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IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
TEXAS, TEXARKANA DIVISION

THE STATE OF TEXAS,

Plaintiff,

vs.
5-96CV-91

No.

THE AMERICAN TOBACCO
COMPANY, et al.,

Defendants.

COMPREHENSIVE SETTLEMENT AGREEMENT AND RELEASE

THIS COMPREHENSIVE SETTLEMENT AGREEMENT AND RELEASE ("Settlement Agreement") is made as of the date hereof, by and among the parties hereto, as indicated by their signatures below, to settle and resolve with finality all claims against all parties to this action relating to the subject matter of this action which have been or could have been asserted by any of the parties to this action.

WHEREAS, the State of Texas, through its Attorney General, Dan Morales, commenced this action on March 28, 1996, asserting various claims for monetary and injunctive relief on behalf of the State of Texas against certain tobacco manufacturers and others as Defendants;

WHEREAS, the Defendants have denied each and every one of the State of Texas's allegations of unlawful conduct or wrongdoing and have asserted a number of defenses to the State of Texas's claims, which defenses have been contested by the State of Texas;

WHEREAS, the State of Texas, through its Attorney General, the Honorable Dan Morales, and Private Counsel, have had a significant leadership role among the various states in maintaining civil litigation against the tobacco industry and in seeking to forge an unprecedented national resolution of the principal issues and controversies associated with the manufacture, marketing and sale of tobacco products in the United States;

WHEREAS, through the efforts of the State of Texas, Attorney General Morales, Private

Counsel and others, a June 20, 1997 Memorandum of Understanding and Proposed Resolution (the "Proposed Resolution") (attached as an Appendix hereto) has been agreed to by members of the tobacco industry, state attorneys general, private litigants and representatives of public health groups, which Proposed Resolution would provide for unprecedented and comprehensive regulation of the tobacco industry while preserving the right of individuals to assert claims for compensation;

WHEREAS, the Proposed Resolution contemplates action by the United States Congress and the President to enact and sign a new federal law with respect to the tobacco industry, which action the tobacco industry has agreed to support and which will require study and analysis by Congress and the President; and

WHEREAS, trial of this action was scheduled to commence on January 12, 1998 and a continuance of such trial could have prejudiced the State of Texas, the State of Texas and the undersigned Defendants (the "Settling Defendants") have agreed to settle independently the litigation commenced by Attorney General Morales pursuant to financial terms comparable to those contained in the Proposed Resolution, which terms will achieve for Texas immediately and with certainty the financial benefits it would receive pursuant to the Proposed Resolution, should it become law, as well as funding for a pilot program to reduce the use of Tobacco Products by children under 18 years of age;

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 State of Texas and such other consideration as described herein, the sufficiency of which is hereby acknowledged, the parties hereto, acting by and through their authorized agents, memorialize and agree as follows;

I. Jurisdiction. Settling Defendants and the State of Texas acknowledge that this Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and that this Court shall retain jurisdiction for the purposes of implementing and enforcing this Settlement Agreement. The parties hereto agree to present any disputes under this Settlement Agreement, including without limitation any claims for breach or enforcement of this Settlement Agreement, exclusively to this Court.

2. Applicability. This Settlement Agreement 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; and the predecessors, successors and assigns of any of the foregoing. This Settlement Agreement shall be binding on and inure to the benefit of the State of Texas, its administrators, representatives, employees, officers, agents, Private Counsel,

counsel and legal representatives; all agencies, departments, commissions and divisions of the State; all subdivisions, public entities, public corporations, instrumentalities and educational institutions over which the State has control; and the predecessors, successors and assigns of any of the foregoing. None of the rights granted or obligations assumed under this Settlement Agreement by the parties hereto may be assigned or otherwise conveyed without the express prior written consent of all of the parties hereto.

3. Voluntary Agreement of Parties. The State of Texas and Settling Defendants acknowledge and agree that this Settlement Agreement is voluntarily entered into by all parties hereto as the result of arms length negotiations during which all such parties were represented by counsel. Settling Defendants understand and acknowledge that certain provisions of this Settlement Agreement impose specific requirements on them that could give rise to challenges under various federal and State constitutional provisions if the State of Texas unilaterally imposed such requirements. None of the parties hereto will seek to challenge this Settlement Agreement based on any such constitutional challenge to the provisions contained herein.

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

- (a) "*State*" or "*State of Texas*" means the State of Texas, all of its officers acting in their official capacities and any department, subdivision or agency of the State, regardless of whether a named plaintiff;
- (b) "*Settling Defendants*" means those Defendants in this action that are signatories hereto;
- (c) "*Market Share*" means, for each year, a Settling Defendant's respective share of sales of cigarettes by unit for consumption in the United States;
- (d) "*Tobacco Industry*" means cigarettes and smokeless tobacco as those terms are defined in the Food and Drug Administration Rule;
- (e) "*Billboards*" includes billboards, as well as all 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 Settling Defendants of any transient entertainment, sporting or similar event, such as NASCAR, that appears in the State of Texas as Part of a national or multi-state tour;
- (f) "*Private Counsel*" means Walter Umphrey, John M. O'Quinn, P.C., John Eddie Williams, Jr., Reaud, Morgan & Quinn, and The Nix Law Firm, each of whom is defined and identified as "counsel" in the Outside Counsel Agreement executed by Attorney General Dan Morales on March 22, 1996, and Ness,

Motley, Loadholt, Richardson & Poole;

(g) "*Transit Advertisements*" means advertising on private or public vehicles and all advertisements placed at, on or within any bus stop, taxi stand, transit 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; and

(h) "*Final Approval*" means the date on which all of the following shall have occurred:

- (1) The Settlement Agreement is approved by the Court;
- (2) Entry is made of an order of dismissal of claims or a final judgment as provided herein; and
- (3) The time for appeal or to seek permission to appeal from the Court's approval as described in (1) hereof and entry of final judgment or order of dismissal as described in (2) hereof has expired or, in the event of an appeal, the appeal has been dismissed or the approval described in (1) hereof and the judgment or order described in (2) hereof have been affirmed in all material respects by the court of last resort to which such appeal has been taken and such dismissal or affirmance has become no longer subject to further appeal or review.

5. Settlement Receipts: Use of Funds. The payments to be made by Settling Defendants under this Settlement Agreement during the year 1998 constitute reimbursement for public health expenditures of the State of Texas, including without limitation expenditures made by the State's Employees' Health Insurance Program and Charity Care programs. All other payments made by Settling Defendants pursuant to this Settlement Agreement are in satisfaction of all of the State of Texas's claims for damages incurred by the State in the year of payment or earlier years, including those for reimbursement of Medicaid expenditures and punitive damages, except that no part of any payment under this Settlement Agreement is made in settlement of an actual or potential liability for a fine, penalty (civil or criminal) or enhanced damages. Accordingly, subject to the orders of this Court and the operation of applicable law, the parties hereto anticipate that funds due to the State of Texas under this Settlement Agreement, other than funds dedicated for legal expense reimbursement, will be allocated as follows, or for such other purposes as the State of Texas may determine:

- ☐ \$151 million to the general revenue fund of the State of Texas, to be used for the exclusive purpose of providing funding, in conjunction with the federal government, for the Children's Health Insurance Program, pursuant to Title XXI of the Social Security Act.
- ☐ \$200 million to the general revenue fund of the State of Texas to be used for the

exclusive purpose of supporting smoking cessation programs, enforcement of juvenile smoking laws, counter-marketing promotional efforts directed toward youth, general anti-tobacco educational programs and other similar initiatives.

- \$200 million to the University of Texas Health Science Center at San Antonio for the exclusive purpose of establishing, maintaining and operating the Texas Children's Cancer Institute.
- \$428 million to the Texas Foundation for Children and Public Health to be used in accordance with Texas law for providing grants to organizations and programs which promote and protect the interest of Texas children and the public health, including but not limited to the following:

- (1) Tobacco counter-marketing promotional efforts directed toward youth;
- (2) General anti-tobacco education;
- (3) Cigarette smoking and smokeless tobacco use cessation programs;
- (4) Children's health screening;
- (5) Childhood immunization;
- (6) Childhood nutrition;
- (7) Children's hospice;
- (8) Pre-natal care;
- (9) Health education programs;
- (10) Rural health care initiatives;
- (11) Mammography screening programs;
- (12) Physical/sexual child abuse;
- (13) Adult domestic violence;
- (14) Substance abuse/mental health; and
- (15) Physical/mental disabilities.

