

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss

TRIAL COURT DEPARTMENT

SUPERIOR COURT

DOCKET NO.

PATRICIA WALSH GREENE,

Plaintiff,

v.

PHILIP MORRIS USA., and STAR
MARKETS COMPANY, INC.

Defendants.

COMPLAINT AND DEMAND FOR JURY TRIAL

Nature of the Action

1. Plaintiff Patricia Walsh Greene brings this action for compensatory damages arising out of her injuries caused by Defendants' wrongful conduct. On October 15, 2013 Patricia Walsh Greene was diagnosed with non-small cell lung cancer as a result of smoking Marlboro brand cigarettes from the time she was thirteen until the age of thirty. Marlboro brand cigarettes are designed, tested manufactured, marketed, promoted, distributed and/or sold by defendant Philip Morris USA ("Philip Morris"), a wholly-owned

subsidiary of Altria Group, Inc. Marlboro cigarettes were defective and unreasonably dangerous and should not have been sold to Patricia Walsh Greene at any time.

2. Defendant Philip Morris has known for decades that cigarette smoking causes a variety of potentially fatal diseases and that the nicotine contained in its cigarettes is a highly addictive drug. *United States v. Philip Morris USA, Inc.*, 449 F. Supp. 2d 1, 146-307 (D.D.C. 2006). Philip Morris has consistently engaged in a public relations campaign to mislead, confuse, and deceive the public, including the plaintiff Mrs. Greene, as to the dangerousness of its cigarettes and the addictive quality of the nicotine contained therein. Since the 1950's Philip Morris, having joined industry trade associations such as the Tobacco Industry Research Committee ("TIRC"), publically pledged to "to aid and assist research into tobacco use and health." Contrary to such public statements, Philip Morris has since that time actually done everything it can to conceal and distort information about the negative health consequences of smoking cigarettes.
3. Philip Morris' own archives show that it has known for decades that nicotine is an addictive drug and that its products are nicotine delivery devices. Philip Morris internal documents from the 1960s show that the company had knowledge that nicotine is a "powerful pharmacological agent" and that the primary motivation for smoking cigarettes is to obtain the effects of nicotine. Defendant Philip Morris has also internally researched and acknowledged addiction can be intensified through adjustment and manipulation of the amount of nicotine in cigarettes and the method of nicotine delivery. Philip Morris has used this information to manipulate the nicotine delivery of its cigarettes so as to initiate and maximize addiction in smokers such as Mrs. Greene.

4. Defendant Philip Morris has also known for decades that most smokers begin smoking as children, some as young as ten years old according to Philip Morris' own internal research. Despite this knowledge, and with knowledge that cigarette smoking is hazardous to one's health, Philip Morris has often employed marketing techniques designed to attract children and teenagers to smoking. Such techniques include handing out free samples, promotional items, and specially designed advertisements used to appeal to children and adolescents.
5. Defendant Star Markets Company, Inc. sold Marlboro brand cigarettes in the Boston area during the time that Patricia Walsh Greene was purchasing and smoking Marlboro brand cigarettes. Patricia Walsh Greene primarily purchased her cigarettes at Star Markets Company, Inc.'s Western Ave location in Brighton, Massachusetts. The Marlboro brand cigarettes Star Markets Company, Inc. sold were defective and unreasonably dangerous and should not have been sold to Patricia Walsh Greene at any time.
6. Plaintiff Patricia Walsh Greene seeks compensatory damages for the wrongful conduct alleged in this Complaint, which proximately caused her pain and suffering, and other losses and expenses, due to her battle with lung cancer.

The Parties

7. Plaintiff Patricia Walsh Greene is a resident of Newton, Massachusetts.
8. Defendant Philip Morris USA ("Philip Morris") is a Virginia corporation that conducts business in the Commonwealth of Massachusetts. Philip Morris manufactures, advertises and sells Marlboro cigarettes throughout the United States, including the Commonwealth of Massachusetts.

9. Defendant Star Markets Company, Inc. (“Star Market”) is a Massachusetts corporation with its principal/and or usual place of business at 750 West Center Street, West Bridgewater, Massachusetts 02379.
10. At all pertinent times, defendants acted through their duly authorized agents, servants and employees who were then acting in the course and scope of their employment, and in furtherance of the business of defendants.
11. All defendants did and continue to do business in the Commonwealth of Massachusetts; made contracts to be performed in whole or in part in the Commonwealth; and/or manufactured, tested, sold, offered for sale, supplied cigarettes, or placed cigarettes in the stream of commerce, or in the course of business, materially participated with others in so doing, cigarettes; and performed such acts as were intended to, and did, result in the sale and distribution in the Commonwealth of cigarettes from which the defendants derived substantial revenue, directly or indirectly. All defendants also caused tortious injury by acts or omissions in the Commonwealth, and/or caused tortious injury in the Commonwealth by acts or omissions outside the Commonwealth.

