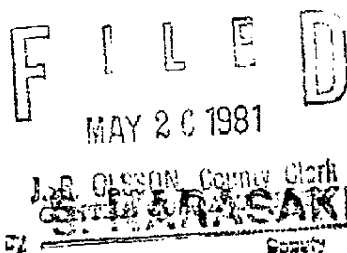


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Attorneys for Plaintiffs



IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF CONTRA COSTA

JAMES T. CLAY and TIMOTHY J. )  
CLAY, )  
Plaintiffs, )

NO. 223410

vs. )

PHILLIP MORRIS CORPORATION, )  
THE TOBACCO INSTITUTE, and )  
DOES I through 100, inclusive, )  
Defendants. )

COMPLAINT FOR DAMAGES

FIRST CAUSE OF ACTION FOR NEGLIGENCE  
BROUGHT BY PLAINTIFF JAMES T. CLAY

I.

Defendants DOES I through 100, inclusive, are sued herein under fictitious names; plaintiffs do not at this time know the true names or legal capacities of said defendants but allege that they are all in some way legally responsible for the injuries and damages set out herein; plaintiffs pray that said true names and legal capacities may be inserted herein when ascertained.

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1 II.

2 At all times herein mentioned, each defendant was an agent,  
3 partner, joint venturer, servant, co-conspirator, and employee of  
4 each of the other defendants; at all of said times, each of said  
5 defendants was acting within the course and scope of said agency,  
6 partnership, joint venture, service, conspiracy and employment.

7 III.

8 At all times herein relevant, defendant PHILLIP MORRIS COR-  
9 PORATION is and was a duly licensed corporation organized and exist-  
10 ing under the laws of the State of Virginia; said corporation is and  
11 was doing business in the City of Antioch, County of Contra Costa,  
12 State of California, and has at all such times availed itself of the  
13 benefits and protections of the laws of the State of California.

14 IV.

15 At all times herein relevant, defendant THE TOBACCO INSTI-  
16 TUTE was and is a trade association organized and existing under the  
17 laws of the District of Columbia; said entity is and was doing  
18 business in the City of Antioch, County of Contra Costa, State of  
19 California, and has at all such times availed itself of the benefits  
20 of the laws of the State of California.

21 V.

22 Defendants PHILLIP MORRIS CORPORATION and DOES ONE through  
23 FIFTY, inclusive, were and are engaged in the manufacture, compound-  
24 ing, testing, processing, producing, packaging, labeling, introducing  
25 into interstate commerce for sale therein, transporting in interstate  
26 commerce for sale therein, storing, advertising, selling and recom-

1 mending cigarette products, including but not limited to cigarettes  
2 with the brand name of BENSON & HEDGES MENTHOL, to the general  
3 public, and for the use and consumption by the general public,  
4 including plaintiffs herein.

5 VI.

6 Defendant THE TOBACCO INSTITUTE and DOES FIFTY ONE through  
7 SEVENTY FIVE, inclusive, were and are engaged in promoting, adver-  
8 tising, and lobbying for the cigarette industry in general and  
9 defendants PHILLIP MORRIS CORPORATION and DOES ONE through FIFTY,  
10 in particular; defendants THE TOBACCO INSTITUTE, and DOES FIFTY ONE  
11 through SEVENTY FIVE, inclusive, sole concern was to promote the  
12 use of cigarettes to the general public and resist any and all laws,  
13 regulations or efforts which would have a negative effect on the  
14 profits sought by said defendants, in particular, and the cigarette  
15 industry in general, regardless of any resultant injuries or loss  
16 of life caused the general public or the plaintiffs herein.

17 VII.

18 Defendants herein, and each of them, negligently and care-  
19 lessly prepared, compounded, manufactured, tested, processed, pro-  
20 duced, packaged, labeled, sold, stored, advertised, introduced into  
21 interstate commerce for sale therein, transported in interstate  
22 commerce for sale therein, recommended to the general public,  
23 promoted and lobbied for cigarettes in general and BENSON & HEDGES  
24 MENTHOL, in particular; defendants, and each of them, negligently  
25 and carelessly sold, distributed and delivered said cigarettes so  
26 as to cause them to be defective, dangerous, contaminated, adulter-

1 ated, impure, deleterious and unsafe for the use and purpose for  
2 which they were intended when used as recommended, suggested and  
3 advertised.

4 VIII.

5 The acts and omissions of defendants herein, and each of  
6 them, included, inter alia: the failure to manufacture cigarettes  
7 in such a manner so as to ensure that such cigarettes would be fire-  
8 safe or self-extinguish in a safe period of time when left unattended,  
9 unsmoked or when inadvertently dropped; said failure was despite  
10 knowledge on the part of defendants, and each of them, that said  
11 cigarettes could be made fire-safe and/or self-extinguishing through  
12 readily available technology, including the use (or non-use) of  
13 certain chemical additives and/or a change in the porosity of the  
14 cigarette paper; said failure was also despite knowledge by defen-  
15 dants, and each of them, that ensuring that cigarettes would burn  
16 unattended no more than two minutes would dramatically reduce the  
17 danger of fires from such cigarettes; defendants further knew that  
18 cigarettes are a major cause of fires in this nation and that such  
19 fires caused approximately 2,300 deaths in 1979 alone.