- \$100 million to the M.D. Anderson Cancer Center in Houston for an endowment for research and for reimbursement of indigent health-care costs.
- \$50 million to the Texas Tech Health Sciences Center for border health initiatives, including the establishment and operation of the Institute of Border Health.
- \$50 million to the University of Texas Southwestern Medical Center at Dallas for research, endowments and other programs that benefit the public health.

All remaining amounts, including any amounts due to be paid by Settling Defendants after December 31, 1998, are to be allocated to the general revenue fund of the State of Texas to be used for such purposes as the State of Texas may determine.

6. Elimination of Billboards and Transit Advertisements. Settling Defendants agree to discontinue all Billboards and Transit Advertisements of Tobacco Products in the State of Texas. Settling Defendants agree to exercise their best efforts in cooperation with the State of Texas to identify all Billboards that are located within 1000 feet of any public or private

school or playground in the State of Texas. Settling Defendants will remove such Tobacco Products advertisements (leaving the space unused or used for advertising unrelated to Tobacco Products) or, at the option of the State of Texas, will allow the State of Texas, at its expense, to substitute for the remaining term of the contract alternative advertising intended to discourage the use of Tobacco Products by children under the age of 18. Settling Defendants agree to provide the State of Texas with preliminary lists of the locations of all Billboards and stationary Transit Advertisements within 30 days from the date of execution of this Settlement Agreement, such lists to be finalized within an additional 15 days, and to remove all Billboards and Transit Advertisements for Tobacco Products within the State of Texas at the earlier of the expiration of applicable contracts or 4 months from the date the final lists are supplied to the State of Texas. Settling Defendants also agree to cooperate to secure the expedited removal of up to 50 Billboards or stationary Transit Advertisements designated by the State of Texas, within 30 days after their designation.

Each Settling Defendant shall provide the Court and the Attorney Central, or his designee, with the name of a contact person to whom the State of Texas may direct inquiries during the time such Billboards and Transit Advertisements are being eliminated, from whom the State of Texas may obtain periodic reports as to the progress of their elimination and who will be responsible for ensuring that appropriate action is taken to remove any Billboards or Transit Advertisements that have not been eliminated in a timely manner.

7. Support of Legislation and Rules. Following Final Approval of this Settlement Agreement, the Settling Defendants will not challenge existing or proposed legislative or administrative initiatives insofar as they effectuate the following:

- (a) The prohibition of the sale of cigarettes in vending machines, except in adult-only locations and facilities;
- (b) The strengthening of civil penalties for sales of Tobacco Products to children under the age of 18 years, including the suspension or revocation of retail licenses; and
- (c) The strengthening of civil penalties for possession of Tobacco Products by children under the age of 18 years.

8. Initial Payments. Each Settling Defendant severally shall cause to be paid into the registry of the Court in accordance with paragraph 11 of this Settlement Agreement, the respective amounts listed for such Settling Defendant in Schedule A hereto, such amounts representing its share of the following payments: \$204 million to be paid on or before February 1, 1998; \$73 million to be paid on or before July 1, 1998; \$146 million to be paid on or before October 1, 1998; and \$302 million to be paid on or before November 1, 1998; the aggregate amount of such payments (\$723 million) being the State of Texas's good faith estimate of the portion Texas would receive of the \$10 billion payment provided for

in Paragraph A on page 34 of the June 20, 1997 Proposed Resolution.

9. Pilot Program Payments. In support of the State of Texas's demonstrated commitment to the meaningful and immediate reduction of the use of Tobacco Products by children under the age of 18 years, Settling Defendants agree to support a pilot program, the elements of which shall be aimed specifically at the reduction of the use of Tobacco Products by children under the age of 18 years. Accordingly, each Settling Defendant severally shall cause to be paid into the registry of the Court in accordance with paragraph 11 of this Settlement Agreement, the respective amounts listed for such Settling Defendant in Schedule B hereto, such amounts representing its share of the following payments: \$74 million to be paid on or before February 1, 1998; \$27 million to be paid on or before July 1, 1998; \$54 million to be paid on or before October 1, 1998; and \$109 million to be paid on or before November 30, 1998.

The pilot program shall commence within a reasonable period after Final Approval of this Settlement Agreement, and shall last for a period of no less than 24 months. The amounts paid by Settling Defendants pursuant to this paragraph 9 in support of the pilot program shall be used for general enforcement, media, educational and other programs directed to the underage users or potential underage users of Tobacco Products, but shall not be directed against any particular tobacco company or companies or any particular brand of Tobacco Products.

10. Annual Payments. Each of the Settling Defendants agrees that, on the dates specified in this paragraph 10 with regard to 1998, and annually thereafter on December 31st of each year after 1998 (subject to final adjustment within 30 days), it shall severally cause to be paid into the registry of the Court in accordance with paragraph 11 of this Settlement Agreement, pro rata in proportion to its respective Market Share, its share of 7.25% of the following amounts (in billions):

Year	1998	1999	2000	2001	2002	2003	thereafter
	1	2	3	4	5	6	
Amount	\$4B	\$4.5B	\$5B	\$6.5B	\$6.5B	\$8B	\$8B

The above amounts represent the amounts contemplated under the Proposed Resolution to be paid to the several States, without regard to the possibility of any claims for reimbursement or credit by any other person or entity including any federal government agency. The payments made by Settling Defendants pursuant to this paragraph 10 shall be adjusted upward by the greater of 3% or the Consumer Price Index applied each year on

the previous year, beginning with the first annual payment. Such payments will also be decreased or increased, as the case may be, in accordance with decreases or increases in volume of domestic tobacco product volume sales as provided in Paragraph B.5 on pages 34-35 of the Proposed Resolution.

Settling Defendants shall make their first annual payment pursuant to this paragraph 10, without adjustment, and without regard to any first annual payment date provided for under any legislation implementing the Proposed Resolution (or a substantially equivalent federal program), as follows. Each Settling Defendant severally shall cause to be paid into the registry of the Court, in accordance with paragraph 11 of this Settlement Agreement, its respective share of the following payments; \$89 million to be paid on or before November 1, 1998; and \$201 million to be paid on or before December 31, 1998. The payments to be made by Settling Defendants in 1998 in the manner described above shall be credited against any first annual payment due before February 28, 1999 under legislation implementing the Proposed Resolution (or a substantially equivalent federal program).

11. Payment of Settlement proceeds. Any payment made pursuant to this Settlement Agreement shall be made to the registry of the Court; provided, that any such payments due to be made before Final Approval shall be paid into a special escrow account (the "Escrow Account"), to be held in escrow pending Final Approval pursuant to the terms of a mutually acceptable escrow agreement (the "Escrow Agreement"), and shall be disbursed only as provided by the terms of the Escrow Agreement. Upon Final Approval and pursuant to the terms of the Escrow Agreement, the amounts held in escrow pursuant to this paragraph 11 and the terms of the Escrow Agreement shall be transferred into the registry of the Court. Any funds held in the registry of the Court shall be disbursed only in accordance with the orders of the Court.

~~12. Adjustments in Event of Federal Resolution. In the event that legislation implementing the Proposed Resolution (or a substantially equivalent federal program) is enacted into law, the settlement provided herein shall remain in place, but the terms of such legislation shall supersede the Settling Defendants' obligations under this Settlement Agreement, except such provisions as relate to the pilot program and except to the extent that the parties hereto have otherwise expressly agreed. The Settling Defendants agree that they will advocate the passage of the federal legislation contemplated by the Proposed Resolution, including the funding to the States contemplated therein. In order to provide Settling Defendants with a full credit for all payments made hereunder pursuant to paragraphs 8 and 10 of this Settlement Agreement in the event of such legislation, and to the extent that the payments made pursuant to paragraphs 8 and 10 of this Settlement Agreement differ from the amounts to be received by the State of Texas pursuant to such legislation, the State of Texas and the Settling Defendants shall take whatever steps are necessary to ensure that the principal amount of payments received by the State of Texas~~

will be the same as the amounts it would receive pursuant to such legislation.