Jurisdiction and Venue

12. This Court has jurisdiction over the subject matter of this action pursuant to G.L. c. 212, § 4. This Court has personal jurisdiction over the defendants pursuant to G.L. c. 223A, §§ 2 and 3.
13. Venue is proper in Middlesex County pursuant to G.L. c. 223, §§ 7 and 8(4).

Factual Background

14. Starting on or about 1971, at the age of thirteen, and continuing for years thereafter, Patricia Walsh Greene smoked Marlboro cigarettes. She started smoking Marlboros in part because she had access to them at no cost through free Marlboro Cigarette giveaway events in the Downtown Crossing area of Boston, Massachusetts. Patricia Walsh Greene continued smoking cigarettes until age thirty, primarily purchasing Marlboro brand cigarettes from the Star Market located on Western Avenue, in Brighton, Massachusetts.
15. At all times relevant to this Complaint, Philip Morris knowingly made material misrepresentations and/or omissions to the public, including Patricia Walsh Greene, about the link between smoking and various diseases, and, in particular, misrepresented that nicotine is not addictive. As late as 1994, Philip Morris testified before the United States Congress that it did not believe nicotine is addictive. After this testimony, Philip Morris engaged in national advertising in which it stated “Philip Morris does not believe cigarette smoking is addictive. People can and do quit all the time.”
16. Philip Morris made the above representations despite a substantial body of evidence, including evidence developed by Philip Morris and other cigarette manufacturers, indicating that nicotine is not only addictive, but is the reason why people, including Patricia Walsh Greene, smoked. Rather than acknowledging what it has known for years, that the primary purpose of nicotine is to provide a pharmacological effect on the smoker that leads to and sustains addiction, Philip Morris has for decades used various misleading tactics to conceal the true role of nicotine, such as comparing the addictiveness of cigarettes to the enjoyment of eating Gummi Bears.

17. Philip Morris has purposely manipulated and controlled the tar and nicotine content and delivery methods of its tobacco products, including Marlboro cigarettes, to create and maintain smokers' addiction to cigarettes.
18. Philip Morris has engaged in a variety of strategies to addict young people to smoking, such as cigarette giveaways in downtown Boston, in which cigarettes were given to minors, including Patricia Walsh Greene. These strategies were designed to put Philip Morris' Marlboro cigarettes into the hands of minors and/or were carried out with reckless disregard for whether the persons to whom its cigarettes were distributed were minors.
19. Philip Morris has known and/or should have known for years that Marlboro cigarettes cause human diseases, including lung cancer, and contain additives that intensify the dangers of smoking. Philip Morris, directly and through its trade associations, concealed and/or failed to disclose to the public and to Patricia Walsh Greene the true facts about the health hazards of smoking Marlboro cigarettes, including their highly addictive qualities, at the time she began smoking and for many years thereafter. Philip Morris' decades-long concealment of and/or failure to disclose the true facts about smoking, disease and addiction had devastating consequences for Patricia Walsh Greene. Patricia Walsh Greene, and many other members of the public, were denied the ability to make an informed decision about smoking Marlboros because information concerning the addictiveness of cigarettes, as well as the associated health consequences of smoking them, were being actively manipulated and concealed by Philip Morris.
20. Philip Morris directly, and through its trade associations, the Tobacco Institute and the Center for Tobacco Research (the successor in interest to the Tobacco Industry Research

Committee) manipulated Patricia Walsh Greene through a campaign of disinformation calculated to mislead the public about the health risks of smoking and to create doubt in the minds of smokers about the link between smoking and human disease.

