

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION**

WILLIAM STARBUCK,

Plaintiff,

vs.

R.J. REYNOLDS TOBACCO  
COMPANY, Individually and as  
Successor By Merger to the BROWN  
& WILLIAMSON TOBACCO  
CORPORATION, and PHILIP  
MORRIS USA INC.,

Defendants.

No. 3:09-CV-13250

**INSTRUCTIONS  
TO THE JURY**

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## **VERDICT FORM**

## No. 1 — INTRODUCTION

Congratulations on your selection as a juror!

These Instructions are to help you better understand the trial and your role in it.

This is a civil case brought by plaintiff William Starbuck for damages for lung cancer that he allegedly suffered as a result of wrongful conduct by defendants R.J. Reynolds Tobacco Company (RJR) and Philip Morris USA Inc. (PM USA). Mr. Starbuck seeks damages from RJR and PM USA on two “product liability” claims: “negligence” and “strict liability”; and two “fraud” claims: “fraudulent concealment” and “conspiracy to fraudulently conceal.” RJR and PM USA deny Mr. Starbuck’s claims and assert, as a specific defense to the “product liability” claims, that Mr. Starbuck is at fault and, thus, responsible for his injury.

You have been chosen and sworn as jurors to try the issues of fact related to Mr. Starbuck’s claims and RJR’s and PM USA’s specific defense. In making your decisions, you are the sole judges of the facts. You must not decide this case based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your individual evaluation of that evidence, your reason and common sense, and these Instructions. Do not take anything that I have said or done or that I may say or do as indicating what I think of the evidence or what I think your verdict should be.

You should consider and decide this case as an action between persons of equal standing in the community, of equal worth, and holding the same or similar

stations in life. The fact that RJR and PM USA are corporations must not affect your decision in any way. A corporation and all other persons stand equal before the law and must be dealt with as equals in a court of justice. When a corporation is involved, it may act only through its employees. A corporation is responsible for the acts and statements of its employees that are made within the scope of their duties as employees of the company.

Please remember that this case is important to the parties and to the fair administration of justice. Please be patient, consider all of the evidence, and do not be in a hurry to reach a verdict just to be finished with the case.

In these Instructions, I will explain how you are to determine whether or not Mr. Starbuck has proved his claims and RJR and PM USA have proved their specific defense. First, however, I will explain some preliminary matters, including the burden of proof, what is evidence, and how you are to treat the testimony of witnesses.

## No. 2 — BURDEN OF PROOF

Your verdict depends on what facts have been proved. Unless I tell you otherwise, facts must be proved “by the greater weight of the evidence,” which is sometimes called “the preponderance of the evidence.”

“Proof by the greater weight of the evidence” is proof that a fact is more likely true than not true.

- It does not depend on which side presented the greater number of witnesses or exhibits
- It requires you to consider all of the evidence and decide which evidence is more convincing or believable
  - For example, you may choose to believe the testimony of one witness, if you find that witness to be convincing, even if a number of other witnesses contradict that witness’s testimony
  - You are free to disbelieve any testimony or other evidence that you do not find convincing or believable
- If, on any issue in the case, you find that the evidence is equally balanced, then you cannot find that the issue has been proved

You may have heard that criminal charges require “proof beyond a reasonable doubt.” That is a stricter standard that does not apply in a civil case, such as this one.

### **No. 3 — DEFINITION OF EVIDENCE**

Evidence is

- Testimony
  - Testimony may be either “live” or “by deposition”
    - A “deposition” is testimony taken under oath before the trial and preserved in writing or on video
    - Consider “deposition” testimony as if it had been given in court
- Answers to interrogatories
  - An interrogatory is a written question asked before trial by one party of another, who must answer it under oath in writing
  - Consider interrogatories and the answers to them as if the questions had been asked and answered here in court
- Exhibits admitted into evidence
  - Just because an exhibit may be shown to you does not mean that it is more important than any other evidence
- Stipulations
  - Stipulations are agreements between the parties
  - If the parties stipulate that certain facts are true, then you must treat those facts as having been proved
  - Either party may read all or part of their stipulations of facts at any time during the trial

Evidence is *not*

- Testimony that I tell you to disregard
- Exhibits that are not admitted into evidence
- Statements, arguments, questions, and comments by the lawyers
- Objections and rulings on objections
- Anything that you see or hear about this case outside the courtroom

Some exhibits consisting of charts and summaries may be shown to you in order to help explain the facts disclosed by books, records, or other underlying evidence in the case

- Such summary exhibits are not evidence or proof of any facts
- They are used for convenience
- In deciding how much weight to give summaries, you must
  - decide if they correctly reflect the facts shown by the evidence
  - consider testimony about the way in which the summaries were prepared

You may have heard of “direct” or “circumstantial” evidence.

- “Direct” evidence is direct proof of a fact
  - An example is testimony by a witness about what that witness personally saw or heard or did

- “Circumstantial” evidence is proof of one or more facts from which you could find another fact
  - An example is testimony that a witness personally saw a broken window and a brick on the floor from which you could find that the brick broke the window
- You should consider both kinds of evidence, because the law makes no distinction between their weight

Some evidence may be admitted only for a limited purpose.

- I will tell you if that happens
- I will instruct you on the purposes for which the evidence can and cannot be used

The weight to be given any evidence—whether that evidence is “direct” or “circumstantial,” or in the form of testimony, an exhibit, or a stipulation—is for you to decide.

## No. 4 — TESTIMONY OF WITNESSES

You may believe all of what any witness says, only part of it, or none of it.

In evaluating a witness's testimony, consider the following:

- the witness's
  - intelligence
  - memory
  - opportunity to have seen and heard what happened
  - motives for testifying
  - interest in the outcome of the case
  - bias or prejudice, if any
  - manner while testifying
- the reasonableness of the witness's testimony
- any differences between what the witness says now and said earlier
- any inconsistencies between the witness's testimony and any other evidence that you believe
- whether any inconsistencies are the result of seeing or hearing things differently, actually forgetting things, or innocent mistakes, or are, instead, the result of lies or phony memory lapses, and
- any other factors that you find bear on believability or credibility

You should not give any more or less weight to a witness's testimony just because the witness is an expert.

- An expert witness may be asked a “hypothetical question” assuming certain facts are true and to give an opinion based on that assumption
- If a “hypothetical question” assumes a fact that is not proved by the evidence, you should decide if the fact not proved affects the weight that you give to the expert’s answer

You may give any witness’s opinion the weight you think it deserves, but you should consider

- the reasons and perceptions on which the opinion is based
- any reason that the witness may be biased,
- whether the witness is being paid, and
- all of the other evidence in the case

It is your exclusive right to give any witness’s testimony whatever weight you think it deserves.

## No. 5 — OTHER IMPORTANT MATTERS

Before I turn to specific instructions on the claims and specific defense in this case, I will explain some important matters.

### *Elements*

In order to recover damages, Mr. Starbuck must prove two initial elements, then prove his claims for damages. Similarly, RJR and PM USA must prove their specific defense of Mr. Starbuck's fault for his injury to avoid or limit their liability for damages on Mr. Starbuck's "product liability" claims.

To prove "initial elements," "claims," "damages," or a "specific defense," the party with the burden of proof must prove certain "elements," which are the factual requirements for proof of each matter. "Elements" that the parties must prove are set out in **bold** in the following instructions.

### *Legal Cause*

Several of the "elements" require proof of "legal causation." For something to be a "legal cause,"

- it must have directly and in natural and continuous sequence produced or contributed substantially to producing the loss, damage, or injury in question, *and*
- it must have been such that it can reasonably be said that, but for it, the loss, damage, or injury in question would not have occurred, *but*

- it does *not* have to be the only cause of the loss, damage, or injury in question
  - Something may have been a legal cause of loss, injury, or damage, even though it operated in combination with the act of another, some natural cause, or some other cause, if it contributed substantially to producing the loss, injury, or damage

### ***Liability For A Legal Product***

It was—and still is—legal to manufacture, sell, and advertise for the sale of cigarettes. Nonetheless, Mr. Starbuck may be entitled to damages from either or both RJR and PM USA, *if* he proves the elements of one or more of his claims.

**No. 6 — MR. STARBUCK’S INITIAL ELEMENTS**

In order to assert his claims, Mr. Starbuck must first prove *both* of the following initial elements by the greater weight of the evidence:

***One*, Mr. Starbuck was addicted to cigarettes containing nicotine on or before November 21, 1996.**

***Two*, his addiction was a legal cause of his lung cancer.**

I defined “legal cause” for you in Instruction No.  
5.

If Mr. Starbuck *does not* prove *both* of these initial elements, by the greater weight of the evidence, then he cannot assert his claims for damages. On the other hand, if he *does* prove *both* of these initial elements as to either or both RJR and PM USA, then he is entitled to assert his claims for damages and he is also entitled to rely on certain findings in prior legal proceedings, as explained in Instruction No. 7.

## **No. 7 — FINDINGS FROM PRIOR LEGAL PROCEEDINGS**

If Mr. Starbuck proves both of the initial elements, then he is also entitled to rely on findings made in prior legal proceedings as binding in this trial. You must not speculate about the basis for these findings. I will tell you what these findings are, as they relate to Mr. Starbuck's claims.

In this case,

- you cannot consider these findings from prior proceedings to decide if Mr. Starbuck has proved the initial matters in Instruction No. 6
- these findings from prior proceedings are binding on the matters to which they relate
  - This means that you must give these findings the same decisive weight that you would give them if you had decided them unanimously yourselves, whether you agree with them or not
- these finding from prior proceedings did not determine, and do not mean, that Mr. Starbuck has proved his claims for damages against either or both RJR and PM USA

Although you must treat these findings as binding on the matters to which they relate, it is solely for you to decide, based on the evidence in this case and my instructions on the law, whether Mr. Starbuck has proved any of his claims for damages against either, both, or neither RJR and PM USA.

## No. 8 — MR. STARBUCK’S “PRODUCT LIABILITY” CLAIMS

Mr. Starbuck asserts two “product liability” claims: “negligence” and “strict liability.” RJR and PM USA deny these claims and assert, as a specific defense, that Mr. Starbuck is at fault and, thus, responsible for his injury.

### *Prior Binding Findings*

If Mr. Starbuck has proved the initial elements in Instruction No. 6, *then* you must consider the following findings in prior litigation to be binding here, as explained in Instruction No. 7:

- RJR and PM USA failed to exercise the degree of care that a reasonable cigarette manufacturer would exercise under like circumstances and, thus, were negligent; and
- RJR and PM USA placed cigarettes on the market that were defective and unreasonably dangerous; and
- Cigarettes that contain nicotine are addictive or dependence producing; and
- Smoking cigarettes causes lung cancer

### *Remaining Elements*

Consequently, for Mr. Starbuck to prove his “*negligence*” claim against a particular defendant, Mr. Starbuck must prove the following *two* elements:

***One*, Mr. Starbuck’s smoking of cigarettes containing nicotine manufactured by the defendant in question was a legal cause of his lung cancer.**

I defined “legal cause” for you in Instruction No. 5. You must unanimously agree whether Mr. Starbuck’s smoking of cigarettes containing nicotine manufactured by RJR, PM USA, both, or neither was a legal cause of his lung cancer.

***Two*, the amount of the damages for Mr. Starbuck’s lung cancer for which the defendant’s negligence was a legal cause.**

Remember that I defined “legal cause” for you in Instruction No. 5.

For Mr. Starbuck to prove his “*strict liability*” claim against a particular defendant, Mr. Starbuck must prove the following *two* elements:

***One*, Mr. Starbuck’s smoking of cigarettes containing nicotine manufactured by the defendant in question was a legal cause of his lung cancer.**

The explanation of this element, just above, in relation to a “negligence” claim, also applies here.

***Two*, the amount of damages for Mr. Starbuck’s lung cancer for which the defendant’s placing cigarettes on the market that were defective and unreasonably dangerous was a legal cause.**

Remember that I defined “legal cause” for you in Instruction No. 5.

If Mr. Starbuck does not prove both of these remaining elements, by the greater weight of the evidence, as to a particular defendant on a particular “product liability” claim, then your verdict must be for that defendant on that claim. On the other hand, if Mr. Starbuck does prove both of these remaining elements as to either or both RJR and PM USA on one or both of his “product liability” claims, then you will consider whether RJR and PM USA have proved their specific defense of Mr. Starbuck’s fault, as explained in the next Instruction.

**No. 9 — RJR’S AND PM USA’S SPECIFIC  
DEFENSE TO THE “PRODUCT LIABILITY”  
CLAIMS**

If you find that Mr. Starbuck has proved damages legally caused by either or both RJR and PM USA in his “product liability” claims, then you must also consider RJR’s and PM USA’s specific defense that Mr. Starbuck is at fault and, thus, responsible for his injury.

