

**NLWJC - Kagan**

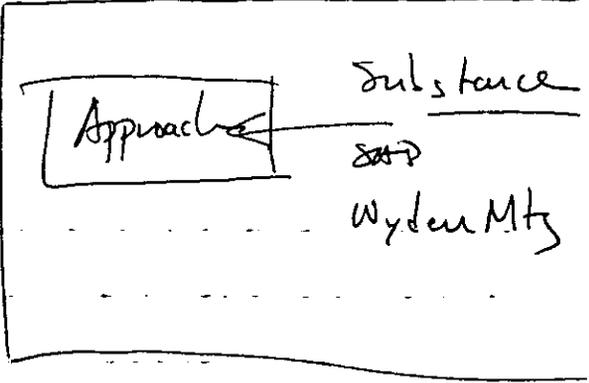
**DPC - Box 048 - Folder-003**

**Tobacco-Settlement: Negotiations**

ToS - ser - medicare suits

and

ToS - ser - negotiation



ser

Wyden Mtz

Doesn't trust

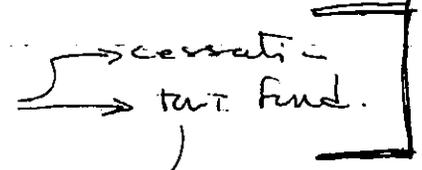
Long way toward goal - doesn't want to be put off track



Panish - much more positive has people researching



- 2-step?  
HCPA



↳ w/ punitive of cost??

Have any right to  
 come into state  
 Medicaid negotiation??  
 Under Medicaid laws??



EK

## SETTLEMENT AGREEMENT

*[NOTE: This draft covers those portions of a possible global settlement which deal with the Castano addiction/dependency claims, for which the remedies will be court approved smoking cessation programs, cessation research and medical research]*

THIS SETTLEMENT AGREEMENT is made as of this \_\_\_ day of September, 1998 by and among defendants Philip Morris Incorporated, R.J. Reynolds Tobacco Company, Lorillard Tobacco Company, Brown & Williamson Tobacco Corp. on its own behalf and as successor to The American Tobacco Company (collectively, the "Settling Defendants") and the Class, as defined in paragraph 1 of this Settlement Agreement.

*[NOTE: The following recitals could be severed and included with others as part of a global Settlement Agreement.]*

WHEREAS, the Class has alleged that the Settling Defendants have acted improperly in manipulating the nicotine levels in their products so as to enhance their addictive qualities, in concealing the addictive nature of nicotine, and in various other ways;

WHEREAS, the Settling Defendants deny each and every one of the Class allegations of improper conduct and have asserted a number of defenses to the Class claims;

WHEREAS, the Class and the Settling Defendants agree that this Settlement Agreement shall not be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing by any Settling Defendant or of the truth of any of the claims or allegations alleged in any litigation between the Settling Defendants and the Class;

WHEREAS, arm's length settlement negotiations have taken place between counsel for the Class ("Class Counsel")

and the Settling Defendants, and this Settlement Agreement, including its exhibits, which embodies all of the terms and conditions of the settlement between the Settling Defendants and the Class plaintiffs, both individually and on behalf of the Class, has been reached, subject to final Court approval;

WHEREAS, Class Counsel have concluded, after due investigation for more than four years and after carefully considering the relevant circumstances of the Settling Defendants, the facts relating to the claims intended to be resolved by the Settlement Agreement, and the applicable law, that it would be in the best interests of the Class to enter into this Settlement Agreement in order to avoid the uncertainties of litigation, particularly complex multi-phase litigation, to revive claims that might otherwise be barred under the applicable statute of limitations, and to assure that the benefits reflected herein are obtained for the Class, and further, that Class Counsel and the Class Representatives consider the settlement set forth herein to be fair, reasonable, adequate and in the best interests of the Class;

WHEREAS, the Settling Defendants have concluded, despite their belief that they are not liable for the claims and have good defenses thereto, that they will enter into this Settlement Agreement solely to avoid the further expense, inconvenience and burden of this protracted and complex litigation, and the distraction and diversion of their personnel and resources, and thereby to put to rest this controversy, and to avoid the risks inherent in uncertain complex litigation;

NOW THEREFORE, it is agreed by and among the undersigned, on behalf of the Settling Defendants and the Class, that the claims to be resolved by this Settlement Agreement be settled, compromised and dismissed on the merits and with prejudice as to the Settling Defendants (but see paragraph 12 with regard to individual Retained Claims for damages), subject to the approval of the Court, on the following terms and conditions:

*[NOTE: The following are substantive provisions intended to settle the Castano addiction/dependency claims.]*

1. **The Class.** This Settlement shall be applicable to all Settling Defendants and to all members of the Class defined as follows (the "Class"):

All residents of the United States, the Commonwealth of Puerto Rico or any possession or territory of the United States who are or may become smokers of cigarettes manufactured by the defendants, who desire to participate in a program designed to assist them in the cessation of smoking and/or to obtain the benefit of research on any dangers which may be inherent in the habit of cigarette smoking.

2. **The Class Action.** Within 10 business days of the execution of this Settlement Agreement by all parties,

Class Counsel shall file on behalf of the Class a class action pursuant to Rule 23(b)(2), FRCP, in the United States District Court for the \_\_\_\_\_ District of \_\_\_\_\_, to secure approval for this Settlement Agreement.

3. **Preliminary Approval of the Settlement Agreement.** Counsel for the undersigned agree to recommend approval of this Settlement Agreement by the Court and to the members of the Class and to undertake their best efforts, including all steps and efforts contemplated by this Settlement Agreement and any other steps and efforts that may be necessary or appropriate, by order of the Court or otherwise, to carry out the terms of this Settlement Agreement.

4. **Submission to the Court.** Class Plaintiffs and Settling Defendants shall promptly submit to the Court a joint motion for preliminary approval of the Settlement and the draft of final judgment contemplated by this Settlement Agreement embodying the settlement, and for a stay of all proceedings in the Class Action against all Defendants, until the approval of

this Settlement has been finally determined, which motion shall include: 1) the proposed draft form of order and final judgment attached hereto as Exhibit A; and 2) the proposed form of order preliminarily approving this Settlement Agreement, attached hereto as Exhibit B. Upon the filing of said motion, Class Plaintiffs and Settling Defendants also shall file joint motions in each of the pending Castano class actions as identified on Exhibit C hereto to stay proceedings therein pending the Court's consideration of this Settlement Agreement.

**5. Notice.**

(a) Upon preliminary approval by the Court of the Settlement, Class Counsel shall, in accordance with paragraph 5(b) hereof, provide Class members with notice of the settlement as approved by the Court, printed on each pack of cigarettes, carton of cigarettes and point of sale advertising material manufactured, sold or provided by the Settling Defendants. Notice shall also be given by one-time publication

in the national editions of *THE WALL STREET JOURNAL* and *USA TODAY*, and in the Internet's World Wide Web. Plaintiffs and the Settling Defendants shall take all necessary steps to insure that such notice is provided as soon as reasonably possible. The Settling Defendants agree promptly to pay for all costs of such notice. Such amounts shall not be refundable to the Settling Defendants in the event the settlement is not approved, or otherwise fails in any way to become final. Both the individual and published forms of notice to the Class shall be subject to the prior approval of the Settling Defendants (which approval shall not be unreasonably withheld).

(b) The parties contemplate that this Settlement Agreement shall be presented to the Court for preliminary approval without delay. The proposed forms of publication Notice to the Class shall be presented to the Court for approval at the earliest available date and shall be published within twenty (20) days after Court approval of said Notices. The printed notices on cigarette packages, cartons and point of sale

sale materials shall be presented to the Court for approval at the earliest possible date and shall thereafter be printed and distributed in accordance with the Court's orders.

6. **Final Judgment.** If the Court approves this Settlement Agreement, then the parties hereto shall jointly seek entry of an order and final judgment, the principal terms of which shall be those contained in the draft form attached hereto as Exhibit A:

(a) as to the Class Action, approving finally this settlement and its terms pursuant to Rule 23(e), FRCP, and directing its implementation pursuant to its terms;

(b) directing that the Class Action be dismissed with prejudice, that individual Retained Claims be reserved to Class members as provided in paragraph 12, and, except as provided for herein, without costs;

(c) reserving exclusive jurisdiction to the Court over the settlement and this Settlement Agreement, including the administration and consummation of this settlement; and

(d) specifying that any applicable statute of limitations or repose, prescriptive provision or law of similar application will begin to run anew on the day after final approval of the Settlement Agreement defined in paragraph 7 hereof.

7. **Final Approval.** This Settlement Agreement shall become final ("final approval") upon the occurrence of all of the following three events:

(a) it is approved in all respects by the Court as required by Rule 23(e), FRCP;

(b) entry, as provided for in paragraph 6 herein, and in a form substantially similar to Exhibit A, of the Final Judgment and Order Approving Settlement; and

(c) the time for appeal or to seek permission to appeal from the Court's approval of this Settlement Agreement as described in (a) hereof and entry of a final judgment as described in (b) hereof has expired or, if appealed, approval of this Settlement Agreement and the final judgment have been affirmed in their entirety by the court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review.

8. Injunctive and Declaratory Relief. Subject to the provisions hereof, and in full, complete and final settlement of the Class Action, the Class Plaintiffs and Settling Defendants agree to entry of a final judgment granting injunctive and declaratory relief requiring the Settling Defendants to establish smoking cessation programs, cessation research programs and public health research programs as provided in paragraphs 9 and 10, with the advice of representatives of the public health community identified on Exhibit D, and to pay, severally and not jointly, the sum of \$ \_\_\_ billion (the "Ancillary Settlement Fund") in accordance

with paragraph 10 into a Court-administered trust fund ("Foundations").

9. The Foundations. The Ancillary Settlement Fund shall be used solely to establish one or more Foundations whose purposes will be:

(a) to develop smoking cessation programs and to approve and distribute monies to state agencies that provide satisfactory evidence that they have established appropriate smoking cessation programs and wish to receive funds from the Foundation as provided herein to implement and operate said programs;

(b) to support and fund smoking cessation research programs;

(c) to support and fund public health research programs in connection with smoking and tobacco-related diseases and conditions.

The Foundations shall be managed and directed by Boards of Trustees appointed by the Court, and shall be governed in accordance with trust instruments, all subject to approval by the Court.

10. **Funding.**

(a) (i) In order to implement and comply with paragraphs 8 and 9, Settling Defendants shall make payments to the Foundations in accordance with the following table:

Year	Public Health Research Foundation	Castano Smoking Cessation Foundation	Castano Cessation Research Foundation
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			

15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			
Each Year Thereafter			

Settling Defendants shall make the first Annual Payment to the Foundations on the later of: (a) 365 days after this Settlement Agreement is executed; or (b) 30 days after obtaining final approval.

Subsequent Annual Payments (subject to the adjustments discussed hereinbelow) shall be made to the Foundations annually on the anniversary of the initial payment.

(ii) **Definitions.** For purposes of this paragraph

(I) the term "Actual Volume" means that number of units of tobacco products sold domestically by all Settling Defendants in the year involved as reported by the Settling Defendants to the Secretary of the Treasury; and

(II) the term "Base Volume" means the number of units of tobacco products sold domestically by all Settling Defendants in 1997.

(b) **Adjustments.**

(1) **In General.** The aggregate sum of the Annual Payments made by all Settling Defendants for each year shall be adjusted in accordance with the formula described in subparagraph (2) below. The Court shall also ensure that each Settling Defendant makes its Annual Payment based on its relative domestic volume of sales of units of tobacco products for the year immediately preceding that for which the payment is due.

(2) **Formula.**

(A) **Inflation Adjustment.** With respect to a year, the Annual Payment for such year shall be increased for such year by the greater of three percent or the percentage increase in the Consumer Price Index for the period beginning in the first full year beginning after the date of Final Approval and ending in the year for which the determination is being made.

(B) **Volume Adjustment.**

(i) **Determination.** With respect to a year -

(I) if the Actual Volume is greater than the Base Volume, the amount of the Annual Payments for such year shall be increased by an amount equal to the amount determined by multiplying such base amount by the ratio of the actual volume to the base volume; or

(II) if the Actual Volume is less than the Base Volume, the Annual Payments for such year shall be reduced by an amount equal to the amount determined by multiplying such base amount by the greater of --

(aa) the ratio of the Actual Volume to the Base Volume; or

(bb) the ratio of the portion of the Actual Volume attributable to sales to individuals 18 years of age or older to the portion of the Base Volume attributable to sales to individuals 18 years of age or older.

(ii) **Required Reduction**. If a reduction in the applicable base amount is required under clause (II), but a Settling Defendant's aggregate net operating profits from domestic sales of tobacco products for the year for which the annual payment is being calculated, as reported to the Securities and Exchange Commission, is greater than such Defendant's aggregate net operating profits from domestic

sales of tobacco products in 1997 (as increased for inflation) as reported to the Securities and Exchange Commission, such reduction shall be reduced (but not below zero) by an amount equal to 25 percent of such increase in such profits.

(iii) **Non-reporting Settling Defendant.** In the case of a participating Settling Defendant which does not report profits to the Securities and Exchange Commission, the profit figures referred to in this subparagraph shall be those reflected in that Defendant's audited financial statements for the applicable year. The determination of the Defendant's aggregate net operating profits from domestic sales of tobacco products shall be derived using the same methodology as was employed in deriving such defendants' aggregate net operating profits from domestic sales of tobacco products in 1997, as reported to the Securities and Exchange Commission.

11. **Reimbursement and Compensation of Class Counsel.** After an agreement was reached among the parties as to all principal terms and conditions of this Settlement

Agreement, the parties first entered into discussions regarding attorneys fees for Class Counsel. The Settling Defendants agreed to reimburse Class Counsel for out of pocket expenditures and to be responsible for fees incurred and earned in connection with Class Counsel's handling of this Cause and of the Castano class actions, and that neither costs nor attorneys fees are to be assessed against the Settlement Fund. Class Counsel intend to seek approval from the Court of attorneys fees in the amount of \_\_\_\_\_ and Settling Defendants agree not to object to such request.

12. **Retained Claims.** Notwithstanding paragraph 13 below:

(a) Individual members of the Class and their survivors shall retain the right to bring individual claims for damages against the Settling Defendants based upon any theory of liability other than for addiction/dependency, which is defined as a cause of action which claims that the Settling Defendants caused them to become addicted to or dependent

on tobacco products, and which seeks a cessation program or other public health program that is to be available to members of the general public and is designed to reduce or eliminate the users' addiction to, or dependency on, tobacco products, and as used herein is brought by those who claim the need for nicotine reduction assistance (the "Retained Claims"). Neither addiction nor dependency claims include claims related to or involving manifestation of illness or tobacco-related diseases.