21. In 2006, Federal District Judge Kessler found in *United States v. Philip Morris USA, Inc.*, that Philip Morris had waited until 2000 to clearly state on its corporate website that it agrees with “overwhelming medical and scientific consensus that cigarette smoking causes lung cancer, heart disease, emphysema, and other serious disease in smokers.” *United States v. Philip Morris USA, Inc.*, 449 F. Supp. 2d 1, 208 (D.D.C. 2006). Judge Kessler also noted that despite this reluctant admission, “Philip Morris still does not include the information on its cigarette packaging that it agrees that smoking causes cancer and other diseases in smokers.” *Id.*
22. Public statements from Philip Morris and its trade associations, were made with the expectation that consumers, including Patricia Walsh Greene, would rely on such statements in making decisions about whether to start, or to continue, smoking cigarettes.
23. As a result of Philip Morris’ campaign of disinformation and targeting of children, Patricia Walsh Greene began smoking Marlboro cigarettes at the age of 13 and continued for another 17 years thereafter.
24. Although Patricia Walsh Greene initially quit smoking at age 22 she was unable to stay cigarette free, and took up smoking again only a year after quitting. She was finally able to quit smoking at the age of 30, in contemplation of bearing children and under immense pressure from her family.
25. Patricia Walsh Greene was diagnosed with non-small cell lung cancer in October of 2013.

26. Patricia Walsh Greene underwent a lobectomy, radiation, and chemotherapy treatments in order to treat her lung cancer. The treatments were physically strenuous and Patricia Walsh Greene was unable to go about her normal daily life. She missed work, personal physical activity that she cherishes, and important family moments. The side effects of the treatment also caused her significant pain and suffering.
27. Additionally, Patricia Walsh Greene has sustained permanent kidney damage as a result of the radiation and chemotherapy necessary to treat her non-small cell lung cancer. She also currently experiences shortness of breath related to her lobectomy.
28. Because of her non-small cell lung cancer and resulting surgery, chemotherapy, and radiation, Patricia Walsh Greene can no longer exercise regularly as she once did nor be as active as she was in the past. She has also experienced significant weight gain which has negatively affected her health in many ways.

Breach of Warranty
(Against All Defendants)

29. Plaintiff restates and incorporates herein the foregoing paragraphs 1-28 of her Complaint
30. Defendants have been engaged for many years in the business of manufacturing, testing, designing, advertising, marketing, packaging, selling, and/or distributing cigarettes, including Marlboro cigarettes, and placing cigarettes into the stream of commerce in and into Massachusetts.
31. Defendants' Marlboro cigarettes were expected to and did reach Patricia Walsh Greene in substantially the same condition they were in when originally manufactured, distributed and sold by defendants.

32. Defendants, as the manufacturers, sellers, marketers and/or distributors of Marlboro cigarettes, impliedly warranted that such cigarettes were merchantable and fit for the ordinary purposes for which they were intended.
33. Defendants breached this warranty because the Marlboro cigarettes manufactured, sold and distributed by defendants to Patricia Walsh Greene, and other members of the public, were defective and unreasonably dangerous to users and consumers, because such cigarettes were carcinogenic, addictive, and contained dangerous levels of tar, nicotine and other dangerous substances. The foreseeable risks posed by Defendants' Marlboro cigarettes could have been reduced or eliminated by Defendants' adoption of a safer reasonable alternative design.
34. At all times relevant to this Complaint, Patricia Walsh Greene used and consumed the Marlboro cigarettes manufactured, sold and distributed by defendants in the manner in which Defendants intended and expected such cigarettes to be used.
35. As a proximate result of Defendants' breach of warranty, Patricia Walsh Greene contracted non-small cell lung cancer and is entitled to recover the damages sought in this Complaint.

Violations of G.L. c. 93A, Section 9
(Against All Defendants)

36. Plaintiff restates and incorporates herein the foregoing paragraphs 1-35 of her Complaint.
37. The Defendants have committed unfair and deceptive acts and practices in violation of Massachusetts' Consumer Protection Act, G.L. c. 93A, § 2(a) and regulations promulgated thereunder. These violations include, but are not limited to, Defendants' breach of their implied warranty of merchantability, in violation of G.L. c. 93A, § 2, by

manufacturing, selling and/or distributing Marlboro cigarettes in a defective condition unreasonably dangerous to users and consumers, including Patricia Walsh Greene, because such cigarettes were carcinogenic, addictive, and contained dangerous levels of tar, nicotine and other substances, when a safer alternative design was available.

38. Philip Morris also violated Massachusetts' Consumer Protection Act, G.L. c. 93A, § 2 by engaging in business practices that were oppressive or otherwise unconscionable. Philip Morris marketed its products to children, with the goal of turning them into addicted customers of Philip Morris' products. Philip Morris also engaged in the campaign of public deception described above, which was calculated to confuse the public as to the dangerousness of cigarettes and the addictiveness of the nicotine contained therein. Such misleading statements and representations were made only to increase Philip Morris' own profits and without regard for the health and safety of consumers, including Patricia Walsh Greene.

