

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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UNITED STATES OF AMERICA,)	
)	
	Plaintiff,)	Civil Action No.
and)	99-CV-2496 (GK)
)	
TOBACCO-FREE KIDS ACTION FUND,)	
AMERICAN CANCER SOCIETY,)	
AMERICAN HEART ASSOCIATION,)	
AMERICAN LUNG ASSOCIATION,)	
AMERICANS FOR NONSMOKERS')	
RIGHTS, and NATIONAL AFRICAN)	
AMERICAN TOBACCO PREVENTION)	
NETWORK,)	
	Intervenors,)	
)	
	v.)	
)	
PHILIP MORRIS USA, INC.,)	
f/k/a PHILIP MORRIS INCORPORATED,)	
<i>et al.</i> ,)	
)	
	Defendants.)	
<hr/>)	

**PLAINTIFF-INTERVENORS' PROPOSED CORRECTIVE
STATEMENTS AND SUPPORTING MEMORANDUM**

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**PLAINTIFF-INTERVENORS’ PROPOSED CORRECTIVE STATEMENTS
AND SUPPORTING MEMORANDUM**

INTRODUCTION

Plaintiff-Intervenors – Tobacco-Free Kids Action Fund, American Cancer Society, American Heart Association, American Lung Association, Americans for Nonsmokers’ Rights, and National African American Tobacco Prevention Network (hereinafter “the Public Health Intervenors”) – hereby submit proposed corrective statements on (i) the adverse health effects of smoking, (ii) the addictiveness of smoking, (iii) the lack of health benefits from “light” cigarettes, (iv) defendants’ manipulation of cigarettes for nicotine delivery, and (v) the adverse effects of secondhand smoke. Order # 1015, at 4. The Court has made overwhelming findings that, as to each of these issues, although Defendants were fully aware of the *true* facts, they nevertheless “consistently, repeatedly, and with enormous skill and sophistication, denied these facts to the public, to

the Government, and to the public health community.” Final Opinion (“Op.”) at 3-4. In light of these findings, the Court has directed Defendants to make corrective statements in the five media that “Defendants have themselves historically used to promulgate false smoking and health messages.” *Id.* at 1636.

The Court has recognized the Public Health Intervenors’ “clear interest in advancing the public health and in the remedies proposed in this case.” Op. at 14. As regards these corrective statements in particular, the Public Health Intervenors are particularly well-suited to propose appropriate corrective statements in light of their substantial experience in crafting public health messages designed to counter the very misinformation that these corrective statements are designed to address.

As directed by the Court, Part I of this submission contains the Public Health Intervenors’ proposal for the exact language of the corrective statements for all five topics in the five media that the Court has identified. In Part II, we will explain the factors the Court should consider in evaluating the proposed corrective statements, and explain why the specific wording we are proposing is critical to correcting Defendant’s long history of deliberate misinformation concerning each of these topics.

In Part III, we further explain that, in addition to the directing the precise language of the corrective statements, it is imperative that the Court also establish the specific criteria governing the execution of the corrective statements in each of the five media. In particular, in light of the Court’s specific findings regarding Defendants’ long and well-established history of manipulating these media to communicate the very misinformation the Court is striving to correct, in order for these to be truly “corrective” statements the Court must approve all aspects of the message, including, *inter alia*, the

print sizes and colors, the voices, and the use of graphics and other images to accompany the text. Indeed, as we will explain, were the Court to permit the Defendants free reign over these elements of the corrective statements, there is a serious risk that the statements will prove ineffective in accomplishing their stated purpose.

Finally, in Part IV, we will explain that, to make the corrective statements as effective as possible, the Court should also consult with appropriate independent experts to evaluate the proposed messages, and undertake basic market testing research to evaluate their effectiveness. Indeed, since this is the very industry-standard process that Defendants undertook to insure that their prior advertising effectively *misinformed* the public about each of these issues, only by utilizing the same kind of market testing can the Court be assured that the corrective statements will actually *correct* those misstatements, and meaningfully inform the public of the truth about addictiveness, smoking's adverse health effects, nicotine manipulation, "light" cigarettes, and the dangers of secondhand smoke.

BACKGROUND

After a nine month trial, on August 17, 2006 this Court issued its Memorandum Opinion and Order finding Defendants liable for massive violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO"). 18 U.S.C. § 1961, *et seq.*. Among myriad other unlawful activities, the Court found that Defendants had engaged in a deliberate, decades-long campaign to deceive the public concerning the adverse health effects of smoking, cigarette addictiveness and Defendants' manipulation of cigarette contents to enhance addictiveness, the effects of secondhand smoke, and the true health effects of "light" cigarettes. Thus, the Court found that "each and every one of these

Defendants repeatedly, consistently, vigorously – and falsely – denied the existence of any adverse health effects from smoking,” Op. at 330, and made similar findings on each of these other matters.¹

In light of the Court’s findings that “Defendants have made false, deceptive, and misleading public statements about cigarettes and smoking from at least January 1954, when the Frank Statement was published up until the present,” *id.* at 1632, among other remedies the Court has ordered:

Defendants to make corrective statements about addiction (that both nicotine and cigarette smoking are addictive); the adverse health effects of smoking (all the diseases which smoking has been proven to cause); the adverse health effects of exposure to ETS (all the diseases which exposure to ETS has been proven to cause); their manipulation of physical and chemical design of cigarettes (that Defendants do manipulate design of cigarettes in order to enhance the delivery of nicotine); and light and low tar cigarettes (that they are no less hazardous than full-flavor cigarettes).

Id. at 1636. Before deciding the specific parameters of these statements, the Court directed that the parties “submit a proposal for the exact wording of such corrective statements, with any supporting materials deemed necessary.” Order # 1015, at 4.

¹ *E.g. Id.* at 445 (“Despite the extensive and detailed knowledge possessed by Defendants for decades about the addictive qualities of nicotine and smoking, Defendants have publicly made false and misleading denials of the addictiveness of smoking, as well as nicotine’s role in causing that addiction”); 636 (“Despite the overwhelming evidence of their research into and utilization of methods to control the amount and delivery of nicotine in cigarettes, Defendants have denied, repeatedly and publicly, that they manipulate nicotine content and delivery in cigarettes in order to create and sustain addiction”); 971 (although “Defendants have known for decades that there is no clear health benefit from smoking low tar/low nicotine cigarettes . . . Defendants extensively – and successfully – marketed and promoted their low tar/light cigarettes as less harmful alternatives to full-flavor cigarettes”); 1384 (“[D]espite their own internal recognition of the link between ETS and disease in nonsmokers, Defendants made numerous public statements denying the linkage”).

DISCUSSION

I. PUBLIC HEALTH INTERVENORS' PROPOSED CORRECTIVE STATEMENTS

Below are the Public Health Intervenor's proposed corrective statements organized by the five media in which the Court has Ordered that these statements be made. As directed by the Court, one complete text containing all five corrective statements is proposed for the newspaper advertisements and websites. For the countertop and header displays, onsets, and television advertisements, the Public Health Intervenor is proposing a separate corrective statement for each of the five topics identified by the Court.

As noted, immediately following these proposals the Public Health Intervenor will explain why the specific wording proposed here is critical to correcting Defendants' long-standing efforts to deliberately mislead the public on each of these topics. *See* Part II, *infra*. We will then explain why, in order to make these corrective statements as effective as possible, the Court should establish specific criteria for their execution, including consultation with independent experts and basic market research. *See* Parts III and IV, *infra*.

A. Recommended Newspaper Text^{*}

For decades, we deliberately misled the American Public about the health effects of smoking.

A Federal District Court is requiring us to make this statement.

We told you that smoking and secondhand smoke were not dangerous and that smoking was not addictive. We falsely marketed “light” and “low-tar” cigarettes as less harmful than regular cigarettes to keep smokers from quitting – even when we knew they were not.ⁱ

Here’s the truth....

- Smoking kills 1200 Americans every dayⁱⁱ from cancer, heart attacks, and many other illnesses. It damages almost every organ in the body.ⁱⁱⁱ
- Smoking is very addictive^{iv} and therefore very hard to quit.^v We even manipulated cigarettes by adding things like ammonia to make them more addictive.^{vi,vii,viii,ix}
- There is no health benefit from smoking “light”, “low-tar”, “ultra-light” , “mild”, or “natural” cigarettes.^x
- Secondhand smoke is a proven cause of cancer, heart attacks, and other illness.^{xi} It kills more than 38,000 Americans each year.^{xii}

Paid for by [Company Name] under order of a Federal District Court.

^{*} For the Court’s convenience, the Public Health Intervenors are providing, in endnotes, the evidence supporting each of the elements in their proposed corrective statements. To be clear, the Public Health Intervenors are *not* suggesting that the Court require that these endnotes be included in the corrective statements themselves.

B. Recommended Text for Television Ads

(Each line of text should be on-screen separately)

Text for Adverse Health Effects of Smoking

For decades, we deliberately misled the American Public about the health effects of smoking.

A Federal District Court is requiring us to make this statement.

We told you that smoking wasn't dangerous.^{xiii}

But here's the truth:

Smoking kills 1200 Americans every day^{xiv} from cancer, heart attacks, and many other illnesses.

That's more deaths than from murder, AIDS, suicide, drugs, car crashes and alcohol *combined*.^{xv}

Paid for by [Company Name] under order of a Federal District Court.

Text for Addictiveness of Smoking and Nicotine

For decades, we deliberately misled the American Public about the health effects of smoking.

A Federal District Court is requiring us to make this statement.

We told Congress under oath that we believed smoking is not addictive.

