No. 20-7874

IN THE

SUPREME COURT OF THE UNITED STATES

Ted A. McCracken, et al., — PETITIONER
(Your Name)

vs.

R.J. Reynolds Tobacco Co., et al. RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Ted A. McCracken
(Your Name)

15 Derry Drive
(Address)

North Wales, PA 19454
(City, State, Zip Code)

484-426-4739
(Phone Number)

QUESTIONS PRESENTED

QUESTIONS:

POINT I

WAS IT NOT A DENIAL OF PETITIONER'S 7TH AMENDMENT RIGHT TO JURY TRIAL FOR THE DISTRICT COURT TO GRANT RESPONDENT(S) SUMMARY JUDGMENT ON THE ISSUE OF LACK OF CAUSATION EVIDENCE WHEN THERE WAS OVERWHELMING EVIDENCE TO PROVE CAUSATION, INCLUDING TEMPLE LUNG CENTER PULMONOLOGIST, BOARD CERTIFIED PULMONOLOGIST, RADIOLOGIST ANALYSIS OF CHEST X-RAYS, ECHO TREADMILL TEST, PULMONARY FUNCTION TEST, 6-MINUTE WALK TEST AND APPROXIMATELY ELEVEN EYE WITNESSES WHOM KNEW PETITIONER TO SMOKE KOOL CIGARETTES, TOP TOBACCO AND NEWPORT AND THERE WAS A GENUINE ISSUE OF MATERIAL FACT THAT PRECLUDED SUMMARY JUDGMENT FOR THE RESPONDENTS ON THE ISSUE OF CAUSATION AND DISTRICT COURT USED INACCURATE FACTS TO RENDER DECISION?.....1

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LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[X] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

PLAINTIFFS:
1. Ted A. McCracken
2. Goretti Sirri McCracken

DEFENDANTS:
1. R.J. REYNOLDS TOBACCO COMPANY;
2. DEBRA CREW, President/Chief Executive Officer, R.J. Reynolds Tobacco Company;
3. ITG BRANDS LLC.;
4. DAVID H. TAYLOR, President/Chief Executive Officer, ITG BRANDS LLC.;
5. REPUBLIC TOBACCO LLC.;
6. DONALD LEVIN, President/Chief Executive Officer, REPUBLIC TOBACCO LLC.

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[xx] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix G to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[xx] is unpublished.

The opinion of the United States district court appears at Appendix E to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[xx] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[x] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was July 30, 2020 .

[ ] No petition for rehearing was timely filed in my case.

[x] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: September 3, 2020, and a copy of the order denying rehearing appears at Appendix E.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const., Amendment 7 is invoked as petitioner was denied a fair trial upon the grounds of blatant judicial misconduct, inter alia, Court "streamlined" litigation for the benefit of respondents. Was ordered to undergo exam by a doctor who was not licensed in the state, and submitted a adverse, incomplete report. Causation evidence was disregarded. Procedural rules were ignored.

Fed. Rules of Evidence 702 is invoked because the District Court ordered plaintiff/petitioner to undergo exam by doctor unlicensed in the state, site of exam. In addition, the exam consisted of arbitrary questions and subjective decision, warranting that the testing method should be replaced by this Court with a standard test of pertinent questions and objective outcome applicable to all examination of addiction throughout the country.

Federal Rules of Civil Procedure, Rule 6 is invoked because it dictates that time shall be afforded to answer motions, without the Court arbitrarily disregarding it.

STATEMENT OF THE CASE

This case relates to a civil diversity personal injury action brought by petitioner, Ted McCracken, proceeding *pro-se* against three (3) cigarette tobacco manufacturers for their toxic cigarettes (tobacco), smoked by petitioner for 44 years and the cause of him contracting Emphysema, Chronic Obstructive Pulmonary Disease and Chronic Bronchitis.

1. One of the most compelling of all claims is that Brown & Williamson Tobacco Co., predecessor to respondent(s) R.J. Reynolds Tobacco Co. and ITG BRANDS by their own admission were adding ammonia booster to the KOOL cigarette tobacco for nearly a decade, thereby causing nicotine potency to multiply to a hundred times that of normal cigarettes, to ensure addiction, boost sales/profits, thereby the proximate cause of petitioner's COPD, Emphysema, and Chronic Bronchitis. Mr. McCracken presented indisputable evidence of two (2) reputable expert pulmonologists (James Dovnarsky, M.D., F.O.P.M.; and James C. Brown,M.D.) in addition to chest x-rays that were expertly examined by Dr. Lewis, of the Temple University Hospital LUNG CENTER concluding definitively that Mr. McCracken Emphysema, COPD, Chronic Bronchitis was caused from the design defect in addition to smoking a pack of cigarettes a day for 44 years. [MSJ 1048] Mr. McCracken was diagnosed with Tobacco-use disorder and was receiving treatment. Mr. McCracken had eleven (11) witnesses to testify that he smoked KOOL cigarettes for 44 years.

Petitioner submitted the medical records of two (2) expert pulmonologists JAMES DOVNARSKY, M.D, F.C.C.P. initially diagnosed petitioner with COPD, Emphysema, Chronic Bronchitis in 2015. With 35 years experience Dr. Dovnarsky is one of the best pulmonologist in the entire country.

Dr. James C. Brown, M.D. was working at the Temple University Hospital Lung Center, N. Broad Street, Philadelphia, PA 19132

Early in the discovery, petitioner distinguished the experts relative to his case.

Respondent(s) brought 4 experts:

1. KLEIN reviewed Mr. McCracken's medical records and concluded had Emphysema, COPD and chronic Bronchitis.

2. MICHEL produced some documents in an attempt to show that the hazards of smoking were known in 1966. Petitioner asserts that he failed, and indeed, petitioner was only 13 in 1966, and did not subscribe to newspapers, etc..

3. AGHARKAR was hired by respondents to give expert testimony on whether petitioner was addicted to tobacco. The Court (KEARNEY, J.) compelled petitioner to undergo a mental examination in the courthouse. AGHARKAR conducted Q & A and then a report was submitted. [MSJ 440] His report states that he expects to conduct a **compulsory** physical examination of petitioner which he never did, so the report is incomplete and invalid. [MSJ 447]

AGHARKAR fails to release the questions he asked or the answers provided. The test was based entirely upon AGHARKAR's subject feeling rather than reliable test questions like those in the Fagerstrom Testing formula, which is the medical standard. Based upon the foregoing, the opinion is inadmissible.

