

Seoul Central District Court

Civil Chamber 22

Judgment

Case 2014Gahab5***** Claim for compensation

The Plaintiff National Health Insurance Service

The defendant 1. K Corp.

The defendant 2. P Korea Inc.

The defendant 3. B Korea

The defendant 4. B Korea Manufacturing Limited

Closing the pleading 2020. 10. 23.

Judgment 2020. 11. 20.

Main Sentence

1. All plaintiff's claims against the defendants are dismissed.
2. The plaintiff is responsible for the litigation costs.

Purpose for claim

The defendants shall jointly pay the plaintiff 53,319,553,950 Won and the amount calculated at an annual rate of 20% from the day after delivery of the duplicate copy of the case to September 30,2015. Pay the money calculated at an annual rate of 15% from the next day to the May 31,2019, and at an annual rate of 12% from the next day to the day of full payment.

Reason

1. Basic facts

A. Status of the Parties Involved

- 1) The Plaintiff is the insurer of national health insurance under Article 13 of the National Health Insurance Act, which administers the affairs of supervising the eligibility of the insured, imposing and collecting insurance contributions, etc., administrating insurance benefits, paying insurance benefit costs, etc. as specified in the paragraphs of Article 14 of the same Act.
- 2) The defendant, K was founded as the [REDACTED] in April 1987, changed the name to the [REDACTED] in 1982 and to the present name in December 2002; has run businesses including the production and distribution of tobaccos, production and distribution of tobacco business related materials, supervision of leaf tobacco cultivation, etc.; and has been producing and selling cigarette products listed in Attachment 1, such as '[REDACTED]', '[REDACTED]', '[REDACTED]' and others.
- 3) The defendant, P Korea Inc. (hereinafter referred only to as 'Defendant P Korea') was founded in March 1989, has run businesses including the production and distribution of tobaccos and has been importing, producing and selling cigarette products listed in Attachment 2, such as '[REDACTED]', '[REDACTED]', '[REDACTED]' and others.
- 4) The defendant B Korea corporation (hereinafter referred to as 'Defendant B Korea') was founded in September 1990, has run businesses including the import, disbution and the sales of tobacco and relevant

goods and the defendant, B Korea Manufacturing Limited (hereinafter referred only to as ‘Defendant B Korea Manufacturing ’) was founded around September 2001, has run businesses including the distribution, sales, etc. of cigarretes, raw ingredients for tobacco and has been importing, producing and selling cigarettes listed in Attachment 3, such as ‘[REDACTED],’ ‘[REDACTED],’ and others.

B. The Plaintiff’s Disbursement of Insurance Benefit Costs, etc.

- 1) The 3,465 people listed in the ‘Name Column’ in the Attached <Table> (hereinafter referred to as the ‘Persons subject to this Case’) are people who, exclusively or in redundancy, smoked the cigarettes imported¹, manufactured and sold by the defendants and who have smoking histories of at least 20 pack-years².
- 2) The Persons subject to this case have been diagnosed with either small cell carcinoma or squamous cell carcinoma out of the cancers of the lungs (hereinafter referred only to as ‘the Diseases in this Case’ when collectively referring to squamous cell carcinoma, among small cell carcinoma, squamous cell carcinoma or laryngeal cancer, out of the cancers of the lungs).
- 3) The Plaintiff disbursed a total amount of 53,319,553,950 won (KRW) as specified in the <Table> below from around 2003 to around 2012, as costs of benefits (NHIS payments) since the Persons subject to this Case were diagnosed as the Diseases of this Case.

<Table>

Diagnosis	Persons subject to this Case (Number of people)	Costs of Benefits (KRW)
Cancers of the lungs (squamous cell carcinoma)	2,153	35,341,953,140 won
Cancers of the Lungs (small cell carcinoma)	837	13,270,212,740 won
Laryngeal cancer (squamous cell carcinoma)	475	4,707,388,070 won
Total	3,465	53,319,553,950 won

- 4) The smoking histories of the Persons subject to this Case, types of diseases developed among the Persons subject th this Case out of the Disease of this Case, NHIS payments made with regards to the Persons subject to this Case, and the details of the cigarettes³ smoked by the Persons Subject to this Case among thos imported, manufactured and sold by the defendants are as specified in the Attached 4 <Table>.

¹ Although Defendant K has not run the business of importing like other defendants, the businesses of the defendants will be phrased as ‘import, manufacturing and selling’ for convenience, when referred to at the same time.

² 1 pack-year is a smoking history that equals to smoking 1 pack per day for 1 year.