13. State of Texas's Dismissal of Claims. Upon approval of this Settlement Agreement by the Court, the State of Texas shall dismiss, with prejudice as to Settling Defendants (including their parents and affiliates), and without prejudice as to Defendant Hill & Knowlton, all claims in this action.

14. State of Texas's Waiver and Release. Upon Final Approval, the State of Texas shall release and forever discharge all Defendants and their present and former parents, subsidiaries, divisions, affiliates, officers, directors, employees, representatives, insurers, suppliers, agents, attorneys and distributors (and the predecessors, heirs, executors, administrators, successors and assigns of each of the foregoing), from any and all manner of civil claims, demands, actions, suits and causes of action, damages whenever incurred, liabilities of any nature whatsoever, including civil penalties, as well as costs, expenses and attorneys' fees (except as to Settling Defendants' obligations under paragraph 17 of this Settlement Agreement), known or unknown, suspected or unsuspected, accrued or unaccrued, whether legal, equitable or statutory ("Claims") that the State of Texas (including any of its past, present or future agents, officials acting in their official capacities, legal representatives, agencies, departments, commissions, divisions, subdivisions (political and otherwise), public entities, corporations, instrumentalities and educational institutions, and whether or not any such person or entity participates in the settlement), whether directly, indirectly, representatively, derivatively or in any other capacity, ever had, now has or hereafter can, shall or may have, as follows:

- (1) for the past, as to any Claims that were or could have been made in this action or any comparable federal or state action; and
- (2) for the future, only as to Claims directly or indirectly based on, arising out of or in any way related to, in whole or in part, the use of or exposure to Tobacco Products manufactured in the ordinary course of business, including without limitation any future claims for reimbursement for health care costs allegedly associated with use of or exposure to Tobacco Products (such past and future Claims hereinafter referred to as the "Released Claims").

The State of Texas hereby covenants and agrees that it shall not hereafter sue or seek to establish civil liability against any person or entity covered by the release provided under this paragraph 14 based, in whole or in part, upon any of the Released Claims, and the State of Texas agrees that this covenant and agreement shall be a complete defense to any such civil action or proceeding; provided, however, that Defendant Mill & Knowlton shall be entitled to the foregoing release and covenant not to sue only upon its assent, whenever given, to comply with the non-economic provisions of this Settlement Agreement, including waiver of claims, if any.

15. Settling Defendants' Waiver, Dismissal and Release of Claims. Upon Final Approval of this Settlement Agreement by the Court, Settling Defendants shall waive any and all claims against the State of Texas and any of its officers, employees, agents, Private Counsel, counsel, witnesses (fact or expert), whistleblowers or contractors, relating to or in connection with this litigation and shall dismiss, with prejudice, any pending claims or actions against such persons or entities, including but not limited to *Philip Morris, Inc. v. Morales*, Cause No. 95-14807 (120th Judicial Dist., Tex.).

In addition, upon Final Approval Settling Defendants shall release and forever discharge the State of Texas and any of its employees, Private Counsel, counsel, witnesses (fact or expert), whistleblowers or contractors, divisions, officers, employees, agents, officials acting in their official capacities, legal representatives, agencies, departments, commissions, divisions, subdivisions (political and otherwise), public entities, corporations, instrumentalities and educational institutions and insurers and the predecessors, heirs, executors, administrators, successors and assigns of each of the foregoing, from any and all manner of civil claims, demands, actions, suits and causes of action, damages whenever incurred, liabilities of any nature whatsoever, including costs, expenses, penalties and attorneys' fees, known or unknown, suspected or unsuspected, accrued or unaccrued, whether legal, equitable or statutory, arising out of or in any way related to, in whole or in part, the litigation of this lawsuit, that Settling Defendants (including any of their present and former parents, subsidiaries, divisions, affiliates, officers, directors, employees, witnesses (fact or expert), representatives, insurers, agents, attorneys and distributors and the predecessors, heirs, executors, administrators, successors and assigns of each of the foregoing, and whether or not any such person participates in the settlement), whether directly, indirectly, representatively, derivatively or in any other capacity, ever had, now has or hereafter can, shall or may have.

16. ~~Most-Favored-Nation~~ Settling Defendants agree that if they enter into any future pre-verdict settlement agreement of other litigation brought by a non-federal governmental plaintiff on terms more favorable to such governmental plaintiff than the terms of this Settlement Agreement (after due consideration of relevant differences in population or other appropriate factors), the terms of this Settlement Agreement will be revised so that the State of Texas will obtain treatment at least as relatively favorable as any such non-federal governmental entity. In addition, Settling Defendants agree that, in the event of any future settlement or final judgment with respect to the claims for non-economic injunctive relief pending in the lawsuit entitled *State of Florida v. American Tobacco Co.*, Civ. Action No. 95-1466 AH (15th Judicial Cir., Palm Beach County, Fla.), the terms of this Settlement Agreement will be revised so that the State of Texas will receive benefits comparable to the terms of any such settlement or final judgment (after due consideration of relevant differences in population or other appropriate factors).

17. Costs, Expenses and Fees. (a) *Reimbursement of Costs and Expenses*. Settling

Defendants will reimburse the Office of the Attorney General and other appropriate State agencies and Private Counsel for reasonable costs and expenses incurred in connection with this litigation, provided that such costs and expenses are of the same nature as costs and expenses for which Settling Defendants would reimburse their own counsel or agents. Within 30 days after the date of this Settlement Agreement, each Settling Defendant shall severally cause to be paid to the Attorney General the respective amount listed for such Settling Defendant in Schedule C hereto. The sum of such payments shall equal \$5 million; such amount being the Attorney General's best estimate of such costs and expenses (with costs for public employees to be fixed at prevailing market rates). In addition, within 30 days after the date of this Settlement Agreement, Settling Defendants shall, pursuant to the terms of Exhibit 1 hereto, pay to Walter Umphrey as representative of Private Counsel an amount equivalent to Private Counsel's best estimate of their reasonable costs and expenses consistent with the criteria set forth above. The Attorney General (for his office and for other appropriate State entities) and Private Counsel shall provide Settling Defendants with an appropriately documented statement of their costs and expenses. Settling Defendants shall promptly pay the amount of such costs and expenses in excess of the amounts already paid, or shall receive a refund if the total of such costs and expenses is less than amounts already paid. Any dispute as to the nature or amount of reimbursable costs and expenses shall be decided with finality by the persons selected to award fees, as provided below.

(b) Payment of Fees. Pursuant to the terms of Exhibit 1, Settling Defendants will pay reasonable attorneys' fees to Private Counsel and any other counsel retained by the State of Texas for their representation of the State of Texas in connection with this action. The State of Texas has retained Private Counsel to represent it in connection with this Action, and has advised Settling Defendants that it has entered into an agreement dated March 22, 1996 regarding the payment of attorneys' fees to Private Counsel.

(c) Exclusive Obligation of Settling Defendants as to Fees. The provisions for payment of fees set forth in this Settlement Agreement and Exhibit I hereto constitute the entire obligation of Settling Defendants with respect to attorneys' fees in connection with this action and the exclusive means by which Private Counsel or other counsel representing the State of Texas in connection with this action may seek payment of fees by the Settling Defendants. Settling Defendants shall have no other obligation to pay fees or otherwise compensate Private Counsel or any other counsel or representative of the State of Texas.

(d) Additional Compensation for State in Event of National Legislation. If legislation implementing the Proposed Resolution (or a substantially equivalent federal program) is enacted, Settling Defendants and the State of Texas contemplate that the State of Texas and any other similar state which has made an exceptional contribution to secure the resolution of these matters may apply to the national panel of independent arbitrators described in section 2(h) of Exhibit I for reasonable compensation for its efforts in

securing enactment of such legislation. Any amount awarded to the State of Texas by such panel shall be paid in conjunction with awards to other governmental entities and shall be paid in proportion to the respective unpaid amounts of such awards, subject to a separate annual cap of \$100 million on the total of all such payments to be made by Settling Defendants.

18. Representations of Parties. The respective parties hereto hereby represent that this Settlement Agreement has been duly authorized and, upon execution, will constitute a valid and binding contractual obligation, enforceable in accordance with its terms, of each of the parties hereto. The State represents that all of the State's outside counsel that have represented the State of Texas in connection with this action are, by and through their authorized representatives, signatories to this Settlement Agreement.