GARNER's report was an attempt to show that R.J. Reynolds Tobacco Company did not use ammonia in 2019, which was obvious, since the FDA ban its use in 1993.

1. The only issue in the District Court was that it opined that petitioner had failed to prove causation. Petitioner argued that the proof was in the reports/records of petitioner's pulmonary experts Drs. Dovnarsky and Brown, and that the issue could easily be decided by the jury.

2. Petitioner had proof from two (2) of the best pulmonologists in the country (James H. Dovnarsky, M.D., F.C.C.P., and James N. Brown, M.D.) whom were employed/residents at two (2) of the best hospitals in the US (Jefferson Hospital, Philadelphia, PA and Temple University Hospital,

Philadelphia, PA, respectively) Dr. Dovnarsky maintained a private practice as well as being a resident physician.

3. Plaintiff was diagnosed with emphysema, COPD, Chronic Bronchitis by James H. Dovnarsky, M.D., F.C.C.P. on 11/18/2015 and his records stated that the cause was plaintiff "smoking a pack a day of cigarettes for 44 years". [MSJ APP-1048]

4. Early in the discovery, petitioner distinguished the expert opinions of Dr. James Dovnarsky, M.D. as a leading pulmonologist with over thirty (30) years experience. The respondents claimed that they sought to depose Dr. Dovnarsky, though, couldn't locate the expert. Rules of Civil Procedure Rule 26.

5. It was established through defendant R.J. Reynolds Tobacco Co. response to interrogatories, that defendant had a "Design Defect" in the consumed cigarette product at issue, inter alia, that, defendant had been adding ammonia to the KOOL cigarette tobacco for at least eight (8) years, from 1993 until 2001, when the FDA ban the use of ammonia. [MSJ APP 379]

6. Relying on the defendant manufacturer's own corporate documents, adding ammonia to the cigarette tobacco caused the cigarettes to be highly addictive and multiplied the nicotine content one hundred times normal, caused a spike in sales, and increased company profits.

7. It seemed obvious that "Design Defect" adulterated tobacco cigarettes (i.e. ammonia, caused ensured addiction, turning plaintiff from a "casual smoker" into a "CHAIN SMOKER" [3/] and the consumption of a 100 times the amount of cigarettes, and with it the TAR content had ABSOLUTELY ACCELERATED the ill effects causing plaintiff to suffer advanced stages of Emphysema, Chronic Obstructive Pulmonary Disease, and Chronic Bronchitis.

8. There was sworn testimony of petitioner, petitioner's mother, and ten (10) other witnesses that petitioner had exclusively smoked KOOL (i.e. the brand adulterated with ammonia booster) a product of

R.J. Reynolds Tobacco Company and ITG BRANDS LLC for 50 years.

9. Coupled with the Design Defect of KOOL cigarettes, respondent Republic also had dangerous manufacturing defects, inter alia, they never test their tobacco for Nicotine/TAR content, so without filtration the Nicotine/TAR levels could be 200 times the average cigarette.

10. In a Summary Judgment Motion, the respondents rebuttal to the allegation that petitioner was an 'addicted chain smoker' was the purported expert opinion of a psychiatrist, AKHARBAR whom after a brief 15 minute interview conducted in a conference room on the 6th floor of the federal courthouse, surmised that petitioner was not addicted to tobacco.

11. The psychiatrist's report was a fraud, and to submit it was medical malpractice, because it was completely devoid of a physical examination on petitioner which is the recognized method to gain empirical physical evidence of addiction (i.e. skin loses essential nutrients and becomes parched), or lack thereof.

12. The psychiatrist's report on the last page states the a physical is compulsory, but, he does not elude to it, because it was never conducted in the conference room of the courthouse, or later at any other location. AGHARKAR was flown in from Georgia, and was unlicensed in Pennsylvania. They offered no evidence to show that the Design Defect had **not** caused plaintiff to become a "chain smoker" and caused the injuries. They had no expert to conclusively negate causation.

The defense providing no proof to disprove that established by doctors/pulmonologist and documentary evidence.

WARNINGS

The District Court abused its discretion in granting summary judgment to respondents based on his analysis of the warnings. Mother and father, brother warnings. Petitioner tried to explain that they were not warnings regarding health issues, but rather suggestions, after recognizing it causes unsightly odors, and smoke inside the house. Petitioner gave sworn testimony that he had not ever received warnings from school health education, nor his physical education teacher. (MSJ APP. 126) Petitioner's father passed away 47 years ago, his brother 36 years ago. There were no cases of lung cancer of petitioner's grandfather, and elders, such as his uncles, so health issues from smoking were not on

petitioner's radar.

REPUBLIC by its responses to Interrogatories never posted the TAR/NICOTINE of their Roll-your-own cigarette tobacco. [MSJ APP-1078] Without that information, petitioner was at a loss to determine if the product was dangerous compared to other products.

It was an abuse of discretion for the District Court to dismiss petitioner's claims of Breach of implied warranty; Conspiracy; Breach of Implied Warranty of Merchantability; Negligence; Strict Liability [DOC 80]

It was an abuse of discretion for the Court (Kearney, J.) to deny plaintiff's request for an expert to be appointed, or alternately, the time to acquire an expert be extended so to further prove causation. [DOC175]

WHEREFORE, upon the foregoing, some of the highlights of the case are stated, and this case should be allowed to proceed to the filing of briefs and the court should fully review all aspects of the case.

REASONS FOR GRANTING WRIT

1. The issue of the (1) arbitrary method and grossly arbitrary questions asked in the exam to determine addiction to tobacco in tobacco litigation should be addressed and decided so to establish standard method and questions.

2. The issue of whether an individual who is unlicensed in the state of Pennsylvania can examine a litigant in Pennsylvania and submit a expert report is at issue in the instant case and should been decided by the Court.

3. The fact of blatant judicial misconduct are at issue in the instant case and should be addressed by the court so to decide when, if ever litigation can be "Streamlined" against the objection of petitioner, and procedural rules ignored so to "streamline" the case, benefiting the defendants.

