

82369902

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LABORERS LOCAL 17 HEALTH AND
BENEFIT FUND, and THE TRANSPORT
WORKERS UNION NEW YORK CITY
PRIVATE BUS LINES HEALTH BENEFIT
TRUST, on behalf of themselves and
all others similarly situated,

97 CIV 4550 (SAS)

[rel. 97 CIV 4676 (SAS)]

Plaintiffs,

v.

PHILIP MORRIS, INC.; R.J. REYNOLDS
TOBACCO COMPANY; BROWN &
WILLIAMSON TOBACCO CORPORATION;
B.A.T. INDUSTRIES P.L.C.; LORILLARD
TOBACCO COMPANY, INC.; LIGGETT &
MYERS INC.; THE AMERICAN TOBACCO
COMPANY; UNITED STATES TOBACCO
COMPANY; THE COUNCIL FOR TOBACCO
RESEARCH -- U.S.A., INC.; THE
TOBACCO INSTITUTE, INC.;
SMOKELESS TOBACCO COUNCIL, INC.;
HILL & KNOWLTON, INC.,

Defendants.

**MEMORANDUM IN SUPPORT OF DEFENDANTS' ALTERNATIVE MOTION TO
DISMISS FOR FAILURE TO JOIN NECESSARY PARTIES**

The moving defendants (hereafter "defendants") respectfully submit this memorandum in support of their motion pursuant to Fed. R. Civ. P. 12(b)(7) for an order dismissing the complaint for failure to join necessary parties.

Simultaneously with this motion, defendants have moved to dismiss the complaint in the related case of United Federation of Teachers Welfare Fund v. Philip Morris, Inc. (97 CIV 4676) (SAS) ("the UFT case"). Both this action and the UFT case are purported class actions brought by

82369903

labor union health and welfare trust funds to recover money expended by the plaintiff funds in providing certain benefits to their participants who are alleged to have suffered from, or to be suffering from, claimed tobacco-related illnesses, as well as to obtain certain injunctive relief.

Plaintiffs in the this action and in the UFT case each assert the same purported claims against the same defendants, and defendants have moved to dismiss the complaints in each action on the same grounds. Therefore, rather than submitting a separate memorandum in this action containing the same arguments, defendants incorporate herein by reference, and rely upon in support of their Rule 12(b)(7) motion in this action, the memorandum submitted in support of their Rule 12(b)(7) motion in the UFT case.

Dated: October 17, 1997

Respectfully submitted,

WACHTELL, LIPTON, ROSEN & KATZ

By: 

Peter C. Hein [PH 5279]
Barbara Robbins [BR 7242]
Ben M. Germana [BG 4220]
51 West 52nd Street
New York, NY 10019
(212) 403-1000

OF COUNSEL:

Paul K. Stecker [PS 4892]
Paul F. Jones
Charles R. Chase [CC 2486]
PHILLIPS, LYTLE, HITCHCOCK,
BLAINE & HUBER LLP
3400 Marine Midland Center
Buffalo, New York 14203
(716) 847-8400

Attorneys for Defendant
Philip Morris Incorporated

82369904

JONES, DAY, REAVIS & POGUE

By: Robert W. Gaffey & Michael S. Chernis

Robert W. Gaffey [RG 4004]
Michael S. Chernis [MC 7873]
599 Lexington Avenue
New York, NY 10022
(212) 326-3939

OF COUNSEL:

Robert F. McDermott, Jr.
Donald B. Ayer
JONES, DAY, REAVIS & POGUE
Metropolitan Square
1450 G Street, N.W. Suite 700
Washington, D.C. 20005-2088
(202) 879-3939

Attorneys for Defendant
R.J. Reynolds Tobacco Company

KIRKLAND & ELLIS

By: Marjorie Press Lindblom

Marjorie Press Lindblom [ML 5970]

Peter A. Bellacosa [PB 2394]

153 East 53rd Street

New York, NY 10022

(212) 446-4800

OF COUNSEL:

David M. Bernick

KIRKLAND & ELLIS

200 E. Randolph Drive

Chicago, IL 60601

Kenneth N. Bass

Paul B. Taylor

KIRKLAND & ELLIS

655 Fifteenth Street

NW Suite 1200

Washington, DC 20005

Attorneys for Defendant Brown &

Williamson Tobacco Corporation

(including as successor by

merger to defendant The American

Tobacco Company)

82369906

GREENBERG, TRAURIG, HOFFMAN,
LIPOFF, ROSEN & QUENTEL

By: Alan E. Mansfield

Alan E. Mansfield [AM 3266]

Citicorp Center

153 East 53rd Street

New York, NY 10022

(212) 801-9200

OF COUNSEL:

Robert E. Northrip

Bruce R. Tepikian

SHOOK, HARDY & BACON, L.L.P.

One Kansas City Place

1200 Main Street

Kansas City, MO 64105

(816) 474-6550

Attorneys for Defendant

Lorillard Tobacco Company

(Incorrectly named in the
complaint as Lorillard Tobacco
Company, Inc.)

SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP

By: 

Peter J. McKenna [PM 7155]
Mark S. Cheffo [MC 6335]
919 Third Avenue
New York, NY 10022
(212) 735-3000

Attorneys for Defendant
United States Tobacco Company

DEBEVOISE & PLIMPTON

By: Steven Klugman

Steven Klugman [SK 2905]

875 Third Avenue

New York, NY 10022

(212) 909-6000

Attorneys for Defendant
The Council for Tobacco
Research-U.S.A., Inc.

SEWARD & KISSEL

By:

Anthony Mansfield [AM 1787]

One Battery Park Plaza

New York, NY 10004

(212) 574-1200

Attorneys for Defendant

The Tobacco Institute, Inc.

JACOB, MEDINGER & FINNEGAN, LLP

By: Barry S. Schaewitz

Barry S. Schaewitz [BS 3405]
1270 Avenue of the Americas, 31 Fl.
New York, NY 10020
(212) 332-7700

Attorneys for Defendant
Smokeless Tobacco Council, Inc.

DAVIS & GILBERT

By:

Bruce Ginsberg [BG 7908]
1740 Broadway, 3rd Floor
New York, NY 10019
(212) 468-4820

Attorneys for Defendant
Hill & Knowlton, Inc.

TO: WEITZ & LUXENBERG, P.C.
180 Maiden Lane
New York, New York 10038

CONNERTON & RAY
1920 L Street, 4th Floor
Washington, D.C. 20036-5004

ATTORNEYS FOR PLAINTIFFS

FFR1
454593