19. Court Approval. If the Court refuses to approve this Settlement Agreement or any material provision hereof, or if such approval is modified in any material respect or set aside on appeal, or if the Court does not enter an order of dismissal of claims or final judgment as provided for in paragraph 13 of this Settlement Agreement, or if the Court enters the order of dismissal of claims or final judgment and appellate review is sought, and on such review such order of dismissal or final judgment is not affirmed in its entirety as to all material aspects of such order or final judgment, then this Settlement Agreement shall be canceled and terminated and it and all orders issued pursuant hereto shall become null and void and of no effect.

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

21. No Determination or Admission. This Settlement Agreement having being executed prior to the taking of any testimony, no final determination of violation of any provision of law has been made in this action. This Settlement Agreement and any proceedings taken thereunder are not intended to be and shall not in any event be construed as, or deemed to be, an admission or concession or evidence of any liability or any wrongdoing whatsoever on the part of any party hereto or any person covered by the releases provided under paragraphs 14 and 15 hereof. The Settling Defendants specifically disclaim and deny any liability or wrongdoing whatsoever with respect to the allegations and claims asserted against them in this action and enter into this Settlement Agreement solely to avoid the further expense, inconvenience, burden and uncertainty of litigation.

22. Non-Admissibility. The settlement negotiations resulting in this Settlement Agreement have been undertaken by the parties hereto in good faith and for settlement purposes only, and neither this Settlement Agreement nor any evidence of negotiations hereunder shall be offered or received in evidence in this action, or any other action or proceeding, for any

purpose other than in an action or proceeding arising under this Settlement Agreement. In addition to the foregoing, notwithstanding the conclusion of the settlement provided for herein, any restrictions imposed by any protective order in this action governing treatment of discovery materials during the pendency of this action shall remain in effect, and existing confidentiality designations shall remain undisturbed until the earlier of the enactment of legislation implementing the Proposed Resolution (or a substantially equivalent federal program) or December 31, 1999. Thereafter, any party to the action may make any motion with respect to such discovery materials; provided, however, that nothing in this paragraph 22 shall preclude undersigned counsel from seeking disclosure of such materials in other actions or Settling Defendants from agreeing otherwise in any other action.

23. Amendment: Waiver. This Settlement Agreement may be amended only by a written instrument executed by the Attorney General, Private Counsel and the Settling Defendants. The waiver of any rights conferred hereunder shall be effective only if made by written instrument executed by the waiving party. The waiver by any party of any breach of this Settlement Agreement shall not be deemed to be or construed as a waiver of any other breach, whether prior, subsequent or contemporaneous, of this Settlement Agreement.

24. Notices. All notices or other communications to any party to this Settlement Agreement shall be in writing (and shall include telex, telecopy or similar writing) and shall be given to the respective parties hereto at the following addresses. Any party hereto may change the name and address of the person designated to receive notice on behalf of such party by notice given as provided in this paragraph.

State of Texas:

Dan Morales
Attorney General
P.O. Box 12548
Capitol Station
Austin, TX 78711
Fax: 512.463.2063

with copies to:
Walter Umphrey
490 Park Street
P.O. Box 4905
Beaumont, TX 77704
Fax: 409.838.8888

John M. O'Quinn

440 Louisiana Street, Suite 2300
Houston, TX 77002
Fax: 713.222.6903

John Eddie Williams, Jr.
8441 Gulf Freeway, Suite 600
Houston, TX 77017
Fax: 713.943.6226

Wayne A. Reaud
Reaud, Morgan & Quinn, Inc.
801 Laurel
Beaumont, TX 77701
Fax: 409.833.8236

Harold W. Nix
Cary Patterson
The Nix Law Firm
203 Linda Drive
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Daingerfield, TX 73638
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Grant Kaiser
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440 Louisiana, Suite 1440
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Marc D. Murr
Law Offices of Marc D. Murr, P.C.
1001 Texas Avenue, Suite 1250
Houston, TX 77002-3131
Fax: 713.229.8003

Joseph F. Rice
Ness, Motley, Loadholt, Richardson & Poole
151 Meeting Street, Suite 600
Charleston, SC 29402
Fax: 803.720.9290

For Philip Morris Incorporated:

Martin J. Barrington
Philip Morris Incorporated
120 Park Avenue
New York, NY 10017-5592
Fax: 212.907.5399

With a copy to:
Meyer G. Koplow
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019
Fax: 212.403.2000

For R.J. Reynolds Tobacco Company:

Charles A. Blixt
General Counsel
R.J. Reynolds Tobacco Company
401 North Main Street
Winston-Salem, NC 27102
Fax: 910.741.2998

With a copy to:
Arthur F. Golden
Davis Polk & Wardwell
430 Lexington Avenue
New York, NY 10017
Fax: 212.450.4800

For Brown & Williamson Tobacco Corporation:

F. Anthony Burke
Brown & Williamson Tobacco Corporation
200 Brown & Williamson Tower
401 South Fourth Avenue
Louisville, KY 40202
Fax: 502.568.7297

With a copy to:
Stephen R. Patton
Kirkland & Ellis

200 East Randolph Dr.
Chicago, IL 60601
Fax: 312.861.2200

For Lorillard Tobacco Company:

Arthur J. Stevens
Lorillard Tobacco Company
714 Green Valley Road
Greensboro, NC 27408
Fax: 910.335.7707

For United States Tobacco Company:

Richard H. Verheij
UST, Inc.
100 West Putnam Avenue
Greenwich, CT 06830
Fax: 203.863.7233

25. Cooperation. The parties hereto agree to use their best efforts and to cooperate with each other to cause this Settlement Agreement to become effective, to obtain all necessary approvals, consents and authorizations, if any, and to execute all documents and to take such other action as may be appropriate in connection therewith. Consistent with the foregoing, the parties hereto agree that they will not directly or indirectly assist or encourage any challenge to this Settlement Agreement by any other person. All parties hereto agree to support the integrity and enforcement of the terms of this Settlement Agreement.

26. Governing Law. This Settlement Agreement shall be governed by the laws of the State of Texas.

27. Construction. 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.

28. Severability. In the event that any non-material provision of this Settlement Agreement is found to be invalid, the remainder of this Settlement Agreement shall be fully enforceable. The proposed allocations of amounts received by the State of Texas set forth

in paragraph 5 of this Settlement Agreement shall not be considered material for purposes of this paragraph 28 or any other provision of this Settlement Agreement.

29. **Intended Beneficiaries.** This action was brought by the State of Texas, through its Attorney General, to recover certain monies and to promote the health and welfare of the people of Texas. No portion of this Settlement Agreement shall provide any rights to, or be enforceable by, any person or entity that is not a party hereto, or a person covered by the releases provided in paragraphs 14 and 15 of this Settlement Agreement, and no portion of this Settlement Agreement shall bind any non-party or determine, limit or prejudice the rights of any such person or entity.

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

IN WITNESS WHEREOF, the parties hereto, through their fully authorized representatives, have agreed to this Comprehensive Settlement Agreement and Release as of this 16th day of January, 1998.

STATE OF TEXAS, acting by and
through Dan Morales, its duly
elected and authorized Attorney
General

By: _____

Dan Morales,
Attorney General

By: _____

Jorge Vega
First Assistant Attorney General

By: _____

Harry Potter, III

Special Assistant Attorney General

COUNSEL TO THE STATE OF
TEXAS

By: _____

Walter Umphrey
Provost & Umphrey

By: _____

John M. O'Quinn

By: _____

John Eddie Williams, Jr.

By: _____

Wayne A. Reaud
Reaud Morgan & Quinn, Inc.

By: _____

Harold W. Nix
The Nix Law Firm

By: _____

Cary Patterson
The Nix Law Firm

By: _____

Marc D. Murr
Law Offices of Marc D. Murr, P.C.