39. By letter dated February 12, 2015 plaintiff sent a demand for relief to Defendants Philip Morris and Star Market, in accordance with G.L. c. 93A, § 9(3). Defendants did not respond to plaintiff's demand for relief by making a written tender of settlement reasonable for the injuries suffered by Patricia Walsh Greene.

40. As a proximate result of defendants' unfair and deceptive trade practices, Patricia Walsh Greene developed non-small cell lung cancer and is entitled, pursuant to G.L. c. 93A, § 9, to recover the damages sought in this Complaint.

Negligence
(Against All Defendants)

41. Plaintiff restates and incorporates herein the foregoing paragraphs 1-40 of her Complaint.

42. Defendants owed plaintiff a duty to exercise reasonable care in the design, development, testing, marketing, promotion, packaging, sale, and/or distribution of Marlboro cigarettes.
43. Defendants owed plaintiff, and other foreseeable users of Marlboro brand cigarettes, a duty to disclose the ever growing knowledge that smoking cigarettes could lead to a variety of human diseases.
44. Defendants breached their duty to exercise reasonable care in numerous respects, including but not limited to the following breaches:
 - a. Defendants failed to exercise reasonable care in the design, development, testing, marketing, promotion, packaging, sale and/or distribution of Marlboro cigarettes;
 - b. Defendants failed to exercise reasonable care in distributing Marlboro cigarettes by, among other things, distributing samples of Marlboro cigarettes to minors, in violation of G.L. c. 270, § 6;
 - c. Philip Morris failed to exercise reasonable care in marketing Marlboro cigarettes, including through free giveaways of Marlboro cigarettes and by intentionally and/or negligently inducing minors, including Patricia Walsh Greene, to smoke Marlboro cigarettes;
 - d. Philip Morris failed to timely and/or ever disclose to plaintiff, and other foreseeable users of Marlboro cigarettes, its own scientific research and other scientific research known to Philip Morris, which showed that use of cigarettes as intended could likely lead to a variety of human diseases; and
 - e. Philip Morris failed to exercise reasonable care in manufacturing Marlboro cigarettes and knew, or should have known, that when used as intended Marlboro cigarettes would cause human disease. Philip Morris also knew, or should have known, that when used as intended by consumers, smoking cigarettes likely leads to addiction, habituation, or dependence.
45. As a proximate result of defendants' negligence, Patricia Walsh Greene contracted non-small cell lung cancer and is entitled to recover the damages sought in this Complaint.

Civil Conspiracy
(Against Philip Morris)

46. Plaintiff restates and incorporates herein the foregoing paragraphs 1-45 of her Complaint.

47. Philip Morris itself, and through its trade associations, acted in concert and joined together with other manufacturers in the tobacco industry, in an unlawful and unfair manner, pursuant to a common design to conceal or omit information regarding the health consequences of cigarettes and their addictiveness, with the intention that consumers, including Patricia Walsh Greene, would rely on this information.

48. Each conspirator knew or in the exercise of reasonable care should have known about the conduct of the others and about the common tortious scheme.

49. Philip Morris itself, and through its trade associations, engaged in a myriad of overt acts in furtherance of the conspiracy. Such acts included, but were not limited to:

- a. A meeting between Philip Morris and its co-conspirators in 1953 to form the Tobacco Institute Research Committee (“T.I.R.C.”), eventually renamed the Council for Tobacco Research (“CTR”), an organization which claimed its purpose was to promote research on cigarette dangers, but which instead was used by Philip Morris and its co-conspirators to disseminate misleading information about the dangers of smoking;
- b. Meetings over the years of T.I.R.C. and its successor organization C.T.R., where the co-conspirators discussed and acted upon their above state goals;
- c. T.I.R.C. funded research studies, which avoided the issue of cancer and addiction, and instead focused on other matters, while giving the impression to the public that the “cancer question” was under “investigation”;