We told you that it's easy to quit.^{xvi}

Here's the truth:

Smoking is very addictive^{xvii} and therefore very hard to quit.^{xviii}

We even manipulated cigarettes to make them more addictive.^{xix}

Paid for by [Company Name] under order of a Federal District Court.

Text for Lack of Any Significant Health Benefit from Smoking “Low-tar,” “Light,” “Ultra light,” “Mild,” and “Natural” Cigarettes

For decades, we deliberately misled the American Public about the health effects of smoking.

A Federal District Court is requiring us to make this statement.

We falsely marketed “low tar” and “light” cigarettes as less harmful than regular cigarettes to keep people smoking...

Even though we knew they were NOT less harmful.^{xx}

Here’s the truth:

ALL cigarettes cause cancer, lung disease, heart attacks and premature death—lights, low-tar, ultra lights and naturals.^{xxi}

Paid for by [Company Name] under order of a Federal District Court.

Text for Manipulation of Cigarette Design and Composition To Ensure Optimum Nicotine Delivery

For decades, we deliberately misled the American Public about the health effects of smoking.

A Federal District Court is requiring us to make this statement.

We denied we controlled the level of nicotine delivered in cigarettes.^{xxii}

Here’s the truth:

Cigarettes are a finely-tuned nicotine delivery device.^{xxiii}

We research and develop methods, such as adding ammonia...

So cigarettes deliver doses of nicotine that create and sustain addiction.^{xxiv,xxv,xxvi}

Paid for by [Company Name] under order of a Federal District Court.

Text for Adverse Health Effects of Exposure To Secondhand Smoke

For decades, we deliberately misled the American Public about the health effects of smoking.

A Federal District Court is requiring us to make this statement.

We denied the harms of secondhand smoke.^{xxvii} Here's the truth:

Secondhand smoke contains 4,800 chemicals^{xxviii} ...

Including more than 50 cancer-causing substances.^{xxix}

Secondhand smoke kills more than 38,000 Americans each year.^{xxx}

Paid for by [Company Name] under order of a Federal District Court.

- C. **Recommended Onsert Text by Topic**
(all text should be in English, followed by Spanish)

Text for Adverse Health Effects of Smoking

Front Cover (visible on front of cigarette pack)

For decades, we deliberately misled the American Public about the health effects of smoking.

A Federal District Court is requiring us to make this statement.

See inside for the truth.

[Graphic visual regarding adverse health effects of smoking placed here]

Inside Panel(s) (visible when onsert is unfolded)

We told you that smoking wasn't dangerous. We even paid scientists to raise doubts about the health effects of smoking.^{xxxii} Here's the truth:

- 1200 Americans die every day from smoking^{xxxiii}--it harms almost every organ in the body, causing heart attacks, strokes, emphysema and almost one third of all cancers.^{xxxiii}
- More people die from smoking than from murder, AIDS, suicide, drugs, car crashes and alcohol *combined*.^{xxxiv}
- In fact, cigarettes kill one half of all lifelong smokers^{xxxv} That means, if you, your spouse, and your parents are lifelong smokers, the chances are that two of you will die from it.
- For every death from smoking, there are another 20 people living with at least one serious illness from smoking. That's over 8 million Americans at any given time.^{xxxvi}

Paid for by [Company Name] under order of a Federal District Court.

Text for Addictiveness of Smoking and Nicotine

Front Cover (visible on front of cigarette pack)

For decades, we deliberately misled the American Public about the health effects of smoking.

A Federal District Court is requiring us to make this statement.

See inside for the truth.

[Graphic visual addressing smoking and nicotine placed here]

Inside Panel(s) (visible when onsert is unfolded)

We told Congress under oath that we believed smoking is not addictive.^{xxxvii} We told you that it's easy to quit. Here's the truth:

- Smoking is very addictive.^{xxxviii} And it's not easy to quit.^{xxxix}
- We manipulated cigarettes to make them more addictive.^{xl}
- When you smoke, the nicotine actually changes the brain—that's why quitting is so hard.^{xli}

Paid for by [Company Name] under order of a Federal District Court.

Text for Lack of Any Significant Health Benefit from Smoking “Low-tar,” “Light,” “Ultra light,” “Mild,” and “Natural” Cigarettes

Front Cover (visible on front of cigarette pack)

For decades, we deliberately misled the American Public about the health effects of smoking.

A Federal District Court is requiring us to make this statement.

See inside for the truth.

[Graphic visual regarding lack of health benefit from smoking lights, low tars placed here]

Inside Panel(s) (visible when insert is unfolded)

We falsely marketed low tar and light cigarettes as less harmful than regular cigarettes to keep people smoking and sustain our profits.

We knew that many smokers switch to low tar and light cigarettes rather than quitting because they believe low tar and lights are less harmful. They are NOT.^{xlii} Here’s the truth:

- Just because lights and low-tar cigarettes feel smoother, that doesn’t mean they are any better for you. Light cigarettes can deliver the same amounts of tar and nicotine as regular cigarettes.^{xliii}
- ALL cigarettes cause cancer, lung disease, heart attacks and premature death—lights, low-tar, ultra lights and naturals.^{xliiv}

Paid for by [Company Name] under order of a Federal District Court.

Text for Manipulation of Cigarette Design and Composition To Ensure Optimum Nicotine Delivery

Front Cover (visible on front of cigarette pack)

For decades, we deliberately misled the American Public about the health effects of smoking.

A Federal District Court is requiring us to make this statement.

See inside for the truth.

[Graphic visual regarding manipulation of design and composition placed here]

Inside Panel(s) (visible when insert is unfolded)

For decades, we falsely denied that we controlled the level of nicotine delivered in cigarettes.^{xlv} Here's the truth:

- Cigarettes are a finely-tuned nicotine delivery device designed to addict people^{xlvi}.
- We control nicotine delivery to create and sustain smokers' addiction, because that's how we keep customers coming back.^{xlvi}
- We also add chemicals, such as ammonia, to enhance the impact of nicotine and make cigarettes taste less harsh.^{xlvi, xlvii}
- When you smoke, the nicotine actually changes the brain—that's why quitting is so hard.¹

Paid for by [Company Name] under order of a Federal District Court.

Text for Adverse Health Effects of Exposure To Secondhand Smoke

Front Cover (visible on front of cigarette pack)

For decades, we deliberately misled the American Public about the health effects of smoking.

A Federal District Court is requiring us to make this statement.

See inside for the truth.

[Graphic visual regarding adverse health effects of secondhand smoke placed here]

Inside Panel(s) (visible when insert is unfolded)

For decades we denied the harms of secondhand smoke.

We joined with other tobacco companies to undermine and discredit the scientific consensus that secondhand smoke causes disease.^{li}

But here's the truth from the U.S. Surgeon General and National Cancer Institute:

- Secondhand smoke contains 4,800 chemicals^{lii} and more than 50 cancer-causing substances.^{liii} Chemicals include formaldehyde, benzene, vinyl chloride, arsenic, ammonia, and hydrogen cyanide.^{liv}
- Secondhand smoke has been proven to cause lung cancer and heart attacks^{lv}, and kills over 38,000 Americans each year.^{lvi}
- There is no risk-free exposure to secondhand smoke.^{lvii}
- Separating smokers from nonsmokers, cleaning the air, and ventilating buildings cannot eliminate exposures of nonsmokers to secondhand smoke.^{lviii}

Paid for by [Company Name] under order of a Federal District Court.

D. Recommended Text for Counter and Header Displays
(Translated to Spanish for Appropriate Markets)

Text for Adverse Health Effects of Smoking

For decades, we deliberately misled the American Public about the health effects of smoking.

A Federal District Court is requiring us to make this statement.

We told you smoking wasn't dangerous. We even paid scientists to raise doubts about the health effects of smoking.^{lix} Here's the truth:

Smoking kills 1200 Americans every day from cancer, heart attacks, and many other illnesses.^{lx}

That's more deaths than from murder, AIDS, suicide, drugs, car crashes and alcohol combined.^{lxi}

[Graphic visual regarding adverse health effects of smoking placed here]

Paid for by [Company Name] under order of a Federal District Court.

Text for Addictiveness of Smoking and Nicotine

For decades, we deliberately misled the American Public about the health effects of smoking.

A Federal District Court is requiring us to make this statement.

We told Congress under oath that we believed smoking is not addictive. We told you it's easy to quit.^{lxii} Here's the truth:

Smoking is very addictive^{lxiii} and therefore very hard to quit.^{lxiv}

[Graphic visual addressing smoking and nicotine placed here]

Paid for by [Company Name] under order of a Federal District Court.

Text for Lack of Any Significant Health Benefit from Smoking “Low-tar,” “Light,” “Ultra light,” “Mild,” and “Natural” Cigarettes

For decades, we deliberately misled the American Public about the health effects of smoking.

A Federal District Court is requiring us to make this statement.

We marketed “low tar” and “light” cigarettes as less harmful than regular cigarettes to keep people smoking, knowing they were NOT less harmful.^{lxv} Here's the truth:

ALL cigarettes cause cancer, lung disease, heart attacks and premature death—lights, low-tar, ultra lights and naturals.^{lxvi}

[Graphic visual regarding lack of health benefit from smoking lights, low tars placed here]

Paid for by [Company Name] under order of a Federal District Court.

Text for Manipulation of Cigarette Design and Composition To Ensure Optimum Nicotine Delivery

For decades, we deliberately misled the American Public about the health effects of smoking.

A Federal District Court is requiring us to make this statement.