(b) With respect to any action asserting Retained Claims, the Settling Defendants agree that venue shall lie wherever venue is proper.

(c) With respect to each and every action brought by any individual class member or survivor based only on any Retained Claims, the Settling Defendants agree to accept service of process by certified mail addressed to the Settling Defendants. The Settling Defendants further agree that with respect to such actions, said Defendants shall not contest personal jurisdiction or service of process and shall not

challenge joinder of any Settling Defendant. The Settling Defendants agree not to assert in any such actions by way of motion, as a defense or otherwise, any claim or objections that they are not subject to the jurisdiction of the court or that joinder of any Settling Defendant is improper.

13. **Limited Release of Claims.** In addition to the effect of any final judgment entered in accordance with this Settlement Agreement, and except as expressly provided in paragraph 12 above regarding Retained Claims, upon this Settlement Agreement becoming final, the Settling Defendants and each of their present and former parents, subsidiaries, divisions, affiliates, stockholders, officers, directors, employees, insurers, suppliers, distributors, agents, attorneys and any of their legal representatives (and the predecessors, heirs, executors, administrators, successors and assigns of each of the foregoing), (the "Released Parties"), shall be released and forever discharged from any all manner of claims, demands, actions, suits, causes of action, whether class, individual, or otherwise in nature, damages whenever

incurred, liabilities of any nature whatsoever, including costs, expenses, penalties, punitive and exemplary damages, and attorneys' fees, known or unknown, suspected or unsuspected, in law or equity, that any member or members of the Class (including any of their past, present or future agents, employees, legal representatives, trustees, parents, spouses, children, associates, affiliates, partners, heirs, executors, administrators, successors and assigns), whether directly, representatively, derivatively or in any other capacity, ever had, now has or hereafter can, shall or may have. By this Settlement Agreement, the members of the Class intend to settle with and release only the Released Parties as set forth herein. Notwithstanding anything to the contrary, Class Representatives and Class Members, and their survivors, retain claims for damages to the extent set forth in paragraph 12 above regarding Retained Claims.

14. **Failure to Approve.** If the Court fails to approve this Settlement Agreement or any part hereof, or if such approval is modified or set aside on appeal, or if the

Court does not enter the final judgment as provided for in paragraph 6, or if the Court enters the final judgment and appellate review is sought, and on such review, such final judgment is not affirmed, then this Settlement Agreement shall be canceled and terminated, and shall become null and void, and the parties shall be restored to their original positions, unless those parties adversely affected by any modification in the Settlement Agreement or Final Judgment shall decide, in their sole discretion, to remain parties to the Settlement Agreement as modified. However, if the status quo cannot be restored because of intervening legislation at any stage of the approval process or thereafter, the parties hereto are afforded full consideration of the benefits of this Settlement Agreement.

15. **Reservation of Rights.** In the event that the Settlement Agreement shall be of no force or effect and, in any event, the parties hereto agree that this Settlement Agreement, including its exhibits, whether or not it shall become final, and any and all negotiations, documents and discussions associated with it shall be without prejudice to the rights of any party,

shall not be deemed or construed to be an admission or evidence of any violation of any statute or law of any liability or wrongdoing by any Settling Defendant or of the truth of any of the claims or allegations contained in any pleading, and evidence thereof shall not be discoverable or used directly or indirectly, in any way, whether in the Class Action or in any other action or proceeding, including any action involving Retained Claims. The parties expressly reserve all of their rights if the settlement does not become final in accordance with the terms of this Settlement Agreement.

16. Successors and Assigns. This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto. Without limiting the generality of the foregoing, each and every covenant and agreement herein by the Class Representatives and their counsel shall be binding upon all members of the Class.

17. Entire Agreement. This Settlement Agreement contains an entire, complete, and integrated statement of each and every term and provision agreed to by and among the parties; it is not subject to any condition not provided for herein. This Settlement Agreement shall not be modified in any respect except by a writing executed by all the parties hereto.

18. Interpretation of Agreement.

(a) Any inconsistency between this Settlement Agreement and the exhibits attached hereto shall be resolved in favor of this Settlement Agreement.

(b) None of the parties hereto shall be considered to be the drafter of this Settlement Agreement or any provision hereof for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

19. Governing Law. All terms of this Settlement Agreement and the exhibits hereto shall be governed by and interpreted according to the substantive laws of the State of \_\_\_\_\_ without regard to its choice of law or conflict of laws principles.

20. Jurisdiction of Court. The Settling Defendants and each member of the Class hereby irrevocably submit to the exclusive jurisdiction of the Court, for any suit, action, proceeding or dispute relating to the applicability of this Settlement Agreement and Exhibits hereto. In the event of a dispute arising out of the Settlement Agreement, the court shall award attorneys fees and costs to the prevailing party. Solely for purposes of such suit, action or proceeding, to the fullest extent that they may effectively do so under applicable law, the parties hereto irrevocably waive and agree not to assert, by way of motion, as a defense or otherwise, any claim or objection that they are not subject to the jurisdiction of this Court, or that this Court is, in any way, an improper venue or an inconvenient forum.

21. **Authority.** The undersigned counsel for the parties to this Settlement Agreement covenant and represent that they are fully authorized to enter into and to execute this Settlement Agreement.

22. **Execution.** This Settlement Agreement may be executed in counterparts. Facsimile signatures shall be considered valid signatures as of the date hereof, although the original signature pages shall thereafter be appended to this Settlement Agreement.

*[NOTES: There should be a severance clause providing that in the event the cessation portions of the settlement are found to be void, they will not affect the remaining parts of the settlement, and vice versa.]*



WHEREAS, the Plaintiff commenced this action in September of 1998 asserting various claims for monetary and injunctive relief against certain tobacco manufacturers and others as Defendants;

WHEREAS, Defendants deny each and every one of the Plaintiff's allegations of unlawful and/or wrongful conduct and have asserted a number of defenses to the Plaintiff's claims, all of which defenses have been contested by the Plaintiff;

WHEREAS, the Food and Drug Administration ("FDA") and other public health authorities view the use of tobacco products by our nation's children as a "pediatric disease" of epic and worsening proportions that results in new generations of tobacco-dependent children and adults;

WHEREAS, the parties to this Master Settlement Agreement are committed to addressing in a responsible manner the public health problems raised by the use of tobacco products, particularly by persons under legal age;

WHEREAS, there is a consensus within the scientific and medical communities that tobacco products are inherently dangerous and cause cancer, heart disease and other serious adverse health effects;

WHEREAS, the FDA, the Federal Trade Commission and other public health authorities, have concluded that tobacco advertising and marketing contribute significantly to the use of tobacco products by adolescents, and that comprehensive restrictions on the sale, promotion and distribution of tobacco products are needed in order to reduce tobacco consumption by adolescents;

WHEREAS, the defendants have agreed to enter into this agreement in order to achieve a resolution in the public interest, notwithstanding the fact that the agreement includes certain

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provisions with which they do not necessarily agree but which they are willing to accept in the interests of reaching an overall resolution of the important issues facing the industry and the nation in the absence of comprehensive federal legislation addressing those issues;

WHEREAS, the parties hereto wish to avoid the further expense, delay, inconvenience, burden and uncertainty of protracted litigation of this matter and have agreed to settle this litigation pursuant to the terms set forth in this Master Settlement Agreement and the Consent Decree and Final Judgment executed in conjunction herewith; and

WHEREAS, the parties have further agreed jointly to petition the Court for approval of the Consent Judgment and Final Decree on the grounds that the unique position occupied by tobacco in the history and economy of the United States, the magnitude of the actual and potential tobacco-related litigation, the advisability of avoiding the cost, expense, uncertainty, and inconsistency associated with such protracted litigation, the need to limit the sale, distribution, marketing, and advertising of tobacco products to persons of legal age, and the need to better educate the public (especially young people) concerning the health risks of using tobacco products make it in the public interest for the parties to resolve their differences and to settle this cause;

NOW, THEREFORE, BE IT KNOWN THAT, in consideration of the payments to be made by the Settling Defendants, the dismissal and release of claims by the Plaintiff and such other consideration as described herein, the sufficiency of which is acknowledged, the Plaintiff, acting by and through its authorized agents, and the Defendants, acting by and through their authorized agents, memorialize and agree as follows:

1. Conditions Precedent, Goals and Purposes.

A. Conditions Precedent-- No party to this Master Settlement Agreement shall incur any obligations or liabilities with respect thereto, nor enjoy any rights or benefits therefrom, unless and until the Congress of the United States has enacted, and the President of the United States has signed into law, a statute that imposes financial requirements upon all non-participating tobacco manufacturers that are at least equivalent to the requirements imposed upon the Participating Tobacco Manufacturers by paragraphs --- through --- of this Master Settlement Agreement.

B. Goals- It is a goal of this MSA to--

(1) decrease youth smoking and reduce the marketing of tobacco products to young Americans;

(2) decrease tobacco use by all Americans by encouraging public education and smoking cessation programs and to decrease the exposure of individuals to environmental (second-hand) smoke;

(3) enhance biomedical research efforts into diseases associated with tobacco use;

(4) advance our knowledge about the health effects of nicotine and tobacco on the human body;

(5) provide transition assistance to tobacco farmers and create incentives to reduce the production and distribution of tobacco products;

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- (6) return to the Participating States funds that they have expended with respect to tobacco-related health care costs and other costs related to tobacco;
- (7) acknowledge the authority of the Food and Drug Administration with respect to the types of tobacco products that may be lawfully sold;
- (8) encourage the reform of tobacco litigation practices to promote efficiency in the courts, to bring finality to current litigation and provide greater predictability in future individual cases; and
- (9) encourage the wise investment of increased tobacco revenues in important public health priorities, such as smoking cessation, public education, counter-advertising.

C. Purposes- It is the purpose of this MSA to--

- (1) provide for the funding by the tobacco industry of an aggressive Federal and state enforcement programs relating to tobacco advertising and distribution, including support for the establishment of a State-administered retail licensing system to prevent minors from obtaining tobacco products;
- (2) provide structure for the Settling Defendants' and Participating Manufacturers' agreements to be subject to financial penalties in the event that underage tobacco usage does not decline materially over the next 10 years;
- (3) promote and encourage the establishment of national standards to control the manufacturing of tobacco products and the ingredients used in such products;

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- (4) promote and support the provision of certain regulatory powers to the Secretary of Health and Human Services to encourage the development and marketing by the tobacco industry of less hazardous tobacco products, including the power to regulate the level of nicotine in such products;
- (5) provide structure for the Settling Defendants' and Participating Manufacturers' agreements to require the manufacturers of tobacco products to disclose all present and future non-public internal laboratory research regarding tobacco products;
- (6) promote and encourage the establishing of a minimum Federal standard to limit smoking in public places, including the halls of Congress;
- (7) provide for the establishment of a National Tobacco Settlement Trust Fund to be funded by the tobacco industry and used in accordance with this Master Settlement Agreement;
- (8) provide for the establishment of a national education-oriented counter advertising and tobacco use prevention campaign to be funded through the National Tobacco Settlement Trust Fund;
- (9) provide annual payments to States to fund tobacco-related health benefits programs;
- (10) settle the present lawsuits and encourage and facilitate the settlement of other tobacco-related State governmental *parens patriae* actions as to which a final

judgment or final settlement has not been reached as of the effective date of this Master Settlement Agreement; and

(11) settle any controversies between the states and the federal Health Care Finance Administration concerning the status of the payments to the states to be made under this MSA.

2. National Goals for the Reduction in Underage Tobacco Use.

(A) IN GENERAL- With respect to the average annual incidence of the daily use of tobacco products by individuals who are under 18 years of age, it shall be the national goals of the United States, the states, and the Settling Defendants and Participating Manufacturers that such use is to be reduced as follows:

(1) CIGARETTES- With respect to cigarettes--

(a) in the fifth and sixth calendar years after the date of execution of this Master Settlement Agreement the percentage decrease in the use of cigarette products shall be at least 30 percent;

(b) in the seventh, eighth and ninth calendar years after the date of execution of this Master Settlement Agreement the percentage decrease in the use of cigarette products shall be at least 50 percent; and

(c) in the tenth and subsequent calendar years after the date of execution of this Master Settlement Agreement the percentage decrease in the use of cigarette products shall be at least 60 percent.

(2) Smokeless Tobacco Products-- With respect to smokeless tobacco products--

(a) in the fifth and sixth calendar years after the date of execution of this Master Settlement Agreement the percentage decrease in the use of smokeless tobacco products shall be at least 25 percent;

(b) in the seventh, eighth and ninth calendar years after the date of execution of this Master Settlement Agreement the percentage decrease in the use of smokeless tobacco products shall be at least 35 percent; and

(c) in the tenth and subsequent calendar years after the date of execution of this Master Settlement Agreement the percentage decrease in the use of smokeless tobacco products shall be at least 45 percent.

3. Determinations. Determinations as to whether the national goals described in paragraph 2. have been met shall be made in accordance with the provisions of paragraphs 30 through 33.

**RECITALS**

4. Jurisdiction. The Plaintiff and the Defendants acknowledge that this Court has jurisdiction over the subject matter of this action and over each of the parties to this Master Settlement Agreement, and further acknowledge that the action was filed in the appropriate venue. Jurisdiction is retained by the Court to enable any party to this Master Settlement Agreement to apply to the Court at any time for further orders and directions as may be necessary and appropriate to implement or enforce this Master Settlement Agreement, and the Parties agree to present any disputes under this Master Settlement Agreement to this Court.

5. Applicability. No portion of this Master Settlement Agreement shall provide any rights to, or be enforceable by, any person or entity that is not a party hereto. Additionally, none of the rights granted or obligations assumed under this Master Settlement Agreement may be assigned or otherwise conveyed without the express prior written consent of all the parties hereto. This Master Settlement Agreement shall apply to and be binding upon those who are or become party to it, as follows:

A. Settling Defendants. This Master Settlement Agreement applies to and shall be binding upon all Settling Defendants and their successors and assigns in the manner expressly provided for herein and shall inure to their benefit and to that of their respective directors, officers, employees, attorneys, representatives, insurers, suppliers, distributors and agents, and to that of any of their present or former parents, subsidiaries, affiliates, divisions or other organizational units of any kind of Settling Defendants, any executors, trustees, and

administrators, and to all other persons or entities acting directly or indirectly, in concert or participation with any of them.