To prove their specific defense, RJR and PM USA must prove all of the following elements by the greater weight of the evidence:

***One, Mr. Starbuck was also responsible for his lung cancer.***

Mr. Starbuck accepts some responsibility for smoking cigarettes. You must decide whether he bears some responsibility for his lung cancer, because he smoked cigarettes. To prove that Mr. Starbuck is responsible for his lung cancer, the defendants must prove all of the following:

- Mr. Starbuck knew of the danger of lung cancer from smoking cigarettes;
- Mr. Starbuck realized and appreciated the possibility of lung cancer as a result of smoking cigarettes;
- Mr. Starbuck had a reasonable opportunity to avoid lung cancer by not smoking cigarettes; and
- Mr. Starbuck voluntarily and deliberately exposed himself to lung cancer by smoking cigarettes

**Two, Mr. Starbuck’s conduct was a contributing legal cause of his lung cancer.**

I defined “legal cause” for you in Instruction No. 5.

**Three, the percentages of the total fault for Mr. Starbuck’s damages that each of the parties to this action caused.**

In determining the percentage of fault to assign to each party,

- you must assign a percentage of the total fault to Mr. Starbuck and to each defendant that you find negligent or strictly liable;
- the percentage of the total fault assigned to any such party may be anywhere from 0% to 100%;
- the total of the percentages assigned to all such parties must be 100%;
- assigning a percentage of fault to Mr. Starbuck will reduce his compensatory damages on his “product liability” claims;
- assigning a percentage of fault to Mr. Starbuck will not necessarily prevent him from recovering compensatory damages on his “product liability” claims

When you determine the amount of damages, if any, to award Mr. Starbuck, do not make any reduction because of the percentage of fault, if any, that you assign to him. When I enter judgment on your verdict, I will make any appropriate

reduction in the damages awarded based on your finding of the percentage of Mr. Starbuck's fault, if any.

## No. 10 — MR. STARBUCK’S “FRAUD” CLAIMS

Mr. Starbuck also seeks damages on two “fraud” claims: “fraudulent concealment” and “conspiracy to fraudulently conceal.” RJR and PM USA deny Mr. Starbuck’s “fraud” claims.

### *Prior Binding Findings*

In this case, if Mr. Starbuck has proved the initial elements to pursue his claims for damages, as explained in Instruction No. 6, then you must consider the following findings in prior litigation to be binding here, as explained in Instruction No. 7:

- Cigarettes that contain nicotine are addictive or dependence producing;
- Smoking cigarettes causes lung cancer;
- RJR, PM USA, and others (the “co-conspirators”)
  - concealed or omitted material information, not otherwise known or available, about the health effects and/or addictive nature of smoking cigarettes, or
  - failed to disclose a material fact concerning or proving the health effects and/or addictive nature of smoking cigarettes, or
  - both,knowing that the incomplete disclosure was false and misleading

- RJR, PM USA, and others (the “co-conspirators”) entered into an agreement to conceal or omit information regarding the health effects of cigarettes, and/or the addictive nature of smoking cigarettes, with the intention that smokers and members of the public rely to their detriment

### *Remaining Elements*

Consequently, for Mr. Starbuck to prove his “*fraudulent concealment*” claim against a particular defendant, Mr. Starbuck must prove the following *three* elements:

***One, Mr. Starbuck relied on a statement by the defendant in question that concealed or omitted material information about the health effects and/or addictive nature of smoking cigarettes to his detriment.***

“Reliance” is action based on dependence on or trust in information provided by the defendant

“Reliance” was “detrimental” if it caused actual damage.

***Two, the defendant’s statement concealing or omitting material information about the health effects and/or addictive nature of smoking cigarettes was a legal cause of Mr. Starbuck’s lung cancer.***

I defined “legal cause” for you in Instruction No. 5.

On Mr. Starbuck’s “*fraudulent concealment*” claim, you *cannot* find that this element is proved as to a particular defendant, *unless* you find that that particular defendant made the statement concealing or omitting

material information about the health effects and/or addictive nature of smoking cigarettes.

***Three*, the amount of the damages for which the defendant’s statement concealing or omitting material information about the health effects and/or addictive nature of smoking cigarettes was a legal cause.**

Again, I defined “legal cause” for you in Instruction No. 5.

For Mr. Starbuck to prove his “*conspiracy to fraudulently conceal*” claim against a particular defendant, Mr. Starbuck must prove the following *three* elements:

***One*, Mr. Starbuck relied on a statement made by one or more co-conspirators, in furtherance of the conspiracy, that concealed or omitted material information about the health effects and/or addictive nature of smoking cigarettes to his detriment.**

The explanation to element *one* of a “fraudulent concealment” claim also applies here.

***Two*, the statement of one or more co-conspirators concealing or omitting material information about the health effects and/or addictive nature of smoking cigarettes was a legal cause of Mr. Starbuck’s lung cancer.**

I defined “legal cause” for you in Instruction No. 5. A co-conspirator is liable for the conduct of other co-conspirators in furtherance of the conspiracy. Thus, because there is a binding finding that both RJR and PM USA were co-conspirators with each other and others,

- if the plaintiff relied on a statement of one of the defendants’ co-conspirators concealing

or omitting material information, made in furtherance of the conspiracy, then each of the defendants here is also responsible for that statement

- if either of the defendants here is liable for “conspiracy to fraudulently conceal,” then the other must also be liable

***Three, the amount of the damages for which a statement of one or more co-conspirators concealing or omitting material information about the health effects and/or addictive nature of smoking cigarettes was a legal cause.***

Again, I defined “legal cause” for you in Instruction No. 5.

If Mr. Starbuck does not prove all three of these remaining elements, by the greater weight of the evidence, as to a particular “fraud” claim, then your verdict must be for the defendants on that claim. On the other hand, if Mr. Starbuck does prove all three of these remaining elements as to one or more of his “fraud” claims, then he is entitled to any damages for which he proves that fraudulent conduct was a legal cause.

If Mr. Starbuck has proved all of the remaining elements of one or more of his “fraud” claims, then you must also unanimously decide whether Mr. Starbuck has proved the following:

**The time period in which the statement that fraudulently concealed or omitted material information was made.**

The time periods in question are the following:

- Before May 5, 1982

- On or after May 5, 1982
- Both before and on or after May 5, 1982

You must not be concerned with or speculate about the effect of your finding on this question. The effect of your finding on this question is for me to decide.

**No. 11 — DAMAGES IN GENERAL  
(REPLACEMENT INSTRUCTION)**

I am giving you this instruction to replace original Instruction No. 11. You must consider this instruction instead of original Instruction No. 11. It is my duty to instruct you about damages. By giving you this replacement instruction on damages, I do not mean to suggest what your verdict should be on any claim.

If you find for Mr. Starbuck on one or more of his claims, then you must determine what, if any, damages to award him. “Damages” are the amount of money that will fairly and adequately compensate Mr. Starbuck for the injury, pain, and suffering that you find he suffered as a result of RJR’s and/or PM USA’s wrongful conduct.

- It is for you to determine what damages, if any, Mr. Starbuck proves by the greater weight of the evidence
- Any damages award must be based upon evidence and not upon speculation, guesswork, conjecture, or sympathy
- Compensatory damages must not be based upon a desire to punish or penalize RJR, PM USA, or anyone else
- You cannot determine the amount for a particular item of damages by taking down each juror’s estimate and agreeing in advance that the average of those estimates will be your award for that item of damages
- You must not award duplicate damages, so do not allow amounts awarded under one item of damages to be included in any amount awarded under another item of damages

- If you find a defendant is liable for damages on one or more of Mr. Starbuck's claims, then that defendant is responsible for all of the elements of damages that its conduct legally caused, even if some of Mr. Starbuck's injuries were not foreseeable to that defendant or arose because he was unusually susceptible to being injured
- If you find that a defendant legally caused a bodily injury, and that the injury resulted in an aggravation of an existing disease or physical defect or activation of a latent disease or physical defect, then you should award damages, if any, that are proved for the aggravation or activation, as well as for the lung cancer surgery
- Remember, do not make any reduction because of the percentage of fault, if any, that you assign to Mr. Starbuck, because I will make any appropriate reduction in the damages awarded based on your finding of the percentage of Mr. Starbuck's fault, if any

You should give no more and no less consideration to this replacement instruction than you give to the other instructions. All instructions, whenever given, are important.

## **No. 12 — ITEMS OF COMPENSATORY DAMAGES**

Mr. Starbuck seeks, and can recover, only the following items of compensatory damages, if he proves that they were legally caused by RJR's and/or PM USA's wrongful conduct:

### ***Injury, Pain, And Suffering***

Damages for “injury, pain, and suffering” are for any of the following:

- bodily injury
- pain and suffering
- disability
- mental anguish
- inconvenience, and
- loss of capacity for the enjoyment of life

### ***Past Injury, Pain, And Suffering***

“Past injury, pain, and suffering” damages are the amount of these damages that Mr. Starbuck proves by the greater weight of the evidence that he has suffered as a result of his lung cancer, including treatment for it, from the date of injury to the date of your verdict.

### ***Future Injury, Pain, And Suffering***

“Future injury, pain, and suffering” damages are the amount of these damages that Mr. Starbuck proves by the greater weight of the evidence that he is likely to suffer as a result of his lung cancer, including treatment for it, from the date of your verdict into the future. Mr. Starbuck is only entitled to damages for “future injury, pain, and suffering,” however, if he proves by the greater weight of the evidence

- that it is probable, or more likely than not, that these injuries will continue into the future, and
- the period for which these injuries are likely to continue

### ***Calculation Of Damages***

In awarding such damages for past and future injury, pain, and suffering, keep in mind that

- there is no exact standard for measuring such damages
- the amount awarded should be fair and just in the light of the evidence

### **No. 13 — WHETHER PUNITIVE DAMAGES ARE JUSTIFIED**

Mr. Starbuck also seeks punitive damages against RJR and/or PM USA on his “fraud” claims. Thus, if you find for Mr. Starbuck and against either or both RJR and PM USA on either of his “fraud” claims, then you must decide whether, in addition to compensatory damages, an award of punitive damages is justified

- as punishment of each defendant you find liable on one or both of these “fraud” claims for their fraudulent conduct, and
- as a deterrent to others from similar fraudulent conduct

First, you will decide whether the fraudulent conduct of each defendant against whom you found on either or both of Mr. Starbuck’s “fraud” claims is such that punitive damages are justified. If you decide that punitive damages are justified, then there will be a second part of this trial, during which I will give you additional instructions and the parties may present additional evidence and argument on the issue of punitive damages. You will then decide, in your discretion, whether or not to award punitive damages and, if so, the amount of punitive damages.

Mr. Starbuck must prove that punitive damages are justified by clear and convincing evidence. “Clear and convincing evidence” differs from the “greater weight of the evidence” in that:

- it is more compelling and persuasive, and
- it is evidence that is precise, explicit, lacking in confusion, and

- it is of such weight that it produces a firm belief or conviction, without hesitation, about the matter in issue

You may, but are not required to, find that punitive damages are justified, if Mr. Starbuck proves either or both “intentional misconduct” or “reckless indifference or disregard” of the defendant in question by clear and convincing evidence.

***“Intentional Misconduct” Alternative***

You may, but are not required to, find that punitive damages are justified against a particular defendant under the “intentional misconduct” alternative, if Mr. Starbuck proves *all* of the following elements by clear and convincing evidence:

***One***, the defendant in question had actual knowledge of the wrongfulness of the fraudulent conduct that was a legal cause of Mr. Starbuck’s lung cancer.

***Two***, the defendant in question had actual knowledge that there was a high probability of injury or damage to Mr. Starbuck from that fraudulent conduct.

***Three***, despite that knowledge, the defendant in question intentionally pursued that fraudulent conduct, resulting in Mr. Starbuck’s lung cancer.

***“Reckless Indifference Or Disregard” Alternative***

You may, but are not required to, find that punitive damages are justified against a particular defendant under the “reckless indifference or disregard” alternative, if Mr. Starbuck proves the following by clear and convincing evidence:

**The fraudulent conduct of the defendant in question that was a legal cause of Mr. Starbuck’s lung cancer was so reckless or wanting in care that it demonstrated a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct.**

This element is proved, if Mr. Starbuck proves one or more of the following:

- the defendant’s fraudulent conduct that was a legal cause of Mr. Starbuck’s lung cancer was so gross and flagrant as to show a reckless disregard of human life or of the safety of persons exposed to the effects of such conduct; or
- the defendant’s fraudulent conduct showed such an entire lack of care that the defendant must have been consciously indifferent to the consequences; or
- the defendant’s fraudulent conduct showed such an entire lack of care that the defendant must have wantonly or recklessly disregarded the safety and welfare of the public; or
- the defendant’s fraudulent conduct showed such reckless indifference to the rights of others as to be equivalent to an intentional violation of those rights.