³ In the ‘Remarks’ column of Attachment 4 <Table>, ① the Persons who only smoked the products of Defendant K were marked ‘○,’ ② those who smoked the products of Defendant K and Defendant P Korea ‘●,’ ③ those who smoked the products of Defendant K, Defendant B Tobacco Korea and Defendant B Manufacturing ‘●,’ and ④ those who smoked the products of all the defendants were marked ‘●’ (consistent with the marks made by the Plaintiff).

[Basis for Recognition] Fact without argument, Intent of the details in each of the Gab evidentiary documents no. 45, 80, 89, 143 and 215 (including designated numbers if present; here in after the same shall apply) and the entire pleading

2. Decision on the defence pleadings of the Defendant K prior to this case

A. On the defence pleading that the lawsuit has been filed by a person without legal capacity

1) Summary of the defence pleading

The lawsuit filed for this case is irrelevant to the Plaintiff's scope of affairs set forth in the National Health Insurance Act. Accordingly, the lawsuit for this case is inappropriate since it was filed by a person without legal capacity.

2) Decision

a) While the legal capacity of a company is limited by the law that was the legal basis for the company's establishment and by the purpose set forth in the articles of association of the company, the acts within the scope of purpose are not limited to the purpose specified in the articles of association itself and include all the acts required both directly and indirectly to carry out such purpose (See Supreme Court Decision 2009Da63236 decided on December 10, 2009).

b) The National Health Insurance Act Article 14(1) Sub-paragraphs 3 and 5 regulate the administration of insurance benefits and the payment of insurance benefit costs as the affairs of the Plaintiff. However, the Plaintiff filed a lawsuit for this case on grounds that it suffered significant damage corresponding to the disbursed amount by paying the insurance benefit costs for unlawful acts of the Defendants, and in order to recover such damages. Thus, the lawsuit for this case by the Plaintiff is appropriate to be deemed as the acts directly and indirectly related to the 'administration of insurance benefits' or the 'payment of insurance benefit costs'; the evidences submitted by the Defendant K do not suffice for recognizing the lawsuit for this case by the Plaintiff as having been out of the scope of the purpose or the affairs set forth in the National Health Insurance Act; and there is no evidence otherwise for such recognition.

c) Thus, there exists no cause for the defense prior to this case of the Defendant on this part.

B. On the defence pleading that the right of action has been abused

1) Summary of the defence pleading

The plaintiff filed the lawsuit for this case to wage a campaign against smoking rather than to remedy its rights. Accordingly, the lawsuit filed for this case is inappropriate as it is an abuse of the right of action since the conduct corresponds to wrongfully using the judicial system for purposes other than the remedy of rights.

2) Decision

As the plaintiff is primarily requesting for the indemnification of damages on grounds that it suffered damages of disbursing insurance benefit costs and secondarily exercising the rights to demand reimbursement set forth in Article 58 of the National Health Insurance Act, the evidences submitted by the Defendant K do not suffice for the recognition that the Plaintiff wrongfully used the judicial system for purposes other than the remedy of rights. Thus, there exists no cause for the defense prior to this case of the Defendant on this part, as well.

C. On the defence pleading to the effect that there are no legal benefits

1) Summary of the defence pleading

Even if the Plaintiff paid insurance benefit costs regarding the Persons subject to this Case, such payments had merely been made from the financial resources created with the **tobacco** charges paid by the Persons subject to this Case and cannot be deemed that damages have been incurred to the Plaintiff. Therefore, the Plaintiff does not have any legal benefits from filing the lawsuit for this case.

2) Decision

In case the primary cause or the secondary cause of action of the Plaintiff for this case is accepted, the Plaintiff achieves the legal benefit of recovering the amount it disbursed as insurance benefit costs, etc. Thus, it is difficult to deem that the Plaintiff does not have any legal benefits from filing the lawsuit for this case. Furthermore, the decision on whether the conducts of the Defendants incurred any damages to the Plaintiff ultimately has to be made in this case. Thus, there exists no cause for the defense prior to this case of the Defendant on this part, as well.

D. On the pleading to the effect that the lawsuit is illegitimate since it is discretionarily granting the rights to perform the litigation

1) Summary of the defence pleading

Since the Plaintiff is elaborating the damage suffered by the Persons subject to this Case as its damage and is requesting for the indemnification of damages on its own, the substance of the lawsuit for this case is a discretionary granting of rights to perform the litigation and thus is illegitimate.