B. Participating Tobacco Manufacturers. This Master Settlement Agreement applies to and shall be binding upon all Participating Tobacco Manufacturers and their successors and assigns in the manner expressly provided for herein and shall inure to their benefit and to that of their respective directors, officers, employees, attorneys, representatives, insurers, suppliers, distributors and agents, and to that of any of their present or former parents, subsidiaries, affiliates, divisions or other organizational units of any kind of Participating Tobacco Manufacturers, any executors, trustees, and administrators, and to all other persons or entities acting directly or indirectly, in concert or participation with any of them.

C. Plaintiff. This Master Settlement Agreement applies to and shall be binding upon the Plaintiff and its successors and assigns in the manner expressly provided for herein and shall inure to its benefit and to that of its administrators, representatives, employees, officers, agents and legal representatives, agencies, departments, commissions, divisions, subdivisions, public entities, public corporations, instrumentalities and educational institutions over which the United States has control, and their predecessors, successors and assigns; it is recognized, however, that for purposes of this Master Settlement Agreement, each State is specifically excluded as a subdivision, instrumentality division, subdivision, or public entity of the Plaintiff, and that in order to be bound by the terms of this Master Settlement Agreement and to gain the benefits of its provisions, a State would have to take the appropriate affirmative steps as provided for herein to become a Participating State.

D. Participating State. This Master Settlement Agreement applies to and shall be binding upon any Participating State and its successors and assigns in the manner expressly provided for herein and shall inure to its benefit and to that of its administrators, representatives, employees, officers, agents and legal representatives, agencies, departments, commissions, divisions, subdivisions, public entities, public corporations, instrumentalities and educational institutions over which the Participating State has control, and their predecessors, successors and assigns.

E. Prior Settling State. With respect to any State that has entered into a separate settlement agreement (“Prior Settlement Agreement”) with some or all of the Settling Defendants or Participating Tobacco Manufacturers prior to the effective date of this Master Settlement Agreement, the terms and conditions of any such Prior Settlement Agreement remain fully enforceable except to the extent that the agreement provides that the terms of this Master Settlement Agreement are controlling, and except to the extent that the parties to the Prior Settlement Agreement agree to be bound by the provisions of this Master Settlement Agreement.

6. Voluntary Agreement of Parties. The Parties hereto expressly acknowledge and agree that this Master Settlement Agreement is voluntarily entered into as the result of arms-length negotiation during which each of the parties was represented by counsel. Each Settling Defendant or Participating Tobacco Manufacturer or other non-state party understands and acknowledges that certain provisions of this Master Settlement Agreement may require it to act or refrain from acting in a manner that could give rise to challenges under state or federal statutes or constitutions, and, by consenting to this Master Settlement Agreement, each such party waives

any and all claims that the provisions of this Master Settlement Agreement violate any of its state or federal statutory or constitutional rights. If as a result of litigation brought by any non-party or putative third-party beneficiary or otherwise, any provision of the Master Settlement Agreement is declared unconstitutional or unenforceable as applied to such non-party or putative third-party beneficiary, Settling Defendants, Participating Tobacco Manufacturers and any non-state parties agree that the provisions of this Master Settlement Agreement shall remain fully binding between the parties hereto. None of the parties hereto will seek to invalidate or question any provision of this Master Settlement Agreement based upon any state or federal constitutional or statutory rights.

7. Definitions. For purposes of this Master Settlement Agreement, the following terms shall have the meanings set forth below:

A. “Billboards” means traditional outdoor billboards, as well as signs and placards in arenas and stadia, whether open-air or enclosed. “Billboards” does not include: (1) any advertisements placed on or outside the premises of retail establishments licensed to sell Tobacco Products or any retail point-of-sale; and (2) billboards or advertisements in connection with the sponsorship by the Settling Defendants of any entertainment, sporting or similar event, such as NASCAR, that appears as part of a national or multi-state tour.

B. “Brand” means a variety of a tobacco product distinguished by the tobacco used, tar content, nicotine content, flavoring used, size, filtration, or packaging.

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C. “Cigarette” means any product which contains nicotine, is intended to be burned under ordinary conditions of use, and consists of--

- (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco; and
- (2) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subparagraph (G).

D. “Cigarette Tobacco” means any product that consists of loose tobacco that contains or delivers nicotine and is intended for use by persons in a cigarette. Unless otherwise stated, the requirements of this MSA pertaining to cigarettes shall also apply to cigarette tobacco.

E. “Commerce” means--

- (1) commerce between any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the Northern Mariana Islands or any territory or possession of the United States;
- (2) commerce between points in any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the Northern Mariana Islands or any territory or possession of the United States; or

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(3) commerce wholly within the District of Columbia, Guam, the Virgin Islands, American Samoa, the Northern Mariana Islands or any territory or possession of the United States.

F. “Commissioner” means the Commissioner of Food and Drugs.

G. “Court” means any judicial or agency court, forum or tribunal within the Geographic United States, including without limitation any Federal, State, or tribal court.

H. “Distributor” means any person who furthers the distribution of tobacco products, whether domestic or imported, at any point from the original place of manufacture to the person who sells or distributes the product to individuals for personal consumption. Such term shall not include common carriers.

I. “Geographic United States” means the 50 States of the United States of America and the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Atoll, the Northern Mariana Islands, and any other trust territory or possession of the United States.

J. “Indian Tribe” has the same meaning given such term in section 4(e) of the Indian Self Determination and Education Assistance Act (25 U.S.C. 450b(e)).

K. “Tribal Organization” has the same meaning given such term in section 4 of the Indian Self Determination and Education Assistance Act (25 U.S.C. 450b).

L. “Manufacturer” means--

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- (1) a person who directly (not through a subsidiary company or affiliate) manufactures tobacco products for sale in the United States;
- (2) a successor or assign of a person described in subparagraph (1);
- (3) an entity established by a person described in subparagraph (1); or
- (4) an entity to which a person described in subparagraph (1) directly or indirectly makes a fraudulent conveyance after the effective date of this Master Settlement Agreement or a transfer that would otherwise be voidable under chapter 7 of title 11, United States Code, but only to the extent of the interest or obligation transferred.

Such term shall not include a parent or affiliate of a person who manufactures tobacco products unless such parent or affiliate itself is a person described in any of subparagraphs (1) through (4).

M. "Market Share" means, for each year, a Settling Defendant's or Participating Manufacturer's respective share of sales of cigarettes for consumption in the Geographic United States.

N. "Nicotine" means the chemical substance named 3-(1-Methyl-2-pyrrolidinyl)pyridine or  $C_{10}H_{14}N_2$ , including any salt or complex of nicotine.

O. "Package" means a pack, box, carton, or container of any kind in which tobacco products are offered for sale, sold, or otherwise distributed to consumers.

P. "Participating State" or "Settling State" means and refers to those states, commonwealths and territories of the United States whose attorneys general or chief legal

officers have executed this Master Settlement Agreement on behalf of their respective States.

Q. “Participating Tobacco Manufacturer” means and refers to a tobacco manufacturer that has executed this Master Settlement Agreement.

R. “Person” means an individual, partnership, corporation, or any other business or legal entity.

S. “*Plaintiff*” or “*The United States*” or “The United States of America” shall mean the United States Federal Government, its successors and assigns, administrators, employees, officers, agents and legal representatives, agencies, departments, commissions, divisions, subdivisions, public entities, public corporations, instrumentalities and educational institutions over which the United States Federal Government has control, and their predecessors, successors and assigns; it is recognized, however, that for purposes of this Master Settlement Agreement, each State is specifically excluded as a subdivision, instrumentality, division, subdivision, or public entity of the United States Federal Government.

T. “Point of sale” means any location at which an individual can purchase or otherwise obtain tobacco products for personal consumption.

U: “Protocol” means the agreements to be performed under paragraphs 9 through 18 of this Master Settlement Agreement for the purpose of setting forth certain obligations being undertaken by the Settling Defendants and Participating Manufacturers in consideration for the resolution of tobacco claims.

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V. “Retailer” means any person who sells tobacco products to individuals for personal consumption, or who operates a facility where vending machines or self-service displays are permitted.

W. “Sale” includes the selling, providing samples of, or otherwise making tobacco products available for personal consumption in any place within the scope of this Master Settlement Agreement.

X. “Secretary” means the Secretary of Health and Human Services.

Y. “Settling Defendant” means those Defendants in this Action that are signatories to this Master Settlement Agreement.

Z. “Smokeless Tobacco” means any product that consists of cut, ground, powdered, or leaf tobacco that contains nicotine and that is intended to be placed in the oral or nasal cavity.

AA. “State” means any State of the United States of America and, for purposes of this Master Settlement Agreement, includes the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Atoll, the Northern Mariana Islands, and any other trust territory or possession of the United States of America. Such term includes any political division of any State.

AB. “State Consent Decree” means a consent decree executed by the Settling Defendants and the Participating Manufacturers and a Participating State under the provisions of this Master Settlement Agreement.

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AC. “Tobacco” means tobacco in its unmanufactured form.

AD. “Tobacco Claim” means a claim directly or indirectly arising out of, based on, or related to the health-related effects or attributes of tobacco products, including a claim arising out of, based on, or related to allegations regarding any conduct, statement or omission concerning the health-related effects or attributes of such products, that is brought against--

(1) a manufacturer or the predecessors or past, present or future parents, affiliates, officers, directors, employees or agents of a manufacturer; or

(2) any importer, supplier, distributor, wholesaler, retailer or other seller of tobacco products or any grower of tobacco.

AE. “Tobacco Product” means cigarettes, cigarette tobacco, and smokeless tobacco, and shall include Roll-Your-Own, Little Cigars and Fine Cut.

AF. “Trade Associations” means and refers to The Council for Tobacco Research -- U.S.A., Inc.; The Tobacco Institute, Inc.; and Smokeless Tobacco Council, Inc.

AG. “Transit Advertisements” means advertising on private or public vehicles and all advertisements placed at, on or within any bus stop, taxi stand, waiting area, train station, airport or any similar location; “Transit Advertisements” does not include any advertisements placed on or outside the premises of retail establishments licensed to sell Tobacco Products or any retail point-of-sale.

AH. “Trust Fund” means the National Tobacco Settlement Trust Fund established under this Master Settlement Agreement.

8. Construction. The terms of this Master Settlement Agreement shall be construed in order to further its goals and purposes. If any provision of this Master Settlement Agreement or its application to any person or circumstance is held invalid or otherwise unenforceable, such holding shall not affect other provisions or applications of this Master Settlement Agreement that can be given effect without the invalid provision or application. This Master Settlement Agreement does not affect the ability of the United States or of Participating States to enact laws with stricter requirements than the provisions of this Master Settlement Agreement.

9. No Endorsement Permitted. Nothing in this Master Settlement Agreement shall be construed as an endorsement of or approval by the United States or Participating States’ of Settling Defendants’ or Participating Tobacco Manufacturers’ business organization, operations, acts or practices, and Settling Defendants and Participating Tobacco Manufacturers shall make no representation to the contrary.

10. Authorship. None of the parties hereto shall be considered to be the drafter of this Master Settlement Agreement or any provision hereof for purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter thereof.

11. Contracts. Settling Defendants and Participating Manufacturers shall agree, with respect to any contract entered into by the manufacturer with an entity that is a distributor or

retailer of tobacco products, to include in such contract as a term and condition a requirement that such distributor or retailer comply with the provisions of this Master Settlement Agreement relating to advertising and marketing.

12. Agreement Regarding Restrictions on Advertising. No Settling Defendant or Participating Tobacco Manufacturer may sell, advertise, or promote a cigarette or smokeless tobacco product, or cause such to be done, in any manner not in compliance with this Master Settlement Agreement. The Settling Defendants and Participating Manufacturers specifically agree to the following terms, restrictions and provisions with respect to certain forms of advertising, and further that those terms, restrictions and provisions, except as otherwise provided, shall take effect nine months following the date of execution of this Master Settlement Agreement:

A. Prohibition on Outdoor Advertising--

(1) In General-- No manufacturer, distributor, or retailer may use any form of outdoor tobacco product advertising, including billboards, posters, or placards.

(2) Stadia and Arenas-- Except as otherwise provided herein, a manufacturer, distributor, or retailer shall not advertise tobacco products in any arena or stadium where athletic, musical, artistic or other social or cultural events or activities occur.

B. Prohibition on Use of Human Images and Cartoons-- No manufacturer, distributor, or retailer may use a human image or a cartoon character or cartoon-type

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character in its advertising, labeling or promotional material with respect to a tobacco product.

C. Prohibition on Advertising on the Internet-- No manufacturer, distributor, or retailer may use the Internet to advertise tobacco products unless such an advertisement is inaccessible in or from the Geographic United States.

D. Prohibition on Point of Sale Advertising--

(1) In General-- Except as otherwise provided herein, no manufacturer, distributor, or retailer may use point of sale advertising of tobacco products.

(2) Adult Only Stores and Tobacco Outlets-- Paragraph (1) shall not apply to point of sale advertising at adult only stores and tobacco outlets.

(3) Permissible Advertising--

(a) In General-- Each manufacturer of tobacco products may display not more than 2 separate point of sale advertisements in or at each location at which tobacco products are offered for sale.

(b) Market Share Manufacturers-- A manufacturer with at least 25 percent of the market share of the tobacco product involved may display an additional point of sale advertisement in or at each location at which tobacco products are offered for sale.

(c) Retailers-- No manufacturer, distributor, or retailer may enter into any arrangement with a retailer to limit the ability of the retailer to display any

form of permissible point of sale advertisement or promotional material originating with another manufacturer, distributor, or retailer.

(4) Limitations--

(a) In General-- A point of sale advertisement permitted under this subsection shall be comprised of a display area that is not larger than 576 square inches (either individually or in the aggregate) and shall consist only of black letters on a white background or other recognized typographical marks. Such advertisement shall not be attached to nor located within 2 feet of any fixture on which candy is displayed for sale.

(b) Audio and Video Formats-- Audio and video advertisements permitted under section 214(c) may be distributed to individuals who are 18 years of age or older at point of sale but may not be played or viewed at such point of sale.

(c) Display Fixtures-- Display fixtures in the form of signs consisting of brand name and price and not larger than 2 inches in height are permitted.

(5) Definition-- For purposes of this paragraph, the term 'point of sale advertising' means all printed or graphical materials bearing the brand name (alone or in conjunction with any other word), logo, motto, selling message, recognizable color or pattern of colors, or any other indicia of product

identification similar or identical to those used for tobacco products, which, when used for its intended purpose, can reasonably be anticipated to be seen by customers at a location at which tobacco products are offered for sale.