20 IX.

21 Defendants, and each of them, were motivated by a desire not  
22 to prolong the smoking life of a cigarette so that more cigarettes  
23 would be consumed, and thereby purchased by the general public, and  
24 the profits of the cigarette industry, including the defedants here-  
25 in, would thereby be maintained and increased.

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1 X.

2 On or about March 28, 1981, at approximately 1:15 a.m., a  
3 fire errupted at plaintiff's residence located at 33 E. 7th Street,  
4 Apt. 22, Antioch, California; said fire was caused by a smouldering  
5 cigarette that had inadvertently been lost in the living room sofa  
6 approximately two hours earlier.

7 XI.

8 By reason of the premises, and as a direct and proximate  
9 result thereof, plaintiff JAMES T. CLAY was caused to sustain severe  
10 personal injuries including second and third degree burns over forty  
11 percent of his body which will require, and has required, extensive  
12 and painful treatment; plaintiff was also caused to sustain severe  
13 psychological trauma and anguish as a result of waking from a sound  
14 sleep to find himself engulfed in an inferno; by reason of the  
15 premises, plaintiff has sustained general damages in excess of the  
16 jurisdictional minimum of the Superior Court.

17 XII.

18 By reason of his injuries, plaintiff JAMES T. CLAY, has  
19 been compelled to incur obligations as and for surgical and medical  
20 services, hospitalization, x-rays, medicines and medical supplies,  
21 and will, in the future, be compelled to incur additional obligations  
22 therefor; plaintiff does not at this time know the reasonable value  
23 thereof, but prays that the same may be inserted herein when ascer-  
24 tained.

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1 XIII.

2 By reason of the premises, plaintiff JAMES T. CLAY has been  
3 deprived of his earning capacity and will, in the future, be deprived  
4 thereof; plaintiff does not at this time know the reasonable value  
5 thereof, but prays that the same may be inserted herein when ascer-  
6 tained.

7 WHEREFORE, plaintiff prays for judgement as hereinafter set  
8 forth.

9 SECOND CAUSE OF ACTION FOR STRICT LIABILITY  
10 BROUGHT BY PLAINTIFF JAMES T. CLAY

11 I.

12 Plaintiff incorporates by reference Paragraphs I through VI  
13 and VIII through XIII, inclusive, of the First Cause of Action, and  
14 makes them a part of this, the Second Cause of Action, as though fully  
15 set out herein.

16 II.

17 At all times herein mentioned, said BENSON & HEDGES MENTHOL  
18 cigarettes, and their component elements, were defective as to design,  
19 manufacture, inspection, testing, supply, service, and as to direc-  
20 tions, instructions and warnings pertaining to the use thereof and,  
21 by reason of the premises, proximately caused the injuries and damages  
22 alleged herein.

23 WHEREFORE, plaintiff prays for judgement as hereinafter set  
24 forth.

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1                    THIRD CAUSE OF ACTION FOR BREACH OF WARRANTY  
2                    BROUGHT BY PLAINTIFF JAMES T. CLAY

3                    I.

4                    Plaintiff incorporates by reference Paragraphs I through VI  
5 and VIII through XIII, inclusive, of the First Cause of Action and  
6 makes them a part of this, the Third Cause of Action, as though fully  
7 set out herein.

8                    II.

9                    On or about, and prior to, said 28th day of March, 1981,  
10 defendants, and each of them, expressly and impliedly warranted that  
11 the aforementioned BENSON & HEDGES MENTHOL cigarettes, and their  
12 component elements, were properly and safely designed, tested,  
13 assembled, were of merchantable quality and were fit for the parti-  
14 cular use for which they were intended; in fact, said cigarettes and  
15 their component elements were not as they were warranted to be, but  
16 were unsafe, dangerous and defective; defendants' breach of warranty  
17 directly and proximately caused the injuries and damages alleged  
18 herein.

19                    WHEREFORE, plaintiff prays for judgment as hereinafter set  
20 forth.

21                    FOURTH CAUSE OF ACTION FOR WILLFUL AND WANTON MISCONDUCT  
22                    BROUGHT BY PLAINTIFF JAMES T. CLAY

23                    I.

24                    Plaintiffs incorporate by reference Paragraphs I through VI  
25 and VIII through XIII, inclusive, of the First Cause of Action and  
26 make them a part of this, the Fourth Cause of Action as though fully

1 set out herein.

2 II.

3 Defendants, and each of them, wantonly, recklessly and  
4 maliciously manufactured, distributed, tested, analyzed, recommended,  
5 merchandised, advertised, promoted, utilized, and lobbied for the  
6 aforementioned cigarettes and their component elements in conscious  
7 disregard of the health and safety of the general public, including  
8 plaintiffs herein, in that defendants knew, or should have known, of  
9 the danger, risk and hazard to the general public, including the  
10 plaintiffs herein, caused by use of said cigarettes in a foreseeable  
11 manner; said defendants further conspired among themselves to conceal  
12 the realized dangers, risks, and hazards from the public in general  
13 and plaintiffs in particular.