If Mr. Starbuck does not prove either or both the “intentional misconduct” alternative or “reckless indifference or disregard” alternative, by clear and convincing evidence, as to a particular defendant, then punitive damages are not justified against that defendant. If Mr. Starbuck does not prove either alternative as to either RJR or PM USA, there will be no further proceedings in this trial. On the other hand, if Mr. Starbuck does prove one or both of these alternatives as to either or both RJR and PM USA, then punitive damages are justified, and there will be further proceedings to determine what, if any, punitive damages you should award.

In deciding whether Mr. Starbuck has proved either or both “intentional misconduct” or “reckless indifference or disregard,” by clear and convincing evidence, as to a particular defendant,

- you *may* consider the “prior binding findings” set out in Instruction No. 10, but no other “prior binding findings”
  - These “prior binding findings” alone *will not* support a finding that punitive damages are justified in this case
  - To award punitive damages, you must find from the evidence submitted in this trial, by clear and convincing evidence, that punitive damages are justified
- you *may not* find that punitive damages for “fraudulent concealment” are justified based on fraudulent conduct of anyone other than the defendant in question

- you *may* find that punitive damages for “conspiracy to fraudulently conceal” are justified against a particular defendant based on fraudulent conduct of others with whom that defendant conspired
- you *may* consider harm to others, besides Mr. Starbuck, from the fraudulent conduct at issue here for which a defendant is responsible to determine whether punitive damages are justified, but you may not award any amount in punitive damages, in any second phase of the trial, to punish a defendant for alleged harms to others
- you should also consider any evidence demonstrating that punitive damages are not justified against a particular defendant, including, for example,
  - evidence of attempts by that defendant to lessen the harm from its prior fraudulent conduct, or
  - evidence that that defendant’s conduct has changed from the fraudulent conduct at issue in this case

## No. 14 — OUTLINE OF THE TRIAL

I will now explain how the trial will proceed.

After I have read all but the last Instruction,

- The lawyers may make opening statements
  - An opening statement is not evidence
  - It is simply a summary of what the lawyer expects the evidence to be
- Mr. Starbuck will present evidence and call witnesses and the lawyers for RJR and PM USA may cross-examine them
- RJR and PM USA may then present evidence and call witnesses, and the lawyer for Mr. Starbuck may cross-examine those witnesses
- The parties will make their closing arguments
  - Closing arguments summarize and interpret the evidence for you
  - Like opening statements, closing arguments are not evidence
- I will give you the last Instruction, on “deliberations”
- You will retire to deliberate on your verdict
- You will indicate your verdict on Mr. Starbuck’s claims and RJR’s and PM USA’s specific defense in a Verdict Form, a copy of which is attached to these Instructions
  - A Verdict Form is simply a written notice of your decision

- When you have reached a unanimous verdict, your foreperson will complete one copy of the Verdict Form by marking the appropriate blank or blanks for each question
- You will all sign that copy to indicate that you agree with the verdict and that it is unanimous
- Your foreperson will then bring the signed Verdict Form to the courtroom when it is time to announce your verdict
- If Mr. Starbuck does prove one or more of his “fraud” claims and that punitive damages are justified, then there will be further proceedings to determine what, if any, punitive damages you should award

## No. 15 — OBJECTIONS

The lawyers may make objections and motions during the trial that I must rule upon.

- If I sustain an objection to a question before it is answered, do not draw any inferences or conclusions from the question itself
- Do not hold it against a lawyer or a party that a lawyer has made an objection, because lawyers have a duty to object to testimony or other evidence that they believe is not properly admissible

## **No. 16 — BENCH CONFERENCES**

During the trial, it may be necessary for me to talk with the lawyers out of your hearing.

- I may hold a bench conference while you are in the courtroom or call a recess
- Please be patient, because these conferences are
  - to decide how certain evidence is to be treated
  - to avoid confusion and error, and
  - to save your valuable time
- We will do our best to keep such conferences short and infrequent

## No. 17 — NOTE-TAKING

You are allowed to take notes during the trial if you want to.

- Be sure that your note-taking does not interfere with listening to and considering all the evidence
- Your notes are not necessarily more reliable than your memory or another juror's notes or memory
- Do not discuss your notes with anyone before you begin your deliberations
- Leave your notes on your chair during recesses and at the end of the day
- At the end of trial, you may take your notes with you or leave them to be destroyed
- No one else will ever be allowed to read your notes, unless you let them

If you choose not to take notes, remember that it is your own individual responsibility to listen carefully to the evidence.

An official court reporter is making a record of the trial, but her transcripts will not be available for your use during your deliberations.

## No. 18 — CONDUCT OF JURORS DURING TRIAL

You must decide this case *solely* on the evidence and your own observations, experiences, reason, common sense, and the law in these Instructions. You must also keep to yourself any information that you learn in court until it is time to discuss this case with your fellow jurors during deliberations.

To ensure fairness, you must obey the following rules:

- Do not talk among yourselves about this case, or about anyone involved with it, until you go to the jury room to decide on your verdict.
- Do not talk with anyone else about this case, or about anyone involved with it, until the trial is over.
- When you are outside the courtroom, do not let anyone ask you about or tell you anything about this case, anyone involved with it, any news story, rumor, or gossip about it, until the trial is over. If someone should try to talk to you about this case during the trial, please report it to me.
- During the trial, you should not talk to any of the parties, lawyers, or witnesses—even to pass the time of day—so that there is no reason to be suspicious about your fairness. The lawyers, parties, and witnesses are not supposed to talk to you, either.

- You may need to tell your family, friends, teachers, co-workers, or employer about your participation in this trial, so that you can tell them when you must be in court and warn them not to ask you or talk to you about the case. However, do not provide any information to anyone by any means about this case until after I have accepted your verdict. That means do not talk face-to-face or use any electronic device or media, such as the telephone, a cell or smart phone, a Blackberry, a PDA, a computer, the Internet, any Internet service, any text or instant messaging service, any Internet chat room, any blog, or any website such as Facebook, MySpace, YouTube, or Twitter, to communicate to anyone any information about this case until I accept your verdict.
- Do not do any research—on the Internet, in libraries, in the newspapers, in dictionaries or other reference books, or in any other way—or make any investigation about this case, the law, or the people involved on your own.
- Do not visit or view any place discussed in this case and do not use Internet maps or Google Earth or any other program or device to search for or to view any place discussed in the testimony.
- Do not read any news stories or articles, in print, on the Internet, or in any “blog,” about this case, or about anyone involved with it, or listen to any radio or television reports about it or about anyone involved with it, or let anyone tell you anything about any such news reports. I assure you that when you have heard all the evidence, you

will know more about this case than anyone will learn through the news media—and it will be more accurate.

- Do not make up your mind during the trial about what the verdict should be. Keep an open mind until you have had a chance to discuss the evidence with other jurors during deliberations.
- Do not decide the case based on biases. Because you are making very important decisions in this case, I strongly encourage you to evaluate the evidence carefully and to resist jumping to conclusions based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your individual evaluation of that evidence, your reason and common sense, and these instructions. Our system of justice is counting on you to render a fair decision based on the evidence, not on biases.
- If, at any time during the trial, you have a problem that you would like to bring to my attention, or if you feel ill or need to go to the restroom, please send a note to the Court Security Officer (CSO), who will give it to me. I want you to be comfortable, so please do not hesitate to tell us about any problem.

I will read the remaining Instruction after closing arguments.

## No. 19 — DELIBERATIONS

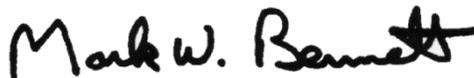
In conducting your deliberations and returning your verdict, there are certain rules that you must follow.

- When you go to the jury room, select one of your members as your foreperson to preside over your discussions and to speak for you here in court
- Discuss this case with one another in the jury room to try to reach agreement on the verdict, if you can do so consistent with individual judgment
  - Nevertheless, each of you must make your own conscientious decision, after considering all the evidence, discussing it fully with your fellow jurors, and listening to the views of your fellow jurors
- Do not be afraid to change your opinions if the discussion with other jurors persuades you that you should, but do not come to a decision simply because other jurors think it is right, or simply to reach a verdict
- Remember that you are not advocates, but judges—judges of the facts
  - Your sole interest is to seek the truth from the evidence in the case.

- If you need to communicate with me during your deliberations, you may send a note to me through the Court Security Officer (CSO), signed by one or more jurors
  - I will respond as soon as possible, either in writing or orally in open court
  - Remember that you should not tell anyone—including me—how your votes stand numerically
- Base your verdict solely on the evidence and on the law as I have given it to you in my Instructions
  - Nothing I have said or done is intended to suggest what your verdict should be—that is entirely for you to decide
- Your verdict on each question submitted must be unanimous
- Complete and sign one copy of the Verdict Form
  - The foreperson must bring the signed Verdict Form to the courtroom when it is time to announce your verdict
- When you have reached a verdict, the foreperson will advise the Court Security Officer that you are ready to return to the courtroom.

Good luck with your deliberations.

**DATED** this 1st day of December, 2014.



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MARK W. BENNETT  
U.S. DISTRICT COURT JUDGE  
NORTHERN DISTRICT OF IOWA  
VISITING JUDGE

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION**

WILLIAM STARBUCK,

Plaintiff,

vs.

R.J. REYNOLDS TOBACCO  
COMPANY, Individually and as  
Successor By Merger to the BROWN  
& WILLIAMSON TOBACCO  
CORPORATION, and PHILIP  
MORRIS USA INC.,

Defendants.

No. 3:09-CV-13250

**VERDICT FORM**

On Mr. Starbuck's claims and RJR's and PM USA's specific defense, we, the Jury, find as follows:

<b>I. MR. STARBUCK'S INITIAL ELEMENTS</b>	
<b>Question 1:</b> Addiction	Has Mr. Starbuck proved by the greater weight of the evidence that he was addicted to cigarettes containing nicotine on or before November 21, 1996, as explained in Instruction No. 6?
	_____ No →
	_____ Yes ↓
	<i>If you answer "Yes," go on to <b>Question 2</b>.</i>
<b>Question 2:</b> Addiction Causation	Has Mr. Starbuck proved by the greater weight of the evidence that his addiction was a legal cause of his lung cancer, as explained in Instruction No. 6?
	_____ No →
	_____ Yes ↓
	<i>If you answer "Yes," go on to <b>Part II</b>.</i>



<b>Question 3(b):</b> Allocation of Fault	What are the percentages of the total fault for Mr. Starbuck’s damages caused by each of the parties to this action? <i>(Remember that the plaintiff and each defendant you marked in Question 1 or Question 2 must be assigned a percentage of fault, from 0% to 100%, and that the total of the percentages of fault assigned to all of the parties must be 100%.)</i>	
	Mr. Starbuck	_____ %
	R.J. Reynolds (RJR)	_____ %
	Philip Morris (PM USA)	_____ %
	TOTAL	100%
<i>Please go on to Part III.</i>		
<b>III. MR. STARBUCK’S “FRAUD” CLAIMS</b>		
<b>Question 1(a):</b> Fraudulent Concealment	Has Mr. Starbuck proved the remaining elements of his “fraudulent concealment” claim against either or both RJR and PM USA, as that claim is explained in Instruction No. 10?	
	R.J. Reynolds (RJR)	_____ Yes _____ No
	Philip Morris (PM USA)	_____ Yes _____ No
	<i>You can only consider Mr. Starbuck’s claim for damages for “fraudulent concealment” against a defendant for whom you marked “Yes” in your answer to Question 1(a). If you marked “Yes” as to either or both RJR and PM USA in Question 1(a), please answer Question 1(b) for that defendant or those defendants. Otherwise, skip Question 1(b), and go on to Question 2(a).</i>	
<b>Question 1(b):</b> Date of Concealment	During which time period has Mr. Starbuck proved that the statement that fraudulently concealed or omitted material information was made, as explained in Instruction No. 10? <i>(Remember, you must not be concerned with or speculate about the effect of your finding on this question, because the effect of your finding on this question is for me to decide.)</i>	
	R.J.Reynolds (RJR)	Philip Morris (PM USA)
	_____ Before May 5, 1982	_____ Before May 5, 1982
	_____ On or after May 5, 1982	_____ On or after May 5, 1982
	_____ Both before and after May 5, 1982	_____ Both before and after May 5, 1982