2) Decision

As it is obvious that the Plaintiff is exercising the right of claims to demand reimbursement set forth in Article 58 of the National Health Insurance Act, it is difficult to deem the lawsuit for this case as a discretionary granting of rights to perform the litigation by which the law does not permit (See the purpose of decision in Supreme Court Decision 2009Da23160 decided on September 13, 2012). Thus, there exists no cause for the defense prior to this case of the Defendant on this part, as well.

3. Decision on the Primary Cause of Action (Claims to demand for indemnification for the damages incurred by the unlawful acts of the Defendants as the direct victim)

A. Summary of the primary cause of action

The Diseases in this Case developed in the Persons subject to this Case due to the defects in the tobacco imported, manufactured and sold by the Defendants and other unlawful acts by the Defendants, and the Plaintiff disbursed a total amount of 53,319,553,950 won (KRW). Eventually, the unlawful acts of the Defendants incurred damages to the Plaintiff of disbursing insurance benefit costs as specified above and thus, the defendants have the liability to compensate an indemnification amount equivalent to the disbursement amount of the insurance benefit costs.

B. Decision

While the Plaintiff disbursed a total amount of 53,319,553,950 won (KRW) as examined above, it is difficult to accept the Plaintiff's primary cause of action of the request for the indemnification of damages equivalent to the above disbursement amount for the following reasons.

- 1) In order for a liability of compensation for damages due to unlawful acts to be established, 'damage' is required to have been incurred to the damaged party in reality, and a causal relationship between the unlawful act of the assailant and the damage must be recognized. 'Damage' here means infringement upon the benefit and protection of law: merely a decrease in the property of a damaged party or a disadvantage upon the property of a damaged party cannot be deemed as damages establishing the liability for unlawful acts, and only the cases where the decrease in the property or a disadvantage upon the property cannot be justified by legal orders such as contracts, Acts and subordinate statutes, etc. will be

deemed as damages establishing the liability for unlawful acts. Thus, the cases where the damaged party is required to bear any decrease in the property or any disadvantage upon the property in accordance with any contract or any Act and subordinate statute, such decrease in the property or disadvantage upon the property cannot be deemed as damages. Furthermore, even if there is any decrease in the property or any disadvantage upon the property of the damaged party, the causal relationship cannot be deemed to exist between the unlawful acts and the damage in case such decrease or disadvantage has been incurred not by the unlawful acts of the assailant but merely by a third causal relationship.

This case is considered in light of the above legal principles. The Plaintiff is the insurer of national health insurance (National Health Insurance Act Article 13) under the supervision of the Minister of Health and Welfare that bears the legal obligation to pay insurance benefit costs in case any insurance incident to which medical services or health care are provided with regards to diseases, injuries, childbirth, etc. of the insured or their dependants (National Health Care Act Article 14(1) Subparagraph 5). In addition, the Plaintiff collects insurance contributions from the persons obligated to pay insurance contributions (National Health Care Act Articles 77 and 69); may make overdue notice to any person who fails to pay the insurance contributions and collect in the same manner as national taxes in arrears are collected (National Health Care Act Article 81); and the State shall subsidize an amount equivalent to 14/100 of the amount of anticipated revenues from insurance contributions for the relevant year to the Plaintiff each year within budgetary limits (National Health Care Act Article 108(1)). The Plaintiff may also be subsidized by the National Health Promotion Fund as set forth in the National Health Promotion Act (National Health Care Act Article 108 (2) and (4)), and such subsidies are used as insurance benefit costs for diseases suffered by the insured and their dependants that are caused by smoking (National Health Insurance Act Articles 108, 2 and 4). In light of the overall regulations of the National Health Insurance Act, the Plaintiff's payment of insurance benefit costs to health care institutions is performing the obligation as the insurer according to the anticipation of the National Health Insurance Act, and is collecting in accordance with the National Health Insurance Act or is merely executing subsidized funds. Therefore, even if there is the Plaintiff suffered any decrease in the property or any disadvantage upon the property, such are matters anticipated by the National Health Insurance Act since the Plaintiff has been founded and is appropriate to be deemed as a disadvantage to be borne by the Plaintiff, whereas it is difficult to deem that infringement upon any legal benefit of the Plaintiff. Moreover, the disbursement of such insurance benefit costs of the Plaintiff has merely been paid based on the 'insurance relationship of becoming the insured of the national health insurance,' rather than from the unlawful acts of the

Defendants, and thus it is difficult to deem that a proximate causal relationship is recognized between the acts of the Defendants and the disbursement of insurance benefit costs.