**We falsely denied that we controlled the level of nicotine delivered in cigarettes.^{lxvii}
Here's the truth:**

Cigarettes are a finely-tuned nicotine delivery device.^{lxviii}

We research and develop methods so cigarettes deliver doses of nicotine that create and sustain addiction.^{lxix,lxx,lxxi}

[Graphic visual regarding manipulation of design and composition placed here]

Paid for by [Company Name] under order of a Federal District Court.

Text for Adverse Health Effects of Exposure To Secondhand Smoke

For decades, we deliberately misled the American Public about the health effects of smoking.

A Federal District Court is requiring us to make this statement.

We denied the harms of secondhand smoke.^{lxxii} Here's the truth:

Secondhand smoke contains 4,800 chemicals^{lxxiii}, including more than 50 cancer-causing substances.

Secondhand smoke causes lung cancer, heart attacks, and other illness^{lxxiv}, and kills more than 38,000 Americans each year.^{lxxv}

[Graphic visual regarding adverse health effects of secondhand smoke placed here]

Paid for by [Company Name] under order of a Federal District Court.

E. Recommended Text for Websites

(On the site, there should be one option to click on for English text; another option to click on for Spanish text)

We deliberately misled the American Public about the health effects of smoking.

A Federal District Court is requiring us to make this statement.

For decades, we told you that smoking wasn't dangerous. We even paid scientists to raise doubts about the health effects of smoking.^{lxxvi} Here's the truth:

- 1200 Americans die every day from smoking^{lxxvii}--it harms almost every organ in the body, causing heart attacks, strokes, emphysema and almost one third of all cancers.^{lxxviii}
- More people die from smoking than from murder, AIDS, suicide, drugs, car crashes and alcohol *combined*.^{lxxix}
- In fact, cigarettes kill one half of all lifelong smokers.^{lxxx} That means if you, your spouse, and your parents are lifelong smokers, the chances are that two of you will die from it.
- For every death from smoking, there are another 20 people living with at least one serious illness from smoking. That's over 8 million Americans at any given time.^{lxxxii}

We told Congress under oath that we believed smoking is not addictive. We told you that it's easy to quit.^{lxxxii} Here's the truth:

- Smoking is very addictive.^{lxxxiii} And it's not easy to quit.^{lxxxiv}
- We manipulated cigarettes to make them more addictive.
- When you smoke, the nicotine actually changes the brain—that's why quitting is so hard.^{lxxxv}

We falsely marketed low tar and light cigarettes as less harmful than regular cigarettes to keep people smoking and sustain our profits.

We knew that many smokers switch to low tar and light cigarettes rather than quitting because they believe low tar and lights are less harmful.^{lxxxvi} They are NOT. Here's the truth:

- Just because lights and low-tar cigarettes feel smoother, that doesn't mean they are any better for you. Light cigarettes can deliver the same amounts of tar and nicotine as regular cigarettes.^{lxxxvii}
- ALL cigarettes cause cancer, lung disease, heart attacks and premature death—lights, low-tar, ultra lights and naturals.^{lxxxviii}

For decades, we falsely denied that we controlled the level of nicotine delivered in cigarettes.^{lxxxix} Here's the truth:

- Cigarettes are a finely-tuned nicotine delivery device designed to addict people^{xc}.
- We control nicotine delivery to create and sustain smokers' addiction, because that's how we keep customers coming back.
- We also add chemicals, such as ammonia, to enhance the impact of nicotine and make cigarettes taste less harsh.^{xc1,xc2}
- When you smoke, the nicotine actually changes the brain—that's why quitting is so hard.^{xc3}

For decades we denied the harms of secondhand smoke. We joined with other tobacco companies to undermine and discredit the scientific consensus that secondhand smoke causes disease.^{xc4}

But here's the truth from the U.S. Surgeon General and National Cancer Institute:

- Secondhand smoke contains 4,800 chemicals^{xc5} and more than 50 cancer-causing substances.^{xc6} Chemicals include formaldehyde, benzene, vinyl chloride, arsenic, ammonia, and hydrogen cyanide.^{xc7}
- Secondhand smoke has been proven to cause lung cancer and heart attacks^{xc8} and kills over 38,000 Americans each year.^{xc9}
- There is no risk-free exposure to secondhand smoke.^c
- Separating smokers from nonsmokers, cleaning the air, and ventilating buildings cannot eliminate exposures of nonsmokers to secondhand smoke.^{ci}

II. THIS PRECISE WORDING IS NECESSARY AND APPROPRIATE TO CORRECT DEFENDANTS' SUCCESSFUL MISINFORMATION CAMPAIGNS CONCERNING EACH OF THESE ISSUES.

A. Overall Considerations For These Corrective Statements

The Court-Ordered corrective statements must correct decades of disinformation and misinformation propagated by the Defendants as a central element of their fraud. This Court has documented in meticulous detail the effective public relations, marketing and advertising efforts of the Defendant tobacco companies over the past fifty years that are at the very heart of their fraudulent enterprise. These efforts began in 1953 with the issuance of the “Frank Statement to Cigarette Smokers,” described by the Court as “an effective public relations step.” *Op.* at 26. The Court went on to describe the Defendants’ ensuing half century of lucrative efforts to sell their deadly products as, by way of just a few examples, “highly sophisticated,” 991, 1208, 1514, 1645, “intense,” *id.* at 1506, “massive,” *id.* at 980, 998, 1514, and most important, “effective,” *passim*, and “phenomenally successful.” *Id.* at 1521. Moreover, these campaigns were executed against a backdrop of nearly limitless resources, rising to almost \$12 billion of marketing and promotional expenditures in 2001, the most recent year for which there is evidence in the record. *Id.* at 1122.¹

For these statements to prevent and restrain future RICO violations, they must be crafted taking into account the best available scientific knowledge about how to communicate effectively to the public, as the Defendants have done for so many years to sow confusion, disparage mainstream scientific consensus and sell their products. The corrective statements must take into account the lessons of public persuasion, honed to

¹ As subsequent Federal Trade Commission reports make clear, these expenditures have continued to rise, reaching \$15.15 billion in 2003. *Op.* at 1521.

new levels by the tobacco industry, so that they effectively communicate the required messages to the American public.² It is also important to evaluate the proposed communications to insure that they are not crafted in such a way that they do more to enhance the image of the Defendants than to inform and educate the public. *See* opinion at 1636. Similarly, care must be taken to insure that the statements do not unintentionally serve the same role as the industry's ineffective, so-called "youth smoking prevention" campaigns. *Op.* at 1164.

In fact, in the Court's final Opinion, it detailed the ways in which the Defendants Youth Smoking Prevention programs are not designed to effectively prevent youth smoking. *Op.* at 1164-1173. Internal industry documents suggest that Defendants designed their Youth Smoking Prevention programs for public relations rather than efficacy in youth smoking prevention. *Id.* at 1172.

When Defendants have had control over the development and production of public health or public education campaigns in the past, numerous studies have concluded that these campaigns were ineffective. More specifically, when the "We Card" program, promoted by the tobacco industry as a voluntary means by which they were helping keep underage kids from purchasing tobacco products, was evaluated, it was found to have no impact. The rate of illegal underage sales for stores with "We Card" and other tobacco industry signs was the same as for stores with no signs at all and much higher than stores with government signs prohibiting illegal sales to minors. Compliance increased only when the tobacco industry signs were coupled with

² Arens, *Contemporary Advertising*, 10th edition, 2005, also available at the website of the Advertising Educational Foundation, www.aef.com/on_campus/classroom/book_excerpts/data/1467.

government signs.³ Numerous studies found the Philip Morris youth prevention campaign, “Think. Don’t Smoke” to be ineffective.⁴ In several of these studies, the ads were found to have no effect on youth, and in one study, youth who had been exposed to the ads were actually more open to smoking. A qualitative research study in Scotland found that a European youth smoking prevention ad campaign sponsored by several tobacco companies was deemed “unrealistic and lacking credibility.”⁵ Furthermore, a 2006 study found not only that exposure to tobacco company youth-targeted smoking prevention advertising generally had no beneficial outcomes for youths, but that exposure to tobacco company parent-targeted advertising may have harmful boomerang effects on youths, especially in grades 10 and 12.⁶

The literature includes numerous examples of corrective advertising, as well of advertising generally, which shed light on the key questions before this Court. The analyses of corrective communications, principally in the context of Federal Trade Commission orders, confirm that the questions raised in crafting effective corrective communications are no different from the questions routinely asked in connection with

³ Cowling, D.C. & Robins, D.G. “Rate of Illegal Tobacco Sales to Minors Varies by Sign Type in California”, Research Letters, *American Journal of Public Health*, November 2000, Vol. 90, No. 11.

⁴ Farrelly M. et al. Getting to the Truth: Evaluating National Tobacco Countermarketing Campaigns. *Am J Public Health*. 2002;92:901–907; American Legacy Foundation. Getting to the Truth: Assessing Youths’ Reactions to the truth(sm) and “Think. Don’t Smoke” Tobacco Countermarketing Campaigns. First Look Report 9, June 2002, accessed October 5, 2006 at <http://www.americanlegacy.org/Files/FLR9.pdf>; Pechmann C, Zhao G, Goldberg ME, Reibling ET. What to convey in anti-smoking ads for adolescents? The use of protection motivation theory to identify effective message themes. *J Marketing* 2003; 67: 1-18; *Counter-Tobacco Advertising Exploratory Summary Report*. Northbrook, Ill: Teenage Research Unlimited; 1999. Accessed October 5, 2006 at <http://tobaccofreekids.org/reports/smokescreen/study.shtml>.