4. The issue of whether the District Court is required to give a pro-se plaintiff Notice of the consequences of Summary Judgment is at issue in this case and the circuits are undecided on the issue and this Court should finally decide the issue.

5. In the instant case, plaintiff/petitioner brought action against manufacturer of loose Roll-Your-Own tobacco and it was disclosed that they maintain no standards in the mfr. of their tobacco. They do not test for, nor disclose to consumers the tar nor nicotine content. This court should address the issue in the interest of consumer protection as this is the worst health hazard to consumers in the United States.

6. The doctrine of collateral estoppel was disregarded, decimated in this case, and the Court should decide if indeed collateral estoppel exists using the principles laid out in U.S. v. Philip Morris USA, 449 F.Supp. 2d 1 (D.C.C. 2006).

ARGUMENT

POINT I

WAS IT NOT A DENIAL OF PETITIONER'S 7TH AMENDMENT RIGHT TO JURY TRIAL FOR THE DISTRICT COURT TO GRANT RESPONDENT(S) SUMMARY JUDGMENT ON THE ISSUE OF LACK OF CAUSATION EVIDENCE WHEN THERE WAS OVERWHELMING EVIDENCE TO PROVE CAUSATION, INCLUDING TEMPLE LUNG CENTER PULMONOLOGIST, BOARD CERTIFIED PULMONOLOGIST, RADIOLOGIST ANALYSIS OF CHEST X-RAYS, ECHO TREADMILL TEST, PULMONARY FUNCTION TEST, 6-MINUTE WALK TEST AND APPROXIMATELY ELEVEN EYE WITNESSES WHOM KNEW PETITIONER TO SMOKE KOOL CIGARETTES, TOP TOBACCO AND NEWPORT AND THERE WAS A GENUINE ISSUE OF MATERIAL FACT THAT PRECLUDED SUMMARY JUDGMENT FOR THE RESPONDENTS ON THE ISSUE OF CAUSATION AND DISTRICT COURT USED INACCURATE FACTS TO RENDER DECISION?

QUESTIONS PRESENTED:

1. Was there sufficient evidence of causation to go before the jury?

2. Did not the expert analysis of chest x-ray be Dr. Lewis, of the Temple University Hospital LUNG CENTER negate asbestos?

3. Was not respondent's expert report incomplete, having failed to conduct the compulsory physical examination? Was not the report inadmissible because compelled to be examined by a illegitimate unlicensed person?

4. Is not use of R[oll]-Y[our]-O[wn] tobacco, which is unchecked for TAR/NICOTINE content a greater health hazard than manufactured cigarettes, requiring greater oversight?

5. WAS IT A DENIAL OF PETITIONER'S RIGHT TO TRIAL AND DENIAL OF DUE PROCESS GUARANTEED BY THE 7TH AND 14TH AMENDMENTS OF THE U.S. CONSTITUTION, RESPECTIVELY, TO ALLOW RESPONDENT'S INCOMPLETE/INCOMPETENT EXPERT REPORT ON ADDICTION TO BE ACCEPTED AS EVIDENCE AND GRANT SUMMARY JUDGMENT WHEN THERE WAS SUFFICIENT EVIDENCE OF CAUSATION?

Summary judgment is to be granted only if the record before the court shows "that there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." Rule 56(c), Fed.R.Civ.P. A "material" fact is one that "might affect the outcome of the suit under the governing law." Anderson v. Liberty Lobby Inc., 477 U.S. 242, 248 (1986).

The medical diagnosis of Dr. James C. Brown, M.D., that petitioner had a TOBACCO-USE

DISORDER and the opinion of psychiatrist AGHARKAR that petitioner did not have a TOBACCO USE DISORDER are squarely contradictory. Dr. James C. Brown, M.D. made his diagnosis and examined petitioner on several occasions without any outside influence (AGHARKAR got paid $650.00 per hour) in the course of his regular practice at Temple University Hospital LUNG CENTER , N. Broad Street, Philadelphia, PA 19132, while AKHARKAR gave unsupported statements and failed to conduct a compulsory physical examination he needed to conduct to find empirical evidence, but, in fact never did. AGHARKAR was unlicensed in PA, therefore, his report is a fraud, incomplete and unworthy of reliance. In his report, he makes reference to the three (3) cigarettes permitted while in Marine Corps training. What he fails to mention is that petitioner left training after just three (3) weeks so obviously he was definitely addicted and suffering from withdrawal symptoms. Dr. James C. Brown, M.D. interviewed petitioner on several occasions regarding his dependency/addiction to tobacco and was treating petitioner to end his addiction and prescribed Chantix to stop smoking. [MSJ APP] The respondent's AGHARKAR saw petitioner on only one occasion, in a lunch room at the federal courthouse, not a medical facility, for approximately 20-25 minutes and formed an opinion regarding petitioner's 44 year addiction, though, never completed the compulsory physical examination which is essential to get empirical scientific evidence of addition or lack thereof. Medical journals describe the physical examination as a search for signs of deficiency because smoking depletes essential nutrients to the skin. Wrinkles, cracking, thinning. There is clearly a genuine issue as to the material fact of whether petitioner is addicted, and the report is a fraud, by a incompetent person who failed to meet the requirements for licensure in the state of

contracted emphysema, COPD, Chronic Bronchitis from "smoking cigarettes for 44 years". (MSJ APP. 622)

Dr. James C. Brown, M.D., pulmonologist, of Temple University Hospital LUNG CENTER was treating petitioner for TOBACCO USE DISORDER with inhalers, Symbicort, Spiriva, Ventolin. More recently, Dr. Marc Diamond, M.D. of Temple University Hospital Lung Center has prescribed oxygen, 1-5 liters per minute and ordered double doses of Symbicort. Petitioner is now tethered to a oxygen tank and/or oxygen concentrator.

Petitioner also had testimony that there were numerous witnesses that petitioner smoked KOOL cigarettes (MSJ APP. 114-119) at age 13 and throughout his teens, including his mother. That at age 18 his wife witnessed his smoking KOOL cigarettes and thereafter as an adult. There were a total of eight (8) names/addresses given during the sworn deposition of witnesses who knew petitioner and his brand of cigarettes to be KOOL cigarettes.

