the United States Congress that nicotine is not addictive.
55. Not only did the defendant know that its cigarettes are addictive, it deliberately manipulated nicotine levels to foster and maintain addiction of their customers, including the plaintiff s decedent. This occurred at all relevant times but especially from the 1960's onward. In the mid 60's Marlboro, a Philip Morris product, began to rapidly gain market share from the previous leader Winston of R.J. REYNOLDS. REYNOLDS researchers gradually discovered that Philip Morris had developed a process of adding ammonia to Marlboro thus enhancing the potency and availability of the nicotine. Especially concerned that Marlboro was thereby capturing large percentages of the critical youth smokers, REYNOLDS quickly developed its own ammonia based nicotine enhancing system. This was marketed as the now familiar filtered camel pushed by the infamous "Joe Camel." The defendant at all relevant times withheld and concealed information from cigarette smokers including the plaintiffs decedent involving: 1) adding nicotine to its products, (2) developing strains of plants

containing excessive levels of nicotine, (3) treating reconstituted tobacco with nicotine salts and other compounds which the defendant knew would increase the addictiveness of tobacco, and (4) treating cigarettes with ammonia compounds to transform nicotine into a freebase form. At the time of withholding such information, the defendant knew or should have known that such information contradicted its statements regarding the safety and health of using its products, that such information was otherwise material to its customers and potential customers, including the plaintiff's decedent, and that such persons would otherwise reasonably rely upon such misstatements.

56. With regard to the defendant's promise to share information about cigarettes and health with smokers, Judge H. Lee Sarokin of the United States District Court for the District of New Jersey stated in *Haines v. Liggett Group, Inc.*, Civ. Action 84-678 that: "A jury might reasonably conclude that the industry's announcement of proposed independent research into the dangers of smoking and its promise to disclose its findings was nothing but a public relations ploy -- a fraud -- to deflect the growing evidence against the industry, to encourage smokers to continue and nonsmokers to begin, and to reassure the public that adverse information would be disclosed."
57. The defendant not only withheld and suppressed relevant and material information from smokers such as the plaintiff's decedent as described above, but also positively misled them by the distribution of false information, none of which has ever been corrected or neutralized by this defendant.
58. At all relevant times, when the defendant made the above referenced misrepresentations either by concealment or by direct false statement, the defendant knew or should have known that such statements or concealments were material to persons such as the plaintiff's decedent in making decisions on smoking and that such persons would rely and did rely upon the defendant's false statements and concealments.
59. The above mentioned representations by the defendant were false and misleading. They were material facts. They were made negligently or without knowledge of the truth or falsity by this defendant.
60. At all times material hereto, the defendant intended to induce the Plaintiff's decedent to act on the said misrepresentations and to buy its products and to consume its products becoming addicted to its product, thus creating a source of income for the Defendant.
61. The Plaintiff's decedent reasonably relied on the above mentioned misrepresentations by the defendant and purchased the products, consumed the products, and ultimately suffered the diseases and abnormalities as alleged, as a result of consuming the product.

62. The abovementioned activities of the defendant constituted fraud and/or deceit.
63. The Plaintiff is also entitled to punitive damages pursuant to *First Interstate Development Corporation v. Ablanado*, 511 So.2d 536 (Fla. 1987), *Owens Corning Fiberglass Corporation v. Ballard*, 749 So.2d 483 (Fla. 1999) or both because the Defendant's conduct was fraudulent, wanton, intentional, and/or reckless.

WHEREFORE, the plaintiff, BRINDA COATES, individually, and as personal representative of the Estate of LOIS STUCKY, seeks damages from the Defendant on behalf of the estate and on behalf of the survivors of the deceased and as provided in the Florida Wrongful Death Act, seeks punitive damages, costs, and such other relief as the Court may deem appropriate and demands a jury trial on all issues to triable.

**COUNT V**  
**CONSPIRACY TO COMMIT FRAUD**  
**R.J. REYNOLDS TOBACCO COMPANY**

Plaintiffs reallege paragraphs (1) through (18) as though fully set out and in addition thereto allege:

64. The following persons and parties participated in a conspiracy to commit fraud, the purposes of which are detailed below:

Brown and Williamson Tobacco Company, individually, and as successor by merger to the American Tobacco Company

B.A.T. plc

U.S. Tobacco Company

Philip Morris USA Inc. f/k/a Philip Morris Inc.

R.J. Reynolds Tobacco Co., individually, and as successor by merger to Brown & Williamson Tobacco Corporation and successor through merger to The American Tobacco Company

Liggett Group, LLC f/k/a Liggett Group Inc., and Liggett & Myers Tobacco Co.