<b>Question 2(a):</b> Conspiracy to Fraudulently Conceal	Has Mr. Starbuck proved the remaining elements of his “conspiracy to fraudulently conceal” claim, as that claim is explained in Instruction No. 10? <i>(Remember, both defendants are liable as “co-conspirators” on this claim, if either one of them is liable.)</i>	
	_____ Yes	_____ No
	<i>If you marked “Yes” in Question 2(a), please answer Question 2(b). Otherwise, skip Question 2(b).</i>	
<b>Question 2(b):</b> Date of Concealment	During which time period has Mr. Starbuck proved that the statement that fraudulently concealed or omitted material information was made by a co-conspirator, as explained in Instruction No. 10? <i>(Remember, you must not be concerned with or speculate about the effect of your finding on this question, because the effect of your finding on this question is for me to decide.)</i>	
	_____ Before May 5, 1982	
	_____ On or after May 5, 1982	
	_____ Both before and after May 5, 1982	
<i>Please go on to <b>Part IV</b> if you marked “Yes” as to one or both defendants in answer to one or more of the following questions: <b>Part II, Question 1, Part II, Question 2, Part III, Question 1(a), and/or Part III, Question 2(a).</b> Otherwise, skip <b>Part IV</b>, sign the Verdict Form, and notify the CSO that you have reached a verdict.</i>		
<b>IV. DAMAGES</b>		
<b>Question 1(a):</b> Aggravation Or Activation	<i>If you found that Mr. Starbuck proved one or more of his claims against one or both of the defendants in <b>Part II</b> or <b>Part III</b>, has Mr. Starbuck proved that his bodily injury legally caused by a defendant resulted in an aggravation of an existing disease or physical defect or activation of a latent disease or physical defect?</i>	
	_____ Yes	_____ No
	<i>If you answer “Yes,” then you should award damages, if any, that are proved for the aggravation or activation, as well as for the lung cancer surgery.</i>	

<b>Question 1(b):</b> Amount of Compensatory Damages	<i>If you found that Mr. Starbuck proved one or more of his claims against one or both of the defendants in <b>Part II</b> or <b>Part III</b>, what amount, if any, do you award to Mr. Starbuck as damages for which the defendant's or the defendants' wrongful conduct was a legal cause, as compensatory damages are explained in Instruction No. 12?</i>	
	Compensatory damages for past injury, pain, and suffering:	\$ _____
	Compensatory damages for future injury, pain, and suffering:	\$ _____
<b>Question 2(a):</b> Are Punitive Damages Justified	Has Mr. Starbuck proved by clear and convincing evidence that punitive damages are justified against either or both RJR and PM USA, as explained in Instruction No. 13?	
	R.J. Reynolds (RJR)	_____ Yes _____ No
	Philip Morris (PM USA)	_____ Yes _____ No
	<i>If you marked "Yes" as to either or both RJR and PM USA, please answer <b>Question 2(b)</b>.</i>	
<b>Question 2(b):</b> Justification	For each defendant against whom you found that punitive damages are justified in <b>Question 2(b)</b> , please mark whether you find that punitive damages against that defendant are justified on the basis of "intentional misconduct," "reckless indifference or disregard," or both.	
	R.J. Reynolds (RJR)	Philip Morris (PM USA)
	_____ Intentional Misconduct	_____ Intentional Misconduct
	_____ Reckless Indifference Or Disregard	_____ Reckless Indifference Or Disregard
	_____ Both	_____ Both
<i>If you find that Mr. Starbuck has proved that punitive damages are justified against one or both of the defendants, then there will be further proceedings to determine what, if any, amount of punitive damages you should award.</i>		

\_\_\_\_\_ Date

\_\_\_\_\_ Foreperson

\_\_\_\_\_ Juror

\_\_\_\_\_ Juror

\_\_\_\_\_ Juror

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Juror

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Juror

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Juror

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Juror

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION**

WILLIAM STARBUCK,

Plaintiff,

vs.

R.J. REYNOLDS TOBACCO  
COMPANY, Individually and as  
Successor By Merger to the BROWN  
& WILLIAMSON TOBACCO  
CORPORATION, and PHILIP  
MORRIS USA INC.,

Defendants.

No. 3:09-CV-13250

**COURT’S PROPOSED  
INSTRUCTIONS  
TO THE JURY  
(11/29/14 SECOND REVISED  
“ANNOTATED” VERSION)**

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**VERDICT FORM**

## No. 20 — INTRODUCTION

Congratulations on your selection as a juror!

These Instructions are to help you better understand the trial and your role in it.

This is a civil case brought by plaintiff William Starbuck for damages for lung cancer that he allegedly suffered as a result of wrongful conduct by defendants R.J. Reynolds Tobacco Company (RJR) and Philip Morris USA Inc. (PM USA). Mr. Starbuck seeks damages from RJR and PM USA on two “product liability” claims: “negligence” and “strict liability”; and two “fraud” claims: “fraudulent concealment” and “conspiracy to fraudulently conceal.” RJR and PM USA deny Mr. Starbuck’s claims and assert, as a specific defense to the “product liability” claims, that Mr. Starbuck is at fault and, thus, responsible for his injury.

You have been chosen and sworn as jurors to try the issues of fact related to Mr. Starbuck’s claims and RJR’s and PM USA’s specific defense. In making your decisions, you are the sole judges of the facts. You must not decide this case based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your individual evaluation of that evidence, your reason and common sense, and these Instructions. Do not take anything that I have said or done or that I may say or do as indicating what I think of the evidence or what I think your verdict should be.

You should consider and decide this case as an action between persons of equal standing in the community, of equal worth, and holding the same or similar

stations in life. The fact that RJR and PM USA are corporations must not affect your decision in any way. A corporation and all other persons stand equal before the law and must be dealt with as equals in a court of justice. When a corporation is involved, it may act only through its employees. A corporation is responsible for the acts and statements of its employees that are made within the scope of their duties as employees of the company.

Please remember that this case is important to the parties and to the fair administration of justice. Please be patient, consider all of the evidence, and do not be in a hurry to reach a verdict just to be finished with the case.

In these Instructions, I will explain how you are to determine whether or not Mr. Starbuck has proved his claims and RJR and PM USA have proved their specific defense. First, however, I will explain some preliminary matters, including the burden of proof, what is evidence, and how you are to treat the testimony of witnesses.

## No. 21 — BURDEN OF PROOF

Your verdict depends on what facts have been proved. Unless I tell you otherwise, facts must be proved “by the greater weight of the evidence,” which is sometimes called “the preponderance of the evidence.”

“Proof by the greater weight of the evidence” is proof that a fact is more likely true than not true.

- It does not depend on which side presented the greater number of witnesses or exhibits
- It requires you to consider all of the evidence and decide which evidence is more convincing or believable
  - For example, you may choose to believe the testimony of one witness, if you find that witness to be convincing, even if a number of other witnesses contradict that witness’s testimony
  - You are free to disbelieve any testimony or other evidence that you do not find convincing or believable
- If, on any issue in the case, you find that the evidence is equally balanced, then you cannot find that the issue has been proved

You may have heard that criminal charges require “proof beyond a reasonable doubt.” That is a stricter standard that does not apply in a civil case, such as this one.

## No. 22 — DEFINITION OF EVIDENCE

Evidence is

- Testimony
  - Testimony may be either “live” or “by deposition”
    - A “deposition” is testimony taken under oath before the trial and preserved in writing or on video
    - Consider “deposition” testimony as if it had been given in court
- Answers to interrogatories
  - An interrogatory is a written question asked before trial by one party of another, who must answer it under oath in writing
  - Consider interrogatories and the answers to them as if the questions had been asked and answered here in court
- Exhibits admitted into evidence
  - Just because an exhibit may be shown to you does not mean that it is more important than any other evidence
- Stipulations
  - Stipulations are agreements between the parties
  - If the parties stipulate that certain facts are true, then you must treat those facts as having been proved
  - Either party may read all or part of their stipulations of facts at any time during the trial

Evidence is *not*

- Testimony that I tell you to disregard
- Exhibits that are not admitted into evidence
- Statements, arguments, questions, and comments by the lawyers
- Objections and rulings on objections
- Anything that you see or hear about this case outside the courtroom

Some exhibits consisting of charts and summaries may be shown to you in order to help explain the facts disclosed by books, records, or other underlying evidence in the case

- Such summary exhibits are not evidence or proof of any facts
- They are used for convenience
- In deciding how much weight to give summaries, you must
  - decide if they correctly reflect the facts shown by the evidence
  - consider testimony about the way in which the summaries were prepared

You may have heard of “direct” or “circumstantial” evidence.

- “Direct” evidence is direct proof of a fact
  - An example is testimony by a witness about what that witness personally saw or heard or did

- “Circumstantial” evidence is proof of one or more facts from which you could find another fact
  - An example is testimony that a witness personally saw a broken window and a brick on the floor from which you could find that the brick broke the window
- You should consider both kinds of evidence, because the law makes no distinction between their weight

Some evidence may be admitted only for a limited purpose.

- I will tell you if that happens
- I will instruct you on the purposes for which the evidence can and cannot be used

The weight to be given any evidence—whether that evidence is “direct” or “circumstantial,” or in the form of testimony, an exhibit, or a stipulation—is for you to decide.

## No. 23 — TESTIMONY OF WITNESSES

You may believe all of what any witness says, only part of it, or none of it.

In evaluating a witness's testimony, consider the following:

- the witness's
  - intelligence
  - memory
  - opportunity to have seen and heard what happened
  - motives for testifying
  - interest in the outcome of the case
  - bias or prejudice, if any
  - manner while testifying
- the reasonableness of the witness's testimony
- any differences between what the witness says now and said earlier
- any inconsistencies between the witness's testimony and any other evidence that you believe
- whether any inconsistencies are the result of seeing or hearing things differently, actually forgetting things, or innocent mistakes, or are, instead, the result of lies or phony memory lapses, and
- any other factors that you find bear on believability or credibility

You should not give any more or less weight to a witness's testimony just because the witness is an expert.

- An expert witness may be asked a “hypothetical question” assuming certain facts are true and to give an opinion based on that assumption
- If a “hypothetical question” assumes a fact that is not proved by the evidence, you should decide if the fact not proved affects the weight that you give to the expert’s answer

You may give any witness’s opinion the weight you think it deserves, but you should consider

- the reasons and perceptions on which the opinion is based
- any reason that the witness may be biased,
- whether the witness is being paid,<sup>1</sup> and
- all of the other evidence in the case

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<sup>1</sup> The plaintiff objected to the inclusion of language based on 11th Circuit Civil Model Jury Instruction No. 3.6.2, because he asserts that it has rarely been given in federal *Engle* progeny cases, notwithstanding the “all cases” order denying the plaintiffs’ request to exclude it. In particular, the plaintiff objected to the language that the jurors “should consider the testimony of such a witness with caution” as invading the province of the jury and as misleading in this case, where this case is being retried in the fifth wave of such cases. I have concluded that the best course is to “split the baby,” by including “whether the witness is being paid” as an additional factor going to the jurors’ determination of the weight to give any witness’s testimony, but not to give 11th Circuit Civil Model Jury Instruction No. 3.6.2 in its entirety. Thus, with the omission of most of 11th Circuit Civil Model Jury Instruction No. 3.62 and this small specific addition, I now believe that the instructions give both parties a fair opportunity to address the credibility of paid witnesses.

It is your exclusive right to give any witness's testimony whatever weight you think it deserves.

## No. 24 — OTHER IMPORTANT MATTERS

Before I turn to specific instructions on the claims and specific defense in this case, I will explain some important matters.

### *Elements*

In order to recover damages, Mr. Starbuck must prove two initial elements,<sup>2</sup> then prove his claims for damages. Similarly, RJR and PM USA must prove their specific defense of Mr. Starbuck's fault for his injury to avoid or limit their liability for damages on Mr. Starbuck's "product liability" claims.

To prove "initial elements," "claims," "damages," or a "specific defense," the party with the burden of proof must prove certain "elements," which are the factual requirements for proof of each matter. "Elements" that the parties must prove are set out in **bold** in the following instructions.

### *Legal Cause*

Several of the "elements" require proof of "legal causation." For something to be a "legal cause,"

- it must have directly and in natural and continuous sequence produced or contributed substantially to producing the loss, damage, or injury in question, *and*

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<sup>2</sup> The plaintiff objected to the former third "initial" element as relevant only to his "product liability" claims, not to *Engle* class membership. As explained more fully, *infra*, my further research has led me to agree

- it must have been such that it can reasonably be said that, but for it, the loss, damage, or injury in question would not have occurred, *but*
- it does *not* have to be the only cause of the loss, damage, or injury in question
  - Something may have been a legal cause of loss, injury, or damage, even though it operated in combination with the act of another, some natural cause, or some other cause, if it contributed substantially to producing the loss, injury, or damage

### ***Liability For A Legal Product***

It was—and still is—legal to manufacture, sell, and advertise for the sale of cigarettes. Nonetheless, Mr. Starbuck may be entitled to damages from either or both RJR and PM USA, *if* he proves the elements of one or more of his claims.