- 2) The Commercial Act Article 682(1)⁴ sets forth the general regulations on the subrogation by insurer against third parties and the National Health Insurance Act Article 58 stipulates that ‘when the NHIS has provided an insurance benefit to the insured or dependent because the grounds for the insurance benefit have arisen due to the act of a third party, the NHIS shall have the right to claim compensation from the third party up to the amount of the expenses incurred for the benefit concerned.’ The reasons behind prescribing the subrogation by insurer or similar regulations including the Commercial Act Article 682(1) and the National Health Insurance Act Article 58 is that it is in violation of the principles of the accident insurance system to ‘enable the insured to hold and exercise the right to claim to a third party even after the concerned insured is paid the insurance benefit costs from the insurer rather leads to profits exceeding the recovery of the damages suffered,’ and that it is irrational for a third party, liable for indemnification, exempt from such liabilities from the insured receiving insurance benefit costs, and thus the purpose is to eliminate such violation and irrationality and to attribute any profits to the insurer (See Supreme Court Decision 87DaKa1669 decided on April 25, 1989). Accordingly, in light of the legislative intent of the Commercial Act Article 682(1) and the National Health Insurance Act Article 58 above, it is appropriate to interpret that the regulation on the subrogation by insurer above has been prescribed by the legislator on the premise that the insurer, etc. is not able to acquire the right to claim compensation for damages on its own against the assailant (i.e. if it is deemed that the insurer is able to claim compensation for damages directly on the assailant, it is not required to arrange a procedure to recover the insurance benefit costs by deliberately prescribing a regulation on the subrogation by the insurer).
- 3) Meanwhile, the right held by the Plaintiff according to the National Health Insurance Act Article 48 is the right to claim compensation from the third party up to the amount of the expenses incurred for the benefit concerned (See Supreme Court Decision 2012Da200028 decided on December 13, 2012). Thus, the assailant is still able to claim defense causes such as the extinctive prescription and comparative negligence on the damaged party against the plaintiff that succeeds the right to claim compensation for damages. However, if the Plaintiff disbursed the insurance benefit costs and interprets that it acquires the right to claim to demand for indemnification as the damaged party, other than the right prescribed in

⁴ The Commercial Act Article 682(1): If a loss has occurred due to acts committed by a third party, the insurer that has paid the amount of insurance coverage shall acquire the rights the policy holder or the insured has against the third party to the extent of the amount of insurance coverage paid.

the National Health Insurance Act Article 58, it will be irrational since the assailant will be in a disadvantageous position of no longer being able to claim the ground for defense against a plaintiff that asserts it is a direct damaged party, even though the assailant is able to confront the plaintiff subrogating the assailant's right to claim to demand for indemnification on the ground for defense against the damaged party.

- 4) Meanwhile, the Plaintiff asserts that it is able to claim compensation for the damage against the Defendants as long as it disbursed interest benefit costs for causes of unlawful activities of the Defendant, on ground of the Supreme Court decision that 'in case a near kindred suspended its business for the damaged party to change its name, it is possible to claim compensation for the damages of lost profit from suspension of business against the assailant (See Supreme Court Decision 81DaKa737 decided on April 13, 1982).

However, in case a near kindred directly changes the name of the damaged party or paid for the name change fee for the damaged party as a part of performing the duty to support, it incurs the decrease in the property or disadvantage upon the property surpassing the normal duty to support, and it is difficult to deem that a near kindred has legal obligations to bear such disadvantage. Accordingly, this case in which the Plaintiff disbursed the insurance benefit costs anticipated in accordance with the National Health Insurance Act, etc. and should bear such disbursement of costs cannot be regarded in the same light with the case of the Supreme Court Decision above.

- 5) Furthermore, the Plaintiff asserts that the Defendants have the obligation to compensate since the amount equivalent to the insurance benefit costs disbursed may be deemed at least as an indirect damage, if not a direct damage, and the Defendants knew or may have known that the Plaintiff will have to disburse insurance benefit amounts with regards to the Diseases in this Case which developed in tobacco smokers on ground of the Supreme Court Decision to the effect that 'the assailant has the obligation of compensation for indirect damages, not damages to the direct object of wrongful acts, due to special circumstances, only in case it is recognized that the assailant knew or may have known such circumstances' (See Supreme Court Decision 94Da5472 decided on January 26, 1996).

However, the damages to the direct object or the indirect damages indicated in the Supreme Court case above are appropriate to be deemed that both damages are based on the premise that 'infringement upon the benefit and protection of law enjoyed by the damaged party' occurred and, in the case of indirect damages, the obligation of compensation is limited to cases where the assailant is recognized to have

known or may have known the special circumstances.⁵ Yet, even if the Plaintiff disbursed insurance benefit costs as examined above, it is difficult to deem that infringement of the protection and benefit of law enjoyed by the Plaintiff, i.e. the damage itself, has occurred and thus the legal principle decided in the above case cannot be applied to this case as it is.)