Vector Group Ltd. Inc., as successor to Liggett Group Inc. and/or f/k/a Brooke Group Ltd., Inc.

Brooke Group Holding, Inc.

T.I.R.C. (Tobacco Institute Research Counsel)

Lorillard Tobacco Company f/k/a P. Lorillard

CTR (Counsel for Tobacco Research)

TI (Tobacco Institute)

Hill and Knowlton, Inc.

Shook and Hardy, P.A.

Other unknown coconspirators

65. The conspiracy existed at all times material to this lawsuit and continues to exist at the present time.
66. By virtue of their collective dominance of the cigarette industry, their political and financial influence, their force of numbers, and their acting in unison, the conspirators possessed a peculiar power of coercion which power they each individually could not possess.
67. The purposes of the conspiracy were:
  - a. To conceal knowledge of the harmful effects of cigarette smoking from the public.
  - b. To frustrate the flow of information from the medical and scientific community to the general public on the health risks and addictive nature of cigarettes.
  - c. To create an illusion of conducting scientific research on cigarettes so as to mislead the public into believing that cigarettes were safe to smoke, when in reality no such bona fide research was ever conducted.
  - d. To improperly influence law and policy in local, state and national government by is representing the state of scientific knowledge about the health effects of cigarettes.
  - e. To improperly influence physicians, health workers, teachers, and others in the community to subvert these persons' belief in the dangers of cigarette smoking, so as to minimize the instructions and recommendations on smoking cessation that would otherwise have been forthcoming.
  - f. To sell cigarettes to minors to ensure a future lucrative market for cigarettes as older smokers died.

- g. To addict persons to cigarettes.
  - h. To continue the addiction of persons who had already begun smoking.
  - i. To create the illusion that a medical and scientific "controversy" existed as to whether or not cigarettes were harmful to human health when in truth and fact no such controversy existed, so as to encourage the public to start or to continue smoking cigarettes.
  - j. To disseminate material misrepresentations of fact to the public including the Plaintiff's decedent intending to deceive the public including the Plaintiffs decedent. Such representations were ultimately relied on by the Plaintiffs decedent causing the Plaintiffs decedent to use, consume, purchase, and become addicted to the Defendant's product.
68. Over the years the conspirators, acting in concert, performed numerous overt acts to further the purposes of the conspiracy. Because many of these acts were concealed, Plaintiff's decedent is not able to state all overt acts but alleges the following as examples:
- a. A meeting between conspirators in 1953 to form the T.I.R.C. (now CTR), which would have as its stated purpose the promotion of research on cigarette dangers, but which in fact was a public relations tool to spread disinformation on the dangers of smoking.
  - b. Various and sundry meetings over the years of T.I.R.C. and its successor C.T.R. wherein the conspirators discussed and acted upon their previously stated goals.
  - c. Research studies funded by T.I.R.C. which avoided the issue of cancer and addiction and instead focused on other matters, while giving the public the appearance that the "cancer question" was under "investigation."
  - d. The publication by the conspirators of "A Frank Statement to Cigarette Smokers" promising to the public to do research to reveal the truth about cigarette dangers, when in fact these dangers were already well known and the conspirators had no intent to do meaningful research.
  - e. A publication sent to over 200,000 physicians in the United States claiming that cigarette smoking dangers were not real, when in fact the conspirators knew that such dangers were real.
  - f. A magazine article appearing in TRUE magazine paid for by conspirators but appearing to be a bona fide article by a respected author, deliberately misstating the dangers of cigarette smoking.

- g. The creation of the Tobacco Institute, of which the conspirators were members and directors, with the purpose of providing disinformation to media and others on the dangers of cigarette use.
- h. The suppression of and refusal to publish of, various and sundry research studies carried out by coconspirators which revealed that cigarette smoking was harmful and addicting.
- i. Various and sundry meetings over the years of the Tobacco Institute wherein the conspirators discussed and acted upon their previously stated goals.
- j. Various and sundry publications, news releases, telephone calls, contacts with the press, the media, the government, and others, by the Tobacco Institute and others in the conspiracy, consisting of suggestions to the media to present the "others side" of the "health controversy" about cigarettes, and to quote tobacco industry sources when reporting on scientific developments showing the dangers of cigarette smoking, which suggestions were accompanied by references to the amount of advertising carried in the magazine or newspaper and threats that such advertising would be dropped if the magazine did not comply.
- k. Numerous statements in the period 1950-1962 falsely criticizing scientific publications and reports which showed that lung cancer and other diseases were caused by cigarette smoking.
- l. A publication in 1953 by T.I.R.C. 18 pages long containing false statements about the connection between smoking and lung cancer, sent to various sources.
- m. Statements and publications by Clarence Cook Little, spokesman for coconspirator T.I.R.C., to the effect that the scientific evidence showing the dangers of cigarettes smoking were "not proven" or were "merely statistical," including but not limited to statements made in Atlantic magazine in 1957. Said statements were made with intent to deceive the public into believing that cigarette smoking was safe.
- n. Lobbying efforts in the period 1962-1966 to prevent or frustrate the passage of the Cigarette Labeling Act of 1965, and similar efforts in 1969 and 1984, which involved making false statements to congress and the press about the dangers of cigarette smoking.
- o. A 1985 publication entitled "Of Cigarettes and Science" authored by coconspirator R.J. Reynolds falsely claiming that cigarettes did not cause heart disease, which publication was the subject of an F.T.C. charge of false advertising.