By: _____

Grant Kaiser

Kaiser & Morrison

By: _____

Joseph F. Rice
Ness, Motley, Loadholt, Richardson
&
Poole

PHILIP MORRIS
INCORPORATED

By: _____

Meyer G. Koplow
Counsel

By: _____

Martin J. Barrington
General Counsel

R.J. REYNOLDS TOBACCO
COMPANY

By: _____

Arthur F. Golden
Counsel

By: _____

Charles A. Blixt
General Counsel

BROWN & WILLIAMSON
TOBACCO
CORPORATION

By: _____

Stephen R. Patton

Counsel

By: _____

Michael J. McGraw
Senior Vice President

LORILLARD TOBACCO
COMPANY

By: _____

Arthur J. Stevens
Senior Vice President & General
Counsel

UNITED STATES TOBACCO
COMPANY

By: _____

Richard H. Verheij
Executive Vice President &
General Counsel



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PRESSRELEASE

FROM ATTORNEY GENERAL DAN MORALES



SUMMARY OF TOBACCO SETTLEMENT

- ☐ \$15.3 billion over 25 years.
- ☐ \$1.2 billion the first year, primarily for children's health care.
- ☐ \$428 million for the creation of a non-profit foundation that will provide grants to organizations that offer a variety of health care services.
- ☐ \$151 million to be used exclusively for the Children's Health Insurance Program, which will pay for health care for more than a million uninsured children.
- ☐ \$200 million to the University of Texas Health Science Center of San Antonio to be used exclusively for establishing, maintaining and operating the Texas Children's Cancer Institute.
- ☐ \$100 million to the MD Anderson Cancer Center in Houston for an endowment for research and reimbursement of indigent health-care costs.
- ☐ \$50 million to the Texas Tech Health Sciences Center in Lubbock and El Paso for border health initiatives, including the establishment and operation of the Institute of Border Health.
- ☐ \$50 million to The University of Texas Southwestern Medical Center at Dallas for research, endowments and other programs that benefit the public health.
- ☐ 7.25 percent of the total annual payments agreed to by the tobacco industry under the national settlement now pending approval by Congress. Texas' share the first year will be \$290 million and exceeds the 5 to 6 percent contemplated in the national settlement.
- ☐ \$200 million to the General Revenue of the State to be used for smoking cessation programs, enforcement of juvenile smoking laws and other anti-tobacco educational programs.
- ☐ Restrictions on the industry's marketing practices, such as the elimination of all billboard advertising in the state; and, no advertising on buses, taxis or in transit stations or waiting areas.
- ☐ Industry may not challenge laws recently passed by the

Texas Legislature which affect the sale to, and possession of, tobacco products by children under the age of 18.

- ☐ Tobacco industry will pay the Office of the Attorney General \$5 million for its costs and attorneys' fees.
- ☐ Three-person arbitration panel or the court to decides costs, expenses and fees for private counsel used by the State.

CONTACT:

Ron Dusek, Ward Tisdale or Sonya Sanchez @ 512-463-2050 or
press@oag.state.tx.us

**IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL
CIRCUIT, IN AND FOR PALM BEACH COUNTY, FLORIDA**

THE STATE OF FLORIDA, et al.,
Plaintiffs,

v.

THE AMERICAN TOBACCO COMPANY, et al.,
Defendants.

Civil Action No. 95-1466 AH

SETTLEMENT AGREEMENT

This Settlement Agreement is made as of this 25th day of August, 1997, by and among the undersigned, and is intended to settle and resolve with finality all present and future civil claims against all parties to this litigation relating to the subject matter of this litigation, which have been or could have been asserted by any of the parties hereto.

WHEREAS, the State of Florida commenced this action in February, 1995, asserting various claims for monetary and injunctive relief on behalf of the State of Florida against tobacco manufacturers and other defendants;

WHEREAS, Defendants have contested the claims in Florida's complaint and amended complaints and Plaintiffs have contested the claims in Defendants' counter and cross claims against the Florida Department of Corrections and deny each and every one of the Defendants' allegations;

WHEREAS, the State of Florida has, through its Governor, the Honorable Lawton M. Chiles, Jr. and its Attorney General, the Honorable Robert A. Butterworth, had a leadership role among the various states in maintaining civil litigation against the tobacco industry and in seeking to forge an unprecedented national resolution of the principal issues and controversies associated with the manufacture, marketing and sale of tobacco products in the United States;

WHEREAS, through the efforts of the State of Florida and others a June 20, 1997 Memorandum of Understanding and attached Proposed Resolution ("Proposed Resolution") has been agreed to by members of the tobacco industry, state attorneys general, private litigants and representatives of public health groups which would provide for unprecedented and comprehensive regulation of the tobacco industry while preserving the right of individuals to assert claims for compensation;

WHEREAS, the Proposed Resolution contemplates action by the United States Congress and the President to enact and sign a new federal law with respect to the tobacco industry, which action the tobacco industry has agreed to support and which will require study and

analysis by Congress and the President;

WHEREAS, jury selection in this action commenced on August 1, 1997, and trial of the action is anticipated to last several months and a continuance of such trial could prejudice the State of Florida. The State of Florida and the undersigned defendants have agreed to settle independently the litigation commenced by the State of Florida pursuant to financial terms comparable to the Proposed Resolution, which terms will achieve for Florida immediately the financial benefits it would receive pursuant to the national Proposed Resolution, should it become law;

NOW THEREFORE, it is hereby agreed as follows:

I. GENERAL PROVISIONS

A. JURISDICTION

The Settling Defendants and Plaintiffs acknowledge that this Court has jurisdiction over the subject matter of this action and over each of the parties to this Settlement Agreement. Jurisdiction is retained by the Court for the purposes of enabling any party to this 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 Settlement Agreement, and the parties hereto agree to present any disputes under this Settlement Agreement to this Court.

Notwithstanding the dismissal of claims provided for herein, the parties hereto agree that the Court will retain jurisdiction over the State of Florida's claims for non-economic injunctive relief provided by the Proposed Resolution. The parties hereto jointly request the Court to set a trial date for the first Monday in August, 1998, or such later date as the Court may direct, said trial to proceed only if the Proposed Resolution or a substantially equivalent federal program has not been enacted. If the Proposed Resolution or a substantially equivalent federal program is not enacted by June 1, 1998, the parties may, with the Court's permission, commence any appropriate pre-trial proceedings relevant to the trial of such issues. If the Proposed Resolution or a substantially equivalent federal program is enacted, any remaining claims shall be dismissed with prejudice.

B. APPLICABILITY

This Settlement Agreement 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, agents and of any of their present or former parents, subsidiaries, affiliates, divisions, or other organizational units of any kind. This Settlement Agreement shall be binding on and inure to the benefit of the State of Florida, the named Plaintiffs, their administrators, representatives, employees, officers,

agents, legal representatives; all Agencies, Departments, Commissions, and Divisions of the State; all subdivisions, public entities, public corporations, instrumentalities, and educational institutions over which the State has control; and their predecessors, successors and assigns.

C. VOLUNTARY AGREEMENT OF PARTIES

Settling Defendants understand and acknowledge that certain provisions of this Settlement Agreement impose certain requirements on them that could give rise to challenges under federal and State constitutions if the State of Florida unilaterally imposed them. The parties hereto acknowledge and agree that this Settlement Agreement is voluntarily entered into by all parties hereto as the result of arms length negotiations during which all parties were represented by counsel. None of the parties hereto will seek to void this Settlement Agreement based on any constitutional challenge to the provisions contained herein.

D. DEFINITIONS

1. "*Plaintiffs*" means collectively the Plaintiffs, State of Florida, Lawton M. Chiles, Jr., individually and as Governor of the State of Florida, the Department of Business and Professional Regulation, the Agency for Health Care Administration and the Department of Legal Affairs.
2. "*State*" or "*State of Florida*" means collectively the Plaintiffs, State of Florida, Lawton M. Chiles, Jr., individually and as Governor of the State of Florida, the Department of Business and Professional Regulation, the Agency for Health Care Administration, and the Department of Legal Affairs, all of its officers acting in their official capacities and any other department, subdivision or agency of the State, regardless of whether a named Plaintiff.
3. "*Settling Defendants*" means those Defendants in this Action that are signatories to this Settlement Agreement.
4. "*Non-Settling Defendants*" means those Defendants that are not signatories to this Settlement Agreement.
5. "*Market Share*" means, for each year, a Settling Defendant's respective share of sales of cigarettes for consumption in the United States.
6. "*Tobacco Products*" shall be defined in the same manner as in the Food and Drug Administration Rule and shall include Roll-Your-Own, Little Cigars and Fine Cut.
7. "*Billboards*" includes billboards, as well as all 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 in the State of Florida as part of a national or multi-state tour.