- 6) Furthermore, even if the Plaintiff paid insurance benefit costs to the Persons subject to this Case, it cannot be deemed that the expenses was incurred by the unlawful acts of the Defendants unless it has been proved that the Diseases in this Case developed in the Persons subject to this case arised from the unlawful acts of the Defendants. However, it is difficult to deem that it has been proved that the Diseases in this Case developed in the Persons subject to this case arised from the unlawful acts of the Defendants as seen from the following, and thus it cannot be deemed that an appropriate causal relationship is recognized between the Plaintiff's insurance benefit amount expenses and the Defendants' acts.

C. Conclusion on the Primary Cause of Action

The Plaintiff cannot be deemed as claiming indemnification for the damages against the Defendants a direct damaged party disbursing insurance benefit costs with regards to the Persons subject to this Case, and thus the Plaintiff's claim related to the primary cause of action has no reason requiring further examination with regards to the other requirements establishing the liability for unlawful acts.

4. Decision on the Secondary Cause of Action (exercise of the rights to demand reimbursement in accordance with the National Health Insurance Act Article 58)

A. Summary of the secondary cause of action

As the Plaintiff has the right to claim compensation from the third party up to the amount of the expenses incurred for the benefit concerned, the Defendants have the liability to compensate for the damages prescribed in the above provision.

B. Premise for decision

⁵ I.e. the Supreme Court Decision 94Da5472 decided on January 26, 1996 deemed that 'in case an electric wire has been cut off from the assailant impacting a utility pole located in a factory district, the damaged party running a factory using the electricity supplied via the concerned electric wire suffered operating loss due to the stoppage of factory operation over a significant period from the suspension of the power supply, and any breakdown of the machineries being operated in the factory at the time or any data being worked on becoming unavailable to the sudden stoppage of the factory' are 'indirect damages' and determined whether the obligation of compensation for damages is established or the scope of compensation for damages based on whether such damages have been predictable. In other words, the above Supreme Court Decision ruled that the operating profit loss amount, machinery breakdowns, data damages, etc. tantamount to the infringement of property rights, i.e. a legal interest enjoyed by the damaged party and it is difficult to deem that the damaged party has legal obligations to bear the above damages, and thus such damages tantamount to the 'damage' establishing the liability for an unlawful act (provided, that the determination on whether the compensation for indirect damages shall be made relies on whether the possibility of prediction exists).

1) Since the nature of the rights NHIS acquires in accordance with the National Health Insurance Act Article 58 is the right of the insured to claim compensation from the third party as examined earlier (See Supreme Court Decision 2012Da200028 decided on December 13, 2012), it must first be proved that the Persons subject to this Case, who are the insured of the national health insurance, have the right to claim compensation from the Defendants in order for the Plaintiff's secondary cause of action to be recognized.

2) However, it will first be examined on whether the respective right to claim compensation above is recognized as the Plaintiff asserts that the Persons subject to this Case have the right to claim compensation under the Product Liability Act, the right to claim compensation for general unlawful acts, and the right to claim compensation for violation of the Consumer Protection Act or the Framework Act on Consumers.

C. Whether the liability for compensation under the Product Liability Act is recognized⁶

1) Whether a product liability from a defect in design is established

A) The Plaintiff's Assertion

(1) Since the harmfulness of tobacco mainly comes from the tar component contained in the tobacco smoke and the addiction comes from the nicotine inside the tobacco, there is a defect in design for not selecting a reasonable alternative design to produce relatively safer tobacco by eliminating or removing the harmfulness or the toxicity of tobacco in the way of completely eliminating or reducing the tar and nicotine in the tobacco although such design exists (First assertion on the defect in design).

(2) The Defendants made the smokers to easily be addicted to tobacco (increase in addiction) by using additives, etc. to reduce the distaste of tobacco in the way of using various additives to make the taste and scent of the tobacco better and to increase the degree of absorption and the smoking amount (increase in attractancy) in the process of importing, manufacturing and selling tobacco, and such additives used as above are chemicals that have toxicity themselves or may induce toxicity in the human body when combusted. Therefore, the Defendants' using additives while manufacturing tobacco is a defect in design (Second assertion on the defect in design).

⁶ As the issue commonly applies to the Defendants, the decision is made without distinguishing the time of founding, whether the defendant manufactures or sells, etc. for each defendant.