⁵ Devlin et al., 2002, excerpted from CDC’s Tobacco Use Prevention Media Campaigns: Lessons Learned from Youth in Nine Countries, 2006, accessed October 6, 2006 at www.cdc.gov/tobacco.

⁶ Wakefield, M. et al., “Impact of Tobacco Industry Anti-Tobacco Advertising on Youth Smoking Attitudes and Behaviour.” Paper presented at the Society for Research on Nicotine and Tobacco (SRNT) Conference, February 15-18, 2006.

advertising. Just as with any other advertising campaign, corrective communications must take into account the inherent complexity of communicating with consumers.⁷ As one article succinctly explains, consumers' "attention must be captured, their interest in the message sustained, their beliefs altered, and the new cognitions retained."⁸ Of course, to be effective, the intended consumer must understand the message. "It is only after information has been comprehended that one can reasonably expect it to influence beliefs, attitudes, intentions and behavior."⁹ But assuring consumer comprehension of a message is neither an easy nor obvious task. It is a communications truism that "the advertiser (and the creative team) must be concerned about how the actual consumer will decode, or interpret, the message."¹⁰ Specifically with regard to remedial messages, studies show that they are often misunderstood and "may be at least as confusing and misleading as the" original false advertising.¹¹ Accordingly, "just like the advertising they are designed to counteract, [corrective communications] need to be empirically evaluated before being mandated and implemented."¹²

In constructing an effective corrective communication, basic principles regarding advertising more generally control. As one primer explains, the successful advertiser will recognize that "[r]eaders will decide in a second or two – or perhaps even a split second – whether or not an ad is worth their time"; "understand what [their] objective is before

⁷ Wilkie, McNeill, & Mazis, "Marketing's 'Scarlett Letter': The Theory and Practice of Corrective Advertising", 48 *Journal of Marketing* 11, 27 (Spring, 1984)

⁸ *Id.*

⁹ Jacoby, Nelson, & Hoyer, "Corrective Advertising and Affirmative Disclosure Statements: Their Potential for Confusing and Misleading the Consumer", 46 *Journal of Marketing* 61 (Winter, 1982)

¹⁰ Arens at 5

¹¹ Jacoby et al. at 62. *See also id.* at 68 ("Are corrective advertising or affirmative disclosure statements subject to being miscomprehended, just as are the advertising messages they are designed to remedy? From the data obtained, the answer would appear to be a resounding 'yes.'")

¹² *Id.* at 62. *See also* Mazis, "FTC v. Novartis: The Return of Corrective Advertising?", 20 *Journal of Public Policy & Marketing* 114, 120, 121 (Spring 2001)(noting with approval the Commission's consideration of the effectiveness of proposed corrective advertising).

putting words and images on a page”; “present one central proposition . . . [and] stick to it”; “avoid cluttering up [the] message (or the page) with additional information that isn’t germane to the objective”; and “[s]ince the ad must support a central proposition, . . . [assure that] all elements with the ad . . . support that proposition”.¹³ Studies of corrective communications find that basic advertising wisdom applies equally to these communications. They, too, report, for example, that consumer comprehension decreases as the number of concepts being communicated increases¹⁴; it is harder to communicate a message in a cluttered environment¹⁵; typeface, fonts, and layout matter¹⁶; and in television ads, there are time frames for written information to remain on screen and words per minute at which text should be read, in addition to colors, contrast and text size that should be used, to optimize comprehension.¹⁷

Because clearly “there is more to remedial advertising than developing statements that one *thinks* will do the job”¹⁸ (emphasis original), and because of the enormous importance of assuring that these communications are effective, the Public Health Interveners urge the Court to carefully take into consideration the objectives against which these communications should be evaluated. These most importantly include the intended audience, the intended message, and the desired response of those receiving the communication. The Public Health Interveners submit the following recommendations for each:

¹³ Blom, “Principles of Effective Print Advertising”, www.marketingpower.com/content993.php (website of the American Marketing Association).

¹⁴ Jacoby et al. at 63.

¹⁵ Mazis at 120.

¹⁶ Blom at 4.

¹⁷ Hoy and Andrews, “Adherence of Prime-Time Televised Advertising Disclosures to the “Clear and Conspicuous” Standard: 1990 versus 2002”, 23 *Journal of Public Policy & Marketing* 170, 172 (Fall, 2004).

¹⁸ Jacoby et al. at 70.

First, the Defendants' frauds have been perpetrated on the American public as a whole, over more than half a century, so the intended audience must be the entire American public, except for the corrective statements contained in inserts that are affixed to cigarette packaging where the intended audience must be smokers.

Second, the underlying purpose of these communications is to prevent and restrain future violations, so for the reasons we will explain in more detail below, the intended message must incorporate three basic elements: 1) that the Defendants have defrauded the American public; 2) that these communications have been ordered by the Court (and are not reflective of the Defendants' corporate responsibility); and 3) basic, accurate information regarding, in rotation: the adverse health effects of smoking; the addictiveness of smoking and nicotine; Defendants' manipulation of cigarette design and composition to ensure optimum nicotine delivery; the lack of any significant health benefit from smoking "low tar," "light," "ultra light," "mild," and "natural" cigarettes; the adverse health effects of exposure to second hand smoke.

Third, the desired response, or "take away" as marketers would call it, which is essential to the prevention of future fraudulent behavior is: "we are finally getting real information about cigarettes from the industry because a court has ordered them to provide it and has overseen the content of what is being provided; we now better understand the key dangers of cigarettes; we now know that we need to carefully evaluate future public communications from the tobacco industry for accuracy and completeness."

Determining the appropriate audience, the intended message and the desired take-away is the first part of the inquiry. As we have seen, it is also essential that each of the proposed communications be evaluated as to how well they will communicate the

intended message to the intended audience. Understanding the efficacy of a public communication is both an art and a science; as the literature demonstrates, it calls for expert testing and analysis. Accordingly, as explained in section IV below, the Public Health Intervenors urge the Court to retain an independent communications firm skilled in developing and pre-testing communications campaigns on similar health topics to assist the Court in determining how well the corrective statements communicate their intended messages before they are approved for circulation. In addition, the United States and Public Health Intervenors should be allowed a period of time to analyze the corrective statements developed and the pre-testing results, and provide their findings and analysis to the Court. If the corrective statements developed have shortcomings that would hinder their corrective effect, those shortcomings can be addressed prior to Court approval for circulation.

In sum, by taking these steps, the Court will substantially increase the likelihood that the ordered corrective communications will, indeed, be an effective remedy in this case.

B. The Rationale For The Corrective Statements Public Health Intervenors Propose

As we next explain, the specific language Public Health Intervenors are proposing will most effectively correct the public's misunderstandings about smoking and its adverse health effects on smokers and non-smokers. The proposed text corrects the misperceptions created by the Defendants that were identified by the Court on all five specific topics, and for each topic, the specific selected language will most clearly address the misunderstandings and effectively communicate the accurate facts.

Our proposed text will be most effective because it is designed with three key components, each of which is essential to correcting the Defendants' incorrect information over the last several decades.

The first essential component of the communication is found in the first part of the headline which states each Defendant's admission that they misled the public about the dangers of smoking. As the D.C. Circuit has explained, such a headline is appropriate where the corrective statements are being required to address an "an egregious case of deliberate deception" Warner-Lambert Co. v. FTC, 562 F.2d 749, 763 (D.C. Cir. 1977). **

This standard is amply satisfied in this case, in light of the Court's overwhelming findings that Defendants *knew* that their prior misstatements were false, and that they were engaged in a pattern of deliberate deception. *See supra* at 4, n.1 (summarizing findings); *see also id.* at 1501-1526 (Defendants "knowingly and intentionally engaged in a scheme to defraud smokers and potential smokers, for purposes of financial gain, by making false and fraudulent statements, representations and promises"). It is particularly appropriate and necessary in this case because the court has found that the Defendants misled the public repeatedly, even after they promised to tell the truth in paid advertisements, and even after they entered into a Settlement with the states to stop doing so. Accordingly, the Court should require that the corrective statements include headline language explaining that Defendants have previously provided the public with misinformation concerning these five subjects.

** In Warner-Lambert the Court rejected the FTC's proposed headline because the record supported a finding that the prior misstatements were not deliberate, but rather were made in good faith. 562 F.2d at 763.

This first part of the headline will serve at least three key purposes: 1) it will alert the public that they have been misled for decades by the tobacco companies, which will better prepare them to receive the accurate information that is forthcoming; 2) because the headline will be consistent in all executions on each topic, it will provide clear overall communication across all media; and 3) it will help inoculate the public against future misleading communications. Using a headline for a communications campaign is standard practice in the advertising industry because it gets the attention of the audience and engages them to continue reading. As one primer for effective public service advertising recommends, "Write headlines that offer a reason to read more...State a benefit, arouse interest or break news."¹⁹ Gaining and keeping the audience's attention is particularly important in the case of these corrective statements, where only a minimum level of media presence is available to offset decades of misinformation.

The second essential component of the communication is notifying the public that the Defendants are being ordered by the Court to make these corrective statements. This particular language is found in the latter part of the headline (second bolded statement) and at the bottom of each set of corrective text where it states that the particular Defendant is paying for the corrective statement, and it is important for several reasons. First, it will help ensure that the corrective statements are believed by the public. Literature related to the Defendants' past public health and education campaigns indicates that when they sponsor such campaigns, audiences do not find them credible.²⁰

¹⁹ Goodman A. *Why Bad Ads Happen to Good Causes*. Cause Communications, 2002.