## No. 25 — MR. STARBUCK'S INITIAL ELEMENTS

In order to assert his claims, Mr. Starbuck must first prove *both*<sup>3</sup> of the following initial elements by the greater weight of the evidence:

***One*, Mr. Starbuck was addicted to cigarettes containing nicotine on or before November 21, 1996.**

***Two*, his addiction was a legal cause of his lung cancer.**

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<sup>3</sup> In reaching my conclusion that the third “initial” element set out in the prior sets of Proposed Jury Instructions goes only to the “product liability” claims, not to *Engle* class membership, I looked at various sets of instructions and verdict forms from prior federal cases. Although Judge Carr treated the third “question” as a qualifier for *Engle* class membership in *Starbuck First Trial*, Judge Erickson did not in *Kerrivan*, 09-CV-13703. The Verdict Form in *Kerrivan* does pose the third “question,” however, and does treat a “no” answer to both defendants as ending the jury’s deliberations. It appears to me that, in *Berger*, 09-CV-14157, and *Reider*, 09-CV-10465, Judges Carr and Rodgers, respectively, conflated the second and third “questions” as a single question: “Was [the plaintiff’s] addiction to cigarettes containing nicotine produced [by a particular defendant] a legal cause of [his/her] [specific disease]?” Both treated a “no” answer to this question as ending deliberations without reaching the specific claims.

I am persuaded that only the first *two* “questions” or “initial elements” must be proved to establish class membership, in light of the definition of the class in the Florida Supreme Court’s decision, *Engle*, 945 So.2d 1246, 1256 (Fla. 2006). Actually smoking cigarettes by any particular defendant is not a requirement for *Engle* class membership.

Finally, while the defendants may assert that the plaintiff must prove that “addiction” to their cigarettes was a legal cause of the plaintiff’s disease, I disagree. Where there is a binding finding that “cigarettes” are “addictive” and that “smoking” cigarettes causes the plaintiff’s disease, then it is sufficient for the plaintiff to prove that “smoking” the defendant’s cigarettes (which are necessarily addictive) was a legal cause of his disease.

I defined “legal cause” for you in Instruction No.

5.

If Mr. Starbuck *does not* prove *both* of these initial elements, by the greater weight of the evidence, then he cannot assert his claims for damages. On the other hand, if he *does* prove *both* of these initial elements as to either or both RJR and PM USA, then he is entitled to assert his claims for damages and he is also entitled to rely on certain findings in prior legal proceedings, as explained in Instruction No. 7.<sup>4</sup>

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<sup>4</sup> I have now deleted the former language concerning the effect of proof of former initial element three on liability for “conspiracy to fraudulently conceal,” which I have now concluded was incorrect.

## No. 26 — FINDINGS FROM PRIOR LEGAL PROCEEDINGS

If Mr. Starbuck proves both of the initial elements, then he is also entitled to rely on findings made in prior legal proceedings as binding in this trial. You must not speculate about the basis for these findings. I will tell you what these findings are, as they relate to Mr. Starbuck's claims.

In this case,

- you cannot consider these findings from prior proceedings to decide if Mr. Starbuck has proved the initial matters in Instruction No. 6
- these findings from prior proceedings are binding on the matters to which they relate
  - This means that you must give these findings the same decisive weight that you would give them if you had decided them unanimously yourselves, whether you agree with them or not
- these finding from prior proceedings did not determine, and do not mean, that Mr. Starbuck has proved his claims for damages against either or both RJR and PM USA

Although you must treat these findings as binding<sup>5</sup> on the matters to which they relate, it is solely for you to decide, based on the evidence in this case and my

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<sup>5</sup> In an objection to Instruction No. 8, the defendants objected to repeated references to the *Engle* class findings as “binding,” on the ground that such references are misleading and confusing without also repeating the limitations on the use and consideration of these findings. I disagree. Jurors are fully capable of understanding

instructions on the law, whether Mr. Starbuck has proved any of his claims for damages against either, both, or neither RJR and PM USA.

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that any further references to “binding findings” *include* the limitations on the meaning of “binding” expressly set out here. Indeed, where the *focus* of this instruction is not on the findings themselves, but on the uses and limitations on the uses of such findings, those limitations have been adequately emphasized. Furthermore, references to “binding” findings in the instructions for specific claims include cross-references to this Instruction setting out limitations on the binding effect of the findings.

## No. 27 — MR. STARBUCK’S “PRODUCT LIABILITY” CLAIMS

Mr. Starbuck asserts two “product liability” claims: “negligence” and “strict liability.” RJR and PM USA deny these claims and assert, as a specific defense, that Mr. Starbuck is at fault and, thus, responsible for his injury.

### *Prior Binding Findings*

If Mr. Starbuck has proved the initial elements in Instruction No. 6, *then* you must consider the following findings in prior litigation to be binding here, as explained in Instruction No. 7:

- RJR and PM USA failed to exercise the degree of care that a reasonable cigarette manufacturer would exercise under like circumstances and, thus, were negligent; and
- RJR and PM USA placed cigarettes on the market that were defective and unreasonably dangerous; and
- Cigarettes that contain nicotine are addictive or dependence producing; and
- Smoking cigarettes causes lung cancer<sup>6</sup>

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<sup>6</sup> Contrary to the view of the plaintiff, these findings *do not* establish liability for damages on the “product liability” claims. Rather, to establish “causation” on a product liability claim, the plaintiff must establish that he used the defendant’s defective product and that using the defective product caused his damage. *See* Florida Standard Civil Jury Instruction (Reorganized) No. 401.18 (Issues On Plaintiff’s Claim—General Negligence, identifying the elements of a “negligence” claim as (1) that the defendant was negligent,

### ***Remaining Elements***

Consequently, for Mr. Starbuck to prove his “*negligence*” claim against a particular defendant, Mr. Starbuck must prove the following *two* elements:

***One*, Mr. Starbuck’s smoking of cigarettes containing nicotine manufactured by the defendant in question was a legal cause of his lung cancer.**

I defined “legal cause” for you in Instruction No. 5. You must unanimously agree whether Mr. Starbuck’s smoking of cigarettes containing nicotine manufactured by RJR, PM USA, both, or neither was a legal cause of his lung cancer.

***Two*, the amount of the damages for Mr. Starbuck’s lung cancer for which the defendant’s negligence was a legal cause.**

Remember that I defined “legal cause” for you in Instruction No. 5.

For Mr. Starbuck to prove his “*strict liability*” claim against a particular defendant, Mr. Starbuck must prove the following *two* elements:

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and (2) that the defendant’s negligence was a legal cause of the plaintiff’s injury); *In re Standard Jury instructions In Civil Cases—Report No. 09-10*, 91 So.3d 785, 796 (Fla. 2012) (approving new Florida Standard Civil Jury Instructions (Reorganized) No. 403.8 on “Strict Liability Failure To Warn” (requiring both a product defect making it unreasonably dangerous and legal causation of the plaintiff’s injury by the defective product). Thus, what used to be the third “initial” element is now a “remaining element” for the jurors to determine whether the plaintiff has proved either of his “product liability” claims.

***One*, Mr. Starbuck’s smoking of cigarettes containing nicotine manufactured by the defendant in question was a legal cause of his lung cancer.**

The explanation of this element, just above, in relation to a “negligence” claim, also applies here.

***Two*, the amount of damages for Mr. Starbuck’s lung cancer for which the defendant’s placing cigarettes on the market that were defective and unreasonably dangerous was a legal cause.**

Remember that I defined “legal cause” for you in Instruction No. 5.

If Mr. Starbuck does not prove both of these remaining elements, by the greater weight of the evidence, as to a particular defendant on a particular “product liability” claim, then your verdict must be for that defendant on that claim. On the other hand, if Mr. Starbuck does prove both of these remaining elements as to either or both RJR and PM USA on one or both of his “product liability” claims, then you will consider whether RJR and PM USA have proved their specific defense of Mr. Starbuck’s fault, as explained in the next Instruction.

**No. 28 — RJR’S AND PM USA’S SPECIFIC  
DEFENSE TO THE “PRODUCT LIABILITY”  
CLAIMS**

If you find that Mr. Starbuck has proved damages legally caused by either or both RJR and PM USA in his “product liability” claims, then you must also consider RJR’s and PM USA’s specific defense that Mr. Starbuck is at fault and, thus, responsible for his injury.

To prove their specific defense, RJR and PM USA must prove all of the following elements by the greater weight of the evidence:

***One, Mr. Starbuck was also responsible for his lung cancer.***

Mr. Starbuck accepts some responsibility for smoking cigarettes. You must decide whether he bears some responsibility for his lung cancer, because he smoked cigarettes. To prove that Mr. Starbuck is responsible for his lung cancer, the defendants must prove all of the following:

- Mr. Starbuck knew of the danger of lung cancer from smoking cigarettes;
- Mr. Starbuck realized and appreciated the possibility of lung cancer as a result of smoking cigarettes;
- Mr. Starbuck had a reasonable opportunity to avoid lung cancer by not smoking cigarettes; and
- Mr. Starbuck voluntarily and deliberated exposed himself to lung cancer by smoking cigarettes

**Two, Mr. Starbuck’s conduct was a contributing legal cause of his lung cancer.**

I defined “legal cause” for you in Instruction No. 5.

**Three, the percentages of the total fault for Mr. Starbuck’s damages that each of the parties to this action caused.**

In determining the percentage of fault to assign to each party,

- you must assign a percentage of the total fault to Mr. Starbuck and to each defendant that you find negligent or strictly liable;
- the percentage of the total fault assigned to any such party may be anywhere from 0% to 100%;
- the total of the percentages assigned to all such parties must be 100%;
- assigning a percentage of fault to Mr. Starbuck will reduce his compensatory damages on his “product liability” claims;
- assigning a percentage of fault to Mr. Starbuck will not necessarily prevent him from recovering compensatory damages on his “product liability” claims

When you determine the amount of damages, if any, to award Mr. Starbuck, do not make any reduction because of the percentage of fault, if any, that you assign to him. When I enter judgment on your verdict, I will make any appropriate

reduction in the damages awarded based on your finding of the percentage of Mr. Starbuck's fault, if any.

## No. 29 — MR. STARBUCK’S “FRAUD” CLAIMS

Mr. Starbuck also seeks damages on two “fraud” claims: “fraudulent concealment” and “conspiracy to fraudulently conceal.” RJR and PM USA deny Mr. Starbuck’s “fraud” claims.

### *Prior Binding Findings*

In this case, if Mr. Starbuck has proved the initial elements to pursue his claims for damages, as explained in Instruction No. 6, then you must consider the following findings in prior litigation to be binding here, as explained in Instruction No. 7:

- Cigarettes that contain nicotine are addictive or dependence producing;<sup>7</sup>
- Smoking cigarettes causes lung cancer;<sup>8</sup>

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<sup>7</sup> Although I did not include this binding finding in the list for the “fraud” claims in prior versions, this factor was also expressly identified by the Florida District Court of Appeals, Fourth District, as an *Engle* finding relevant to and with *res judicata* effect on a “fraudulent concealment” or “conspiracy to fraudulently conceal” claim. *Philip Morris USA, Inc. v. Putney*, 117 So.3d 798, 801 (Fla. Ct. App. 2013).

<sup>8</sup> Again, I did not include this binding finding in the list for the “fraud” claims in prior versions, but this finding plainly relates to and provides context for the binding findings about the information that the defendants and their co-conspirators failed to disclose.