(3) As the design method of applying perforated filters to cigarettes⁷ makes the smokers feel the tobacco smoke to be mild and light, thereby misconceiving the harmfulness of smoking and increases the addition to tobacco by enabling a substantial amount of smoke to be inhaled deeply, it is a defect in design (Third assertion on the defect in design).

B) Decision

(1) Relevant legal principles

(A) The term “defect in design” means the lack of safety caused by failure of a manufacturer to adopt a reasonable alternative design in a situation where any damage or risk caused by the product would otherwise have been reduced or prevented if an alternative design had been adopted. (Product Liability Act Article 2 Sub-paragraph 2)

(B) In general, a person manufacturing and selling products should manufacture products that have safety within the expectable scope in light of the current technology level, economic feasibility, etc. in terms of the structure, quality, performance, etc. of the products and bears the liability of compensation for unlawful acts in case any user suffers damages from defects of not having such safety, and the decision on whether there exists the so-called defect in design which means the lack of safety caused by failure of a manufacturer to adopt a reasonable alternative design in a situation where any damage or risk caused by the product would otherwise have been reduced or prevented if an alternative design had been adopted in view of the generally-accepted idea in the society, comprehensively taking into account various circumstances such as the characteristics and purpose of the product; details of the product expected of by the user; details of expected risks; the user’s awareness regarding the risks; possibility of the user to avoid the risk; possibility and economic costs of an alternative design; relative merits and demerits of the adopted design and the alternative design, etc. (See Supreme Court Decision 2011Da22092 decided on April 10, 2014)

(2) Whether to recognize the defect in design

In contemplating this case in view of the above legal principle, when considering the following circumstances recognized in aggregation of the details in each evidentiary documents EulGa No. 12, 40, and 66 through 88 and Eulna No. 20 through 24 and 47 through 53 and the entire pleading, the evidences submitted by the Plaintiff do not suffice to recognize that there is a defect in the design of the tobacco imported, manufactured and sold by the Defendants; and there is no evidence to recognize it otherwise.

(A) Taking into account the fact that combusting tobacco leaves and inhaling the smoke is the essential characteristic of tobacco; that the taste of tobacco differs depending on the amount of nicotine and tar

⁷ Refers to cigarettes made by cutting tobacco leaves and rolling up in papers.

contained in the tobacco smoke and the tobacco consumers select and smoke the tobacco with the taste or scent he/she like; that the tobacco consumers intend to obtain the pharmacological effect of nicotine including the sense of stability, etc. and removing nicotine will make it unable to obtain such effect; and that it is not simple to set an appropriate level of nicotine at a degree not addicting the smokers due to these characteristics of tobacco, it cannot be deemed that not adopting the methods to completely eliminate nicotine or tar, or reduce the amount of nicotine or tar contained in tobacco, even if such methods exist, is a defect in design in itself and it is difficult to deem that the Defendants failed to adopt a reasonable alternative design in a situation where any damage or risk caused to tobacco consumers from smoking would otherwise have been reduced or prevented if an alternative design had been adopted (related to the first assertion on the defect in design).

(B) While the Plaintiff asserts that the Defendants used ammonia compounds to manipulate the pH level of the tobacco some to increase the adoption rate of nicotine, evidences to recognize such assertion are not sufficient (related to the first assertion on the defect in design i)

(C) In contemplating whether using additives in manufacturing tobacco is a defect in design, taking into account the following circumstances recognized based on the evidences submitted by the Defendants and the entire pleading, i. e. ① many ingredients such as ammonia, pyridine, methylamine, dimethylamine, hydrazine, formic acid, etc. are also contained in tobacco leaves, ② it is difficult to recognize that tobacco containing additives including flavor are more harmful than those without additives, or cause differences in the smoking behavior, smoking amount or inhaled amount of tobacco, and that the toxicity of tobacco smoke seems not to increase even through the evaluation of the usage action by combining generally used additives to tobacco, ③ in particular, the tobacco without additives should be deemed as a reasonable alternative design in order to recognize that the Defendants' use of additives in manufacturing tobacco is a defect in design, but the guidelines of fourth session in the Conference of the Parties (Evidentiary document EulNa No. 47) to the WHO Framework Convention on Tobacco Control specifies that 'any reduction of their attractiveness resulting from removing or reducing certain ingredients in no way suggests that those tobacco products are less dangerous for human health' and the American Cancer Society it published a research finding mentioning that 'while some tobacco are marketed and sold as having no chemicals or additives and rolled with 100% cotton filters, there's no proof that they are healthier or safer than other tobacco,' ④ there exists research findings that most of the ingredients added to tobacco were observed not to have any adverse effects in animal tests and reported as not being harmful, ⑤ approximately 98% of the ingredients known to be tobacco additives have been approved by the Food & Drug Administration (FDA) as food additives or materials included in the GRAS (Generally Recognized as Safe) list or the FEMA (Flavor and