It was an abuse of discretion for the District Court to grant the respondents Summary Judgment for lack of causation evidence. There was overwhelming credible medical evidence presented by petitioner's doctors Dovnarsky, Brown, Lewis and the respondents could not disprove it, and there was genuine issues of material fact, and more than sufficient evidence to go the jury, where jurors could use their common sense and experience to weigh the evidence of long-standing respected pulmonologists practicing in Philadelphia, whom are affiliated with leading hospitals, Temple, Jefferson in the country, as compared to respondent's purported expert opinion of unlicensed AGHARKAR who submitted a incomplete report without a physical examination of petitioner. Indeed, AGHARKAR, whom was unlicensed in PA, probably had no intention of ever conducting a intrusive physical upon petitioner. It was a total fraud.

INACCURATE FACTS

In the Memorandum opinion of Judge Kearney, [DOCUMENT 184], dated February 14, 2019, he

unilaterally propounds a theory that petitioner had heavy exposure to asbestos which he apparently found on a medical record entitled 'INITIAL IMPRESSIONS' which Dr. Dovnarsky compiled after petitioner's initial doctor's office visit on November 18, 2015. (MSJ APP. 622) There was apparently miscommunication between the doctor's intake nurse and/or the doctor, because petitioner never had any heavy exposure to asbestos. Petitioner worked as a HVAC service technician for a well established oil company where his duties included repairing hydronic heating systems with steel and copper piping (hot water/steam boilers), as well as forced warm air furnaces which used galvanized duct work and central air conditioning.

Petitioner had limited exposure to asbestos for an aggregate of 3 minutes over the three (3) years while he worked at Bergey & Gehman Oil Company, Perkasie, PA. The amount of asbestos was a trivial amount, enough to fill a 1 quart tub and then add water to it. It was only used occasionally and in small amounts to make cosmetic repair of hairline cracks at the connection of one (1) 6" smoke pipe at specifically that point where it enters the chimney base.

The respondents in their seven (7) hour deposition never questioned petitioner about asbestos, nor did they mention it in their Motion for Summary Judgment.

Pulmonologist Dr. James H. Dovnarsky, M.D., F.C.C.P., with over thirty (30) years specializing in Pulmonary Medicine analyzed petitioner's chest x-rays and found absolutely no sign of asbestos. Dr. Howard Lewis, M.D. also analyzed the chest x-rays and found no signs of asbestos, but, only that of Chronic Obstructive Pulmonary Disease.

Dr. James H. Dovnarsky, M.D., F.C.C.P, states at MSJ APP 622, lines 6-7, "I have reviewed a chest x-ray from Temple University [Hospital] dated 11/17/15 that shows hyperinflation consistent with Emphysema but no other abnormalities"[MSJ APP. 622, lines 5-6].

PETITIONER MADE A PRIMA FACIE CASE FOR DESIGN DEFECTS-MANIPULATION/ADDING TOXIC AMOUNTS OF NICOTINE BY MANUFACTURERS OF KOOL CIGARETTES, PROXIMATE CAUSE OF PETITIONER CONTRACTING EMPHYSEMA, CHRONIC OBSTRUCTIVE PULMONARY DISEASE, CHRONIC BRONCHITIS.

It was established through respondent R.J. Reynolds Tobacco Company response to plaintiff's interrogatories, that respondent had a "Design Defect" in the KOOL cigarettes petitioner had been smoking for 44 years, inter alia, that respondent had been manipulating the nicotine levels by adding ammonia to the KOOL cigarette tobacco for at least eight (8) years from 1993 until 2000, when the FDA ban the use of ammonia. [MSJ APP]

In the Federal Register/Vol. 60, No. 155/Friday, August 11, 1995/Notice, there is an article entitled: CIGARETTE SMOKE AND THIS IS HOW AMMONIA CAN ACT AS AN IMPACT BOOSTER. [MSJ APP 1174]

The source of this came from R.J. Reynolds Records, released to the public in compliance with the Master Settlement Agreement made between states and tobacco manufacturers, including respondents.

> It reads in pertinent part,
> "cigarette smoke and this is how ammonia can act as an impact booster"
> Ammonia increases the pH of the smoke and thereby enhances the absorption of nicotine by the body.[446] FDA;s investigation has revealed at least one common site for the application of ammonia and ammonia-like compounds: reconstituted tobacco. The agency has found levels of these compounds to be as high as 10% in reconstituted tobacco.
> The company handbook describes the benefits of the treated reconstituted tobacco as a source of ammonia to absorb nicotine from higher alkaloid-containing components in the blend. This company handbook also describes the application of ammonia directly to the leaf tobacco. With regard to the question of the efficiency of this technology in increasing nicotine Delivery, the handbook states that smoke analysis shows that an experimental cigarette made of reconstituted tobacco treated with ammonia has almost double the nicotine transfer efficiency of tobacco.[447] This handbook also states that many U.S. tobacco manufacturers utilize ammonia technology. One company has admitted to FDA that it uses DAP in manufacturing cigarettes, and that such increases nicotine delivery."[448]
>
> [446] Surgeon General's Report. *Nicotine Addiction.* 1988. Pages 29-31.

[447] *See* Statement of David A. Kessler, note 416, *supra*, at pp. 10-12.
[448] *See* King and Spalding letter, note 403, *supra*, at p.6.

The respondent adding ammonia to KOOL doubled the nicotine, created a increase in sales/profits and ensured addiction, turning petitioner into a "CHAIN SMOKER" and was the proximate cause of petitioner contracting Emphysema, Chronic Obstructive Pulmonary Disease, and chronic Bronchitis. Petitioner was a chain smoker, smoking 2 packs of KOOL cigarettes per day. [MSJ APP 243, lines 21-23]

PETITIONER MADE A PRIMA FACIE CLAIM FOR CAUSATION BASED UPON THE DESIGN DEFECT-REPUBLIC TOBACCO WAS AT TOXIC LEVELS AND PROXIMATE CAUSE TO PETITIONER CONTRACTING EMPHYSEMA, CHRONIC OBSTRUCTIVE PULMONARY DISEASE, CHRONIC BRONCHITIS.

In the course of discovery, petitioner sent interrogatories to Republic Tobacco asking questions regarding the manipulation of nicotine in their tobacco products.