8. "*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.

9. "*Final Approval*" means the date on which all of the following shall have occurred:

- a. The Settlement Agreement is approved by the Court;
- b. Entry is made of an order of dismissal of claims or a final judgment as provided herein; and
- c. The time for appeal or to seek permission to appeal from the Court's approval as described in (a) hereof, and entry of such final judgment or order of dismissal as described in (b) hereof has expired or if appealed, the appeal has been dismissed or the approval and judgment or order have been affirmed 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.

II. OBLIGATIONS OF PARTIES

A. NON-MONETARY PROVISIONS

1. *Elimination of Billboards and Transit Advertisements.* Settling Defendants agree to discontinue all Billboards and Transit Advertisements of Tobacco Products in the State of Florida. Settling Defendants agree to exercise their best efforts in cooperation with the State of Florida to identify all Billboards that are located within 1000 feet of any public or private school or playground in the State of Florida. Settling Defendants will remove such Tobacco Product advertisements (leaving the space unused or used for advertising unrelated to Tobacco Products) or, at the option of the State of Florida, will allow the State of Florida, at its expense, to substitute for the remaining term of the contract alternative advertising intended to discourage the use of Tobacco Products by children under the age of 18. Settling Defendants agree to provide the State of Florida with a preliminary list of the location of all Billboards and Stationary Transit Advertisements within 30 days from the date of execution of this Settlement Agreement, such list to be finalized within an additional 15 days, and to remove all Billboards and Transit Advertisements for Tobacco Products within the State of Florida at the earlier of the expiration of applicable contracts or 4 months from the date the final list is supplied to the State of Florida. The parties hereto also agree to cooperate to secure the expedited removal of up to 50 Billboards or stationary Transit Advertisements designated by the State of Florida, within 30 days after their designation.

Each Settling Defendant shall provide the Court and the Attorney General, or his designee, with the name of a contact person to whom Plaintiffs may direct inquiries during the time such Billboards and Transit Advertisements are being eliminated, from whom the Plaintiffs may obtain periodic reports as to the progress of their elimination and who will be responsible for ensuring that appropriate action is taken to remove any Billboards that have not been timely eliminated.

2. *Support of Legislation and Rules.* Following Final Approval of this Settlement Agreement, Settling Defendants agree to support legislative initiatives to enact new laws and administrative initiatives to promulgate new rules intended to effectuate the following:

- a. The prohibition of the sale of cigarettes in vending machines, except in adult-only locations and facilities;
- b. The strengthening of civil penalties for sales of Tobacco Products to children under the age of 18, including the suspension or revocation of retail licenses; and
- c. The strengthening of civil penalties for possession of Tobacco Products by children under the age of 18.

3. *Document Disclosure.* Settling Defendants and the State of Florida agree to cooperate to secure the expedited review of any decisions issued prior to the date of this Settlement Agreement regarding the inapplicability of any assertion of privilege with respect to documents or other material. The documents covered by this provision are those documents and materials which have been presented to the Special Master, the Honorable R. William Rutter, Jr., and as to which a Report and Recommendation has been issued requiring the disclosure and production of such documents or materials, for whatever reason.

B. MONETARY PROVISIONS

1. *Initial Payment – General.* On or before September 15, 1997, Settling Defendants shall, pursuant to a mutually acceptable Escrow Agreement, cause to be paid into a special escrow account (the "Escrow Account"), for the benefit of the State of Florida, to be held in escrow pending Final Approval, the sum of \$550 million; that being Plaintiffs' good faith estimate of the portion Florida would receive of the \$10 billion payment provided for in Paragraph A on page 34 of the June 20, 1997 Memorandum of Understanding and attached Proposed Resolution.

2. *Initial Payment – Pilot Program.* In support of Florida's demonstrated commitment to the meaningful and immediate reduction of the use of Tobacco Products by children under the age of 18, Settling Defendants also agree to support a pilot program (the "Pilot Program") by the State of Florida, the elements of which shall be aimed specifically at the

reduction of the use of Tobacco Products by persons under the age of 18 years. Accordingly, on or before September 15, 1997, the Settling Defendants shall, pursuant to the Escrow Agreement, cause to be paid into a second special escrow account (the "Second Escrow Account"), for the benefit of the State of Florida, to be held in escrow pending Final Approval of this Settlement Agreement, the sum of \$200 million. The Pilot Program will commence upon Final Approval of this Settlement Agreement and last for a 24-month period following such date. The \$200 million amount payable by Settling Defendants in support of the Pilot Program shall be used only after approval by the Court and at the rate of approximately \$100 million per 12-month period for general enforcement, media, educational and other programs directed to the underage users or potential underage users of Tobacco Products, but shall not be directed against the tobacco companies or any particular tobacco company or companies or any particular brand of Tobacco Products.

3. Annual Payments. On September 15, 1998, (subject to adjustment for actual market share by January 30, 1999), and annually thereafter, on December 31st (subject to final adjustment within 30 days), each of the Settling Defendants agrees, severally and not jointly, that it shall cause to be paid into a special account for the benefit of the State of Florida (the "Account"), pro rata in proportion equal to its respective Market Share, its share of 5.5% of the following amounts (in billions):

Year	1	2	3	4	5	6	thereafter
Amount	\$4B	\$4.5B	\$5B	\$6.5B	\$6.5B	\$8B	\$8B

The payments made to the Account by the Settling Defendants pursuant to the calculation set forth in this paragraph shall be adjusted upward by the greater of 3% or the Consumer Price Index applied each year on the previous year, beginning with the first annual payment. Such Payments will also be decreased or increased, as the case may be, in accordance with decreases or increases in volume of domestic tobacco product volume sales as provided in Paragraph B.5 on pages 34-35 of the Proposed Resolution. Any payment pursuant to this paragraph that is due to be paid before Final Approval of this Settlement Agreement shall be paid into the Escrow Account and shall be disbursed only as provided by the terms of the Escrow Agreement. On September 15, 1998, Settling Defendants shall pay \$220 million without any adjustment, that being Settling Defendants' and the State's best estimate of the first such annual payment (in respect of 1998).

4. Use of Funds. The monies received under this Settlement Agreement constitute not only reimbursement for Medicaid expenses incurred by the State of Florida, but also settlement of all of Florida's other claims, including those for punitive damages, RICO and other statutory theories. In consonance with the Proposed Resolution, other than the Pilot Program and legal expense reimbursement, the parties hereto anticipate that funds provided hereunder, only after approval by the Court, will be used for children's health

care coverage and other health-related services, to reimburse the State of Florida for medical expenses incurred by the State, for mandated improvements in State enforcement efforts regarding the reduction of sales of Tobacco Products to minors, and to ensure the Proposed Resolution's performance targets. The funds provided hereby may be used for such purposes as the State match required to draw federal funds to provide children's health care coverage and for enhancement of children's and adolescents' substance abuse services, substance abuse prevention and intervention and children's mental health services.

5. Adjustments in Event of Federal Resolution. In the event that the Proposed Resolution is enacted as federal legislation, or if any substantially equivalent federal program is enacted, the settlement provided herein shall remain in place, but the terms of such Proposed Resolution or federal program shall supersede the provisions of this Settlement Agreement, except for the Pilot Program and to the extent that the parties hereto have otherwise expressly agreed. In order to provide the Settling Defendants with a full credit for all payments made hereunder pursuant to paragraphs II.B.1 and II.B.3 of this Settlement Agreement in the event of the enactment of the Proposed Resolution or substantially equivalent federal program, and to the extent that the payments made pursuant to paragraphs II.B.1 and II.B.3 of this Settlement Agreement shall differ from the amounts to be received by the State of Florida pursuant to such Proposed Resolution or substantially equivalent federal program, the parties hereto shall take whatever steps are necessary to ensure that the principal amount of payments received by the State of Florida will be the same as the amounts it would receive pursuant to the Proposed Resolution or substantially equivalent federal program.