Extract Manufacturer's Association) list that FDA evaluated of being safe in general, and the remaining 2% is approved by government institutions of other countries, does not subject to regulatory approval, or is deemed as a general food item, ⑥ with regards to individual additives, the Plaintiff asserts that theobromine created from cocoa or caffeine is harmful for its bronchiectatic effects but the evidence is not sufficient to recognize that theobromine created during smoking causes bronchiectatic effects considering the amount of cocoa used as an additive to tobacco and theobromine contained in such cocoa, ⑦ while the Plaintiff asserts that the acetaldehyde created when the sugar used as an additive is combusted increases the dependency on tobacco, the acetaldehyde in the tobacco smoke is not created when the sugar used as the additive is combusted but rather is mainly created when the polysaccharide such as cellulose etc. contained in natural tobacco leaves and it has not been objectively verified that acetaldehyde is created more from the sugar added and increases the harmfulness (Evidentiary Document EulGa No. 84), ⑧ the analysis on the pyrolytic products of sugar rather showed that acetaldehyde has not been detected or indicated that an infinitesimal amount existed (Evidentiary Document No. 85), ⑨ there exists research findings that the analysis on acetaldehyde in the tobacco some after adding 10.5% of sugar to tobacco, far more than the regular added amount, did not show any significant difference from tobacco without sugar (Evidentiary Document No. 86), and that ⑩ a report in 2002 by the Health Council of the Netherlands specified that the 'acetaldehyde in the cigarette smoke does not have direct potentiation to human. There is no evidence that the acetaldehyde contained in the tobacco smoke reaches the brain,' the evidences submitted by the Plaintiff do not suffice to recognize that the Defendants incurred or increased the harmfulness or addictiveness of tobacco by using additives in manufacturing tobacco or that not using additives in manufacturing tobacco is a safer reasonable alternative design (regarding the second assertion on defect in design ii).

(D) In view of the fact that the perforated filter of the cigarettes is a design method adopted to reduce the amount of nicotine and tar in the tobacco smoke⁸ and that there exists research findings that the perforated filters reduce the risk of diseases such as the cancer of the lungs, etc. (Evidentiary Document EulNa No. 51), the evidences submitted by the Plaintiff do not suffice to recognize that using perforated filters is a defect in design (related to the third assertion on defect in design).

⁸ Since air flows in through the perforations when the tobacco smoke pass through the filter and is mixed with the tobacco smoke, the smoker inhales more air whenever he/she smokes and therefore inhales less cigarette smoke compared to tobacco without perforated filters.

2) Whether a product liability from a defect in indications is established

A) The Plaintiff's assertions

Even though the Defendants should indicate a clear and strong warning regarding the harmfulness and addictiveness of tobacco in manufacturing and selling tobacco that have harmfulness and addictiveness it did not properly perform the indication of reasonable warning set forth in the Product Liability Act ① by simply indicating a warning statement to the effect that smoking is harmful to health without including a detailed information on the harmfulness of tobacco, ② by indicating the warning on the addictiveness of smoking only since 2008 and ③ even by indicating an advertising phrase, etc. to make it unable to properly perceive the severity of the harmfulness or the addictiveness of tobacco. Therefore, the Defendants should bear the liability to compensate for damages under the Product Liability Act for defect in indications.

B) Whether to recognize the defect in indications

(1) Relevant legal principles

In case the manufacturer, etc. failed to give a reasonable explanation, instructions, warnings or other indications where damages or risks caused by a product could have been reduced or avoided if it had given such indications, liabilities for unlawful acts may be recognized regarding such defect in indication (defect in instruction·warning), the decision should be made in view of the generally-accepted idea in the society, comprehensively taking into account various circumstances such as the characteristics the product; the form commonly used; the details of the product expected of by the user; the details of expected risks; the user's awareness regarding the risks and the possibility of the user to avoid the risk (See Supreme Court Decision 2011Da22092 decided on April 10, 2014).

(2) Detailed decision

(A) A person manufacturing and selling tobacco should indicate warnings such as the danger of smoking on the tobacco in accordance with the Act and subordinate statute related to Attachment 5, and the Defendants are not in dispute that they performed the obligation of indication set forth in the above relevant Act and subordinate statute.