²⁰ Hendricksen L and Fortmann TC. Young adults' opinions of Philip Morris and its television advertising, *Tobacco Control*, 2002; 11:236-240; *see also* Devlin et al., 2002, excerpted from CDC's Tobacco Use Prevention Media Campaigns: Lessons Learned from Youth in Nine Countries, 2006, accessed October 6, 2006 at www.cdc.gov/tobacco

In addition, an October 2005 Harris poll²¹ revealed that only 4% of Americans felt that the tobacco industry was "generally honest and trustworthy -- so that [they] normally believe a statement by a company in that industry." This percentage is lower than all of the other 16 industries included in the poll except the oil industry. This distrust is also why the Public Health Intervenors recommend not including the Defendant companies' logos in the corrective statements, but instead just their names in regular type. If the Defendants' corporate logos are included, viewers eyes will be drawn to them, and the corrective statements might not be read or not believed because they may be perceived as yet another public relations effort on the part of the Defendants.

In addition, the fact that the Court is requiring the corrective statements is critical for the public to know in order to properly evaluate the corrective statements. This will help convey that accurate information is being provided by the Defendant cigarette companies because the Court has ordered it, and the Defendants are not now, on their own, a trusted source of accurate information. The absence of these facts about the source of the corrective statement would increase the likelihood that Defendants could again successfully mislead the public in the future. The goal of the corrective statements is to provide the public with information that will help correct decades of deception, but without falsely giving the Defendants the kind of credibility for telling the truth with the public that will enable them to mislead the public in the future.

Finally, this information will help insure that the public carefully scrutinizes future statements by the Defendants for truthfulness, including other "public education" campaigns done by the Defendants simultaneously with these court-ordered corrective

²¹ Nationwide Harris Poll of 1,833 U.S. adults surveyed online by Harris Interactive[®] between October 11 and 17, 2005. Accessed at www.harrisinteractive.com/harris_poll/index.asp?PID=611.

statements or in the near future, thereby making it harder for the Defendants to engage in future violations.

The third essential component of each corrective statement is the heart of the communications—the specific misinformation spread by the Defendants’ on each topic, and then the corrective facts. The juxtaposition of the prior misinformation with accurate facts is critical, so that the public will recognize the misinformation and will be able to contrast that with the reality of the accurate dangers of smoking. The proposed text is *concise* because communications literature emphasizes the importance of focusing on a few key facts rather than overwhelming people with too much information that they cannot adequately internalize.²²

The text is also *simple* for several reasons. Communications manuals emphasize that complex presentations of information are not well understood by the public.²³ This is especially true for those with language or literacy challenges. Fourteen percent of adult Americans have a below basic literacy level, and 29% have a basic literacy level.²⁴ In addition, people with lower education are significantly more likely to be smokers (in 2004, 40% of adults with a GED were smokers; 34% of adults with a 9th-11th grade education were smokers; and only 8% of those with graduate degrees were smokers).²⁵

²² Blom, “Principles of Effective Print Advertising”, www.marketingpower.com/content993.php (website of the American Marketing Association); *see also* American Marketing Association. Writing Copy That Sells. Accessed October 13, 2006 at <http://www.marketingpower.com/content19404.php>.

²³ National Cancer Institute. Developing and Pre-testing Concepts, Messages and Materials. *Making Health Communication Programs Work*. Page 6. U.S. National Institutes of Health. Accessed October 13, 2006 at <http://www.cancer.gov/pinkbook/page6>

²⁴ National Assessment of Adult Literacy, 2003. Accessed October 11, 2006 at <http://nces.ed.gov/NAAL/index.asp?file=KeyFindings/Demographics/Overall.asp&PageId=16#1>

²⁵ Centers for Disease Control and Prevention. Cigarette Smoking Among Adults—United States, 2004. *MMWR* 2005; 54: 1122 accessed October 12, 2006 at <http://www.cdc.gov/mmwr/PDF/wk/mm5444.pdf>.

For each of the five topics, we have developed text that can be communicated clearly in each of the five proposed media, given their individual strengths and constraints. For example, the text for in-store displays focuses on just one or two key facts because these displays will be reviewed very quickly by passersby. Likewise, the text for the 15-second TV ads is brief, to maximize the viewers' comprehension of the messages. Onserts and websites, by contrast, provide more space and more audience attention opportunities, permitting the corrective statements to effectively communicate a greater number of facts.

C. Additional Factors to Consider For Particular Media

1. Onserts

For the onserts, Public Health Intervenors strongly recommend supplementing the factual text with graphic visuals that illustrate the health risks to the public and particularly to smokers who will be most likely to see the onserts. Because the corrective statements onserts will be very similar to cigarette package health warning labels, existing findings about package warning labels provide a benchmark to evaluate the effectiveness of the onserts the Court will require here, and how those onserts should be developed and produced. Three studies, one from New Zealand²⁶, one from Australia²⁷,

²⁶ BRC. (2004) Smoking health warnings study: The effectiveness of different (pictorial) health warnings in helping people consider their smoking-related behaviour. Wellington: BRC Marketing & Social Research. **Error! Main Document Only.**<http://www.ndp.govt.nz/publications/healthwarnings.html> accessed October 2, 2006.

²⁷ Elliott & Shanahan Research. (2003) *Developmental research for new Australian health warnings on tobacco products stage 2*. Canberra: Commonwealth of Australia. **Error! Main Document Only.**<http://www.health.gov.au/internet/wcms/publishing.nsf/Content/health-pubhlth-strateg-drugs-tobacco-warnings.htm> accessed October 2, 2006.

and an international study²⁸, demonstrated that pictorial cigarette package warnings were more effective than text warnings. Pictorial warnings can increase the effectiveness of communications campaigns. As pictorial warnings are visual, they can be linked to visual media, such as newspaper and television messages, thereby increasing the effectiveness of overall communication.²⁹ Due to their effectiveness at communicating health messages, pictorial-based cigarette package health warning labels have been implemented in Canada (2000), Brazil (2002), Singapore (2003), European Union (2004), Venezuela (2004), Thailand (2005), Australia (2006), and Uruguay (2006). In 2006, Chile, Peru, Belgium and the United Kingdom also passed legislation to require pictures or images on cigarette packs. New Zealand, Jordan, Romania, India and other countries are also considering implementing cigarette pack warnings as a way to educate smokers about the risks of continuing to smoke. According to Hammond et al (*Tobacco Control*, 2006), “Large, graphic warnings on cigarette packages are an effective means of increasing health knowledge among smokers [and] may also help to reduce the disparities in health knowledge by providing low-income smokers with regular access to health information.”³⁰ Examples of recommended graphic visuals can be found at the end of this section.

Another reason to include graphic visuals in onserts is that they effectively communicate with people who have low literacy and/or have limited fluency in English.

As noted earlier, 14% of adults have a below basic literacy level and 29% have a basic

²⁸ Hammond D, Fong GT, McNeill A, Borland R, and Cummings KM. Effectiveness of cigarette warning labels in informing smokers about the risks of smoking: findings from the International Tobacco Control (ITC) Four Country Survey. *Tobacco Control*. 2006; 15(suppl_3):iii19-iii25.

²⁹ Canadian Cancer Society (2001). *Controlling the Tobacco Epidemic: Selected Evidence in Support of Banning All Tobacco Advertising and Promotion, and Requiring Large, Picture-Based Health Warnings on Tobacco Packages* Ottawa: Canadian Cancer Society, International Union Against Cancer.

³⁰ Hammond et al, 2006.

literacy level.³¹ People with lower education are significantly more likely to be smokers.³² Furthermore, 18% of U.S. adults speak a language other than English at home,³³ and for those who do not understand English well, the graphic visuals will be much more effective in communicating the adverse health effects than will be the text alone.

The final rationale for inclusion of graphic visuals in the inserts is that in order to counter the previous misinformation, the same marketing approaches should be used as have previously been employed by the Defendants. All of the Defendants have relied on attractive and persuasive images (Joe Camel, Marlboro Man, attractive images of young people enjoying life, etc.) to market their products, so it is critical to counter those messages with equally persuasive visuals. The companies have used imagery to communicate much more than facts about their products through their sophisticated marketing campaigns. These campaigns further counter the truthful health information about these products and create a positive aura around smoking to make it attractive to those looking to fulfill certain needs like rebellion and acceptance.

On the following pages are some example graphic visuals for four of the five topics of the corrective statements. “Cigarettes Cause Strokes,” “Cigarettes Cause Mouth Diseases,” “Tobacco Use Can Make You Impotent,” “Cigarettes Are Highly Addictive,” and “You’re Not the Only One Smoking This Cigarette” have been used by Health

³¹ National Assessment of Adult Literacy, 2003. Accessed October 11, 2006 at <http://nces.ed.gov/NAAL/index.asp?file=KeyFindings/Demographics/Overall.asp&PageId=16#1>

³² Centers for Disease Control and Prevention. Cigarette Smoking Among Adults—United States, 2004. MMWR 2005; 54: 1122 accessed October 12, 2006 at <http://www.cdc.gov/mmwr/PDF/wk/mm5444.pdf>.

³³ Department of Commerce Bureau of the Census. United States Census, 2000 accessed October 12, 2006 at [http://en.wikipedia.org/wiki/Language_\(United_States_Census\)](http://en.wikipedia.org/wiki/Language_(United_States_Census)).

Canada. These and similar graphic visuals have been used on Canada's cigarette packages since 2000.

"Smoking Causes Lung Cancer," "Smoking Causes Mouth and Throat Cancer," "Tobacco Smoke is Toxic," and "Don't Let Your Children Breathe Your Smoke" have been used on cigarette packages by the Australian Commonwealth Department of Health and Ageing since March 2006.