- RJR, PM USA, and others (the “co-conspirators”)
  - concealed or omitted material information, not otherwise known or available, about the health effects and/or addictive nature of smoking cigarettes, or
  - failed to disclose a material fact concerning or proving the health effects and/or addictive nature of smoking cigarettes, or
  - both,
 knowing that the incomplete disclosure was false and misleading
  
- RJR, PM USA, and others (the “co-conspirators”) entered into an agreement to conceal or omit information regarding the health effects of cigarettes, and/or the addictive nature of smoking cigarettes, with the intention that smokers and members of the public rely to their detriment

***Remaining Elements***

Consequently, for Mr. Starbuck to prove his “*fraudulent concealment*” claim against a particular defendant, Mr. Starbuck must prove the following *three* elements:<sup>9</sup>

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<sup>9</sup> I have also reconsidered the relevance of the former third initial element—that is, whether Mr. Starbuck’s smoking of cigarettes containing nicotine manufactured by either or both RJR and PM USA was a legal cause of his lung cancer—is an element of the “fraud” claims. I conclude that it is not, nor is there a requirement that one of the defendants *in this case* be found liable on the “fraudulent concealment” claim for the other defendant to be liable on the “conspiracy to fraudulently conceal” claim. *See*

**One, Mr. Starbuck relied<sup>10</sup> on a statement by the defendant in question**

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*Lorillard Tobacco Co. v. Alexander*, 123 So.3d 67, 79-81 (Fla. Dist. Ct. App. 2013) (applying “well-settled” principles of conspiracy law to a “conspiracy to fraudulently conceal” claim against cigarette makers, noting that civil conspiracy is not a separate or independent tort, but imputes the tortious acts of one co-conspirator to another); *Philip Morris USA Inc. v. Putney*, 117 So.3d 798, 801 (Fla. Dist. Ct. App. 2013) (finding that the binding *Engle* findings “establish[ed] the there were other companies besides the Tobacco Companies involved in this case, including other companies producing tobacco products, who were co-conspirators,” and finding that evidence sufficient to establish liability of the defendants in the case without any consideration of whether a defendant in the case made an omission or concealment or whether the plaintiff actually used any particular tobacco company’s products). Indeed, in *Putney*, the court held that an *Engle* progeny case was one in which there “is an independent tort of conspiracy,” because it was one ““where mere force of numbers acting in unison or other exceptional circumstances may make a wrong,”” and concluding that “[t]he actions of the conspirators, coupled with the addictive nature of cigarettes, resulted in the conspirators exerting a ‘peculiar power of coercion’ over Margot, the decedent.” 117 So.2d at 801-02. I have not gone quite that far in this instruction.

<sup>10</sup> My adoption of a “justifiable reliance” requirement for the “fraud” claims, at defendants’ request for a “reasonable” or “justifiable” reliance requirement, was based on too hasty a reading of *Philip Morris USA, Inc. v. Naugle*, 103 So.3d 944, 946-946 (Fla. Dist. Ct. App. 2012), in which the court twice stated that the jury was required to find that the plaintiff “justifiably relied” on concealments and omissions (or a false controversy created by the tobacco industry) to establish her “fraud” claims. However, the issue in *Naugle* was the timing of the plaintiff’s reliance in relation to the statute of repose. *Id.* Furthermore, the case cited as authority for a requirement that the plaintiff show “she justifiably relied on statements or omissions made after [the repose] date,” *Joy v. Brown & Williamson Tobacco Corp.*, No. 96-2645CIV-T24(B), 1998 WL 35229355, \*5 (M.D. Fla. May 8, 1998), does not discuss or impose any “reasonable” or “justifiable” reliance requirement. Indeed, as the plaintiff points out, the Florida Supreme Court has expressly rejected any “justifiable reliance” requirement for fraudulent misrepresentation, *see Butler v. Yusem*, 44 So.3d 102, 105 (Fla. 2010), and the defendants have failed to convince me that “fraudulent concealment” is any different in this respect. The phrase “justifiable reliance” may also have sounded like a correct statement of the law to me for the further reason that *Iowa law* does impose a “justifiable

**that concealed or omitted material information about the health effects and/or addictive nature of smoking cigarettes to his detriment.<sup>11</sup>**

“Reliance” is action based on dependence on or trust in information provided by the defendant

- The plaintiff did not rely on a defendant’s statement concealing or omitting material information, if the plaintiff *knew* or it was *obvious to him* that smoking cigarettes presented dangerous health consequences<sup>12</sup>

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reliance” requirement on proof of fraud, either fraudulent misrepresentation or fraudulent non-disclosure. *See, e.g., In re Marriage of Cutler*, 588 N.W.2d 425, 430 (Iowa 1999).

<sup>11</sup> The defendants objected to my statement of what was relied upon, in all three elements, arguing that the legal causation element is plaintiff’s detrimental reliance *on a statement* concealing or omitting a material fact concerning the health effects or addictive nature of smoking. To put it another way, the defendants contend that, at a minimum, the jury in this case must find reliance on a statement that was misleading due to concealed information. I agree.

<sup>12</sup> The defendants objected to my failure to instruct that the plaintiff could not have “justifiably relied” on a statement that he knew was false. I agree with the defendants to the extent that, as a general proposition, a plaintiff could not have “relied”—“justifiably,” “reasonably,” “subjectively,” or “in fact”—on any concealments of material information relating to the true health effects of smoking and/or the addictive nature of smoking, if he *knew* that smoking cigarettes presented dangerous health consequences. *See, e.g., M/I Schottenstein Homes, Inc. v. Azam*, 813 So.2d 91, 94-95 (Fla. 2002) (“[I]f the recipient ‘knows that it [the statement] is false or its falsity is obvious to him,’ his reliance is improper, and there can be no cause of action for fraudulent misrepresentation.” (quoting *Besett v. Basnett*, 389 So.2d 995, 997 (Fla. 1980))); *Carrousel Int’l Corp. v. Auction Co. of Am., Inc.*, 674 So.2d 162, 162 (Fla. Dist. Ct. App. 1996) (“[T]he jury could not have lawfully found against Goodman on the plaintiff’s theory of fraudulent misrepresentation where the record shows that the plaintiff knew about the false misrepresentation before it incurred any expenses in reliance upon that misrepresentation.”). Thus, I have added what is now the first main “bullet point.”

- On the other hand, you may find that the plaintiff relied on a defendant's statement concealing or omitting material information, even if you find that the plaintiff was aware that smoking cigarettes *could have been* dangerous to his health, because such awareness is not *knowledge* of the true health effects of smoking cigarettes, which the defendants concealed<sup>13</sup>

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<sup>13</sup> The defendants also objected to what is now the second main “bullet point” on the ground that it is the opposite of their requested language that a plaintiff could not have relied on information that he knew to be false. Specifically, they argue that the plaintiff could not have relied on any concealments, if he “was aware that smoking could have been dangerous to his health,” and that language with the contrary import in *Philip Morris USA Inc. v. Naugle*, 103 So.3d 944, 947 (Fla. Dist. Ct. App. 2012), on which I relied, is simply a passage in an appellate opinion, taken out of context, that does not make a good jury instruction. I disagree. The defendants’ assertion is *contrary to law*, in light of *Naugle*, 103 So.3d at 947. The statement I relied on in *Naugle* is not simply a statement concerning inferences from evidence, taken out of context, but a statement of *law* that a plaintiff’s *awareness of possible dangerousness* of cigarette smoking is not enough to establish that a plaintiff did not rely on a concealment, where what was concealed was the defendants’ *knowledge* that cigarette smoking *does* have dangerous health consequences. Thus, the distinction established in *Naugle*, as a matter of law, is between *awareness of a possibility* and *knowledge* of a fact, and that principle is raised *in the same context* here, where the defendants argue that there is no such distinction. Finally, the defendants contend that reliance depends upon what the plaintiff knew, not on what the defendants knew. While this is true, what is critical is the distinction between a plaintiff’s *awareness of possible dangerousness* of cigarette smoking and his *knowledge of the actual dangerousness* of cigarette smoking, which was in the defendants’ possession (*i.e.*, they knew it), but concealed by them. To eliminate any improper confusion about whether this element goes to what the plaintiff knew or what the defendants knew, however, I have eliminated the two “sub-bullet points” explaining that one rationale for the insufficiency of *awareness* of possible dangers to show *knowledge* of actual dangers is the binding findings that the defendants concealed or omitted material information, not otherwise known or available, about the health effects and/or addictive nature of smoking cigarettes, and that the defendants concealed material information relating to the true

- The plaintiff is not required to prove that he relied on any specific statement by a specific defendant, if he proves that he relied on a pervasive misleading advertising campaign for cigarettes in general by that defendant.<sup>14</sup>

“Reliance” was “detrimental” if it caused actual damage.

**Two, the defendant’s statement concealing or omitting material information about the health effects and/or addictive nature of smoking cigarettes was a legal cause of Mr. Starbuck’s lung cancer.**

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health effects of smoking and/or the addictive nature of smoking. *See Naugle*, 103 So.2d at 947. I have substituted for those “sub-bullet points” only “. . . because such awareness is not *knowledge* of the true health effects of smoking cigarettes, which the defendants concealed.”

<sup>14</sup> Although I agree with the defendants that the plaintiff must have relied *on a statement* concealing or omitting material information, I also conclude that controlling law demonstrates—and that I should instruct the jurors—that the plaintiff is not required to prove that he relied on any specific statement of a defendant (or, in the case of “conspiracy to fraudulently conceal,” any specific statement of any specific co-conspirator), if he shows that he relied on pervasive misleading advertising campaigns for cigarettes in general by the defendant (or, in the case of “conspiracy,” by any co-conspirator). Thus, I have added to the explanation of “reliance” the language of this third “main” bullet point, drawn from *Philip Morris USA Inc. v. Putney*, 117 So.2d 798, 802 (Fla. Dist. Ct. App. 2013). The defendants’ reliance on the earlier decision in *Grills v. Philip Morris USA, Inc.*, 645 F. Supp. 2d 1107, 1124 (M.D. Fla. 2009), which the defendants characterize as holding that a requirement of well-established Florida law is that a concealment plaintiff must identify a specific statement that was rendered untruthful by omitted information, and upon which the plaintiff reasonably and detrimentally relied, is misplaced, because it appears to me that such a holding is contrary to a subsequent statement of *controlling* Florida law by a Florida appellate court in *Putney*.

I defined “legal cause” for you in Instruction No. 5.

On Mr. Starbuck’s “fraudulent concealment” claim, you *cannot* find that this element is proved as to a particular defendant, *unless* you find that that particular defendant made the statement concealing or omitting material information about the health effects and/or addictive nature of smoking cigarettes.<sup>15</sup>

***Three*, the amount of the damages for which the defendant’s statement concealing or omitting material information about the health effects and/or addictive nature of smoking cigarettes was a legal cause.**

Again, I defined “legal cause” for you in Instruction No. 5.

For Mr. Starbuck to prove his “*conspiracy to fraudulently conceal*” claim against a particular defendant, Mr. Starbuck must prove the following *three* elements:

***One*, Mr. Starbuck relied on a statement made by one or more co-conspirators, in furtherance of the conspiracy, that concealed or omitted**

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<sup>15</sup> I have deleted the former bullet point, because, as explained, *supra*, in note 9, proof that Mr. Starbuck’s smoking of cigarettes containing nicotine manufactured by either or both RJR and PM USA was a legal cause of his lung cancer is not an element of the “fraud” claims. What the plaintiff must have relied on to his detriment, and what must have been a legal cause of his lung cancer, to prove a “fraudulent concealment” claim is a statement by the defendant in question concealing or omitting material information about the health effects and/or addictive nature of smoking cigarettes.

**material information about the health effects and/or addictive nature of smoking cigarettes to his detriment.**<sup>16</sup>

The explanation to element *one* of a “fraudulent concealment” claim also applies here.

The plaintiff is not required to prove that he relied on any specific statement by any specific co-conspirator, if he proves that he relied on a pervasive misleading advertising campaign for cigarettes in general by one or more co-conspirators.<sup>17</sup>

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<sup>16</sup> The defendants objected to the instruction on “conspiracy to fraudulently conceal” on the ground that it did not require proof that the co-conspirator’s statement concealing or omitting material information was “in furtherance of the conspiracy.” I agree that one co-conspirator’s conduct, on which the liability of other co-conspirators is based, must be “in furtherance” of the conspiracy. I have not found that Florida has or requires any specific definition of “in furtherance,” and no party has suggested one. Therefore, I have not attempted to define “in furtherance.” I am also not sure that there is any jury question on whether any co-conspirator’s statement concealing or omitting material information was “in furtherance” of the conspiracy. This is so, because there is a binding finding that the co-conspirators agreed to conceal or omit information regarding the health effects of cigarettes, and/or the addictive to nature of smoking cigarettes, *with the intention that smokers and members of the public rely to their detriment*, which seems to me to prove that any such statement by a co-conspirator was in furtherance of the conspiracy to provide misinformation on which smokers would rely.

<sup>17</sup> See, e.g., *Philip Morris USA Inc. v. Putney*, 117 So.2d 798, 802 (Fla. Dist. Ct. App. 2013). The defendants’ reliance on the earlier decision in *Grills v. Philip Morris USA, Inc.*, 645 F. Supp. 2d 1107, 1124 (M.D. Fla. 2009), which they characterize as holding that a requirement of well-established Florida law is that a concealment plaintiff must identify a specific statement that was rendered untruthful by omitted information, and upon which the plaintiff reasonably and detrimentally relied, is misplaced, because it appears to me that such a holding is contrary to a subsequent statement of *controlling* Florida law by a Florida appellate court in *Putney*.