Republic responded stating that they never check the tar nor nicotine levels of their tobacco. It is customary that all cigarette manufacturers post the tar and nicotine levels of their brands. Republic Tobacco sells Roll-Your-Own loose tobacco, that is sold in pouches, bags. It can be assumed that their tobacco yields an extraordinarily high level of TAR and NICOTINE. In the case of Celotex, the Court stated that its expected that a company with expertise in a particular field would check their product so as not to market toxic levels of tar or nicotine. In this instant case Republic Tobacco did neither, and exhibited a total disregard for petitioner and all consumers.

Petitioner asserts that his smoking Republic tobacco was the proximate cause of petitioner contracting Emphysema, Chronic Obstructive Pulmonary Disease, and Chronic Bronchitis.

PETITIONER MADE A PRIMA FACIE CASE AGAINST R.J.REYNOLDS TOBACCO COMPANY AND ITG BRANDS FOR FAILURE TO WARN OF HEALTH HAZARDS FROM CIGARETTES IN 1965-1966.

Petitioner was diagnosed with Emphysema, COPD, Chronic Bronchitis at 61, and started smoking when 12-13 years of age. Petitioner can clearly remember that when he first started smoking there were no warning labels on the cigarette packs. They did not show up at the retailer until approximately 6 months after petitioner started smoking.

There was a total failure of respondents, R.J. Reynolds Tobacco Company and ITG Brands LLC to warn petitioner, 12-13 years old of health hazards of cigarette smoking in 1965 through to 1966, at a **critical** time in petitioner's development. It is asserted that in 1965-1966 there was absolutely NO warnings. Petitioner stated during sworn deposition that he did not recall ever receiving warnings from [his] Gym teacher [MSJ APP 127, lines 22 to pp. 128, line 2], nor hazardous health warnings from health class [MSJ APP 128, lines 5-8], nor from any health class counseling [MSJ APP 128].

As a young boy, petitioner had confidence that the government knew about health hazards. Petitioner would have heeded the warnings at that age, and put off the choice to smoke until he got older. Petitioner did not receive warnings at 12-13 when he started smoking from either of his parents. Indeed, in sworn deposition, petitioner testified that he would sneak cigarettes outside the view of his parents. Petitioner testified that his brother never indicated to him that he should stop smoking. [MSJ APP.] As petitioner matured, his mother may have encouraged petitioner to stop, but, it came in reaction to causing cigarette burns on coffee table, bedroom dresser and in a noticeable spot on the wall to wall carpet.

Cigarette advertising was on television, radio, billboards in 1965-66 and the tobacco manufacturers sponsored many major sporting events.

Petitioner was just a youngster with absolutely no practical use for cigarettes, so warnings of health hazards of smoking would have been heeded. Petitioner was a responsible hard worker, delivering newspapers six days a week. Attended Boy Scouts. 1965-66 was a critical time in petitioner's early life

and petitioner has been severely injured due to no warnings of any kind from the respondent manufacturers in 1965-66, the proximate cause of petitioner contracting Emphysema, Chronic Obstructive Pulmonary Disease (COPD) and Chronic Bronchitis.

After World War II, half of all Americans smoked. Cigarette advertising was on television, radio and billboards in 1965-66.

Excerpt from book, pertaining to 1966-1969, reads:

"To drive in America in 1966-1969 was to experience the sights and images of cigarettes, conveyed by the billboards lining the roadside.

Cities too, had cigarette-promotion landmarks. For more than 25 years, millions of people gawked at a single Camel billboard in Times Square, in the heart of New York City.

Two stories high, between 43rd and 44th Streets, a smoker blew yard-wide rings of vapor 24 hours a day.

Philip Morris, with the help of its advertisers, made "Marlboro Country" shorthand for the freedom of the Wild West. Always keen to tie smoking with youthfulness, RJR (i.e. R.J. REYNOLDS TOBACCO COMPANY) went to new extremes with Joe Camel, a caricature of a smoking camel dressed in hip gear and always found in ultracool and trendy situations. It didn't take long for Joe Camel to endear itself to U.S. children and become the second-most recognized cartoon character after Mickey Mouse. Cigarette alighted in pop culture as well.

Everyone over a certain age know that smokers will "walk a mile for a Camel" and that "Winston Tastes good like a cigarette should."

Women, fighting for Equal rights, were empowered by the Virginia Slims slogan, "You've Come a long way, baby".

The country's stars and heroes pulled away.

Humphrey Bogart, Lauren Bacall, Sharon Stone, Rod Sterling and Bruce Willis all glamorized smoking in public and in the movies.

Al Jolson, Amelia Earhart, Joe DiMaggio, and Mike Wallace promoted it. In his prime, Jackie Gleason would take a deep drag on a Marlboro and exclaim, "How sweet it is".

Based upon the foregoing, it is respectfully requested that the Supreme Court grant a Writ of Certiorari to review and reverse this case in the interest of justice.

POINT II

WAS IT NOT AN ABUSE OF DISCRETION, PLAIN ERROR AND A DENIAL OF PETITIONER'S RIGHT TO TRIAL GUARANTEED BY THE 7TH AMENDMENT, U.S. CONSTITUTION FOR THE DISTRICT COURT TO DENY PETITIONER'S REQUEST FOR SUMMARY JUDGMENT AGAINST RESPONDENTS R.J. REYNOLDS TOBACCO COMPANY AND ITG BRANDS UPON THE GROUND OF COLLATERAL ESTOPPEL, BASED UPON JUDGE KESSLER'S OPINION IN D.C. CIRCUIT CASE, U.S. V. PHILIP MORRIS, ET AL., 449 F.SUPP.2D 1, 566 F.3D 1095 (D.C. CIR. 2009) IN WHICH RESPONDENT R.J. REYNOLDS TOBACCO COMPANY WAS FOUND TO BE GUILTY IN THE SUIT ON THE ISSUES OF (1) CONSPIRACY; (2) CONCEALMENT OF HEALTH HAZARDS OF SMOKING; (3) TARGETING MINORS FOR CIGARETTE SALES; (4) MANIPULATION OF NICOTINE; (5) ADDING AMMONIA BOOSTER WARRANTING REVERSAL?