These visuals have proven effective in communicating health risks to smokers, but could be altered to insure effective corrective statements onserts. In addition, visuals addressing misperceptions about Light, Natural, Mild and Low-Tar cigarettes could be recommended but would need to be developed.

Public Health Intervenors recommend that the onserts, when affixed to the cigarette packages, take up 50% of the package front, and include the headline, one fact and a graphic image. This is the recommended size of cigarette pack health warnings proposed by the Framework Convention on Tobacco Control and is the size that has been used by Canada since 2000. The onsert should then be expandable by unfolding it, and should include more of the corrective facts on the inside.

1. Adverse Health Effects of Smoking



WARNING
**CIGARETTES
CAUSE STROKES**

Tobacco smoke can cause the arteries in your brain to clog. This can block the blood vessels and cause a stroke. A stroke can cause disability and death.

human brain with stroke

Health Canada



WARNING
**CIGARETTES
CAUSE MOUTH
DISEASES**

Cigarette smoke causes oral cancer, gum diseases and tooth loss.

Health Canada



WARNING
**TOBACCO USE
CAN MAKE YOU
IMPOTENT**

Cigarettes may cause sexual impotence due to decreased blood flow to the penis. This can prevent you from having an erection.

Health Canada

SMOKING CAUSES LUNG CANCER
Health Authority Warning



Quitline
131 848

LUNG CANCER

9 out of 10 lung cancers are caused by smoking. Every cigarette you smoke increases your risk of lung cancer. Most people who get lung cancer, die from it.

You CAN quit smoking. Call **Quitline** 131 848, talk to your doctor or pharmacist, or visit www.quitnow.info.au

SMOKING CAUSES MOUTH AND THROAT CANCER
Health Authority Warning



Quitline
131 848

MOUTH CANCER

Smoking is the major cause of cancers affecting the mouth and throat. These cancers can result in extensive surgery, problems in eating and swallowing, speech problems and permanent disfigurement.

You CAN quit smoking. Call **Quitline** 131 848, talk to your doctor or pharmacist, or visit www.quitnow.info.au

2. The addictiveness of smoking and nicotine.



3. Manipulation of design and composition to enhance nicotine delivery.

TOBACCO SMOKE IS TOXIC
Health Authority Warning

Quitline
131 848

Tobacco smoke is a complex mixture of toxic chemicals such as **nitrosamines** and **benzopyrenes** which contribute directly to the formation of cancer in smokers, and **carbon monoxide** which reduces the ability of blood to carry oxygen. These harmful substances can reach your brain, heart and other organs within 10 seconds of the first puff.

You CAN quit smoking. Call **Quitline** 131 848, talk to your doctor or pharmacist, or visit www.quitnow.info.au

4. Adverse Health Effects of Secondhand Smoke



DON'T LET CHILDREN BREATHE YOUR SMOKE
Health Authority Warning

Children exposed to passive smoking experience more serious illnesses such as pneumonia, middle ear infections and asthma attacks. Babies exposed to passive smoking are at a greater risk of SIDS (Sudden Infant Death Syndrome).

You CAN quit smoking. Call **Quitline** 131 848, talk to your doctor or pharmacist, or visit www.quitnow.info.au



WARNING
YOU'RE NOT THE ONLY ONE SMOKING THIS CIGARETTE

The smoke from a cigarette is not just inhaled by the smoker. It becomes second-hand smoke, which contains more than 50 cancer-causing agents.

Health Canada

One final consideration for execution of the corrective statements inserts is that the text should be bilingual (in English and Spanish). Many companies, including the Defendants, have developed marketing materials in Spanish, as the clear second language

in the U.S., or in English and Spanish. In addition, to be effective onsert text should not be simply translated word for word to Spanish, but should be appropriately translated to Spanish to clearly communicate the corrective facts.

2. Counter-Top and Header Displays

Many of the same considerations apply to the executions of the corrective statements for counter-top and header displays as for onserts. Graphic visuals should be used to enhance the comprehension of the corrective statements. In fact, graphic visuals may be even more important for the displays, since they will be reviewed very quickly and thus cannot effectively communicate more than a headline and a key fact. Visuals can re-enforce the facts and help viewers internalize them. Similarly, bilingual (Spanish and English) or Spanish only displays should be used in locations where the tobacco companies provide or distribute their marketing and promotional materials in both Spanish and English or exclusively in Spanish.

3. Television Ads

Considerations for the television ads include the importance of having a credible, authoritative announcer speak the text that should also be super-imposed on the TV screen. The audio and video should be in sync to ensure as clear communication as possible. See Warner-Lambert, 562 F.2d at 763 (approving requirement for television commercials containing corrective statement to “be presented simultaneously in both audio and visual portions”).³⁴ If it is not possible to clearly communicate the necessary corrective information in 15 seconds, then TV ads of sufficient length to communicate the correction should be required by the Court. The text should be black on a white

³⁴ See also Hoy MG and Andrews JC. Adherence of Primetime Televised Advertising Disclosures to the “Clear and Conspicuous” Standard: 1990 versus 2002. *Journal of Public Policy and Marketing*. Fall 2004.

screen, and should be large enough and on the screen long enough to be effectively read by those with a basic reading level since over 40% of the U.S. population reads at a basic level or below.³⁵

4. Websites

Considerations for the websites include the importance of having the corrective information (or a clear link that takes the viewer to it on another page of the site) prominently displayed on the home page of each Defendant's website. If the corrective information is on another page of the site, it must be clearly and prominently displayed there. The corrective statements text should be in English and appropriately translated Spanish, to aid Spanish-speaking consumers in understanding the facts. In addition, Defendants should not be allowed to undermine the corrective statements in any other part of their websites.

5. Newspapers

Exhibit A includes an example of a corrective statement full-page newspaper ad that takes into account the important considerations of newspaper advertising/communications. It takes into account the audience of this medium, which is the general public, as distinguished from the audience of smokers who will primarily see the onserts. For example, the headline should be a significantly larger font than the body copy in order to ensure that it catches the attention of the public, and the layout should include enough white space to make it inviting to read, rather than being cluttered with too much information or unnecessary visuals. See Warner-Lambert, 562 F.2d at 763 (approving of

³⁵ National Assessment of Adult Literacy, 2003. Accessed October 11, 2006 at <http://nces.ed.gov/NAAL/index.asp?file=KeyFindings/Demographics/Overall.asp&PageId=16#1>

requirements for corrective print ads to be displayed so that the corrective statement “can be readily noticed”).

III. THE COURT SHOULD ESTABLISH THE CRITERIA FOR THE DEVELOPMENT AND EXECUTION OF THE CORRECTIVE STATEMENTS.

In order for the statements to have the intended corrective effect, it is also important to look beyond the specific language used to how the language and any other visuals are displayed and the background against which it is displayed. By altering how the language is displayed, the background against which it is displayed and other factors, an advertiser can greatly influence whether an ad is effective. Therefore, it is appropriate and necessary for the Court to evaluate these aspects of the corrective statements here as well. *See Warner-Lambert*, 562 F.2d at 763 (approving of the FTC’s corrective statements requirements – e.g., print sizes, text separation requirements, audio and visual requirements – because they were “well calculated to assure that the disclosure will [] attract the notice of readers, viewers, and listeners, and will be plainly conveyed”).³⁶

Exhibit A, as mentioned, provides an illustration of how choices made about layout, font, text size, etc. can facilitate effective communication. Exhibit B illustrates how *other* choices could be made to undermine the intended effect, hindering the effectiveness of the corrective statements. For example, Exhibit A is direct and organized into readable components by topic, while Exhibit B is extremely text-heavy and does not organize the language into readable groups which would make it difficult

³⁶ *See also* In the Matter of Bristol-Myers Co., et al., 102 F.T.C. 21, 790 (F.T.C. 1983) (“To increase the chances for successful communication, the corrective message should employ persuasive communication techniques similar to those used to create the beliefs initially. . . . [T]he corrective message will be more successful if the other messages in the advertisements do not contradict, conflict, or obscure the corrective message in any way.” (citations omitted)).

for many people to understand or too time-consuming to keep their attention. Exhibit A uses a 2-part headline that clearly states the issue, that the Defendants have misled the public and that they are being required to make the corrective statements, followed by a summary statement about the specific misinformation and a brief statement with the corrective fact(s), and an endline that reconfirms that the Defendants are being ordered to make the statements. While the newspaper version, under the order, must address all five topics, brief representative statements will communicate much more effectively than would a litany of information. Exhibit B, by contrast, includes a headline that implies corporate goodwill rather than a mandate by the Court and a visual that distracts from the serious nature of the communications. These are just some of the many examples of choices that could be made by the Defendants to either hinder or enhance communication of the corrective statements. As noted earlier when Defendants have developed public health or public education campaigns, those campaigns have been proven ineffective.

Given the Court's finding that Defendants' ads and public communications have been misleading, and in order to ensure that the corrective statements have their intended corrective effect, the Court should determine not only the "exact wording of [the] corrective statements," (Order at 4) but also all other aspects of the corrective statements involving the content and presentation of the corrective statements.

The variables in production/execution of the corrective statements include, but are not limited to, the elements below, listed by medium/communications vehicle. As mentioned earlier, there are many, many elements that can either increase or decrease the likelihood that the information presented is effectively corrective.