***Two*, the statement of one or more co-conspirators concealing or omitting material information about the health effects and/or addictive nature of smoking cigarettes was a legal cause of Mr. Starbuck’s lung cancer.**

I defined “legal cause” for you in Instruction No. 5. A co-conspirator is liable for the conduct of other co-conspirators in furtherance of the conspiracy.<sup>18</sup> Thus, because there is a binding finding that both RJR and PM USA were co-conspirators with each other and others,

- if the plaintiff relied on a statement of one of the defendants’ co-conspirators concealing or omitting material information, made in furtherance of the conspiracy, then each of the defendants here is also responsible for that statement
- if either of the defendants here is liable for “conspiracy to fraudulently conceal,” then the other must also be liable

***Three*, the amount of the damages for which a statement of one or more co-conspirators concealing or omitting material information about the health effects and/or addictive nature of smoking cigarettes was a legal cause.**

Again, I defined “legal cause” for you in Instruction No. 5.

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<sup>18</sup> See, e.g., *Wilcox v. Stout*, 637 So.2d 335, 337 (Dist. Ct. Fla. App. 1994) (civil case involving a claim of conspiracy to tortiously interfere with business relationships, stating, “[E]ach conspirator is liable for and bound by the act and declaration of each and all of the conspirators done or made in furtherance of the conspiracy even if not present at the time.”).

If Mr. Starbuck does not prove all three of these remaining elements, by the greater weight of the evidence, as to a particular “fraud” claim, then your verdict must be for the defendants on that claim. On the other hand, if Mr. Starbuck does prove all three of these remaining elements as to one or more of his “fraud” claims, then he is entitled to any damages for which he proves that fraudulent conduct was a legal cause.

If Mr. Starbuck has proved all of the remaining elements of one or more of his “fraud” claims, then you must also unanimously decide whether Mr. Starbuck has proved the following:

**The time period in which the statement that fraudulently concealed or omitted material information was made.**

The time periods in question are the following:

- Before May 5, 1982
- On or after May 5, 1982
- Both before and on or after May 5, 1982

You must not be concerned with or speculate about the effect of your finding on this question. The effect of your finding on this question is for me to decide.

### **No. 30 — DAMAGES IN GENERAL**

It is my duty to instruct you about damages. By instructing you on damages, I do not mean to suggest what your verdict should be on any claim.

If you find for Mr. Starbuck on one or more of his claims, then you must determine what, if any, damages to award him. “Damages” are the amount of money that will fairly and adequately compensate Mr. Starbuck for the injury that you find he suffered as a result of RJR’s and/or PM USA’s wrongful conduct.

- It is for you to determine what damages, if any, Mr. Starbuck proves by the greater weight of the evidence
- Any damages award must be based upon evidence and not upon speculation, guesswork, conjecture, or sympathy
- Compensatory damages must not be based upon a desire to punish or penalize RJR, PM USA, or anyone else
- You cannot determine the amount for a particular item of damages by taking down each juror’s estimate and agreeing in advance that the average of those estimates will be your award for that item of damages
- You must not award duplicate damages, so do not allow amounts awarded under one item of damages to be included in any amount awarded under another item of damages
- If you find either or both RJR and PM USA are liable for damages on one or more of Mr. Starbuck’s claims, then they are responsible for all of the elements of damages that their conduct legally caused, even

if some of Mr. Starbuck's injuries were not foreseeable to them or may not have been to the same degree as they would have been to an ordinary person

- Remember, do not make any reduction because of the percentage of fault, if any, that you assign to Mr. Starbuck, because I will make any appropriate reduction in the damages awarded based on your finding of the percentage of Mr. Starbuck's fault, if any

## **No. 31 — ITEMS OF COMPENSATORY DAMAGES**

Mr. Starbuck seeks, and can recover, only the following items of compensatory damages, if he proves that they were legally caused by RJR's and/or PM USA's wrongful conduct:

### ***Injury, Pain, And Suffering***

Damages for “injury, pain, and suffering” are for any of the following:

- bodily injury
- pain and suffering
- disability
- mental anguish
- inconvenience, and
- loss of capacity for the enjoyment of life

### ***Past Injury, Pain, And Suffering***

“Past injury, pain, and suffering” damages are the amount of these damages that Mr. Starbuck proves by the greater weight of the evidence that he has suffered as a result of his lung cancer, including treatment for it, from the date of injury to the date of your verdict.

### *Future Injury, Pain, And Suffering*

“Future injury, pain, and suffering” damages are the amount of these damages that Mr. Starbuck proves by the greater weight of the evidence that he is likely to suffer as a result of his lung cancer, including treatment for it, from the date of your verdict into the future. Mr. Starbuck is only entitled to damages for “future injury, pain, and suffering,” however, if he proves by the greater weight of the evidence

- that it is probable, or more likely than not, that these injuries will continue into the future, and
- the period for which these injuries are likely to continue

### *Calculation Of Damages*

In awarding such damages for past and future injury, pain, and suffering, keep in mind that

- there is no exact standard for measuring such damages
- the amount awarded should be fair and just in the light of the evidence

**No. 32 — WHETHER PUNITIVE DAMAGES ARE  
JUSTIFIED**

Mr. Starbuck also seeks punitive damages against RJR and/or PM USA on his “fraud” claims. Thus, if you find for Mr. Starbuck and against either or both RJR and PM USA on either of his “fraud” claims, then you must decide whether, in addition to compensatory damages, an award of punitive damages is justified

- as punishment of each defendant you find liable on one or both of these “fraud” claims for their fraudulent conduct, and
- as a deterrent to others from similar fraudulent conduct

First, you will decide whether the fraudulent conduct of each defendant against whom you found on either or both of Mr. Starbuck’s “fraud” claims is such that punitive damages are justified. If you decide that punitive damages are justified, then there will be a second part of this trial, during which I will give you additional instructions and the parties may present additional evidence and argument on the issue of punitive damages. You will then decide, in your discretion, whether or not to award punitive damages and, if so, the amount of punitive damages.

Mr. Starbuck must prove that punitive damages are justified by clear and convincing evidence. “Clear and convincing evidence” differs from the “greater weight of the evidence” in that:

- it is more compelling and persuasive, and
- it is evidence that is precise, explicit, lacking in confusion, and

- it is of such weight that it produces a firm belief or conviction, without hesitation, about the matter in issue

You may, but are not required to, find that punitive damages are justified, if Mr. Starbuck proves either or both “intentional misconduct” or “reckless indifference or disregard” of the defendant in question by clear and convincing evidence.<sup>19</sup>

### ***“Intentional Misconduct” Alternative***

You may, but are not required to, find that punitive damages are justified against a particular defendant under the “intentional misconduct” alternative, if

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<sup>19</sup> The defendants objected to submitting a “reckless indifference or disregard” alternative for punitive damages, because they contend that no Florida court in an *Engle* progeny case has ever instructed the jury to determine punitive damages on a claim-by-claim basis. Nothing about allowing the jurors to consider this alternative, however, requests a claim-by-claim determination. Rather, the jurors are ultimately asked to award only a *single* amount of punitive damages. If the jurors award punitive damages based only on “intentional misconduct” or both “intentional misconduct” and “recklessness,” then the award is sustainable, even if “recklessness” was not a submissible alternative. Also, contrary to another objection by the defendants, nothing about this Instruction, the Verdict Form, or the Phase 2 Punitive Damages Instructions and Verdict Form allows jurors to award punitive damages for anything but the “fraud” claims. Thus, there is no possibility that the punitive damages award will be for negligence or strict liability claims, even if such damages are based on a “recklessness” alternative justifying punitive damages. Contrary to yet another objection of the defendants, because a single *amount* of punitive damages is determined separately, according to separate criteria, all relating to the “fraud” claims, there is no possibility of duplication or distortion of the amount of punitive damages by submission of alternative bases for whether punitive damages are “justified.”

Mr. Starbuck proves *all* of the following elements by clear and convincing evidence:

***One*, the defendant in question had actual knowledge of the wrongfulness of the fraudulent conduct that was a legal cause of Mr. Starbuck’s lung cancer.**

***Two*, the defendant in question had actual knowledge that there was a high probability of injury or damage to Mr. Starbuck from that fraudulent conduct.**

***Three*, despite that knowledge, the defendant in question intentionally pursued that fraudulent conduct, resulting in Mr. Starbuck’s lung cancer.**

***“Reckless Indifference Or Disregard” Alternative***

You may, but are not required to, find that punitive damages are justified against a particular defendant under the “reckless indifference or disregard” alternative, if Mr. Starbuck proves the following by clear and convincing evidence:

**The fraudulent conduct of the defendant in question that was a legal cause of Mr. Starbuck’s lung cancer was so reckless or wanting in care that it demonstrated a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct.**

This element is proved, if Mr. Starbuck proves one or more of the following:

- the defendant’s fraudulent conduct that was a legal cause of Mr. Starbuck’s lung cancer was so gross and flagrant as to show a reckless disregard of human life or of the

safety of persons exposed to the effects of such conduct; or

- the defendant's fraudulent conduct showed such an entire lack of care that the defendant must have been consciously indifferent to the consequences; or
- the defendant's fraudulent conduct showed such an entire lack of care that the defendant must have wantonly or recklessly disregarded the safety and welfare of the public; or
- the defendant's fraudulent conduct showed such reckless indifference to the rights of others as to be equivalent to an intentional violation of those rights.

If Mr. Starbuck does not prove either or both the "intentional misconduct" alternative or "reckless indifference or disregard" alternative, by clear and convincing evidence, as to a particular defendant, then punitive damages are not justified against that defendant. If Mr. Starbuck does not prove either alternative as to either RJR or PM USA, there will be no further proceedings in this trial. On the other hand, if Mr. Starbuck does prove one or both of these alternatives as to either or both RJR and PM USA, then punitive damages are justified, and there will be further proceedings to determine what, if any, punitive damages you should award.

In deciding whether Mr. Starbuck has proved either or both “intentional misconduct” or “reckless indifference or disregard,” by clear and convincing evidence, as to a particular defendant,<sup>20</sup>

- you *may* consider the “prior binding findings” set out in Instruction No. 10, but no other “prior binding findings”
  - These “prior binding findings” alone *will not* support a finding that punitive damages are justified in this case
  - To award punitive damages, you must find from the evidence submitted in this trial, by clear and convincing evidence, that punitive damages are justified
- you *may not* find that punitive damages for “fraudulent concealment” are justified based on fraudulent conduct of anyone other than the defendant in question
- you *may* find that punitive damages for “conspiracy to fraudulently conceal” are justified against a particular defendant based on fraudulent conduct of others with whom that defendant conspired
- you *may* consider harm to others, besides Mr. Starbuck, from the fraudulent conduct at issue here for which a defendant is responsible

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<sup>20</sup> I find that many of the defendants’ objections concerning factors relevant to whether punitive damages are “justified” blur the difference between factors going to whether punitive damages are “justified” and factors going to the “amount” of punitive damages, misallocate those factors to one or the other phase of the punitive damages determination, or mistake the extent to which the same factor goes to both phases of the determination.

to determine whether punitive damages are justified, but you may not award any amount in punitive damages, in any second phase of the trial, to punish a defendant for alleged harms to others

- you should also consider any evidence demonstrating that punitive damages are not justified against a particular defendant, including, for example,<sup>21</sup>
  - evidence of attempts by that defendant to lessen the harm from its prior fraudulent conduct, or
  - evidence that that defendant's conduct has changed from the fraudulent conduct at issue in this case

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<sup>21</sup> The defendants objected to failure to include various factors as demonstrating that punitive damages are *not* justified. However, the broad language inviting consideration of any evidence demonstrating that punitive damages are not justified, with “including, for example,” makes clear that the defendants may argue that other factors show that punitive damages are not justified.

## No. 33 — OUTLINE OF THE TRIAL

I will now explain how the trial will proceed.

After I have read all but the last Instruction,

- The lawyers may make opening statements
  - An opening statement is not evidence
  - It is simply a summary of what the lawyer expects the evidence to be
- Mr. Starbuck will present evidence and call witnesses and the lawyers for RJR and PM USA may cross-examine them
- RJR and PM USA may then present evidence and call witnesses, and the lawyer for Mr. Starbuck may cross-examine those witnesses
- The parties will make their closing arguments
  - Closing arguments summarize and interpret the evidence for you
  - Like opening statements, closing arguments are not evidence
- I will give you the last Instruction, on “deliberations”
- You will retire to deliberate on your verdict
- You will indicate your verdict on Mr. Starbuck’s claims and RJR’s and PM USA’s specific defense in a Verdict Form, a copy of which is attached to these Instructions
  - A Verdict Form is simply a written notice of your decision

- When you have reached a unanimous verdict, your foreperson will complete one copy of the Verdict Form by marking the appropriate blank or blanks for each question
- You will all sign that copy to indicate that you agree with the verdict and that it is unanimous
- Your foreperson will then bring the signed Verdict Form to the courtroom when it is time to announce your verdict
- If Mr. Starbuck does prove one or more of his “fraud” claims and that punitive damages are justified, then there will be further proceedings to determine what, if any, punitive damages you should award

## No. 34 — OBJECTIONS

The lawyers may make objections and motions during the trial that I must rule upon.