13. Additional Agreed Restrictions. The Settling Defendants and Participating Manufacturers also specifically agree to the following additional terms and provisions with respect to certain forms of advertising:

A. Restriction on Product Names-- A manufacturer shall not use a trade or brand name of a nontobacco product as the trade or brand name for a cigarette or smokeless tobacco product, except for a tobacco product whose trade or brand name was on both a tobacco product and a nontobacco product that were sold in the United States on January 1, 1995.

**B. Advertising Limit Actions--**

(1) In General-- A manufacturer, distributor, or retailer may in accordance with this Master Settlement Agreement, disseminate or cause to be disseminated advertising or labeling which bears a tobacco product brand name (alone or on conjunction with any other word) or any other indicia of tobacco product identification only in newspapers, in magazines, in periodicals or other publications (whether periodic or limited distribution), on billboards, posters and placards in accordance with paragraph 9.A., in non point-of-sale promotional material (including direct mail), in point-of-sale promotional material, and in audio or video formats delivered at a point-of-sale.

(2) Limitation-- A Settling Defendant, Participating Manufacturer, distributor, or retailer that intends to disseminate, or to cause to be disseminated, advertising or labeling for a tobacco product in a medium that is not described in paragraph (1) shall notify the Commissioner and the other signatories not less than 30 days prior to the date on which such medium is to be used. Such notice shall describe the medium and discuss the extent to which the advertising or labeling may be seen by individuals who are under 18 years of age.

(3) Action by Commissioner-- Not later than 30 days after the date on which the Commissioner receives a notice under paragraph (2), the Commissioner may in his discretion make a determination with respect to the action to be taken, if

any, concerning such notice and communicate the same to the signatories.

Disagreements with respect to such determinations by the Commissioner shall be resolved by the Court on motion by the party concerned.

C. Restriction on Placement in Entertainment Media--

(1) In General-- No payment shall be made by any manufacturer, distributor, or retailer for the placement of any tobacco product or tobacco product package or advertisement--

(a) as a prop in any television program or motion picture produced for viewing by the general public; or

(b) in a video or on a video game machine.

(2) Definition of Video Game-- The term “video game” means any electronic amusement device that utilizes a computer, microprocessor, or similar electronic circuitry and its own cathode ray tube, or is designed to be used with a television set or a monitor, that interacts with the user of the device.

(3) Definition of Video-- The term “video” means an audiovisual work produced for viewing by the general public, such as a television program, a motion picture, a music video, and the audiovisual display of a video game.

D. Restrictions on Glamorization of Tobacco Products-- No direct or indirect payment shall be made by any manufacturer, distributor, or retailer to any entity for the purpose of promoting the image or use of a tobacco product through print or film media

that appeals to individuals under 18 years of age or through a live performance by an entertainment artist that appeals to such individuals.

14. Agreement on Format and Content Requirements for Labeling and Advertising--

A. In General-- Except as provided in subsections B and C, each manufacturer, distributor, or retailer advertising or causing to be advertised, disseminating or causing to be disseminated, any labeling or advertising for a tobacco product shall use only black text on a white background.

B. Certain Advertising Excepted--

(1) In General-- Subsection (a) shall not apply to advertising--

(a) in any facility where vending machines and self-service displays are permitted under this Master Settlement Agreement if the advertising involved--

(i) is not visible from outside of the facility; and

(ii) is affixed to a wall or fixture in the facility;

(b) that appears in any publication (whether periodic or limited distribution) that is an adult publication.

(2) Adult Publication-- For purposes of paragraph (1)(b), the term “adult publication” means a newspaper, magazine, periodical, or other publication--

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- (a) whose readers under 18 years of age constitute 15 percent or less of the total readership as measured by competent and reliable survey evidence;  
and
- (b) that is read by fewer than 2,000,000 individuals who are under 18 years of age as measured by competent and reliable survey evidence.

C. Audio or Video Formats-- Each manufacturer, distributor or retailer advertising or causing to be advertised any advertising for a tobacco product in an audio or video format shall comply with the following:

- (1) With respect to an audio format, the advertising shall be limited to words only with no music or sound effects.
- (2) With respect to a video format, the advertising shall be limited to static black text only on a white background. Any audio with the video advertising shall be limited to words only with no music or sound effects.

15. Agreement to Ban Non-tobacco Items and Services, Contests and Games of Chance, and Sponsorship of Events.

A. Ban on All Non-Tobacco Merchandise-- No manufacturer, importer, distributor, or retailer shall market, license, distribute, sell or cause to be marketed, licensed, distributed or sold any item (other than tobacco products) or service, which bears the brand name (alone or in conjunction with any other word), logo, symbol, motto, selling

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message, recognizable color or pattern of colors, or any other indicia of product identification similar or identifiable to those used for any brand of tobacco products.

B. Gifts, Contests, and Lotteries-- No manufacturer, distributor, or retailer shall offer or cause to be offered to any person purchasing tobacco products any gift or item (other than a tobacco product) in consideration of the purchase of such products, or to any person in consideration of furnishing evidence, such as credits, proofs-of-purchase, or coupons, of such a purchase.

C. Sponsorship--

(1) In General-- No manufacturer, distributor, or retailer shall sponsor or cause to be sponsored any athletic, musical, artistic or other social or cultural event, or any entry or team in any event, in which the brand name (alone or in conjunction with any other word), logo, motto, selling message, recognizable color or pattern of colors, or any other indicia of product identification similar or identical to those used for tobacco products is used.

(2) Use of Corporate Name-- A manufacturer, distributor, or retailer may sponsor or cause to be sponsored any athletic, musical, artistic or other social or cultural event in the name of the corporation which manufactures the tobacco product if--

(a) both the corporate name and the corporation were registered and in use in the United States prior to January 1, 1995; and

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(b) the corporate name does not include any brand name (alone or in conjunction with any other word), logo, symbol, motto, selling message, recognizable color or pattern of colors, or any other indicia or product identification identical or similar to, or identifiable with, those used for any brand of tobacco products.

16. Miscellaneous Additional Provisions. The following additional provisions are expressly agreed to by the Settling Defendants and Participating Manufacturers:

A. Minimum Cigarette Package Size-- Except as otherwise provided herein, no Settling Defendant or Participating Tobacco Manufacturer may sell or cause to be sold, or distribute or cause to be distributed, any cigarette package that contains fewer than 20 cigarettes.

B. Vending Machines, Self-service Displays, Mail-order Sales, And Other “Impersonal” Modes of Sale-- No Settling Defendant or Participating Tobacco Manufacturer may engage in the following methods of sale or marketing:

- (1) Mail-order redemption of coupons and distribution of free samples through the mail; and
- (2) Vending machines (including vending machines that sell packaged, single cigarettes) and self-service displays, except those that are located in facilities where the retailer ensures that no person younger than 18 years of age is present, or permitted to enter, at any time.

C. Free Samples--No Participating Tobacco Manufacturer may distribute or cause to be distributed any free samples of cigarettes or smokeless tobacco.

D. Each Participating Tobacco Manufacturer shall remove from each point of sale all self-service displays, advertising, labeling, and other items that the manufacturer owns that do not comply with the requirements under this section.

17. Package Labeling Requirements.

A. Restrictions on Labels and Labeling--No Participating Tobacco Manufacturer may sell or distribute, or cause to be sold or distributed, cigarettes or smokeless tobacco with labels or labeling not in compliance with this section, and other applicable requirements.

B. Particular Warnings

(1) Participating Tobacco Manufacturers which manufacture cigarettes shall place on each package and product carton one of the following warnings:

“WARNING: Cigarettes are addictive”

“WARNING: Tobacco smoke can harm your children”

“WARNING: Cigarettes cause fatal lung disease”

“WARNING: Cigarettes cause cancer”

“WARNING: Cigarettes cause strokes and heart disease”

“WARNING: Smoking during pregnancy can harm your baby”

“WARNING: Smoking can kill you”

“WARNING: Tobacco smoke causes fatal lung disease in non-smokers”

“WARNING: Quitting smoking now greatly reduces serious risks to your health”

(2) Each Participating Tobacco Manufacturer which manufactures smokeless tobacco products shall place on each package and product carton one of the following warnings:

“WARNING: This product can cause mouth cancer”

“WARNING: This product can cause gum disease and tooth loss”

“WARNING: This product is not a safe alternative to cigarettes”

“WARNING: Smokeless tobacco is addictive”

(3) Each of the package or carton warnings in the preceding subsections shall be rotated among the product packages and cartons.

(4) Each of the warnings in subsections B.(1) and (2) shall also appear on each advertisement or promotional material and shall be rotated quarterly.

(5) With respect to cigarette packages and cartons, the warning shall occupy at least 25 percent of the front panel of the package or carton, and shall appear on the upper portion thereof. Cigarette packages of flip-top design currently in production as of the effective date of the Master Settlement Agreement shall be exempt from the requirement of the preceding sentence. For smokeless tobacco products, the warning shall appear on the principal display panel and must occupy at least 25 percent of the display panel. The warning shall be in no less than 17-point type.

(6) All tobacco products described with terms such as “light” or “low tar” shall be accompanied by a disclaimer on all packages and cartons, and in any advertising or promotional material, that the product has not been shown to be less hazardous to health than other tobacco products of the same type.

(7) The provisions of this Master Settlement Agreement with respect to warnings, labeling, and packaging shall apply to Participating Tobacco Manufacturers without modification, except as specifically to in writing and approved by the Court, as modified by an act of Congress, unless such act of Congress eliminates the warning requirements of the Master Settlement Agreement.

18. Agreement to Provisions Relating to Lobbying. The Settling Defendants and Participating Manufacturers also specifically agree to the following additional terms and provisions with respect to certain lobbying activities.

A. Definitions-- For purposes of this section, the terms ‘lobbying activities’, ‘lobbying firm’, and ‘lobbyist’ have the meanings given such terms by section 3 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1602).

B. General Requirement-- A manufacturer of a tobacco product shall require that any lobbyist or lobbying firm employed or retained by the manufacturer, or any other individual who performs lobbying activities on behalf of the manufacturer, as part of the employment or retainer agreement refrain from supporting or opposing any Federal or

State legislation, or otherwise supporting or opposing any governmental action on any matter without the express consent of the manufacturer.

C. Additional Agreements-- An individual shall not be employed or retained to perform lobbying activities on behalf of a manufacturer of a tobacco product unless such individual enters into a signed agreement with the manufacturer that acknowledges that the individual--

- (1) is fully aware of, and will fully comply with, all applicable laws and regulations relating to the manufacture and distribution of tobacco products;
- (2) has reviewed and will fully comply with the requirements of this Master Settlement Agreement;
- (3) has reviewed and will fully comply with any consent decree entered into under this Master Settlement Agreement as that decree applies to the manufacturer involved; and
- (4) has reviewed and will fully comply with the business conduct policies and other applicable policies and commitments (including those relating to the prevention of underage tobacco use) of the manufacturer involved.

19. Agreement to Terminate Certain Entities.

A. Requirement-- Not later than 1 year after the date of enactment of this Master Settlement Agreement, Settling Defendants and Participating Manufacturers shall provide

for the termination of the activities of the Tobacco Institute and the Council for Tobacco Research, U.S.A. and the Institute and Council shall be dissolved.

**B. Establishment of Other Entities--**

(1) Authority-- Manufacturers of tobacco products agree that they may form or participate in any trade organization or other industry association only in accordance with this subsection.

(2) Board of Directors-- A trade organization or other industry association formed or participated in under this subsection shall--

(a) be administered by an independent board of directors, of which--

(i) during the 10-year period beginning on the date on which the organization or association is formed or first participated in under this subsection, not less than 20 percent (at least 1 member) shall be individuals who are not current or former directors, officers, or employees of an entity terminated under subsection A. or of the members of the association or organization; and

(ii) during the life of the association or organization, no member shall be a director of any of the members of the association or organization;

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(b) be administered by officers who are appointed by the board of directors and who are not otherwise employed by any of the members of the association or organization; and

(c) be provided with legal advice by a legal adviser who is appointed by the board of directors and who is not otherwise employed by any of the members of the association or organization.

(3) By-Laws-- A trade organization or other industry association formed or participated in under this subsection shall adopt by-laws that--

(a) prohibit meetings by members of the association or organization who are competitors in the tobacco industry except under the sponsorship of the association or organization;

(b) require that every meeting of the board of directors, or a subcommittee of the board or other general committee, proceed under and strictly adhere to an agenda that is approved by the legal counsel and circulated in advance; and

(c) require the taking of minutes that describe the substance of any meeting of the members of the association or organization and the maintenance of such minutes in the records of the association or organization for a period of 5 years following the meeting.

C. Department of Justice--

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(1) Oversight-- The Attorney General and, as appropriate, State antitrust officials shall exercise oversight authority with respect to any association or organization to which subsection B. applies.

(2) Access and Inspection-- During the 10-year period beginning on the date on which an association or organization to which subsection B. applies is formed, the Attorney General and, as appropriate State antitrust authorities shall, upon the provision of reasonable notice to the legal counsel of the association or organization, have access to--

(a) all books, records, meeting agenda and minutes, and other documents maintained by the association or organization; and

(b) the directors, officers, and employees of the association or organization for interview purposes.

(3) Multi-State Committee-- Two or more Participating States, acting through the attorney general of each such State, may establish a multi-State oversight committee to assist the Attorney General in exercising the oversight responsibilities under this section.

(4) Confidentiality-- The Attorney General shall promulgate regulations to provide that materials provided under paragraph (2) are protected with appropriate confidentiality protections.

D. Antitrust Considerations-- The parties shall ensure that the provisions of the Sherman Act (15 U.S.C. 1 et seq.), the Clayton Act (29 U.S.C. 52 et seq.), and any other Federal or State antitrust laws are observed with respect to an association or organization to which subsection B. applies.

20. Agreements With Regard to Corporate Culture and Compliance.

A. Corporate Culture-- Within twelve (12) months after execution of this Master Settlement Agreement:

(1) Each Settling Defendant and Participating Tobacco Manufacturer shall promulgate corporate principles that express and explain its commitment to the goals of compliance with the provisions of this Master Settlement Agreement, reductions in underage tobacco use, and development of “reduced risk” tobacco products.

(2) Each Participating Tobacco Manufacturer shall designate a specific high level officer with responsibility and authority to promote efforts to attain the goals set forth in subsection (1).

(3) Each Participating Tobacco Manufacturer shall provide an annual report to its shareholders on compliance and on progress in meeting the goals set forth in subsection (1).