The issue against the tobacco manufacturers (i.e. R.J. REYNOLDS TOBACCO COMPANY and ITG BRANDS LLC) is that they manipulated the nicotine levels in their KOOL cigarettes to ensure addiction, and hence proximate cause of onset of Emphysema, Chronic Obstructive Pulmonary Disease and Chronic Bronchitis.

Petitioner moved for summary judgment upon the ground of collateral estoppel against both R.J. Reynolds Tobacco Company (hereinafter referred to as RJR), who bought the KOOL brand from the original manufacturer (i.e. Brown and Williamson Tobacco Company) and manufactured the KOOL brand of cigarettes for several years and against ITG BRANDS who acquired the KOOL brand in 2015 from RJR.

RJR was a defendant in the case of U.S. v. Philip Morris USA, 449 F.Supp.2d 1 (D.D.C. 2006) which found several major tobacco companies liable for violations of the Racketeer Influenced and Corrupt Organization (RICO) Act by engaging in numerous acts of fraud to further a conspiracy to deceive the American public about nicotine addiction and health effects of cigarettes and environmental tobacco smoke.

Judge Gladys Kessler found that the evidence overwhelming established that the companies violated RICO by coordinating their public relations, research, and marketing efforts in order to advance their scheme to defraud by denying their manipulation of the nicotine content of cigarettes and also denying their marketing targeted youth as new smokers. The companies also suppressed and destroyed

information related to the dangers of smoking in order to maximize their profits and enhance the market for cigarettes.

Respondents R.J. Reynolds Tobacco Company had every opportunity to defend themselves against the allegations that they manipulated nicotine, but failed and were found guilty after a 9 month trial with hundreds of witnesses. Recognizing that defendant(s) RJR and ITG BRANDS LLC were given every opportunity to defend themselves shows that the issue of nicotine manipulation has been extensively, exhaustively litigated in U.S. v. Philip Morris USA, 449 F.Supp.2d 1 (D.D.C. 2006) and summary judgment should have been granted to petitioner on the doctrine of collateral estoppel.

CONCLUSION

Based upon the foregoing, petitioner respectfully requests that respondent's Motion for Summary Judgment be reversed and remanded.

QUESTION

POINT III

WAS THERE NOT BLATANT JUDICIAL MISCONDUCT/BIAS/PREJUDICE IN THE DISTRICT COURT WHICH DEPARTED FROM THE U.S. CONSTITUTION, 7TH AMENDMENT, STATUTE, AND THIS COURT'S DECISIONS, INTER ALIA, THE COURT "STREAMLINED" COMPLEX LITIGATION FOR THE BENEFIT OF RESPONDENTS?

DID THE DISTRICT COURT (KEARNEY, J.) CONSTANTLY ABUSE ITS DISCRETION, AND IGNORED FEDERAL RULES OF CIVIL PROCEDURE, RULE 6(c)(1) TO THE DETRIMENT OF *PRO-SE* PETITIONER, BY FAILING TO GIVE PETITIONER SUFFICIENT TIME TO RESPOND TO RESPONDENT(S) WRITTEN MOTIONS, WHERE THE COURT (KEARNEY, J.) WOULD ISSUE A DECISION WITHIN A DAY, BEFORE PETITIONER HAD SUFFICIENT TIME TO RESPOND?

> According to the Local Rules of U.S. District Court, Rule 7.1(c) Motion Practice gives an opposing party fourteen (14) days after service of the motion to serve an answer/opposition.

According to Rule 6(c)(1) of the Federal Rules of Civil Practice, when a written motion is filed, there is a return date of fourteen (14) days when the motion is to be heard, giving the opposing party sufficient time to respond.

Judge Kearney would never allow appellant 14 days to respond, and would often render a decision within 1-4 days of defendant filing, before the motion made its way through the mail, and before appellant could respond, or have time to adequately read the cases defendant cited and prepare an argument. Many issues were complex and required research into case law, though the Court destroyed appellant's opportunity to respond effectively.

At the conclusion of the initial personal appearance before the court, Judge Kearney made a unilateral comment, which was partially incoherent, though, in retrospect, the gist of the comment is now understood. To paraphrase, he said, "I will use Judge [incoherent] method to bring about a speedy disposition to this case".

I.

The Court (KEARNEY, J.) set the tone early in the litigation, when he didn't even wait for

petitioner to file a Answer/Opposition to respondent's Motion for Extension of Time, etc., as is evident in [DOC 23] and the Court's order the next day [DOC 24]. Whenever the respondents requested an Extension of Time, the Court granted an extension within twenty-four (24) hours, before petitioner could Answer or submit Opposition.

II.

On December 28, 2017, appellant requested the Court's permission to file documents electronically [DOC 14], which would have saved some time and was denied without explanation [DOC 16] by the Court (KEARNEY, J.) on 12/29/2017.

III.

On January 8, 2018, one (1) defendant filed Motion to Dismiss the Complaint [DOC 18], and then on January 17, 2018, another defendant filed Motion to Dismiss for Lack of Jurisdiction [DOC 20] and plaintiff-appellant filed for extension of time to file Opposition to [DOC 18] and the Court gave plaintiff-appellant until 2/2/2019 to file Opposition to both motions [DOC] which was only fourteen (14) days and not an extension [DOC 20] beyond the 14, that the statute mandates Fed.R.Civ.Proc. Rule 6(c)(1).

IV.

The court (KEARNEY, J.) would issue a decision on defendant's motions within a couple days without allowing plaintiff-appellant sufficient time to respond. On June 4, 2018 REPUBLIC filed Motion to Dismiss the Complaint [DOC 61], and on 6/13/2018 plaintiff-appellant motioned for Extension of Time to file Opposition [DOC 72] and the Court (KEARNEY, J.) arbitrarily denied the extension [DOC 73], though, the Court (KEARNEY, J.) always, without exception gave the defendants extensions of time whenever they requested. The Court (KEARNEY, J.) was partial to the defendants throughout the litigation.

V.

On May 21, 2018, the Court (KEARNEY, J.] issued an order dismissing certain claims of plaintiff-appellant [DOC 53]. Subsequently, plaintiff-appellant sought Extension of Time for Reconsideration and the Court denied it [70].

VI.