C. DISMISSAL, WAIVER AND RELEASE OF CLAIMS

1. Dismissal of Plaintiffs' Claims. Upon approval of this Settlement Agreement by the Court, Plaintiffs shall dismiss, with prejudice as to Settling Defendants (including their parents and affiliates), and without prejudice as to other Non-Settling Defendants, all claims in this Action, except to the extent such claims seek non-economic injunctive relief provided by the Proposed Resolution. In the event any Non-Settling Defendants agree to comply with the non-economic terms contained in this Settlement Agreement, Plaintiffs shall dismiss with prejudice all claims against any such Non-Settling Defendants, except to the extent such claims seek non-economic injunctive relief provided by the Proposed Resolution.

2. Plaintiffs' Waiver and Release. On the Final Approval Date, the State of Florida shall release and forever discharge all Defendants and their present and former parents, subsidiaries, divisions, affiliates, officers, directors, employees, representatives, insurers, agents, attorneys and distributors (and the predecessors, heirs, executors, administrators, successors, and assigns of each of the foregoing) (the "Released Parties"), from any and all manner of civil claims, demands, actions, suits, and causes of action, damages whenever

incurred, liabilities of any nature whatsoever, including costs, expenses, penalties and attorneys' fees ("Claims"), known or unknown, suspected or unsuspected, accrued or unaccrued, whether legal, equitable or statutory, both past, as to any claims that were or could have been made in this action or any comparable federal action, and as to the future, as to all Claims directly or indirectly based on, arising out of or in any way related to, in whole or in part, the use of or exposure to Tobacco Products manufactured in the ordinary course of business, that the State of Florida (including any of its past, present or future agents, officials acting in their official capacities, legal representatives, agencies, departments, commissions, divisions, subdivisions (political and otherwise), public entities, corporations, instrumentalities, and educational institutions, and whether or not any such person or entity participates in the settlement), whether directly, indirectly, representatively, derivatively or in any other capacity, ever had, now has or hereafter can, shall or may have (hereinafter, collectively, the "Released Claims"). Notwithstanding any provision herein, Plaintiffs do not release the claims for non-economic relief reserved under this Settlement Agreement, and Defendants retain all defenses thereto.

The State of Florida hereby covenants and agrees that it shall not, hereafter, sue or seek to establish civil liability against any Released Party based, in whole or in part, upon any of the Released Claims. The State of Florida agrees that this covenant and agreement shall be a complete defense to any such civil action or proceeding; provided, however, that those Non-Settling Defendants which are not parents or affiliates of the Settling Defendants shall be entitled to the foregoing release and covenant not to sue only upon their assent to comply with the non-economic provisions of this Settlement Agreement and the Waiver of Claims.

3. *Settling Defendants' Waiver and Dismissal of Claims.* Upon Final Approval, Settling Defendants shall waive any and all claims against any of the Plaintiffs in this action including the State, or against any of their officers, employees, agents, counsel, witnesses (fact or expert), whistle-blowers or contractors, relating to or in-connection with this litigation and shall dismiss, with prejudice, any pending claims or actions against such persons or entities that arise out of this litigation of this lawsuit.

IV. MOST FAVORED NATION

The Settling Defendants agree that if they enter into any future pre-verdict settlement agreement of other litigation brought by a non-federal governmental plaintiff on terms more favorable to such governmental plaintiff than the terms of this Settlement Agreement (after due consideration of relevant differences in population or other appropriate factors), the terms of this Settlement Agreement will be revised so that the State of Florida will obtain treatment at least as relatively favorable as any such non-federal governmental entity.

V. COSTS AND FEES

On or before September 30, 1997, the Settling Defendants shall cause to be paid to the Attorney General of Florida \$10 million for the best estimate of costs and expenses attributable to his office and other appropriate state agencies or entities in connection with this litigation (cost for public employees shall be at prevailing market rates); and on or before September 30, 1997, the Settling Defendants shall further cause to be paid \$12 million to the Plaintiffs' private counsel for their best estimate of their costs and expenses. Thereafter the Attorney General's Office, the appropriate state entities and Florida's private counsel shall provide the Settling Defendants with an appropriately documented statement of their costs and expenses. The Settling Defendants shall promptly pay the amount of such costs and expenses in excess of the above \$22 million, or shall receive a refund or a credit against other payments due hereunder if the total of such costs and expenses shall be less than \$22 million. Any dispute as to the nature or amount of reimbursable costs and expenses shall be decided with finality by the persons selected to award fees, as provided below.

Settling Defendants agree to pay, separately and apart from the above, reasonable attorneys' fees to private counsel. If the Proposed Resolution or substantially equivalent federal program is enacted, the amount of such fees will be set by a panel of independent arbitrators with finality, subject to an appropriate annual cap on all such payments and other conditions. In the absence of any such legislation enacting the Proposed Resolution or a substantially equivalent federal program, attorneys' fees in connection with this litigation will be awarded in the same manner (subject to the appropriate annual cap and other conditions) by three independent arbitrators selected by the parties hereto.

In addition to the foregoing, in the event of the enactment of the Proposed Resolution or other substantially equivalent federal program, the parties hereto contemplate that the State of Florida and any other similar state which has made an exceptional contribution to secure the resolution of these matters may apply to the panel of independent arbitrators for reasonable compensation for its efforts in securing the Proposed Resolution, subject to an appropriate separate annual cap on all such payments.

VI. MISCELLANEOUS

A. HEADINGS. The headings of the paragraphs and sections of this Settlement Agreement are not binding and are for reference only and do not limit, expand, or otherwise affect the contents of this Settlement Agreement.

B. NO ADMISSION. This Settlement Agreement and any proceedings taken hereunder are not intended and shall not in any event be construed as, or deemed to be, an admission or concession or evidence of any liability or any wrongdoing whatsoever on the part of any party or any Released Party. The parties hereto and Released Parties specifically disclaim and deny any liability or wrongdoing whatsoever with respect to the allegations and claims

asserted against them in this action and enter into this Settlement Agreement solely to avoid the further expense, inconvenience, burden and uncertainty of litigation.

C. NON-ADMISSIBILITY. These settlement negotiations have been undertaken by the parties in good faith and for settlement purposes only, and neither this Settlement Agreement nor any evidence of negotiations hereunder, shall be offered or received in evidence in this Action, or any other action or proceeding, for any purpose other than in an action or proceeding arising under this Settlement Agreement.

D. AMENDMENT. This Settlement Agreement may be amended only by a writing executed by all signatories hereto and any provision hereof may be waived only by an instrument in writing executed by the waiving party. The waiver by any party of any breach of this Settlement Agreement shall not be deemed to be or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Settlement Agreement.

E. COOPERATION. The parties to this Settlement Agreement and their attorneys agree to use their best efforts and to cooperate with each other to cause this Settlement Agreement to become effective, to obtain all necessary approvals, consents and authorizations, if any, and to execute all documents and to take such other action as may be appropriate in connection therewith. The parties hereto may agree, without further order of the Court, to reasonable extensions of time to carry out any of the provisions of this Settlement Agreement.

F. GOVERNING LAW. This Settlement Agreement shall be governed by the law of the State of Florida.

G. CONSTRUCTION. 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.

H. INTENDED BENEFICIARIES. This Action was brought by the State of Florida, through its Governor and Attorney General, to recover certain monies and to promote the health and welfare of the people of Florida. No portion of this Settlement Agreement shall provide any rights to, or be enforceable by, any person or entity that is not a party hereto or a Released Party.

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

ENTERED INTO THIS 25th DAY OF AUGUST, 1997.

WEST PALM BEACH,

STATE OF FLORIDA

By:

Lawton M. Chiles, Jr., Robert A. Butterworth,

Governor Attorney General

PHILIP MORRIS INCORPORATED R.J. REYNOLDS TOBACCO COMPANY

By: By:

BROWN & WILLIAMSON TOBACCO LORILLARD TOBACCO COMPANY

CORPORATION

By: By:

UNITED STATES TOBACCO COMPANY

By:



[Back to Florida STIC Library](#)

IN THE CHANCERY COURT OF JACKSON COUNTY, MISSISSIPPI

IN RE MIKE MOORE, ATTORNEY GENERAL et al,
STATE OF MISSISSIPPI TOBACCO LITIGATION

)
)
) CAUSE NO. 94-1429
)

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is made as of July 2, 1997, by and among the undersigned counsel, on behalf of their respective clients, to set forth the principal terms and conditions of an agreement in principle among the parties hereto to settle and resolve with finality all present and future claims against all parties relating to the subject matter of this litigation which have been or could have been asserted by any of the parties hereto, including all claims on behalf of the State of Mississippi and all of its governmental agencies, departments, political subdivisions and any other state-controlled public entities (collectively "Mississippi" or "the State of Mississippi"). The parties contemplate the prompt drafting and execution of a comprehensive Settlement Agreement that will incorporate the terms of this MOU, as well as other customary terms and conditions, including releases, acceptable to the parties.