B. Compliance-- Each Settling Defendant and Participating Tobacco Manufacturer (not including any entity which solely imports such products) shall—

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- (1) Establish, no later than 12 months after the effective date of the Master Settlement Agreement, a written plan designed to—
  - (a) ensure compliance with the Federal Cigarette Labeling and Advertising Act, the Comprehensive Smokeless Tobacco Health Education Act of 1986, the Federal Food, Drug and Cosmetic Act, and this Master Settlement Agreement.
  - (b) identify ways to reduce youth access to, and the incidence of underage consumption of, tobacco products, and to provide internal incentives for achieving such goals; and
  - (c) provide internal incentives to develop tobacco products with reduced health risks.
- (2) Review such plan annually and make changes reasonably designed to achieve the goals of this section; and
- (3) Pursuant to the plan, implement a program to prevent and detect violations of the Federal Food, Drug and Cosmetic Act, and as may be applicable, the Federal Cigarette Labeling and Advertising Act, and the Comprehensive Smokeless Tobacco Health Education Act of 1986, as well as this Master Settlement Agreement. Such program shall be implemented and in effect no later than one year after the effective date of the Master Settlement Agreement. The program shall include—

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- (a) compliance standards and procedures to be followed by the employees and agents of the manufacturer and retail organizations that are reasonably capable of reducing the prospects of violations of the acts specified in this subsection;
- (b) assignment to a specific high-level officer of the manufacturer (the “compliance officer”) overall responsibility to oversee compliance with relevant standards and procedures, especially with regard to preventing underage tobacco use;
- (c) use of due care to prevent the delegation of substantial discretionary authority to individuals who the manufacturer knows, or should know through the exercise of due diligence, have or have had a propensity to disregard corporate policy;
- (d) initiatives to communicate relevant standards and procedures to all employees and agents, including lobbyists and retail organizations;
- (e) monitoring and auditing systems reasonably designed to detect noncompliance by the manufacturer’s employees and other agents, including a reporting system whereby employees and other agents could report noncompliance, including known violations of this MSA by a retailer or distributor, to the compliance officer without fear of retribution and whereby the compliance officer could report such violations of this MSA by a retailer or distributor to the Secretary;

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- (f) consistent enforcement of the manufacturer’s standards through appropriate disciplinary mechanisms, including, as appropriate, discipline of individuals responsible for the failure to detect a noncompliance; and
- (g) reasonable steps to be taken in order to respond appropriately after the detection of an action in noncompliance, including any necessary modifications to the compliance plan and program to prevent and detect the recurrence of such action or similar actions.

21. Agreements With Respect to Retail Monitoring.

A. Each Settling Defendant and Participating Tobacco Manufacturer shall take all steps, including, without limitation, compliance checks of retailers and creation of financial incentives for compliance, reasonably calculated to ensure that retailers or others—

- (1) do not advertise or label tobacco products of such Participating Tobacco Manufacturer in violation of the provisions of this Master Settlement Agreement, and
- (2) fully comply with the applicable provisions of this Master Settlement Agreement.

B. Each Participating Tobacco Manufacturer shall establish procedures requiring that its employees and agents report violations of the Master Settlement Agreement by

retailers and distributors to the compliance officer of such Participating Tobacco Manufacturer, who shall report such violations to the Secretary.

C. Each Settling Defendant and Participating Tobacco Manufacturer shall deal only with distributors and retailers that fully comply with applicable provisions of state and federal law with respect to the distribution, sale and marketing of tobacco products.

22. Antitrust Matters--Participating Tobacco Manufacturers agree to refrain from engaging in any unilateral or concerted activity intended to, or which has the purpose or effect of, restraining competition for innovative or less harmful products, or which otherwise restrains competition between Participating Tobacco Manufacturers or between them and any actual or potential competitor.

23. Dismissal of Other Related Lawsuits--

A. Settling Defendants and Participating Tobacco Manufacturers will dismiss with prejudice, without costs and fees, and execute general releases in the following lawsuits: [list of cases, such as FDA, EPA, challenges to local ordinances, administrative rules, and against individuals or former employees.]

B. Participating Tobacco Manufacturers expressly waive any right, cause of action, or claim against the Participating States, or any of their units of government, and any officer, employee or agent of such governments which it may have now or in the future with respect to matters within the scope of this Master Settlement Agreement.

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C. Participating Tobacco Manufacturers agree not to provide funding or in-kind support or cooperation to any person bringing a suit which the Settling Defendants or Participating Tobacco Manufacturers would be precluded from bringing in their own right pursuant to paragraph B above.

24. Access to Information--For purposes of determining or securing compliance with this Master Settlement Agreement by Participating Tobacco Manufacturers, representatives of the United States or Participating States may, without limitation on whatever other rights to access that may be permitted under law, upon five (5) business days prior notice—

A. have access during regular business hours to inspect and copy, at tobacco manufacturer's expenses, all non-privileged books, records and other documents in the custody or control of a tobacco defendant; and

B. interview a Settling Defendant's or Participating Tobacco Manufacturer's directors, officers, employees and agents.

25. Establishment of Payment Receipt and Expenditure Mechanisms.

A. Creation and Deposits--

(1) In General--

(a) Funds Payable to the United States-- The Attorney General will establish a settlement trust fund for payments to be made to the United States pursuant to this Master Settlement Agreement under the supervision

of the Court. That fund is to be known as the “National Tobacco Settlement Trust Fund” or the “Federal Trust Account.”

(b) Funds Payable to Participating States--The Attorney General or Chief Legal Officer of each Participating State will establish a settlement trust fund for payments to be made to such Participating States pursuant to this Master Settlement Agreement under supervision of the Court. Each such fund will be known as “[Name of Participating State] Tobacco Settlement Trust Fund” or “[Name of Participating State] Trust Account.”

(2) Deposits and Reductions-- The respective Trust Funds shall be composed of the following deposits to be paid by participating manufacturers in perpetuity under the fee payment schedule below. Payments to the United States and to Participating States shall be made directly to the appropriate respective Trust Fund under procedures to be approved by the Court. The amounts required to be paid herein shall be reduced proportionally in the event of any State that does not become a Participating State in this Master Settlement Agreement.

(A) Compensatory Damage Deposits-- With respect to compensatory damages, \$303,337,500,000 shall be deposited proportionally in the respective Trust Funds and shall represent the settlement amounts agreed to herein for the first 25 years.

- (B) Punitive Damage Deposits-- With respect to punitive damages, \$95,000,000,000 shall be deposited proportionally in the respective Trust Funds and shall represent the settlement of tobacco-related punitive damages claims which occurred prior to the date of execution of this Master Settlement Agreement. The United States portion of these funds shall be used to fund the Trust Fund for Health Research under paragraph 36.
- (3) Amounts in Trust Funds-- The Tobacco Settlement Trust Funds created pursuant to this Master Settlement Agreement shall consist of the Federal Trust Account and the respective Participating States' Trust Accounts. Each such Trust Account shall consist of such amounts as may be transferred to it under this section or credited under paragraph 27(b)(3).
- (4) Administration of Participating States' Trust Accounts. The respective Participating States' Trust Accounts shall be administered pursuant to such plans as are prepared by the respective Attorneys General or Chief Legal Officers of the affected States and approved by the Court. Such proposed plans shall be presented to the Court for approval within 45 days from the effective date of the Master Settlement Agreement.
- (5) Administration of the Federal Trust Account

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(a) In General-- The National Tobacco Settlement Trust Fund shall be administered by the Attorney General who shall serve together with the Secretary of the Treasury and the Secretary of Health and Human Services as the Trustees of the Fund.

(b) Advisory Board-- The Trustees of the Federal Trust Account, in administering the Trust Fund, shall be advised by an advisory board established under paragraph 27.

B. Transfers to Respective Trust Funds-- There shall be transferred to the Respective Participating State Trust Accounts and the Federal Trust Account an amount equal to 50 percent in the aggregate in the case of the Participating State Trust Accounts and 50 percent in the case of the Federal Trust Account of the--

(1) amounts received under paragraph 26, less the amounts made available under subparagraphs (D), (E), and (F) of subsection (c)(3) for tobacco transition, Native Americans, and asbestos-related injuries;

(2) amounts paid as fines or penalties, including interest thereon, under paragraph 28; and

(3) amounts repaid or recovered under paragraph 33, including interest thereon.

C. Settlement Amounts to be Paid into Trust Accounts--

(1) In General--On December 31st of each year, the Settling Defendants and the Participating Tobacco Manufacturers shall pay their appropriate respective annual

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amounts into the National Tobacco Settlement Trust Fund and into the respective Participating State Tobacco Settlement Trust Funds without further Order of the Court, as described in the table in paragraph (2).

(2) Settlement Funds Table-- For purposes of paragraph (1), the aggregate amounts to be paid in each full year following the date of execution of this Master Settlement Agreement are as follows:

In billions of dollars

Year	States	Public Health Research	Asbestos	Agriculture	Native Americans	
1st	3.25	1.1	2.15	0	3.0925	0.2
2nd	3.75	1.6	2.15	0.2	5.0925	0.2
3rd	4.75	2.2	2.55	0.2	6.1925	0.2
4th	7.0	3.3	3.7	0.2	.0925	0.2
5th	7.5	3.5	4.0	0.2	.0925	0.2
6th	8.0	4.0	4.0	0.2	0.1	0.2
7th	8.0	4.0	4.0	0.2	0.1	0.2
8th	8.0	4.0	4.0	0.2	0.1	0.2
9th	8.0	4.0	4.0	0.2	0.1	0.2
10th	8.0	4.0	4.0	0.2	0.1	0.2
11th	8.0	4.0	4.0	0.2	0.0575	0.2
12th	8.0	4.0	4.0	0.2	0.0575	0.2
13th	8.0	4.0	4.0	0.2	0.0575	0.2
14th	8.0	4.0	4.0	0.2	0.0575	0.2
15th	8.0	4.0	4.0	0.2	0.0575	0.2
16th	8.0	4.0	4.0	0.2	0.065	0.2

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17th	8.0	4.0	4.0	0.2	0.065	0.2
18th	8.0	4.0	4.0	0.2	0.065	0.2
19th	8.0	4.0	4.0	0.2	0.065	0.2
20th	8.0	4.0	4.0	0.2	0.065	0.2
21st	8.0	4.0	4.0	0.2	0.0725	0.2
22nd	8.0	4.0	4.0	0.2	0.0725	0.2
23rd	8.0	4.0	4.0	0.2	0.0725	0.2
24th	8.0	4.0	4.0	0.2	0.0725	0.2
25th+	8.0	4.0	4.0	0.2	0.0725	0.2

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(3) Definitions and Use of Funds-- With respect to the table in paragraph (2):

(a) “State” means the respective State account established under subsection A.(1)(b).

(a) “Research” means activities carried out by the Secretary under paragraph 36 to conduct and support biomedical and behavioral research into the causes of tobacco use, diseases and conditions associated with tobacco use and other substance abuse dependencies, and the development of therapies for such diseases and conditions.

(c) “Public health” means public health activities carried out by the Secretary under paragraphs 36 and 37 to implement the National Anti-Tobacco Product Consumption and Tobacco Product Cessation Public Health Program to further the purposes of this Master Settlement Agreement.

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(d) "Asbestos" means programs and activities carried out by the Secretary of Labor relating to victims of asbestos-related injuries with respect to which the use of tobacco products have been determined to be a significant contributor.

(4) Federal Trust Account-- Amounts to which subparagraphs (b) through (f) of paragraph (3) apply shall be deposited into the Federal Trust Account and shall be available in each calendar year, without further order of the Court, for use as described in such subparagraphs.

D. ADJUSTMENTS- The amounts described in subsection A. relating to deposits, reductions and expenditures shall be adjusted proportionally on an annual basis by the respective Trustees or Account administrators to account for any adjustments made under paragraph 26(c)(2) relating to settlement payments.

26. Settlement Payments Schedule

A. REQUIREMENT OF INITIAL PAYMENT- To be eligible to receive the benefits of this Master Settlement Agreement, Settling Defendants and Participating Tobacco Manufacturers shall pay settlement proceeds proportionally to the respective Trust Accounts in an aggregate amount of \$10,000,000,000.00 within 90 days of execution of this Master Settlement Agreement.

B. SUBSEQUENT BASE AMOUNT PAYMENTS- To be eligible to continue to receive the benefits of this Master Settlement Agreement, Settling Defendants and

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Participating Tobacco Manufacturers shall, not later than December 31 of each year involved, pay settlement fees to the Trust Fund in an aggregate amount of--

- (1) with respect to the first fiscal year following the year in which the fees are paid under subsection (a), \$9,792,500,000;
- (2) with respect to the second such fiscal year, \$12,992,500,000;
- (3) with respect to the third such fiscal year, \$16,092,500,000;
- (4) with respect to the fourth such fiscal year, \$14,492,500,000;
- (5) with respect to the fifth such fiscal year, \$15,492,500,000;
- (6) with respect to the sixth such fiscal year, and each of the next 4 succeeding fiscal years, \$16,500,000,000 for each such year;
- (7) with respect to the 11th such fiscal year, and each of the next 4 succeeding fiscal years, \$16,457,500,000 for each such year;
- (8) with respect to the 16th such fiscal year, and each of the next 4 succeeding fiscal years, \$16,465,000,000 for each such year; and
- (9) with respect to the 21st such fiscal year, and each of the next succeeding fiscal years, in perpetuity, \$16,472,500,000 for each such year.

C. ADJUSTMENTS-

- (1) In General-- The amount of the annual base amount payments for each year under subsection B. shall be adjusted by the appropriate Trustees or Account Administrators in accordance with the formula described in paragraph (2). In

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prescribing such adjustments, the appropriate Trustees or Account Administrators shall ensure that participating manufacturers make annual payments based on their relative domestic volume of sales of units of tobacco products during the year for which the payment is due.

(2) Adjustment Formula--

(a) Inflation Adjustment- With respect to a year, the base amount payment for such year under subsection B. shall be increased for such year by the greater of 3 percent or the percentage increase in the Consumer Price Index for the period beginning in the first full fiscal year beginning after the date of enactment of this MSA and ending in the year for which the determination is being made.

(b) Volume Adjustment--

(i) Determination- With respect to a year--

a) if the actual volume is greater than the base volume, the amount of the annual base amount payments for such year under subsection B. shall be increased by an amount equal to the amount determined by multiplying such base amount by the ratio of the actual volume to the base volume; or

b) if the actual volume is less than the base volume, the annual base amount payments for such year under subsection B. shall be reduced by an amount equal to the amount determined by multiplying such base amount by the greater of--

(aa) the ratio of the actual volume to the base volume; or

(bb) the ratio of the portion of the actual volume attributable to sales to individuals 18 years of age or older to the portion of the base volume attributable to sales to individual 18 years of age or older.