- a. Onserts: Important executional variables for cigarette package onserts include the size, font, and color of the headline; the size, quality and content of graphic visuals; the placement of facts on the front cover versus inside a folded onsert; the ease with which consumers can access, unfold and review the onsert; the size of the onsert (unfolded and folded); the size, color and font of the text on the inside panel(s); color of background; and any other visual elements that can either inhibit or enhance clear communication.
- b. Counter and Header Displays: Important executional variables for in-store displays include the overall size, material, layout and configuration of the display boards; the size, font, and color of the headline; the size, quality and content of graphic visuals; the color of background; and any other visual elements that can either inhibit or enhance clear communication.
- c. Television Ads: Important executional variables for television ads include the size, color and font of the on-screen text; the background color; how much text is shown on-screen at a time; the length of time each set of text stays on the screen; the quality and volume of the announcer's voice; the rate at which he/she speaks; the length of the ad; and any other elements, visual or auditory, that can either inhibit or enhance clear communication. See Exhibit C for example of appropriately designed television ad.
- d. Websites: Important executional variables for websites include size, color and font of the on-screen text; the background color; how much text is on each page of the site; where the corrective statements are displayed on the site; and any other elements, visual or auditory, that can either inhibit or enhance clear communication.
- e. Newspapers: Important executional variables for full-page newspaper ads include size, color and font of the text; the relative sizes of the headline, body text and tagline; the background color; the layout; and any other visual elements that can either inhibit or enhance clear communication. As noted earlier, Exhibit B indicates how executional decisions can be made which hinder communication and overall effectiveness. Exhibit A, in contrast, illustrates choices made which enhance communication of the key information.

IV. THE COURT SHOULD ALSO ESTABLISH THE CRITERIA BY WHICH THE CORRECTIVE STATEMENTS ARE DEVELOPED AND DISPLAYED BY CONSULTING WITH EXPERTS AND REQUIRING APPROPRIATE MARKET TESTING.

As the foregoing discussion demonstrates, in order for the Court's corrective statements to be effective, the Public Health Intervenors urge that, at minimum, the Court's order should cover all aspects of the statements and how and where they are

presented. In order to maximize the likelihood that the corrective statements are as effective as Defendants' prior misstatements and to minimize the burden on the court, Public Health Intervenors also recommend that the Court retain an independent communications/ advertising firm to make recommendations about the content and execution of the Court ordered statements. By doing so, the court will further insure that the corrective statements are developed and executed with the same degree of expertise that Defendants have traditionally taken in their advertising efforts. Thus, since the prior misstatements were developed by communications and advertising experts, and were likely pre-tested for effectiveness, the Court should require that these corrective statements be developed and tested in the same manner.

Thus, Public Health Intervenors propose a procedure for developing and approving the many versions of the corrective statements in order to ensure consistent decision-making and the highest likelihood that the corrective statements will achieve their goal of correcting previous misinformation. This procedure would involve a Court-appointed independent expert firm, paid for by the Defendants, which would develop corrective statements that incorporate Court-approved text and directions regarding all other aspects of the corrective statements; and would test the various executions of the corrective statements before they are put into circulation to ensure clear communication and credibility. Key measures for pre-testing include communication of main message(s), engagingness, believability, and increases in knowledge on the key information points included in each execution. The Communications Firm(s) would retain the services of a professional research agency to conduct the testing.

Once the corrective statements are pre-tested, Public Health Intervenors recommend that the results be analyzed by the communications firm(s), the Court, and the parties, who can then provide comments and analysis. If the corrective statements are found to have shortcomings that inhibit clear and credible communication, they should then be revised to address the shortcomings before they are finally approved and circulated.

Obviously, it is imperative that the communications firm(s) selected do not have tobacco companies as clients (currently or in the recent past). Ideally, the communications firm(s) selected to develop and pre-test the corrective statements would have a record of developing and conducting effective tobacco health education campaigns. As examples, the U.S. advertising agencies with the most experience on tobacco health education campaigns are: Arnold Worldwide (Boston office); Crispin Porter Bogusky (Miami office); Ground Zero (Los Angeles office); Clarity Coverdale Fury (Minneapolis office). Any of these agencies would be well equipped to deliver effective corrective statements messaging in all of the media prescribed by the Court. While the tobacco companies may argue that having these agencies produce the corrective statements would increase the cost of production, the Defendants customarily work with top national or international advertising agencies whose ad development and production is as costly as that of the agencies listed above, if not more costly.

Finally, involving independent communications experts in the development and testing of the corrective statements will not only ensure that the corrective statements are effective, but will be the least burdensome for the Court because 1) the executional decisions about font size, color, layout etc. will be left to professionals, acting pursuant to

^{vii} NCI. Risks Associated with Smoking Cigarettes with Low Machine-Measured Yields of Tar and Nicotine. Smoking and Tobacco Control Monograph No. 13. Bethesda, MD: U.S. Department of Health and Human Services, National Institutes of Health, National Cancer Institute, NIH Pub. No. 02-5074, October 2001.

^{viii} Pankow, JF. Et al. Conversion of Nicotine in Tobacco Smoke to Its Volatile and Available Free-Base Form Through the Action of Gaseous Ammonia. Environ. Science & Technology 1997; Vol 31 No 8, 2428-2433.

^{ix} Wells, K. Technology Handbook. Legacy Tobacco Documents Library. Brown and Williamson. August 22, 1995. Access Date: June 4, 2003. Bates No. 505500002/0060.

^x NCI. Risks Associated with Smoking Cigarettes with Low Machine-Measured Yields of Tar and Nicotine. Smoking and Tobacco Control Monograph No. 13. Bethesda, MD: U.S. Department of Health and Human Services, National Institutes of Health, National Cancer Institute, NIH Pub. No. 02-5074, October 2001. See also Opinion at 219-222, 971, 1515, 1516.

^{xi} U.S. Department of Health and Human Services. The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General. Atlanta, GA: U.S. Department of Health and Human Services, Center for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2006.

^{xii} CDC. Annual Smoking-Attributable Mortality, Years of Potential Life Lost and Economic Costs—United States, 1997-2001. MMWR 2005; 54(25): 625-628.

^{xiii} The Court has made numerous factual findings substantiating that Defendants deliberately and continuously made these statements. See e.g. Op. at 234, 255-257, 319-320, 330-331.

^{xiv} CDC. Annual Smoking-Attributable Mortality, Years of Potential Life Lost and Economic Costs—United States, 1997-2001. MMWR 2005; 54(25): 625-628. See also Opinion at 221 and 1505.

^{xv} CDC. Annual Smoking-Attributable Mortality, Years of Potential Life Lost and Economic Costs—United States, 1997-2001. MMWR 2005; 54(25): 625-628. CDC. National Vital Statistics Reports Volume 52, Number 21. "Deaths: Injuries, 2001."

<http://www.cdc.gov/nchs/products/pubs/pubd/nvsr/52/52-23.htm> See also Opinion at 1505.

^{xvi} The Court has made numerous factual findings substantiating that Defendants deliberately and continuously made these statements. See e.g. Op. at 332-333, 447-448, 452, 459-461, 463, 514, 1359, 1364.

^{xvii} Fiore MC, Bailey WC, Cohen SJ, et al. Treating Tobacco Use and Dependence. Clinical Practice Guideline. Rockville, MD: U.S. Department of Public Health and Human Services. Public Health Service. June 2000. See also Opinion at 332 and 347.

^{xviii} CDC. Cigarette Smoking Among Adults- United States, 2000. MMWR 2002; 51(29): 642-645. See also Opinion at 347.

^{xix} Opinion at 653-654, 1512-1513.

^{xx} The Court has made numerous factual findings substantiating that Defendants deliberately and continuously made these statements. See e.g. Op. at 740-741, 828, 971.

^{xxi} NCI. Risks Associated with Smoking Cigarettes with Low Machine-Measured Yields of Tar and Nicotine. Smoking and Tobacco Control Monograph No. 13. Bethesda, MD: U.S. Department of Health and Human Services, National Institutes of Health, National Cancer Institute, NIH Pub. No. 02-5074, October 2001.

^{xxii} The Court has made numerous factual findings substantiating that Defendants deliberately and continuously made these statements. See e.g. Op. at 636-637, 654.

^{xxiii} Opinion at 653-654, 1512-1513.

^{xxiv} NCI. Risks Associated with Smoking Cigarettes with Low Machine-Measured Yields of Tar and Nicotine. Smoking and Tobacco Control Monograph No. 13. Bethesda, MD: U.S. Department of Health and Human Services, National Institutes of Health, National Cancer Institute, NIH Pub. No. 02-5074, October 2001.

^{xxv} Pankow, JF. Et al. Conversion of Nicotine in Tobacco Smoke to Its Volatile and Available Free-Base Form Through the Action of Gaseous Ammonia. Environ. Science & Technology 1997; Vol 31 No 8, 2428-2433.

^{xxvi} Wells, K. Technology Handbook. Legacy Tobacco Documents Library. Brown and Williamson. August 22, 1995. Access Date: June 4, 2003. Bates No. 505500002/0060.

^{xxvii} The Court has made numerous factual findings substantiating that Defendants deliberately and continuously made these statements. See e.g. Op. at. 1384 and 1407.

^{xxviii} NCI. Risks Associated with Smoking Cigarettes with Low Machine-Measured Yields of Tar and Nicotine. Smoking and Tobacco Control Monograph No. 13. Bethesda, MD: U.S. Department of Health and Human Services, National Institutes of Health, National Cancer Institute, NIH Pub. No. 02-5074, October 2001.

^{xxix} U.S. Department of Health and Human Services. The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General. Atlanta, GA: U.S. Department of Health and Human Services, Center for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2006.

^{xxx} CDC. Annual Smoking-Attributable Mortality, Years of Potential Life Lost and Economic Costs—United States, 1997-2001. MMWR 2005; 54(25): 625-628.