Defendant filed Motion to Dismiss [DOC 18] on 1/8/2018, and plaintiff-appellant on 1/17/2018 filed for Extension of Time [DOC 21] and then given only approximately 2 weeks [DOC 22]. Because of the proclivities this judge displayed, plaintiff-appellant could not afford to wait more than 6-7 days before seeking an extension of time.

VII.

Subsequently, appellant-plaintiff complained to the Court (Kearney, J.) during a courtroom appearance, that he was not being given sufficient time to respond to motions, and requested at least permission to register for ecf. to file electronically. Appellant argued that the defendant's lawyers can file electronically from their office, while appellant must travel by vehicle to the courthouse, often in early morning hours using the drop box so appellant's response may be considered. The Court would not allow sufficient time for oppositions to be mailed. The Court's response was that **ECF** is for <u>lawyers.</u> The Court's (Kearney, J.) actions were contrary to the Federal Rules of Civil Procedure, Rule 6 (c)(1). Plaintiff-appellant repeatedly objected in written motions and on those two occasions appellant was physically before the Court (Kearney, J.), when Attorney Weaver was there for the defendants, appellant argued.

These actions were plain and obvious error, unwarranted, prejudicial, unfair, malicious, giving unfair advantage to the tobacco companies, with their army of lawyers and ruined any chance appellant had to successfully conduct research and argue issues.

In addition:

1. The Court (KEARNEY, J.) compelled petitioner to undergo mental examination in Eastern District, Philadelphia, by a psychiatrist who traveled from Georgia and was not even licensed in the state of Pennsylvania. When petitioner sought to hire a psychiatrist at respondent's expense, Judge Kearney denied the request.

QUESTION

WAS IT AN ABUSE OF DISRECTION AND VIOLATION OF THE 7TH AMENDMENT OF THE U.S. CONSTITUTION FOR FAIR TRIAL FOR THE DISTRICT COURT TO DENY PETITIONER'S WRITTEN REQUEST FOR A EXPERT TO BE APPOINTED AT RESPONDENT'S EXPENSE, OR ALTERNATELY, GRANT AN EXTENSION OF TIME SO PETITIONER COULD RETAIN AN EXPERT, WARRANTING REVERSAL?

AND THE RESPONDENT'S REPORT WAS INCOMPLETE DUE TO FAILURE TO CONDUCT THE PHYSICAL EXAMINATION, AND PSYCHIATRIST WAS UNLICENSED IN THE STATE OF PENNSYLVANIA, USING UNRELIABLE TESTING METHOD.

Petitioner submitted a written request for an expert pursuant to Rule 706(a) of the Federal Rules of Evidence and pursuant to the principles enunciated in Hodges v. Keane, 145 F.R.D. 332 (S.D.N.Y. 1993) (requiring respondents who sought to have their psychiatrist examine the petitioner to pay for the indigent petitioner to hire his own expert) [DOC 170]

Once the respondent(s) had their psychiatrist examine petitioner and give an adverse opinion then petitioner was entitled to have respondent(s) pay for this indigent petitioner to hire his own expert.

Because petitioner had made an allegation that respondent's tobacco had caused him to become addicted, the respondents sought to have petitioner examined by their private psychiatrist. Petitioner opposed. The court ruled that either petitioner withdraw his claim of addiction or undergo the mental examination. The psychiatrist, AGHARKAR, resided in Georgia, and was not licensed in Pennsylvania. The psychiatrist conducted Q&A for twenty minutes in the

courthouse, and then apparently returned to his residence in Georgia. Subsequently, he submitted a incomplete report, in which he stated that a physical examination was compulsory when conducting an assessment for addiction, though, he never conducted the physical. AGHARKAR did not reveal which questions and answers that he used to reach his conclusion, though there is the Fagerstrom test which provides ten relevant questions and a score is given should the subject answer in the affirmative on each.

AGHARKAR who was unlicensed in the state of PA, testing method was purely subjective, unreliable, incomplete and therefore invalid, inadmissible.

The District Court (Kearney, J.) denied the request [DOC 175] and petitioner respectfully requests that the order granting respondent(s) Motion for Summary Judgment be reversed and the case be remanded so petitioner may acquire an expert at respondent's expense or alternately, his own.

POINT V

WAS IT A VIOLATION OF THE 7TH AMENDMENT (U.S. CONSTITUTION) GUARANTEE FOR FAIR TRIAL WHEN *PRO-SE* PETITIONER RECEIVED NO NOTICE OF CONSEQUENCES WHEN RESPONDENT(S) FILED FOR SUMMARY JUDGMENT?

Most courts agree that a *pro-se* litigant faced with summary judgment must receive an understandable notice of the requirements of the summary judgment rules, including the necessity of submitting affidavits if the facts are in dispute. Neal v. Kelly, 963 F.2d 453 (D.D.C. 1992); Timms v. Frank, 953 F.2d 281 (7th Cir.) cert. denied 112 S.Ct. 2307 (1992).

Petitioner never received any kind of notice, putting him at a severe disadvantage.

Based upon the foregoing, petitioner respectfully requests a reversal and remand, so to receive the appropriate notice, so he can adequately prepare.

POINT VI

IS IT NOT IMPERATIVE THAT THIS SUPREME COURT DECIDE ON A STANDARD TEST OF NICOTINE ADDICTION RATHER THAN DEPENDING ON THE UNRELIABLE AND INVALID MULTIPLE TESTING METHODS OF ALL DIFFERENT PROVIDER(S)?

TOLERATED IN ALL CIRCUITS.

The Fagerstrom Test for Nicotine Dependence is one that is recommended, with collaboration of a physical examination.

Screening for Tobacco Dependence:

There are a number of questionnaires that have been designed specifically to measure tobacco dependence. The most commonly used tobacco dependence measures are the Fagerstrom tolerance questionnaire (FTQ), which consists of ten (10) questions, rather than the inappropriate questions and purely subjective(1) opinion without collaboration of physical examination. Indeed, his report concluded that a physical was necessary and he had not conducted same. Testing should be based upon uniformed questions as in the Fagerstrom Test with physical examination which seeks empirical evidence of deficiencies (e.g. skin deterioration due to tobacco-use).

WAS IT NOT A DENIAL OF PETITIONER'S RIGHT TO TRIAL GUARANTEED BY THE 7TH AMENDMENT TO ORDER AND ACCEPT THE OPINION OF AGHARKAR.