WHEREAS, the State of Mississippi, through its Attorney General Michael C. Moore, has instituted this action asserting various claims on behalf of the State of Mississippi against tobacco manufacturers and other defendants:

WHEREAS, the defendants have contested the claims in Mississippi's complaint;

WHEREAS, Attorney General Moore has had a leadership role among Attorneys General from various states in maintaining civil litigation against the tobacco industry and in seeking to forge an unprecedented national resolution of the principal issues and controversies associated with the manufacture, marketing and sale of tobacco products in the United States;

WHEREAS, through the efforts of Attorney General Moore and others a June 20, 1997 Memorandum of Understanding and attached Proposed Resolution ("Proposed Resolution") has been agreed to by members of the tobacco industry, state attorneys general, private litigants and representatives of public health groups which would provide for unprecedented and comprehensive regulation of the tobacco industry while preserving the right of individuals to assert claims for compensation;

WHEREAS, the Proposed Resolution contemplates action by the United States Congress and the President to enact and sign a new federal law with respect to the tobacco industry, which action the tobacco industry has agreed to support and which will require study and analysis by Congress and the President;

WHEREAS, trial is scheduled to commence on July 7, 1997 and a continuance of such trial could prejudice the State of Mississippi, the State of Mississippi and the undersigned defendants have agreed to settle independently

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the litigation commenced by Attorney General Moore pursuant to financial terms comparable to the Proposed Resolution, which terms will achieve for Mississippi immediately the financial benefits it would receive pursuant to the national Proposed Resolution, should it become law,

NOW THEREFORE, it is hereby agreed as follows:

This MOU will be presented to the Chancery Court of Jackson County (the "Court") promptly upon its execution, and the parties agree jointly to petition the Court to adjourn all further proceedings in contemplation of their final resolution and termination pursuant to this MOU and the Settlement Agreement contemplated hereby.

The Settlement Agreement shall contain among other things, the following terms to which the parties hereby agree:

1. On or before July 15, 1997 the undersigned defendants (the "Settling Defendants") shall cause to be paid into a special account (the "Account"), for the benefit of the State of Mississippi, to be held in escrow pending effectuation of the Settlement Agreement, the sum of \$170 million; that being plaintiff's good faith estimate of the portion Mississippi would receive of the \$10 billion payment provided for in Paragraph A on page 34 of the June 20, 1997 Memorandum of Understanding and attached Proposed Resolution.

2. On or before July 30, 1997, the Settling Defendants shall cause to be paid to the Attorney General \$2.5 million for the best estimate of costs

and expenses attributable to his office and other appropriate state agencies in connection with this litigation; and on or before July 30, 1997, the Settling Defendants shall further cause to be paid \$12.5 million to the plaintiffs' private counsel for their best estimate of their costs and expenses. The combined costs to be paid on July 30, 1997, may not exceed 15 million dollars. Thereafter the Attorney General's office, the appropriate state agencies and the plaintiffs' private counsel shall provide the Settling Defendants with an appropriately documented statement of their costs and expenses. The Settling Defendants shall promptly pay the amount of such costs and expenses in excess of the above \$15 million, or shall receive a refund or a credit against other payments due hereunder if the total of such costs and expenses shall be less than \$15 million. Any dispute as to the nature or amount of reimbursable costs and expenses shall be decided with finality by the persons selected to award fees pursuant to paragraph 8 below.

3. Commencing within ten (10) business days after December 31, 1998, and annually thereafter, the Settling Defendants shall cause to be paid to the Account 1.7% of the following amounts (in billions):

Year	1	2	3	4	5	6	thereafter
Amount	\$4B	\$4.5B	\$5B	\$6.5B	\$6.5B	\$8B	\$8B

The above payments shall be adjusted upward by the greater of 3% or the Consumer Price Index applied each year on the previous year, beginning with the first annual payment. The above payments will also be decreased or increased as

the case may be, in accordance with decreases or increases in volume of domestic tobacco product volume sales as provided in Paragraph H.5 on pages 34-35 of the June 20, 1997 Proposed Resolution.

4. In recognition of the ongoing payments called for in paragraph 3 above, the Settlement Agreement will provide for the resolution of all past and future claims of the type described above against all defendants. The defendants will be released from all such claims by the State of Mississippi.

5. In the event that the Proposed Resolution is enacted as federal legislation, or if any substantially equivalent federal program is enacted, the settlement provided herein and in the Settlement Agreement shall remain in place, but the terms of such Proposed Resolution or federal program shall supersede the provisions of this MOU and Settlement Agreement. In order to provide the Settling Defendants with a full credit for all payments made hereunder pursuant to paragraphs 1 and 3 of this MOU in the event of the enactment of the Proposed Resolution or substantially equivalent federal program, and in the event that the payments made to the Account pursuant to paragraphs 1 and 3 of this MOU shall differ from the amounts to be received by Mississippi pursuant to such Proposed Resolution or substantially equivalent federal program, adjustments shall be made in the form of a credit to the future payments by the Settling Defendants, a refund by the State of Mississippi, or other means that will ensure that the principal amount of payments received by Mississippi will be the same as

the amounts they would receive pursuant to the Proposed Resolution or substantially equivalent federal program.

6. In the absence of the enactment of the Proposed Resolution or any substantially equivalent federal program, and in the event of multiple settlements by the Settling Defendants with various non-federal governmental plaintiffs in other similar litigation, it is agreed that the aggregate percentage applicable to the various non-federal governmental plaintiffs will not exceed 100%, and the sum of the initial payments will not exceed \$10 billion. In order to ensure this result it is agreed that all such percentages (including the 1.7% applied in paragraph 1 and specified in paragraph 3) will be adjusted downward (by the same relative percentage) to achieve a total aggregate percentage of 100%.

7. The Settling Defendants agree that if they enter into any settlement agreement of other similar non-federal governmental litigation on terms more favorable to such governmental plaintiff than the terms of this MDU and the Settlement Agreement (after due consideration of relevant differences in population or other appropriate factors), the terms of this Settlement will be revised so that Mississippi will enjoy treatment at least as relatively favorable as any such other non-federal governmental entity.

8. The Settling Defendants agree to pay, separately and apart from the above, reasonable attorneys' fees. If the Proposed Resolution or substantially equivalent federal program is enacted, the amount of such fees will

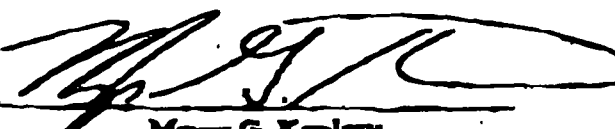
be set by a panel of independent arbitrators with finality, subject to an appropriate annual cap on all such payments and other conditions. In the absence of any such Proposed Resolution or substantially equivalent federal program, attorneys' fees in connection with this litigation will be awarded in the same manner (subject to an appropriate annual cap and other conditions) by three independent arbitrators selected by the parties hereto. In the event of the enactment of the Proposed Resolution or other substantially equivalent federal program, the parties contemplate that the State of Mississippi and any other similar state which has made an exceptional contribution to secure the resolution of these matters may apply to the panel of independent arbitrators for reasonable compensation for its efforts in securing the Proposed Resolution, subject to an appropriate separate annual cap on all such payments.

July 2, 1997

Washington, D.C.

PHILIP MORRIS INCORPORATED

STATE OF MISSISSIPPI

By: 
Meyer G. Koplow

By: 
Michael C. Moore,
Attorney General

R.J. REYNOLDS TOBACCO COMPANYBy: D. Scott Wise**BROWN & WILLIAMSON TOBACCO CORPORATION**By: D. Scott Wise**LORILLARD TOBACCO COMPANY**By: Meyer G. Koplow