^{xxxi} The Court has made numerous factual findings substantiating that Defendants deliberately and continuously made these statements. See e.g. Op. at. 234, 255-257, 319-320, 330-331.

^{xxxii} CDC. Annual Smoking-Attributable Mortality, Years of Potential Life Lost and Economic Costs—United States, 1997-2001. MMWR 2005; 54(25): 625-628. See also Opinion at 1505.

^{xxxiii} U.S. Department of Health and Human Services. The Health Consequences of Smoking: A Report of the Surgeon General. Atlanta, GA: U.S. Department of Health and Human Services, Center for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2004.

^{xxxiv} CDC. Annual Smoking-Attributable Mortality, Years of Potential Life Lost and Economic Costs—United States, 1997-2001. MMWR 2005; 54(25): 625-628. CDC. National Vital Statistics Reports Volume 52, Number 21. "Deaths: Injuries, 2001."

<http://www.cdc.gov/nchs/products/pubs/pubd/nvsr/52/52-23.htm> See also Opinion at 1505.

^{xxxv} U.S. Department of Health and Human Services. The Health Consequences of Smoking: A Report of the Surgeon General. Atlanta, GA: U.S. Department of Health and Human Services, Center for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2004. p 873.

^{xxxvi} CDC. Cigarette Smoking Attributable Morbidity - United States, 2000. MMWR 2003; 52(35) 842-844.

^{xxxvii} The Court has made numerous factual findings substantiating that Defendants deliberately and continuously made these statements. See e.g. Op. at.332-333, 447-448, 452, 459-461, 463, 514, 1359, 1364.

^{xxxviii} Fiore MC, Bailey WC, Cohen SJ, et al. Treating Tobacco Use and Dependence. Clinical Practice Guideline. Rockville, MD: U.S. Department of Public Health and Human Services. Public Health Service. June 2000. See also Opinion at 332 and 347.

^{xxxix} CDC. Cigarette Smoking Among Adults- United States, 2000. MMWR 2002; 51(29): 642-645. See also Opinion at 347.

^{xl} Opinion at 653-654, 1512-1513.

^{xli} Fiore MC, Bailey WC, Cohen SJ, et al. Treating Tobacco Use and Dependence. Clinical Practice Guideline. Rockville, MD: U.S. Department of Public Health and Human Services. Public Health Service. June 2000. See also Opinion at 334-335.

^{xlii} The Court has made numerous factual findings substantiating that Defendants deliberately and continuously made these statements. See e.g. Op. at.740-741, 828, 971.

^{xliii} NCI. Risks Associated with Smoking Cigarettes with Low Machine-Measured Yields of Tar and Nicotine. Smoking and Tobacco Control Monograph No. 13. Bethesda, MD: U.S. Department of Health and Human Services, National Institutes of Health, National Cancer Institute, NIH Pub. No. 02-5074, October 2001.

^{xliv} NCI. Risks Associated with Smoking Cigarettes with Low Machine-Measured Yields of Tar and Nicotine. Smoking and Tobacco Control Monograph No. 13. Bethesda, MD: U.S. Department of Health and Human Services, National Institutes of Health, National Cancer Institute, NIH Pub. No. 02-5074, October 2001.

^{xlv} The Court has made numerous factual findings substantiating that Defendants deliberately and continuously made these statements. See e.g. Op. at. 636-637, 654.

^{xlvi} NCI. Risks Associated with Smoking Cigarettes with Low Machine-Measured Yields of Tar and Nicotine. Smoking and Tobacco Control Monograph No. 13. Bethesda, MD: U.S. Department of Health and Human Services, National Institutes of Health, National Cancer Institute, NIH Pub. No. 02-5074, October 2001.

^{xlvii} Opinion at 653-654, 1512-1513.

^{xlviii} Pankow, JF. Et al. Conversion of Nicotine in Tobacco Smoke to Its Volatile and Available Free-Base Form Through the Action of Gaseous Ammonia. Environ. Science & Technology 1997; Vol 31 No 8, 2428-2433.

^{xlix} Wells, K. Technology Handbook. Legacy Tobacco Documents Library. Brown and Williamson. August 22, 1995. Access Date: June 4, 2003. Bates No. 505500002/0060.

^l Fiore MC, Bailey WC, Cohen SJ, et al. Treating Tobacco Use and Dependence. Clinical Practice Guideline. Rockville, MD: U.S. Department of Public Health and Human Services. Public Health Service. June 2000. See also Opinion at 334-335.

^{li} The Court has made numerous factual findings substantiating that Defendants deliberately and continuously made these statements. See e.g. Op. at. 1384 and 1407.

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^{liii} U.S. Department of Health and Human Services. The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General. Atlanta, GA: U.S. Department of Health and Human Services, Center for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2006.

^{liv} NCI. Risks Associated with Smoking Cigarettes with Low Machine-Measured Yields of Tar and Nicotine. Smoking and Tobacco Control Monograph No. 13. Bethesda, MD: U.S. Department of Health and Human Services, National Institutes of Health, National Cancer Institute, NIH Pub. No. 02-5074, October 2001.

^{lv} U.S. Department of Health and Human Services. The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General. Atlanta, GA: U.S. Department of Health and Human Services, Center for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2006. See also Opinion at 1234.

^{lvi} CDC. Annual Smoking-Attributable Mortality, Years of Potential Life Lost and Economic Costs—United States, 1997-2001. MMWR 2005; 54(25): 625-628.

^{lvii} U.S. Department of Health and Human Services. The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General. Atlanta, GA: U.S. Department of Health and Human Services, Center for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2006.

^{lviii} U.S. Department of Health and Human Services. The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General. Atlanta, GA: U.S. Department of Health and Human Services, Center for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2006.

^{lix} The Court has made numerous factual findings substantiating that Defendants deliberately and continuously made these statements. See e.g. Op. at 234, 255-257, 319-320, 330-331.

^{lx} CDC. Annual Smoking-Attributable Mortality, Years of Potential Life Lost and Economic Costs—United States, 1997-2001. MMWR 2005; 54(25): 625-628. See also Opinion at 221 and 1505.

^{lxi} CDC. Annual Smoking-Attributable Mortality, Years of Potential Life Lost and Economic Costs—United States, 1997-2001. MMWR 2005; 54(25): 625-628. CDC. National Vital Statistics Reports Volume 52, Number 21. "Deaths: Injuries, 2001."

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^{lxiii} Fiore MC, Bailey WC, Cohen SJ, et al. Treating Tobacco Use and Dependence. Clinical Practice Guideline. Rockville, MD: U.S. Department of Public Health and Human Services. Public Health Service. June 2000. See also Opinion at 332 and 347.

^{lxiv} CDC. Cigarette Smoking Among Adults- United States, 2000. MMWR 2002; 51(29): 642-645. See also Opinion at 347.

^{lxv} The Court has made numerous factual findings substantiating that Defendants deliberately and continuously made these statements. See e.g. Op. at 740-741, 828, 971.

^{lxvi} NCI. Risks Associated with Smoking Cigarettes with Low Machine-Measured Yields of Tar and Nicotine. Smoking and Tobacco Control Monograph No. 13. Bethesda, MD: U.S. Department of Health and Human Services, National Institutes of Health, National Cancer Institute, NIH Pub. No. 02-5074, October 2001. See also Opinion at 219-222.

^{lxvii} The Court has made numerous factual findings substantiating that Defendants deliberately and continuously made these statements. See e.g. Op. at 636-637, 654.

^{lxviii} Opinion at 514, 1512-1513.

^{lxix} NCI. Risks Associated with Smoking Cigarettes with Low Machine-Measured Yields of Tar and Nicotine. Smoking and Tobacco Control Monograph No. 13. Bethesda, MD: U.S. Department of Health and Human Services, National Institutes of Health, National Cancer Institute, NIH Pub. No. 02-5074, October 2001.

^{lxx} Pankow, JF. et al. Conversion of Nicotine in Tobacco Smoke to Its Volatile and Available Free-Base Form Through the Action of Gaseous Ammonia. Environ. Science & Technology 1997; Vol. 31 No. 8, 2428-2433. See also Opinion at 514, 612, 653, 1512-1513.

^{lxxi} Wells, K. Technology Handbook. Legacy Tobacco Documents Library. Brown and Williamson. August 22, 1995. Access Date: June 4, 2003. Bates No. 505500002/0060.

^{lxxii} The Court has made numerous factual findings substantiating that Defendants deliberately and continuously made these statements. See e.g. Op. at 1384 and 1407.

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^{lxxv} CDC. Annual Smoking-Attributable Mortality, Years of Potential Life Lost and Economic Costs—United States, 1997-2001. MMWR 2005; 54(25): 625-628.

^{lxxvi} The Court has made numerous factual findings substantiating that Defendants deliberately and continuously made these statements. See e.g. Op. at 234, 255-257, 319-320, 330-331.

^{lxxvii} CDC. Annual Smoking-Attributable Mortality, Years of Potential Life Lost and Economic Costs—United States, 1997-2001. MMWR 2005; 54(25): 625-628

^{lxxviii} U.S. Department of Health and Human Services. The Health Consequences of Smoking: A Report of the Surgeon General. Atlanta, GA: U.S. Department of Health and Human Services, Center for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2004.

^{lxxix} CDC. Annual Smoking-Attributable Mortality, Years of Potential Life Lost and Economic Costs—United States, 1997-2001. MMWR 2005; 54(25): 625-628. CDC. National Vital Statistics Reports Volume 52, Number 21. "Deaths: Injuries, 2001."

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