The respondents sought to examine petitioner to give their expert opinion of whether petitioner was addicted tobacco. Petitioner filed opposition. The respondents claimed that they had "an expert" flying into Philadelphia from Phoenix, AZ. When it was necessary to reschedule, respondents claimed that their expert was flying into Philadelphia

The court ordered a deposition to be conducted by a psychiatrist inside the courthouse.

(1) AKHARBAR was hired by the tobacco mfr., and had testified in 50 cases in and around Atlanta, Georgia where he resides. AGHARKAR was not licensed in the state of Pennsylvania and

therefore was not qualified to perform a Q&A, nor give his opinion regarding petitioner's addiction. Moreover, he had no license to practice medicine in Pennyslvania, was a friend of BIG TOBACCO, and his findings were contrary to rational thinking. Testing should use the Fagerstrom Testing method.

POINT VI

QUESTION PRESENTED

WAS IT AN ABUSE OF DISCRETION AND DENIAL OF PETITIONER'S RIGHT TO TRIAL GUARANTEED BY THE 7TH AMENDMENT, U.S. CONST. FOR THE DISTRICT COURT TO GRANT RESPONDENT'S SUMMARY JUDGMENT AGAINST REPUBLIC TOBACCO LLC. FOR THEIR FAILURE TO PROVIDE (1) TAR/NICOTINE/CARCINOGEN LEVELS FOR THEIR PRODUCTS TO PETITIONER AND CONSUMERS; (2) WARNING LABELS; AND (3) PROVIDE A LIST OF TAR/NICOTINE DATA SHEETS TO PETITIONER AND CONSUMERS WARRANTING REVERSAL?

REPUBLIC TOBACCO sells loose tobacco and is distinctly different than R.J. REYNOLDS TOBACCO COMPANY or ITG BRANDS LLC which are machine-made cigarette manufacturers (w/Tar-Nicotine ratings) and FDA regulated and so do not they deserve greater scrutiny under the law because their product is inferior/far more hazardous to health and they are not FDA regulated?

In the order of the District Court, dated June 26, 2018, respondent, Republic tobacco was ordered to answer the plaintiff's claims. It must be remembered that REPUBLIC sells loose tobacco, so they do not have to comply with the 1965 nor 1969 Labeling Act. Petitioner contends that REPUBLIC has a duty to conduct basic manufacturing practices (i.e. test tobacco for tar/nicotine content), and if they fail they should be found to have manipulated nicotine levels. George v. Celotex Corp. 914 F.2d 26, 28 (2d Cir. 1990). Their business practice is to use the highest nicotine-yielding tobacco and it is reflected in increased sales. The FDA regulates the cigarette industry, but not the loose tobacco manufacturers, and therefore, they should list the ingredients of their product because several tobacco(s) have been banned by the FDA (e.g. Y-1 mfr. Brown & Williamson, genetically modified). Petitioner contends that if a individual smokes REPUBLIC's product for 5-10 years you will definitely get COPD, Emphysema, which is not inherent in smoking machine-made cigarettes. REPUBLIC TOBACCO is distinctly different and should be treated differently than R.J. REYNOLDS TOBACCO COMPANY or ITG BRANDS LLC..

INTERROGATORY NO. 10: Did you ever provide a list of the levels of tar/nicotine/different carcinogens of the TOP cigarette tobacco or the smoke of that tobacco with the packaged product, or otherwise, inform the general public, or more particularly this plaintiff of that information?

RESPONSE: Subject to and without waiving its objection Republic states that it did not provide lists of the type referenced in this Interrogatory during the time period 1987 through 1998.

INTERROGATORY NO. 12: Using the FDA method to determine the tar/nicotine levels of a cigarette, what is the tar/nicotine/carcinogen levels of a single TOP cigarette using the tobacco and paper supplied in the marketed product.

RESPONSE: Subject to and without waiving its objections, Republic states that it did not measure "tar" and nicotine yields utilizing what was formerly known as the "FTC method" during the period 1987 through 1998.

Therefore, there is no genuine issue remaining to the claims and ask that the decision to grant summary judgment to respondent be reversed, and petitioner's Motion for Summary Judgment on these causes of action be granted and damages assessed.

4. When asked in Interrogatory No. 4 if they ever conducted tests, evaluations of the harmful effects on lungs through inhalation of their TOP tobacco products, they said NO.

5. Respondent REPUBLIC states in response to Interrogatory No. 7, that in 1987 when they acquired TOP tobacco it knew of the health effects of smoking, but did not place warnings on packages of their TOP tobacco.

6. Republic's response to Interrogatory No. 10 is that they never provided a list of the levels of Tar/nicotine/different carcinogens of TOP cigarette tobacco or the smoke of that tobacco with the packaged product, or otherwise, inform the general public, or more particularly the petitioner of that information?

7. Republic's response to Interrogatory No. 12 was that they never measured the tar nor nicotine levels of their tobacco product.

8. For the record, Republic only produces one type of tobacco, in either menthol or non-menthol.

9. Republic (1) failed to provide tar/nicotine levels of any of their products; (2) failed to provide

warnings on any of their tobacco products and is therefore liable under negligence/strict liability theories of liability.

10. Therefore, there is no genuine issue remaining as to the claims against Republic and its respectfully requested that Summary Judgment granted to respondents be reversed, remanded and petitioner's Motion for Summary Judgment against Republic be granted, damages assessed, or alternately move to trial.

11. REPUBLIC TOBACCO manufacturing practices are far below the American cigarette industry standards, and more akin to a third world country. Their selling tobacco which is unfit for the purpose for which it was intended. Simply throwing tobacco leaves in a neat little package with graphic designs does not meet the "Consumer Expectation Test" for Roll-Your-Own Cigarette Tobacco. Its expected (by petitioner and consumers) that they would test the tar/nicotine content of their cigarette tobacco smoke with the expectation that it would be comparable to other cigarettes on the market, otherwise, they should not be labeling their product "CIGARETTE" tobacco.

CONCLUSION

Upon the foregoing, petitioner respectfully requests that this Court grant Writ of Certiorari to review, reverse and remand the order of the U.S. Court of Appeals, Third Circuit and U.S. District Court for the Eastern District of Pennsylvania.

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