(ii) Required Reduction-- If a reduction in the applicable base amount is required under clause b), but the participating manufacturers' aggregate net operating profits from domestic sales of tobacco products for the year for which the annual payment is being calculated, as reported to the Securities and Exchange Commission, is greater than such participating manufacturers' aggregate net operating profits from domestic sales of tobacco products in 1996 (as increased for inflation) as reported to the Securities and Exchange Commission, such reduction shall be

reduced (but not below zero) by an amount equal to 25 percent of such increase in such profits.

(iii) Nonreporting Manufacturer-- In the case of a participating manufacturer that does not report profits to the Securities and Exchange Commission, the profit figures referred to in this subparagraph shall be those reflected in that participating manufacturer's audited financial statements for the applicable year. The determination of the participating manufacturers' aggregate net operating profits from domestic sales of tobacco products shall be derived using the same methodology as was employed in deriving such participating manufacturers' aggregate net operating profits from domestic sales of tobacco products in 1996, as reported to the Securities and Exchange Commission.

(iv) Definitions-- For purposes of this subparagraph--

- a) the term “actual volume” means the number of units of tobacco products sold domestically by participating manufacturers in the year involved (as reported by such participating manufacturers to the Secretary); and

b) the term “base volume” means the number of units of tobacco products sold domestically by participating manufacturers in 1996.

(c) Civil Damages Adjustment -- With respect to a year, the base amount payment for a defendant for such year under subsection B shall be decreased for such year by eighty percent (80%) of the amount that such defendant pays in damages in a civil action, with such reduction applying to the amount of payments made to the state in which such damages were paid pursuant to paragraph 29 of this MSA.

D. DETERMINATION OF AMOUNT- With respect to the total amount of settlement fees to be paid by Settling Defendants and Participating Tobacco Manufacturers in a given year, the percentage of such total amount of settlement fees that each Settling Defendant or Participating Tobacco Manufacturer shall be required to pay to the respective Trust Accounts under this section shall be determined by such Settling Defendants and Participating Tobacco Manufacturers. In making such determinations, consideration shall be provided for any payments made by manufacturers to States under any previous settlement of a tobacco civil action.

F. Collection of Unpaid Payments-- In any case where the Federal Account Trustees do not receive a payment under this section within 30 days after it is due, such payment

shall be treated as a claim of the United States Government subject to subchapter II of chapter 37 of title 31, United States Code.

27. Administrative Provisions.

A. Duty of Trustees-- It shall be the duty of the Attorney General as a Trustee of the National Tobacco Settlement Trust Fund to hold the Trust Fund and to report to the Committees on Judiciary, Labor and Human Resources, Commerce and Agriculture of the Senate and the Committees on Judiciary, Commerce, and Agriculture of the House of Representatives each fiscal year--

- (1) on the financial condition and the results of the operations of the Trust Fund during the fiscal year preceding the fiscal year in which such report is submitted, and
- (2) on the expected condition and operations of the Trust Fund during the fiscal year in which such report is submitted and the 5 fiscal years succeeding such fiscal year.

Such report shall be printed as both a House and Senate document of the session of the Congress to which the report is made.

B. Investment of Amounts in Trust Fund--

- (1) Investment in Obligations-- The Trustees shall invest such portion of the State Account and the Federal Account of the National Tobacco Settlement Trust Fund as is not, in their judgment, required to meet current withdrawals. Such

investments may be made only in interest-bearing obligations of the United States. For such purpose, such obligations may be acquired--

- (a) on original issue at the issue price, or
- (b) by purchase of outstanding obligations at the market price.

(2) Sale of Obligations-- Any obligation acquired by the State Account or the Federal Account of the Trust Fund may be sold by the Secretary of the Treasury at the market price.

(3) Crediting of Interest and Sale Proceeds-- The interest on, and the proceeds from the sale or redemption of, any obligations held in a State Trust Account or the Federal Trust Account shall be credited to and form a part of such Account.

C. Establishment of Advisory Board--

(1) In General-- There is established an advisory board (referred to in this subsection as the "Advisory Board") to advise the Trustees of the National Tobacco Settlement Trust Fund in the administration of the Federal Trust Account.

(2) Membership--

- (a) In General-- The Advisory Board shall be composed of the Trustees of the National Tobacco Settlement Trust Fund, who shall act as the co-chairpersons of the Advisory Board, and 4 members to be appointed--

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(i) ½ by the Speaker of the House of Representatives, in consultation with the minority leader of the House of Representatives, and

(ii) ½ by the majority leader of the Senate, in consultation with the minority leader of the Senate.

(b) Nominees-- The members appointed under each clause of subparagraph (a) shall be chosen in the following manner:

(i) 1 member from a nominee list prepared by State attorneys general.

(ii) 1 member from a nominee list prepared by representatives of the tobacco industry.

(iii) 1 member from a nominee list prepared by representatives of public health experts.

(iv) 1 member from a nominee list prepared by representatives of the members of the class of plaintiffs in *Dianne Castano v. American Tobacco Company*.

(3) Terms and Vacancies-- Each member of the Advisory Board shall serve for a term of 4 years, to begin on the date of appointment. Any vacancy on the Advisory Board shall not affect its powers, but shall be filled in the same manner as the original appointment. Any member appointed to fill a vacancy occurring

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before the expiration of the term for which the member's predecessor was appointed shall be appointed for the remainder of that term.

(4) Powers--

(a) Hearings-- The Advisory Board may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Advisory Board considers advisable to carry out the duties of the Advisory Board.

(b) Information from Federal Agencies--The Advisory Board may request directly from any Federal department or agency such information as the Advisory Board considers necessary to carry out such duties.

(5) Personnel Matters--

(a) Compensation-- Each member of the Advisory Board who is not an officer or employee of the Federal Government shall serve without compensation. All members of the Advisory Board who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(b) Travel Expenses--The members of the Advisory Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of

title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Advisory Board.

(6) Limitation-- Amounts used for administrative expenses under this section shall not exceed .1 percent of the amounts in the Trust Fund in each year or \$15,000,000 whichever is less.

28. Enforcement.

A. Initial Penalty-- It is agreed that there will be imposed an initial penalty on the failure of any Settling Defendant or Participating Tobacco Manufacturer to make any settlement payment required within 60 days after the date on which such payment is due.

B. Amount of Penalty-- The amount of the penalty imposed by subsection A. on any failure with respect to a manufacturer shall be \$100,000 for each day during the noncompliance period.

C. Noncompliance Period-- For purposes of this section, the term “noncompliance period” means, with respect to any failure to make a required settlement payment, the period--

(1) beginning on the due date for such payment; and

(2) ending on the date on which such payment is paid in full.

D. Limitations--

(1) In General-- No penalty shall be imposed by subsection A. on any failure to make a settlement payment during any period for which it is established to the

satisfaction of the Trustees that none of the persons responsible for such failure knew or, exercising reasonable diligence, would have known, that such failure existed.

(2) Corrections-- No penalty shall be imposed under subsection A on any failure to make a settlement payment if--

(a) such failure was due to reasonable cause and not to willful neglect; and

(b) such failure is corrected during the 30-day period beginning on the 1st date that any of the persons responsible for such failure knew or, exercising reasonable diligence, would have known, that such failure existed.

(3) Waiver-- In the case of any failure to make a settlement payment that is due to reasonable cause and not to willful neglect, the Trustees may waive all or part of the penalty imposed under subsection A to the extent that the Trustees determines that the payment of such penalty would be excessive relative to the failure involved.

29. Reimbursement for Participating State Expenditures.

A. Payments--

(1) In General-- The Trustees shall use amounts made available under section 101(c)(1) in each fiscal year to provide funds to each State to reimburse such State for amounts expended by the State for the treatment of individuals with tobacco-related illnesses or conditions.

(2) Amount- The amount for which a State is eligible for under paragraph (1) for a fiscal year shall be based on the applicable percentage described in paragraph (3) of the amount available for such fiscal year under paragraph (1).

(3) Applicable Percentage- For purposes of paragraph (2), the applicable percentage for any Participating State is determined in accordance with the following table:

State	Applicable Percentage
Alabama	1.270390
Alaska	0.241356
Arizona	1.163883
Arkansas	0.751011
California	8.805641
Colorado	1.054018
Connecticut	1.596937

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Delaware	0.227018
District of Columbia	0.534487
Florida	3.590667
Georgia	2.007112
Hawaii	0.642527
Idaho	0.257835
Illinois	4.272898
Indiana	1.714594
Iowa	0.758686
Kansas	0.762230
Kentucky	1.875439
Louisiana	1.916886
Maine	0.870740
Maryland	2.051849
Massachusetts	3.700447
Michigan	4.431824
Minnesota	2.474364
Mississippi	0.851450
Missouri	1.659116
Montana	0.335974

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Nebraska	0.445356
Nevada	0.307294
New Hampshire	0.552048
New Jersey	3.494187
New Mexico	0.465816
New York	14.529380
North Carolina	2.097625
North Dakota	0.250758
Ohio	4.690156
Oklahoma	0.841972
Oregon	1.092920
Pennsylvania	5.233270
Rhode Island	0.821727
South Carolina	0.883628
South Dakota	0.234849
Tennessee	2.479873
Texas	4.451382
Utah	0.330016
Vermont	0.370244
Virginia	1.373860

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Washington	1.794612
West Virginia	1.003660
Wisconsin	2.098696
Wyoming	0.122405
American Samoa	0.008681
N. Mariana Islands	0.001519
Guam	0.006506
U.S. Virgin Islands	0.004804
Puerto Rico	0.193175.

30. Determination of Underage Use Base Percentages to Measure Reductions in Underage Usage.-- One of the purposes of this Master Settlement Agreement is to encourage the achievement of dramatic and immediate reductions in the number of underage consumers of tobacco products. It is agreed that substantial financial surcharges will be imposed on Settling Defendants and on Participating Tobacco Manufacturers if certain underage tobacco-use reduction targets are not met.

A. Cigarettes-- For purposes of this paragraph, it is agreed that the underage use base percentage for cigarettes shall be a percentage determined by the Secretary, weighted by the relative population of the age groups involved as determined using data compiled in 1995 by the Bureau of the Census, based on--

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- (1) the average of the percentages of 12th graders (individuals who are 16 or 17 years of age) who used cigarette products on a daily basis for each of the calendar years 1986 through 1996;
- (2) the average of the percentages of 10th graders (individuals who are 14 or 15 years of age) who used cigarette products on a daily basis for each of the calendar years 1991 through 1996; and
- (3) the average of the percentages of 8th graders (individuals who are 13 years of age) who used cigarette products on a daily basis for each of the calendar years 1991 through 1996.

B. Smokeless Tobacco-- For purposes of this section, the underage use base percentage for smokeless tobacco products shall be a percentage determined by the Secretary, weighted by the relative population of the age groups involved as determined using data compiled in 1995 by the Bureau of the Census, based on--

- (1) the average of the percentages of 12th graders (individuals who are 16 or 17 years of age) who used smokeless tobacco products on a daily basis in 1996;
- (2) the average of the percentages of 10th graders (individuals who are 14 or 15 years of age) who used smokeless tobacco products on a daily basis in 1996; and
- (3) the average of the percentages of 8th graders (individuals who are 13 years of age) who used smokeless tobacco products on a daily basis in 1996.

C. Use of Certain Data or Methodology-- For purposes of determining the percentages under paragraphs (1) through (3) of subsections A and B, the Secretary shall use the data contained in the National High School Drug Use Survey entitled Monitoring the Future by the University of Michigan or such other comparable index, as determined appropriate by the Secretary after notice and an opportunity for a hearing, that utilizes methodology identical to that used by the University of Michigan in such survey.

31. Annual Daily Incidence of Underage Use of Tobacco Products.

A. Annual Determination-- Not later than the expiration of the 5-year period beginning on the date of execution of this Master Settlement Agreement, and annually thereafter, the Secretary shall determine the average annual incidence of the daily use of tobacco products by individuals who are under 18 years of age.

B. Cigarettes-- With respect to cigarette products, a determination under subsection (a) for a year shall be based on the percentage, as weighted by the relative population of the age groups involved as determined using data compiled in 1995 by the Bureau of the Census, of--

- (1) 12th graders (individuals who are 16 or 17 years of age) who used cigarette products on a daily basis during the year involved;
- (2) 10th graders (individuals who are 14 or 15 years of age) who used cigarette products on a daily basis during the year involved; and
- (3) 8th graders (individuals who are 13 years of age) who used cigarette products on a daily basis during the year involved.

C. Smokeless Tobacco-- With respect to smokeless tobacco products, a determination under subsection (a) for a year shall be based on the percentage, as weighted by the relative population of the age groups involved as determined using data compiled in 1995 by the Bureau of the Census, of--

- (1) 12th graders (individuals who are 16 or 17 years of age) who used smokeless tobacco products on a daily basis during the year involved;
- (2) 10th graders (individuals who are 14 or 15 years of age) who used smokeless tobacco products on a daily basis during the year involved; and
- (3) 8th graders (individuals who are 13 years of age) who used cigarette smokeless tobacco on a daily basis during the year involved.

D. Use of Certain Data or Methodology--

- (1) In General-- For purposes of determining the percentages under paragraphs (1) through (3) of subsections (b) and (c), the Secretary shall use the data contained in the National High School Drug Use Survey entitled Monitoring the Future by the University of Michigan (if such survey is still being undertaken) or such other comparable index, as determined appropriate by the Secretary after notice and an opportunity for a hearing, that utilizes methodology identical to that used by the University of Michigan in such survey.
- (2) Alteration of Methodology- If the Secretary determines that the methodology used by the University of Michigan in the survey referred to in paragraph (1) has been altered in a material manner from the methodology used

during the period from 1986 to 1996 (including by altering States or regions on which the survey is based), the Secretary, after notice and an opportunity for a hearing, shall use percentages based on an index developed by the Secretary that utilizes methodology identical to that used by the University of Michigan in such survey.