- p. Testimony before congressional subcommittees in 1994 by coconspirators, to the effect that cigarette smoking was not addictive and not harmful, when such assertions were false and known to be false.
- q. A national advertising campaign in 1984, challenging that the "studies which conclude that smoking causes disease have regularly ignored significant evidence to the contrary." (R.J. Reynolds advertisement, *Can we have an open debate about smoking?* (1984)) No such evidence ever existed.
- r. A statement by coconspirator Reynolds in 1964 before a congressional subcommittee that "[m]any distinguished scientists are of the opinion that it has not been established that smoking causes disease," and claimed a "lack of clinical and laboratory scientific evidence of the relationship between smoking and health." These statements were knowing attempts to mislead the public by misrepresenting the state of knowledge about cigarettes and human health.
- s. A statement by coconspirator Reynolds in 1982 that "science to date after much research including over \$100 million funded by our industry, indicates that no causal link [between smoking and human disease] has been shown," and that "there is absolutely no proof that cigarettes are addictive."
- t. "Research Reports on Tobacco and Health", generated on behalf of the defendant by The Tobacco Institute, Inc. and published for many years dispute the known health consequences of smoking. These releases reported on fringe medical theories of the cause of lung cancer, other than cigarettes, in order to allay the public's fear regarding the deadly health consequences of smoking. These theories, as reported by the Tobacco Institute, Inc., for the conspirators include, but are not limited to, the following: that smoking lowers fatty substances in human lungs, that lung cancer is caused by a certain personality, and that emphysema is an outcome of childhood measles.
- u. Manufacture of cigarettes by coconspirators, acting in concert or individually with knowledge and ratification, in such a way as to control and manipulate the nicotine content in such cigarettes, with the purpose of securing acceptance, habituation, and addiction.
- v. It has recently come to the public's attention that the tobacco companies have conspired to deceive consumers, continuing to manipulate nicotine levels up to the present day/time in an ongoing attempt to hopelessly addict consumers such as the Plaintiffs decedent.

69. The above mentioned representations by the Defendant together with the representations and concealment of information outlined in the previous count were false and misleading. They were material facts. They were made either intentionally, recklessly, and/or negligently without knowledge of the truth or falsity of the representations.
70. At all times material hereto the Defendant and/or their coconspirators, intended to induce the Plaintiff's decedent to act on the said misrepresentations and to buy their product and to consume their product, becoming addicted to their product, thus creating a source of income for the Defendant.
71. The Plaintiff's decedent reasonably relied on the above mentioned misrepresentations by the Defendant and purchased the products, consumed the products, became addicted to the products, and ultimately suffered the diseases and abnormalities as alleged as a result of consuming the product.
72. The above mentioned activities of the Defendant, and/or their coconspirators, constituted fraud and/or deceit and/or conspiracy to commit the same.
73. The Plaintiff is also entitled to punitive damages pursuant to *First Interstate Development Corporation v. Ablanado*, 511 So.2d 536 (Fla. 1987), *Owens Corning Fiberglass Corporation v. Ballard*, 749 So.2d 483 (Fla. 1999) or both because the Defendant's conduct was fraudulent, wanton, intentional, and/or reckless.

WHEREFORE, the plaintiff, BRINDA COATES, individually, and as personal representative of the Estate of LOIS STUCKY, seeks damages from the Defendant on behalf of the estate and on behalf of the survivors of the deceased and as provided in the Florida Wrongful Death Act, seeks punitive damages, costs, and such other relief as the Court may deem appropriate and demands a jury trial on all issues so triable.

Dated this Friday, June 09, 2017.

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**CERTIFICATE OF SERVICE**

I HEREBY certify that on Friday, June 09, 2017, I electronically filed the foregoing with the Clerk of the Court by using the Florida Courts E-Filing Portal.

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