- d. Subsequent creation of the Tobacco Institute, an organization formed for the purpose of providing misleading information concerning the dangers of cigarette use to the media and others, of which Philip Morris and its co-conspirators were members;
- e. The suppression of and refusal to publish various research studies carried out by co-conspirators which revealed smoking to be both harmful and addictive;
- f. Meetings over the years of the Tobacco Institute, wherein Philip Morris and its co-conspirators discussed and acted upon their previously stated goals;
- g. Publications, news releases, telephone calls, contacts with the press, the media, the government, and others, by the Tobacco Institute and other co-conspirators, consisting of suggestions to the media to present the “other side” of the “health controversy” about cigarettes, and to quote tobacco industry sources when reporting on scientific developments showing the dangers of cigarette smoking. These suggestions were accompanied by references to the amount of advertising carried in the magazine or newspaper and threats that such advertising would be dropped if the magazine did not comply;
- h. Numerous public statements from 1950-1962 by Philip Morris and its co-conspirators that falsely criticized scientific publications and reports which showed that lung cancer and other diseases were caused by cigarette smoking;
- i. A 1953 publication by T.I.R.C., consisting of 18 pages, containing false statements about the connection between smoking and lung cancer;
- j. Publication in 1954 by Philip Morris and its co-conspirators, through T.I.R.C., of “A Frank Statement to Cigarette Smokers” (Frank Statement). The Frank

Statement promised the public that Philip Morris and its co-conspirators would do research to reveal the true dangers of cigarette smoking. In fact, Philip Morris and its co-conspirators already knew at the time the Frank Statement was published, the true dangers of smoking cigarettes;

- k. Statements and publications by Clarence Cook Little, spokesman for T.I.R.C., to the effect that scientific evidence showing the dangers of cigarette smoking were “not proven” or were “merely statistical.” These statements included, but were not limited to, statements made in Atlantic magazine in 1957, which were made with an intent to deceive the public into believing cigarette smoking was safe;
- l. False statements to Congress and the press, in the periods 1962-1966, 1969, and 1984 minimizing the dangers of cigarette smoking;
- m. A statement by Philip Morris’ co-conspirator R.J. Reynolds in 1964, before a congressional subcommittee, that “[m]any distinguished scientists are of the opinion that it has not been established that smoking causes disease,” and claiming a “lack of clinical and laboratory scientific evidence of the relationship between smoking and health”;
- n. Publication of an article in 1968, paid for by co-conspirators, entitled "To Smoke or Not to Smoke—That Is Still the Question," in TRUE magazine which was designed to appear as a legitimate article by a genuine author. The article was in fact written by a sports writer who was also employed by Hill and Knowlton, the public relations firm behind the creation of T.I.R.C. This article deliberately misstated the known dangers of smoking;

- o. A statement by Philip Morris' co-conspirator R.J. Reynolds in 1982 that "science to date after much research including over \$100 million funded by our industry, indicates that no causal link [between smoking and human disease] has been shown," and that "there is absolutely no proof that cigarettes are addictive";
- p. A 1984 national advertising campaign by co-conspirator R.J. Reynolds asserting that "studies which conclude that smoking causes disease have regularly ignored significant evidence to the contrary";
- q. A 1985 publication entitled "Of Cigarettes and Science" authored by Philip Morris' co-conspirator R.J. Reynolds, falsely stating that cigarettes do not cause heart disease, which publication was the subject of an F.T.C. charge of false advertising;
- r. "Research Reports on Tobacco and Health", generated on behalf of the co-conspirators by the Tobacco Institute, Inc. and published for many years, which disputed the known health consequences of smoking. These releases reported on fringe medical theories of the cause of lung cancer other than cigarettes, in order to assuage the public's fear regarding the deadly consequences of smoking cigarettes. These theories, as reported by the Tobacco Institute, on behalf of Philip Morris and its co-conspirators include, but are not limited to: that smoking lowers fatty substances in the lungs, that lung cancer is caused by a certain personality, and that emphysema is an outcome of childhood measles;
- s. Statements to Congress in 1994 by Philip Morris and its co-conspirators denying the addictiveness and dangerousness of cigarettes; and

- t. Manufacture of cigarettes by Philip Morris and its co-conspirators, acting together or individually, with the purpose of controlling and manipulating the nicotine therein, in order to create and sustain addiction in smokers.
50. As a result of its role in this conspiracy, Philip Morris is responsible for the tortious, and wrongful acts of the other co-conspirators, as well as its own.
51. As a direct and proximate result of the Philip Morris' role in the conspiracy to deceive the public about the harmful effects of smoking cigarettes, Patricia Walsh Greene contracted lung cancer, and is entitled to the damages sought in this Complaint.

Prayer for Relief

Plaintiff requests judgment against all Defendants for compensatory damages for all injuries and losses described above, including, but not limited to:

- A) Patricia Walsh Greene's pain and suffering, lost earnings, and medical expenses;
- B) Double or treble damages, costs, and attorneys' fees, in accordance with G.L. c. 93A, §9;
- C) All recoverable costs of this action; all legally recoverable interest; and
- D) Any other relief which the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury of all claims so triable.

Respectfully Submitted,

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