32. Required General Reduction in Underage Tobacco Use.

A. In General-- For purposes of assessing surcharges under paragraph 33, the Secretary shall determine whether the required percentage reduction in the underage use of tobacco products for a year (based on the tables contained in subsection (b)) has been achieved for the year involved. Such determination shall be based on--

(1) with respect to cigarette products, the average annual incidence of the daily use of tobacco products by individuals who are under 18 years of age for the year involved (as determined under section 313(b)) as compared to the underage use base percentage for cigarette products (as determined under section 312(a)); and

(2) with respect to smokeless tobacco products, the average annual incidence of the daily use of smokeless tobacco products by individuals who are under 18 years of age for the year involved (as determined under section 313(c)) as compared to the underage use base percentage for smokeless tobacco products (as determined under section 312(b)).

B. Percentage Reduction in Underage Use of Tobacco Products-- For purposes of subsection A, the required percentage reduction in the underage use of tobacco products with respect to each tobacco product shall be determined based on the national goals for the reduction in underage tobacco use under paragraph 2 above.

33. Application of Surcharges--

A. In General-- If the Secretary determines that the percentage reduction in the underage use of tobacco products for a year has not been achieved as required, the Secretary shall impose a surcharge on the participating manufacturers of the tobacco products involved.

B. Amount of Surcharge--

(1) In General--

(a) Cigarettes-- With respect to cigarettes, the amount of any surcharge to be imposed under this section for a calendar year shall be equal to--

(i) with respect to each of the first 5 calendar years to which this section applies, the product of--

a) \$100,000,000, and the number of applicable surcharge percentage points as determined under subsection (c) up to 5 percentage points;

b) \$200,000,000, and the number of applicable surcharge percentage points as determined under subsection (c), if

such percentage points are greater than 5 but less than 11

percentage points; and

c) \$300,000,000, and the number of applicable surcharge

percentage points as determined under subsection (c), if

such percentage points are 11 or more percentage points;

and

(ii) with respect to calendar years succeeding the period

referred to in subparagraph (A), the product of--

a) \$250,000,000, and the number of applicable surcharge

percentage points as determined under subsection (c) up to

5 percentage points; and

b) \$500,000,000, and the number of applicable surcharge

percentage points as determined under subsection (c), if

such percentage points are 5 or more percentage points.

(b) Smokeless Tobacco-- With respect to smokeless tobacco, the

amount of any surcharge to be imposed under this section for a calendar

year shall be equal to--

(i) with respect to each of the first 5 calendar years to which

this section applies, the product of--

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a) \$15,000,000, and the number of applicable surcharge percentage points as determined under subsection (c) up to 5 percentage points;

b) \$30,000,000, and the number of applicable surcharge percentage points as determined under subsection (c), if such percentage points are greater than 5 but less than 11 percentage points; and

c) \$45,000,000, and the number of applicable surcharge percentage points as determined under subsection (c), if such percentage points are 11 or more percentage points; and

(ii) with respect to calendar years succeeding the period referred to in subparagraph (A), the product of--

a) \$30,000,000, and the number of applicable surcharge percentage points as determined under subsection (c) up to 5 percentage points; and

b) \$60,000,000, and the number of applicable surcharge percentage points as determined under subsection (c), if such percentage points are 5 or more percentage points.

(2) Adjustments-- The amount applicable under paragraph (1) shall be annually adjusted by the Secretary based on--

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- (a) with respect to subparagraph (A) of such paragraph--
    - (i) the proportional percentage increase or decrease, as compared to calendar year 1995, in the population of individuals residing in the United States who are at least 13 years of age but less than 18 years of age;
    - (ii) the proportional percentage increase or decrease, as compared to calendar year 1996, in the average profit per unit (measured in cents and weighted by annual sales) earned by participating manufacturers for the tobacco product involved (as determined by the Secretary through a contract with a nationally recognized accounting firm having no connection to such manufacturers); and
  - (b) any methodology utilized to avoid the double counting of underage individuals whose tobacco use has previously resulted in the imposition of a surcharge, limited to the extent that there were not other underage users of tobacco in such previous years for whom a surcharge was not paid because of the limitation contained in section 316.
- (3) Profit Per Unit-- For purposes of paragraph (2)(A)(ii), the average profit per unit for calendar 1996 shall be determined using the operating profit reported by participating manufacturers to the Securities and Exchange Commission.

(4) Annual Limitations-- The total amount of surcharges imposed under this section for a calendar year shall not exceed--

(a) in the case of cigarettes--

(i) \$5,000,000,000 for each of the years described in paragraph

(1)(A)(i); and

(ii) \$10,000,000,000 for each of the years described in

paragraph (1)(A)(ii); and

(b) in the case of smokeless tobacco products--

(i) \$500,000,000 for each of the years described in paragraph

(1)(B)(i); and

(ii) \$1,000,000,000 for each of the years described in paragraph

(1)(B)(ii).

C. Determination of Applicable Surcharge Percentage Points--

(1) In General--Except as provided in paragraph (2), with respect to a calendar year, the applicable surcharge percentage points shall be equal to the percentage point difference between--

(a) the required percentage reduction in the underage use of the tobacco product involved for the year (based on the tables in paragraph 29(b); and

(b) the number of percentage points by which the average annual incidence of the daily use of the tobacco products involved by individuals

who are under 18 years of age for the year (as determined under paragraph 28) is less than the underage use base percentage for such products (as determined under paragraph 27).

(2) Adjustment-- If for any calendar year the Secretary determines that the average annual incidence of the daily use of the tobacco products involved by individuals who are under 18 years of age (as determined under paragraph 28) is greater than the underage use base percentage for such products (as determined under paragraph 27), the applicable surcharge percentage point shall be equal to--

(a) the percentage point amount determined under paragraph (1)(A);

and

(b) the number of percentage points by which the average annual incidence of the daily use of the tobacco products involved by individuals who are under 18 years of age (as determined under paragraph 28) is greater than the underage use base percentage for such products (as determined under paragraph 27).

(3) Type of Product-- Separate determinations shall be made under this section for cigarette products and smokeless tobacco products.

D. Joint and Several Obligation-- Any surcharge imposed under this section with respect to a tobacco product (cigarette products or smokeless tobacco products) shall be the joint and several obligation of all participating manufacturers of such product as allocated by the market share of each such manufacturer with respect to such product.

The market share of each manufacturer for each such product shall be based on the market share of such product for the year preceding the year for which the determination is being made.

E. Assessment- Not later than May 1 of each year in which a surcharge will be imposed under this section, the Secretary shall assess, pursuant to subsection (d), to each participating manufacturer the amount for which such manufacturer is obligated. Not later than July 1 of any year in which a manufacturer receives an assessment under this section, the manufacturer shall pay such assessment in full or be subject to such interest on such amount as the Secretary may by regulation prescribe.

F. Use of Amounts-- Amounts received under this section shall be used to further the purposes of this Master Settlement Agreement.

34. Abatement Procedures.

A. Petitions-- Upon payment by a participating manufacturer of the amount assessed to the manufacturer under paragraph 30, the manufacturer may submit a petition to the Secretary for an abatement of the assessment. A notice of such abatement petition shall be submitted to the attorney general of each State.

B. Hearing-- The Secretary shall provide for the conduct of a hearing on an abatement petition received under subsection (a) pursuant to the procedures described in sections 554, 556, and 557 of title 5, United States Code. The attorney general of any State shall be permitted to be heard at any hearing conducted under this subsection.

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- C. Burden--The burden at any hearing under subsection (b) shall be on the participating manufacturer to prove, by a preponderance of the evidence, that the manufacturer should be granted the abatement.
- D. Basis of Decision-- Any decision regarding a petition for an abatement under this section shall be based on a determination as to whether--
- (1) the participating manufacturer has acted in good faith and in full compliance with this MSA (and any amendment made by this MSA) and any regulations or State or local laws promulgated in furtherance of this MSA;
  - (2) the participating manufacturer has pursued all reasonably available measures to attain the reductions;
  - (3) there is any evidence of any direct or indirect action by the participating manufacturer to undermine the achievement of the reductions required under paragraph 2 or to undermine any other provision of this MSA (or amendment);  
and
  - (4) the participating manufacturer has taken (or failed to take) any other action as determined appropriate by the Secretary.
- E. Amount-- Upon a determination granting an abatement under this section, the Secretary shall order the abatement of any or all of the amount paid by the participating manufacturer (as determined by the Secretary), together with interest that may have accrued on such amount during the period between the date on which payment by the manufacturer was made and the date on which the abatement order was granted. Such

interest shall be equal to that provided for the average 52-week Treasury Bill during the period involved.

F. Aggrieved Parties-- Any participating manufacturer or attorney general of any State that is aggrieved by an abatement that is granted under this section may seek judicial review of the abatement decision within 30 days of the date of such decision in the Court of Appeals for the District of Columbia Circuit. Review in such cases shall be subject to the procedures described in sections 701 through 706 of title 5, United States Code.

G. Prohibition-- A participating manufacturer may not file a petition under subsection (a) until such time as the manufacturer has fully paid the Secretary the amount assessed to the manufacturer under paragraph 30.

35. Incentive for Exceeding Reduction Goals.

A. In General-- If the Secretary determines that the percentage reduction in the underage use of tobacco products for a year exceeds 60 percent for cigarettes and 45 percent for smokeless tobacco products for a year as required under paragraph 29, the Secretary shall notify the Trustees who shall adjust, in accordance with subsection (b), the amount of the settlement payment that a participating manufacturer shall be required to pay for such year.

B. Amount-

(1) Cigarettes-- With respect to cigarettes, the amount of a settlement payment adjustment applicable to a participating manufacturer under this section shall be an amount equal to 1/80 of the amount that the manufacturer is required to pay for

such year multiplied by the number of percentage points by which the manufacturer has reduced underage tobacco use in excess of the 60 percent reduction required under paragraph 2.

(2) Smokeless Tobacco-- With respect to smokeless tobacco, the amount of a licensing fee adjustment applicable to a participating manufacturer under this section shall be an amount equal to 1/110 of the amount that the manufacturer is required to pay for such year multiplied by the number of percentage points by which the manufacturer has reduced underage tobacco use in excess of the 45 percent reduction required under paragraph 2.

C. Procedures-- The Trustees, in consultation with the Secretary, shall develop procedures subject to the Court's approval to carry out this section.

36. National Institutes of Health Trust Fund for Health Research--

A. Creation of Trust Fund-- It is agreed that a trust fund to be known as the "National Institutes of Health Trust Fund for Health Research" will be established (referred to in this section as the "NIH Trust Fund"), and will consist of such amounts as may be transferred to the Trust Fund pursuant to paragraphs 25(c)(2) and (3)(D).

B. Transfers to Trust Fund-- It is also agreed that funds will be transferred to the NIH Trust Fund for each fiscal year in an amount equivalent to the amount described in section 25(d)(2)(A) for each such fiscal year.

C. Obligations from NIH Trust Fund--

- (1) In General-- Subject to the provisions of paragraph (4), with respect to the amounts made available in the Trust Fund in a fiscal year, the Secretary shall distribute during any fiscal year--
  - (a) 2 percent of such amounts to the Office of the Director of the National Institutes of Health to be allocated at the Director's discretion--
    - (i) for carrying out the responsibilities of the Office of the Director, including the Office of Research on Women's Health and the Office of Research on Minority Health, the Office of Alternative Medicine, the Office of Rare Disease Research, the Office of Behavioral and Social Sciences Research (for use for efforts to reduce tobacco use), the Office of Dietary Supplements, and the Office for Disease Prevention; and
    - (ii) for construction and acquisition of equipment for or facilities of or used by the National Institutes of Health;
  - (b) 2 percent of such amounts for transfer to the National Center for Research Resources to carry out section 1502 of the National Institutes of Health Revitalization Act of 1993 concerning Biomedical and Behavioral Research Facilities;
  - (c) 1 percent of such amounts for carrying out section 301 and part D of title IV of the Public Health Service Act with respect to health information communications;

(d) 10 percent of such amounts for carrying out section 414 of the Public Health Service Act with respect to national cancer research and demonstration centers; and

(e) the remainder of such amounts to member institutes and centers, including the Office of AIDS Research, of the National Institutes of Health in the same proportion to the total amount received under this section, as the amount of annual appropriations under appropriations Acts for each member institute and Centers for the fiscal year bears to the total amount of appropriations under appropriations Acts for all member institutes and Centers of the National Institutes of Health for the fiscal year.

(2) Plans of Allocation-- The amounts transferred under paragraph (1)(E) shall be allocated by the Director of the National Institutes of Health or the various directors of the institutes and centers, as the case may be, pursuant to allocation plans developed by the various advisory councils to such directors, after consultation with such directors.

(3) Grants and Contracts Fully Funded in First Year-- With respect to any grant or contract funded by amounts distributed under paragraph (1), the full amount of the total obligation of such grant or contract shall be funded in the first year of such grant or contract, and shall remain available until expended.

(4) Trigger and Release of Monies and Phase In--

(a) Trigger and Release-- No expenditure shall be made under paragraph (1) during any fiscal year in which the annual amount appropriated for the National Institutes of Health is less than the amount so appropriated for the prior fiscal year.

(b) Phase-In-- The Secretary of Health and Human Services shall phase-in the distributions required under paragraph (1) so that--

(i) 25 percent of the amount in the Trust Fund is distributed in the first fiscal year for which funds are available;

(ii) 50 percent of the amount in the Trust Fund is distributed in the second fiscal year for which funds are available;

(iii) 75 percent of the amount in the Trust Fund is distributed in the third fiscal year for which funds are available; and

(iv) 100 percent of the amount in the Trust Fund is distributed in the fourth and each succeeding fiscal year for which funds are available.

D. National Tobacco Research Agenda--

(1) In General-- In order to promote the goals and purposes of this Master Settlement Agreement, not later than 1 year after the date of execution of this Master Settlement Agreement, and annually thereafter, the Director of the National Institutes of Health, in collaboration with the Director of the Centers for Disease Control and Prevention, the Commissioner of Food and Drugs, the

Administrator of the Substance Abuse and Mental Health Services

Administration, and the Director of the Office of National Drug Control Policy, shall prepare and submit to the Secretary and to the appropriate committees of Congress a National Tobacco Research Agenda.

(2) Contents-- The Agenda submitted under paragraph (a) shall reflect the research needs in the area of tobacco-related illnesses and diseases and conditions related to other abused substances for the year for which the Agenda is being submitted, with special emphasis on youth tobacco use. The Agenda shall include research concerning--

- (a) the role of tobacco products in causing cancer, cardiovascular diseases, stroke, and other diseases;
- (b) genetic and behavioral factors that are related to the use of tobacco or the development of tobacco-related diseases;
- (c) the development of prevention and treatment modalities with respect to tobacco use and cessation;
- (d) the development and use of safer and less addictive tobacco products;
- (e) tobacco-related surveillance and education, including the effects of counter-advertising;
- (f) biomedical and behavioral research of the type described in subparagraphs (a) through (e) for other abused substances such as illicit narcotics; and

(g) brain development in the early years of life, and the continued physical, intellectual, and social development of children, with emphasis on how tobacco and other abused substances affect such development.