14 III.

15 As a direct and proximate result of the aforesaid acts of  
16 defendants, and each of them, plaintiff was caused to and did suffer  
17 the aforementioned injuries and damages and, therefore, is entitled  
18 to punitive and exemplary damages in the sum of Ten Million Dollars  
19 (\$10,000,000.00).

20 WHEREFORE, plaintiff prays for judgement as hereinafter set  
21 forth.

22 FIFTH CAUSE OF ACTION FOR NEGLIGENT INFLICTION OF  
23 EMOTIONAL DISTRESS BROUGHT BY PLAINTIFF TIMOTHY J. CLAY

24 I.

25 Plaintiff incorporates by reference all of the Paragraphs of  
26 the First Cause of Action and makes them a part of this, the Fifth  
Cause of Action, as though fully set out herein.

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1 II.

2 At all times herein relevant, TIMOTHY J. CLAY was and is  
3 the natural twin brother of plaintiff JAMES T. CLAY.

4 III.

5 Plaintiff TIMOTHY J. CLAY was in close proximity to his  
6 brother JAMES T. CLAY at the time said plaintiff was injured; plain-  
7 tiff TIMOTHY J. CLAY was caused to witness his brother being trapped  
8 in the aforementioned inferno in the apartment they shared and was  
9 caused to witness the severe injuries and damages suffered by his  
10 brother, JAMES T. CLAY, as they were sustained and immediately there-  
11 after.

12 IV.

13 As a direct and proximate result of the negligence and  
14 carelessness of the defendants, and each of them, and of witnessing  
15 the events herein described, plaintiff TIMOTHY J. CLAY suffered great  
16 emotional disturbance and shock and injury to his nervous system,  
17 and has sustained general damages in excess of the jurisdictional  
18 minimum of this Court.

19 V.

20 By reason of his injuries, plaintiff TIMOTHY J. CLAY has  
21 been compelled to incur obligations as and for surgical and medical  
22 services, hospitablization, x-rays, medicines and medical supplies,  
23 and will, in the future, be compelled to incur additional obligations  
24 therefor; plaintiff does not at this time know the reasonable value  
25 thereof, but prays that the same may be inserted herein when ascer-  
26 tained.

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1 VI.

2 By reason of the premises, plaintiff TIMOTHY J. CLAY has  
3 been deprived of his earning capacity and will, in the future, be  
4 deprived thereof; plaintiff does not, at this time, know the  
5 reasonable value thereof, but prays that the same may be inserted  
6 herein when ascertained.

7 WHEREFORE, plaintiff prays for judgment as hereinafter set  
8 forth.

9 SIXTH CAUSE OF ACTION FOR INTENTIONAL INFLICTION OF  
10 EMOTIONAL DISTRESS BROUGHT BY PLAINTIFF TIMOTHY J. CLAY

11 I.

12 Plaintiff incorporates Paragraphs I through VI and VIII  
13 through XIII of the First Cause of Action, Paragraph II of the Fourth  
14 Cause of Action, and Paragraphs II, II and IV of the Fifth Cause of  
15 Action, and makes them a part of this, the Sixth Cause of Action, as  
16 though fully set out herein.

17 II.

18 By reason of the premises, and defendants' intentional,  
19 willful, wanton and reckless conduct, and disregard of the safety  
20 and well-being of the general public, including plaintiffs herein,  
21 defendants, and each of them, caused plaintiff TIMOTHY J. CLAY to  
22 suffer great emotional distress as set forth herein.

23 III.

24 As a direct and proximate result of the aforesaid acts and  
25 omissions of defendants, and each of them, plaintiff was caused to  
26 suffer the aforementioned injuries and damages and is, therefore,

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1 entitled to punitive and exemplary damages in the sum of Ten Million  
2 Dollars (\$10,000,000.00).

3 WHEREFORE, plaintiffs pray for judgement as follows:

4 FOR ALL CAUSES OF ACTION:

5 1. For general damages in excess of the jurisdictional  
6 minimum of the Superior Court;

7 2. For special damages according to proof;

8 3. For costs of suit incurred herein; and

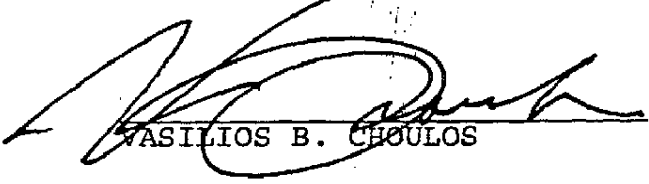
9 4. For such other and further relief as this Court may  
10 deem proper.

11 FOR THE FOURTH AND SIXTH CAUSES OF ACTION:

12 1. For exemplary and punitive damages in the sum of Ten  
13 Million Dollars (\$10,000,000.00).

14 DATED: 5-26-81

BELLI & CHOULOS

  
VASILIOS B. CHOULOS

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