- If I sustain an objection to a question before it is answered, do not draw any inferences or conclusions from the question itself
- Do not hold it against a lawyer or a party that a lawyer has made an objection, because lawyers have a duty to object to testimony or other evidence that they believe is not properly admissible

## **No. 35 — BENCH CONFERENCES**

During the trial, it may be necessary for me to talk with the lawyers out of your hearing.

- I may hold a bench conference while you are in the courtroom or call a recess
- Please be patient, because these conferences are
  - to decide how certain evidence is to be treated
  - to avoid confusion and error, and
  - to save your valuable time
- We will do our best to keep such conferences short and infrequent

## No. 36 — NOTE-TAKING

You are allowed to take notes during the trial if you want to.

- Be sure that your note-taking does not interfere with listening to and considering all the evidence
- Your notes are not necessarily more reliable than your memory or another juror's notes or memory
- Do not discuss your notes with anyone before you begin your deliberations
- Leave your notes on your chair during recesses and at the end of the day
- At the end of trial, you may take your notes with you or leave them to be destroyed
- No one else will ever be allowed to read your notes, unless you let them

If you choose not to take notes, remember that it is your own individual responsibility to listen carefully to the evidence.

An official court reporter is making a record of the trial, but her transcripts will not be available for your use during your deliberations.

## No. 37 — CONDUCT OF JURORS DURING TRIAL

You must decide this case *solely* on the evidence and your own observations, experiences, reason, common sense, and the law in these Instructions. You must also keep to yourself any information that you learn in court until it is time to discuss this case with your fellow jurors during deliberations.

To ensure fairness, you must obey the following rules:

- Do not talk among yourselves about this case, or about anyone involved with it, until you go to the jury room to decide on your verdict.
- Do not talk with anyone else about this case, or about anyone involved with it, until the trial is over.
- When you are outside the courtroom, do not let anyone ask you about or tell you anything about this case, anyone involved with it, any news story, rumor, or gossip about it, until the trial is over. If someone should try to talk to you about this case during the trial, please report it to me.
- During the trial, you should not talk to any of the parties, lawyers, or witnesses—even to pass the time of day—so that there is no reason to be suspicious about your fairness. The lawyers, parties, and witnesses are not supposed to talk to you, either.

- You may need to tell your family, friends, teachers, co-workers, or employer about your participation in this trial, so that you can tell them when you must be in court and warn them not to ask you or talk to you about the case. However, do not provide any information to anyone by any means about this case until after I have accepted your verdict. That means do not talk face-to-face or use any electronic device or media, such as the telephone, a cell or smart phone, a Blackberry, a PDA, a computer, the Internet, any Internet service, any text or instant messaging service, any Internet chat room, any blog, or any website such as Facebook, MySpace, YouTube, or Twitter, to communicate to anyone any information about this case until I accept your verdict.
- Do not do any research—on the Internet, in libraries, in the newspapers, in dictionaries or other reference books, or in any other way—or make any investigation about this case, the law, or the people involved on your own.
- Do not visit or view any place discussed in this case and do not use Internet maps or Google Earth or any other program or device to search for or to view any place discussed in the testimony.
- Do not read any news stories or articles, in print, on the Internet, or in any “blog,” about this case, or about anyone involved with it, or listen to any radio or television reports about it or about anyone involved with it, or let anyone tell you anything about any such news reports. I assure you that when you have heard all the evidence, you

will know more about this case than anyone will learn through the news media—and it will be more accurate.

- Do not make up your mind during the trial about what the verdict should be. Keep an open mind until you have had a chance to discuss the evidence with other jurors during deliberations.
- Do not decide the case based on biases. Because you are making very important decisions in this case, I strongly encourage you to evaluate the evidence carefully and to resist jumping to conclusions based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your individual evaluation of that evidence, your reason and common sense, and these instructions. Our system of justice is counting on you to render a fair decision based on the evidence, not on biases.
- If, at any time during the trial, you have a problem that you would like to bring to my attention, or if you feel ill or need to go to the restroom, please send a note to the Court Security Officer (CSO), who will give it to me. I want you to be comfortable, so please do not hesitate to tell us about any problem.

I will read the remaining Instruction after closing arguments.

## No. 38 — DELIBERATIONS

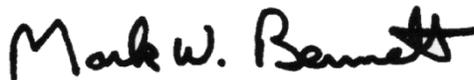
In conducting your deliberations and returning your verdict, there are certain rules that you must follow.

- When you go to the jury room, select one of your members as your foreperson to preside over your discussions and to speak for you here in court
- Discuss this case with one another in the jury room to try to reach agreement on the verdict, if you can do so consistent with individual judgment
  - Nevertheless, each of you must make your own conscientious decision, after considering all the evidence, discussing it fully with your fellow jurors, and listening to the views of your fellow jurors
- Do not be afraid to change your opinions if the discussion with other jurors persuades you that you should, but do not come to a decision simply because other jurors think it is right, or simply to reach a verdict
- Remember that you are not advocates, but judges—judges of the facts
  - Your sole interest is to seek the truth from the evidence in the case.

- If you need to communicate with me during your deliberations, you may send a note to me through the Court Security Officer (CSO), signed by one or more jurors
  - I will respond as soon as possible, either in writing or orally in open court
  - Remember that you should not tell anyone—including me—how your votes stand numerically
- Base your verdict solely on the evidence and on the law as I have given it to you in my Instructions
  - Nothing I have said or done is intended to suggest what your verdict should be—that is entirely for you to decide
- Your verdict on each question submitted must be unanimous
- Complete and sign one copy of the Verdict Form
  - The foreperson must bring the signed Verdict Form to the courtroom when it is time to announce your verdict
- When you have reached a verdict, the foreperson will advise the Court Security Officer that you are ready to return to the courtroom.

Good luck with your deliberations.

**DATED** this 1st day of December, 2014.



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MARK W. BENNETT  
U.S. DISTRICT COURT JUDGE  
NORTHERN DISTRICT OF IOWA  
VISITING JUDGE

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION**

WILLIAM STARBUCK,

Plaintiff,

vs.

R.J. REYNOLDS TOBACCO  
COMPANY, Individually and as  
Successor By Merger to the BROWN  
& WILLIAMSON TOBACCO  
CORPORATION, and PHILIP  
MORRIS USA INC.,

Defendants.

No. 3:09-CV-13250

**VERDICT FORM**

On Mr. Starbuck's claims and RJR's and PM USA's specific defense, we, the Jury, find as follows:

<b>I. MR. STARBUCK'S INITIAL ELEMENTS</b>	
<b>Question 1:</b> Addiction	Has Mr. Starbuck proved by the greater weight of the evidence that he was addicted to cigarettes containing nicotine on or before November 21, 1996, as explained in Instruction No. 6?
	<input type="checkbox"/> No → <input type="checkbox"/> Yes ↓
	<i>If you answer "No," do not answer any more questions in the Verdict Form. Instead, sign the Verdict Form and notify the Court Security Officer (CSO) that you have reached a verdict.</i>
	<i>If you answer "Yes," go on to <b>Question 2</b>.</i>
<b>Question 2:</b> Lung Cancer	Has Mr. Starbuck proved by the greater weight of the evidence that his addiction was a legal cause of his lung cancer, as explained in Instruction No. 6?
	<input type="checkbox"/> No → <input type="checkbox"/> Yes ↓
	<i>If you answer "No," do not answer any more questions in the Verdict Form. Instead, sign the Verdict Form and notify the CSO that you have reached a verdict.</i>
	<i>If you answer "Yes," go on to <b>Part II</b>.</i>



<b>Question 3(b):</b> Allocation of Fault	What are the percentages of the total fault for Mr. Starbuck’s damages caused by each of the parties to this action? <i>(Remember that the plaintiff and each defendant you marked in Question 1 or Question 2 must be assigned a percentage of fault, from 0% to 100%, and that the total of the percentages of fault assigned to all of the parties must be 100%.)</i>	
	Mr. Starbuck	_____ %
	R.J. Reynolds (RJR)	_____ %
	Philip Morris (PM USA)	_____ %
	TOTAL	100%
<i>Please go on to Part III.</i>		
<b>III. MR. STARBUCK’S “FRAUD” CLAIMS</b>		
<b>Question 1(a):</b> Fraudulent Concealment	Has Mr. Starbuck proved the remaining elements of his “fraudulent concealment” claim against either or both RJR and PM USA, as that claim is explained in Instruction No. 10?	
	R.J. Reynolds (RJR)	_____ Yes _____ No
	Philip Morris (PM USA)	_____ Yes _____ No
	<i>You can only consider Mr. Starbuck’s claim for damages for “fraudulent concealment” against a defendant for whom you marked “Yes” in your answer to Question 1(a). If you marked “Yes” as to either or both RJR and PM USA in Question 1(a), please answer Question 1(b) for that defendant or those defendants. Otherwise, skip Question 1(b), and go on to Question 2(a).</i>	
<b>Question 1(b):</b> Date of Concealment	During which time period has Mr. Starbuck proved that the statement that fraudulently concealed or omitted material information was made, as explained in Instruction No. 10? <i>(Remember, you must not be concerned with or speculate about the effect of your finding on this question, because the effect of your finding on this question is for me to decide.)</i>	
	R.J.Reynolds (RJR)	Philip Morris (PM USA)
	_____ Before May 5, 1982	_____ Before May 5, 1982
	_____ On or after May 5, 1982	_____ On or after May 5, 1982
	_____ Both before and after May 5, 1982	_____ Both before and after May 5, 1982

<b>Question 2(a):</b> Conspiracy to Fraudulently Conceal	Has Mr. Starbuck proved the remaining elements of his “conspiracy to fraudulently conceal” claim, as that claim is explained in Instruction No. 10? <i>(Remember, both defendants are liable as “co-conspirators” on this claim, if either one of them is liable.)</i>	
	_____ Yes	_____ No
	<i>If you marked “Yes” in Question 2(a), please answer Question 2(b). Otherwise, skip Question 2(b).</i>	
<b>Question 2(b):</b> Date of Concealment	During which time period has Mr. Starbuck proved that the statement that fraudulently concealed or omitted material information was made by a co-conspirator, as explained in Instruction No. 10? <i>(Remember, you must not be concerned with or speculate about the effect of your finding on this question, because the effect of your finding on this question is for me to decide.)</i>	
	_____ Before May 5, 1982	
	_____ On or after May 5, 1982	
	_____ Both before and after May 5, 1982	
<i>Please go on to Part IV if you marked “Yes” as to one or both defendants in answer to one or more of the following questions: Part II, Question 1, Part II, Question 2, Part III, Question 1(a), and/or Part III, Question 2(a). Otherwise, skip Part IV, sign the Verdict Form, and notify the CSO that you have reached a verdict.</i>		
<b>IV. DAMAGES</b>		
<b>Question 1:</b> Amount of Compensatory Damages	<i>If you found that Mr. Starbuck proved one or more of his claims against one or both of the defendants in Part II or Part III, what amount, if any, do you award to Mr. Starbuck as damages for which the defendant’s or the defendants’ wrongful conduct was a legal cause, as compensatory damages are explained in Instruction No. 12?</i>	
	Compensatory damages for past injury, pain, and suffering:	\$ _____
	Compensatory damages for future injury, pain, and suffering:	\$ _____
<b>Question 2(a):</b> Are Punitive Damages Justified	Has Mr. Starbuck proved by clear and convincing evidence that punitive damages are justified against either or both RJR and PM USA, as explained in Instruction No. 13?	
	R.J. Reynolds (RJR)	_____ Yes _____ No
	Philip Morris (PM USA)	_____ Yes _____ No
	<i>If you marked “Yes” as to either or both RJR and PM USA, please answer Question 2(b).</i>	

<b>Question 2(b):</b> Justification	For each defendant against whom you found that punitive damages are justified in <b>Question 2(b)</b> , please mark whether you find that punitive damages against that defendant are justified on the basis of “intentional misconduct,” “reckless indifference or disregard,” or both.	
	R.J. Reynolds (RJR)	Philip Morris (PM USA)
	_____ Intentional Misconduct	_____ Intentional Misconduct
	_____ Reckless Indifference Or Disregard	_____ Reckless Indifference Or Disregard
	_____ Both	_____ Both
<i>If you find that Mr. Starbuck has proved that punitive damages are justified against one or both of the defendants, then there will be further proceedings to determine what, if any, amount of punitive damages you should award.</i>		

\_\_\_\_\_ Date

Foreperson	Juror
Juror	Juror
Juror	Juror
Juror	Juror