37. National Anti-Tobacco Product Consumption and Tobacco Product Cessation Public Health Program.

A. Authority and Duties-- Using amounts made available pursuant to section 25(c)(2) and (3)(D), it is agreed that the Secretary shall carry out the following activities:

(1) National Anti-Tobacco Program--

(a) In General- The Secretary shall establish and implement a national anti-tobacco product consumption and tobacco product cessation program to discourage individuals from beginning to use tobacco products and other substances of abuse and to assist individuals who consume such products to discontinue such use, with special emphasis placed on health promotion and disease prevention activities that discourage children under the age of 18 from initiating or continuing use of such products;

(b). Requirements-- In carrying out the program under subparagraph

(a), the Secretary shall--

(i) to the maximum extent practicable, act in cooperation with State and local public health officials, and private for-profit and non-profit entities that carry out anti-tobacco product use and tobacco product cessation programs; and

(ii) to the extent determined appropriate by the Secretary,  
coordinate the program through the Centers for Disease Control  
and Prevention, Office on Smoking and Health.

(2) Administrative Activities-- The Secretary shall provide funds from those allocated herein for the administration and implementation of the public health and regulatory provisions of this Master Settlement Agreement, including funds for the Centers for Disease Control and Prevention and the Food and Drug Administration.

(3) Block Grants-- The Secretary shall use not less than 50 percent of the amounts available in each fiscal year under this section to provide block grants to States to carry out activities described in subsection C.

B. Recommendations-- In developing programs under this section, the Secretary shall consider, as appropriate, the recommendations of the Attorneys General who have been engaged in litigation against the tobacco industry for a number of years, and private counsel to members of the class certified for purposes of *Dianne Castano v. American Tobacco Company* as well as other private counsel involved in tobacco litigation..

C. Direct Federal Activities-- Under the national anti-tobacco product consumption and tobacco cessation program implemented under subsection (a)(1), the Secretary shall carry out the following activities:

(1) Public Education--

(a) Model Curricula-- It is agreed that the Secretary, acting through the Director of the Centers for Disease Control and Prevention, should develop model curricula and other materials designed to educate the public about the health risks associated with tobacco use. Such educational materials should be specially designed to influence the knowledge, attitudes, and behavior of young Americans.

(b) Assistance by CDC-- It is further agreed that the Director of the Centers for Disease Control and Prevention should provide technical assistance to State and local public health and education officials and parent-teacher and other civic organizations in developing age effective anti-tobacco educational curricula and other materials.

(c) Chronic Consumers of Tobacco Products-- Educational efforts under this paragraph shall include the development of materials that advise members of the public who consume tobacco products of the risks of continuing to use such products and the benefits of discontinuing the use of these products.

(d) Cessation Education-- It is agreed that the Director of the Centers for Disease Control and Prevention, in consultation with State and local public health officials, should take additional appropriate action to inform consumers of tobacco products about effective therapies for ceasing the consumption of tobacco products. Such actions should be consistent with

the tobacco use cessation guidelines issued by the Agency for Health Care Policy and Research.

(2) Counter-Advertising-- The Secretary shall carry out a mass media public education campaign designed to counter the effects of marketing practices of tobacco product manufacturers and distributors.

(3) Model State Program-- The Secretary shall establish a model smoking cessation program that may be used by States in the design of State-based smoking cessation programs. Such model program shall provide for the provision of grants and other assistance by such States to eligible entities and individuals in the State for the establishment or administration of tobacco product use prevention and cessation programs.

(4) Other Activities-- The Secretary may undertake anti-tobacco product consumption and cessation activities in addition to those specified in paragraphs (1) through (3). Such activities may include enhanced direct Federal programs whose goal is to reduce the use of other abused substances such as illicit drugs.

(5) Grants and Contracts-- It is agreed that the Secretary, acting under the authority provided under section 301 of the Public Health Service Act (42 U.S.C. 241 et seq.), may award grants and contracts under subsection (a)(1) to public and private entities (including for-profit entities if determined appropriate by the Secretary) to carry out educational, counter-advertising and other activities described in this subsection.

D. Voluntary Tobacco Use Prevention and Cessation Block Grants--

(1) In General-- The Secretary shall award block grants to States under subsection A.(3) to enable such States to carry out activities for the purpose of planning, implementing, and evaluating tobacco use prevention and cessation activities.

(2) Eligibility-- To be eligible to receive a grant under this section, a State shall certify to the Secretary that such State has in effect a comprehensive plan designed to reduce smoking and youth access to tobacco products, which plan shall include provisions addressing problems associated with the purchase, receipt or possession of tobacco products by minors.

(3) Application--

(a) In General-- A State that desires to receive a voluntary block grant under subsection A.(3) shall prepare and submit to the Secretary an application, at such time, in such manner, and accompanied by such information as the Secretary may require.

(b) Contents-- An application submitted under subparagraph (a) shall--

(i) describe the activities that will be carried out using assistance under this subsection; and

(ii) provide such assurances as the Secretary determines to be necessary to carry out this subsection.

- (4) Use of Funds-- A State shall use amounts received under this section to carry out tobacco abuse cessation activities described herein.
- (5) Formula-- The amount of a block grant under this subsection shall be determined by the Secretary based on a formula to be developed by the Secretary that takes into consideration the number of children between the ages of 10 and 18 in each State.
- (6) Nonparticipating States-- If a State elects not to participate in the voluntary block grant program under this subsection, the funds allocated to such State will be distributed to participating States in the same ratio as amounts provided to such States under the formula developed under paragraph (5).

38. Document Disclosure Plan. It is agreed that, within 45 days of the execution of this Master Settlement Agreement, the parties will present a detailed plan to the Court which will provide for the disclosure of previously nonpublic or confidential documents by Settling Defendants and Participating Tobacco Manufacturers of tobacco products, including the results of internal health research, and to provide for a procedure to settle claims of attorney-client privilege, work product, or trade secrets with respect to such documents.

39. Costs and Fees--

A. It is agreed that for purposes of recovery of fees and costs in each of their lawsuits, the Participating States shall be deemed the prevailing parties. Within 60 days execution of this Master Settlement Agreement, Settling Defendants and Participating Tobacco Manufacturers shall pay to each Participating State, separate and apart from any

other funds due and owing to the State, its costs and attorneys' fees in this matter, including costs and fees incurred by the Office of the Attorney General and state agencies, and those due special assistants attorney general or other outside counsel retained for each State's case.

B. It is further agreed that each State will submit to the Settling Defendants and Participating Tobacco Manufacturers a statement of its attorneys' fees and costs within 60 days of the execution of this Master Settlement Agreement. Said Settling Defendants and Participating Tobacco Manufacturers shall state any objections to such statements within 30 days. If the parties cannot agree upon any disputed items, the matters in dispute shall be submitted to binding arbitration before a three-member panel, one member each to be appointed by the State and jointly by said Settling Defendants and Participating Tobacco Manufacturers, the third to be selected by the two first appointed.

40. Joint and Several Liability-- Except as expressly provided otherwise in this Master Settlement Agreement, all monetary liabilities are the joint and several liabilities of Settling Defendant and each Participating Tobacco Manufacturer.

41. Modification, Enforcement and Remedies

A. Modification. This Master Settlement Agreement shall not be modified unless the party seeking modification demonstrates, by clear and convincing evidence, that it will suffer a grievous wrong evoked by new and unforeseen conditions. It is intended that each Settling Defendants and the Participating Tobacco Manufacturer will comply with this Master Settlement Agreement as originally agreed upon, even if the Settling Defendants'

and Participating Tobacco Manufacturers’ obligations hereunder are greater than those imposed under current or future law; therefore, a change in law that results, directly or indirectly, in more favorable or beneficial treatment of any one or more of Participating Tobacco Manufacturers shall not support modification of this Master Settlement Agreement, except where such changes create material legal requirements that produce obligations in clear and unresolvable conflict with those of this Master Settlement Agreement.

B. In the event that any signatory to this Master Settlement Agreement is determined by the Court to have violated this Master Settlement Agreement, the Court may enter any order necessary to compel compliance with this Master Settlement Agreement or remediation of the violation (hereinafter referred to as “Enforcement Order”). In the first instance, an Enforcement Order shall not normally be accompanied by criminal or civil sanction, provided, however, that if any signatory is later determined by the court to have failed to comply with an Enforcement Order or to have violated the provision(s) of the Master Settlement Agreement upon which an earlier Enforcement Order was based, the court may, in addition to any other appropriate order, punish such signatory’s misconduct by imposing appropriate sanctions.

C. Nothing in this Master Settlement Agreement affects the ability of the United States or a Participating State or its units of local government to adopt measures that further restrict or eliminate the use of, or access to, tobacco products by minors.

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D. Nothing in this Master Settlement Agreement affects the ability of the United States or a Participating State or its units of local government to adopt measures that further restrict or eliminate employee and general public exposure to smoking in the work-place and in other public and private places and facilities.

E. Nothing in this Master Settlement Agreement affects the ability of the United States or a Participating State or its units of local government to adopt measures that further restrict or eliminate the sale or distribution of tobacco products, or to impose taxes on such products.

F. The remedies in this Master Settlement Agreement are not exclusive and nothing shall prevent a State from seeking criminal or civil sanctions or other remedies provided in State or federal law for acts or omissions of Participating Tobacco Manufacturers which may also violate the terms of this Master Settlement Agreement.

42. Additional Parties-- The United States, Settling Defendants, Participating States, and Participating Tobacco Manufacturers (the "Initial Parties") contemplate that other parties will desire to join and become bound by this Master Settlement Agreement. The Initial Parties agree that a State or non-participating tobacco manufacturer may sign anytime hereafter and become bound by this Master Settlement Agreement without the approval of any of the Initial Parties or any of the other parties who subsequently may sign the Master Settlement Agreement. Upon signing this Master Settlement Agreement, a non-participating tobacco manufacturer shall be considered a Participating Tobacco Manufacturer for all purposes herein.

43. Severability-- If a court determines that any provision of the Master Settlement Agreement is unconstitutional or otherwise unenforceable, all other provisions of this Master Settlement Agreement shall remain fully effective and enforceable.

44. Headings--The headings of the paragraphs of this Master Settlement Agreement are for reference only and do not limit, expand or otherwise affect the contents of this Master Settlement Agreement.

45. Representations-- Each of the parties represent and warrant that they have the legal authority and power to enter into this Master Settlement Agreement and to be bound by its terms.

46. Service of Notices and Process

A. United States-- Service upon the United States shall be made upon the Office of the Attorney General.

A State: Service upon the respective States shall be made upon the Attorney General or Chief Legal Officer as appropriate.

B. Participating Tobacco Manufacturers: Service upon each Participating Tobacco Manufacturer shall be made at:

1. [list separately each Participating Tobacco Manufacturer]

C. Changes. Each party shall promptly inform all other parties of any change in identity or address of the persons to be served.

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47. Final Disposition--This Master Settlement Agreement resolves all claims set forth in the Plaintiff's and the Participating States' complaints against Settling Defendants and Participating Tobacco Manufacturers and shall constitute final disposition of this action.

Dated, this \_\_\_\_ day of \_\_\_\_\_, 1998.

## Elements of a Deal

1. Money: Hatch bill (\$428.5 billion, adjusted for volume & inflation). This nets \$46 billion over 5 years, and increases prices 69 cents a pack by our estimates (over \$1.00/pack by industry estimates).
2. FDA: Frist provisions (McCain bill). Hatch bill takes away FDA's pre-market approval of new products; gives FDA authority over ingredients but not filter or paper; requires Congressional vote on nicotine ban; limits FDA authority on advertising and access restrictions. Democrats will never swallow liability limits without clean FDA authority.
3. Liability: Annual cap of \$6-7 billion (Hatch is \$5.5 billion), probably with an 80% offset against annual payments. We could live with other possible restrictions (such as a subcap on punitive damages or real limits on attorneys fees), but we won't be able to deliver many Democratic votes for them. Hatch has a \$5.5 billion cap and a ban on punitives and class actions.
4. Lookback: Hatch bill (Industry-wide penalties of \$100-300 million a point with \$5 billion cap in first 5 years, \$250-500 million a point with \$10 billion cap after that), but with no abatement procedure -- and if possible, a very modest company-specific penalty to keep Democrats from walking away. (For example, we once considered applying a \$500 per teen penalty only if a company missed the targets by 20 points or more.)
5. Farmers: Industry could bypass the Ford-Lugar dispute by agreeing to purchase a fixed amount of domestic tobacco at current prices for the next 10 years.
6. Spending: Most of the \$46 billion over 5 years would go to the states (\$20B+) and tax cuts (\$15B+), with the leftovers going to farmers, research, and counteradvertising. Hatch bill allocates funds nearly the same way as McCain managers amendment (42% states, 21% public health, 20% research, 17% farmers).

## **Plan B: State-Only Settlement with Modified Skinny Bill**

We could split this into two parts, on the theory that Congress would be more likely to pass a smaller bill. Under this scenario, we would call a White House summit with the key parties, and seek the following result: 1) a state-only settlement between the attorneys general and the industry that would only take effect if Congress acted by October; and 2) a modified skinny bill with full FDA authority, reasonable lookbacks, a price increase (40 cents) to pay for a tax cut, and a liability cap that would only take effect if the state-only settlement was reached. The modified skinny bill would be less than half the size of the McCain bill, and meet Gingrich's test for no new net taxes. If Congress rejected it, they would be saying no to a tax cut.

State-Only Settlement: Around \$200 billion for states, plus a set-aside for a nationwide counteradvertising campaign. Industry would agree to buy current level of domestic tobacco for 10 years. State-only deal avoids 25% budget offset for federal accounting purposes.

Modified Skinny Bill: \$225-250 billion, with all or most of the money going for tax cuts (with room for farmers, NIH, and/or other bipartisan priorities). Full FDA authority. Reasonable lookbacks (e.g., industrywide penalties of a penny a pack per point). No HCFA recoupment of state settlement funds if states agree to 1) reasonable attorney fee limits and 2) spend half the money on an agreed-upon menu that includes cessation, prevention, and children's health or child care. Liability cap that takes effect only if the state-only settlement is finalized, so members of Congress and the attorneys general can each say the other is responsible for it.