(B) In addition to the recognized facts and comprehensively taking into account the following circumstances recognized based on the evidences submitted by the Defendants (Evidentiary document EulNa No. 7, 87, or EulNa No. 95, 63) and the entire pleading, i. e. ① **tobacco** was introduced into Korea in the early 1600's and have been consumed by way of combusting dried **tobacco** leaves and inhaling the smoke since those days, this way of consuming tobacco has been practiced prior to the Defendants' manufacturing of

tobacco, ② the aspect that smoking may be harmful to health and the aspect that smoking may have certain useful functions for the mind and body, that is the controversies of the harmful effect and the efficacy of tobacco have been continued since the time of introduction into the country ③ various epidemiological research findings regarding the relevance of smoking and lung cancer, etc. were announced since the 1950's; the Royal Society of Medicine in the UK announced an official report at the government level regarding the danger of smoking in 1962; and the research finding announced in the US Surgeon General's Report in 1964 that smoking is the major cause of lung cancer, ④ there were coverages of the details of the reports by the UK and the US as specified above via newspapers, etc. at that time and there were scores of coverages in newspapers, etc. that a large quantity of harmful ingredients such as nicotine, carbon monoxide, benzopyrene, nitrogen oxide, pesticide residues, etc. are contained in the tobacco smoke, ⑤ the Defendants further indicated warning statements that smoking is harmful to health or statements including the fact that sales is prohibited to youth under 19 in accordance with the National Health Promotion Act, the Youth Protection Act, etc. ⑥ it seems that such media coverages, legal regulations, etc. made the fact that smoking may be the cause of various diseases including cancer in the respiratory system including the lungs to be widely perceived in society at large including tobacco consumers, ⑦ even if a dependence in nicotine may arise to some degree by smoking, it not only seems to be a matter of selection by free will on determining whether to start smoking or continue smoking but also seems that there had been a wide perception among tobacco smokers that it is not easy to quit smoking once a person started to smoke, ⑧ while it seems to be true that the Defendants indicated the warning on the addictiveness of smoking besides the harmfulness of smoking only since 2008 while they have been importing, manufacturing and selling tobacco, it is difficult to deemed that the Defendants violated the relationship with smokers even if they did not indicate the indications no required by the Act and subordinate statutes at the time, as long as they performed the obligation to indicate as required by the Act and subordinate statutes at that time, ⑨ even if the Defendants used expressions like 'nature, pure, well-being, 1mg, mild, light, gently refreshingly, capability to filter out harmful ingredients, detoxification,' etc. with the purpose of promoting the sales, etc. of tobacco, the tobacco consumers were in the position of freely determining on whether to smoke or not by comprehensively considering the warning statement and the advertising phrases as above indicated by the Defendants, and it is difficult to deem that the advertising phrases as above to have an essential impact to the free will on determining whether to start smoking or to continue smoking (there is no evidence to recognize that the tobacco smokers arrived at a state of starting smoking or continuing smoking without perceiving the harmfulness or addictiveness of tobacco from the above advertising phrases in spite of the warning statements of the harmfulness or addictiveness of tobacco),

it is difficult to recognize that there is a defect in the indications of the tobacco manufactured and sold by the Defendants even if the Defendants, who are the manufacturers of the tobacco, did not indicate additional explanations or warnings, etc. other than the warning statement on the tobacco pack in accordance with the regulations of the Act and subordinate statutes.

3)Whether the tobacco imported, manufactured and sold by the Defendants have any defect lacking safety ordinarily expected of a product

In addition to the recognized facts and comprehensively taking into account the following circumstances recognized based on the aforementioned evidences and the entire pleading, i. e. ① tobacco have been deemed as an item of personal preference in Korea and the manufacturing, selling and smoking thereof have been legally and socially allowed without defining any restrictions regarding the quality or level and the circumstances cannot be deemed that such legal system or the generally-accepted idea in the society changed, and thus it is difficult to deem that the safety ordinarily expected of the tobacco itself, which is an item of personal preference, is lacked merely on the circumstances that carcinogens exist in tobacco and the smoke thereof, that this may cause damage to the health of the smokers, and that a dependency may occur, ② there are cases where carcinogens exist in products that are not processed and the types of carcinogens increases by applying heat to foods, ③ tobacco have been consumed by way of putting dried tobacco leaves into tobacco-pipes or pipes or rolling dried leaves in paper, combusting and inhaling the smoke since the introduction of tobacco into Korea, harmful ingredients including tar, nicotine, carbon monoxide, etc. are created in the smokes when combusting dried tobacco leaves and most of the harmful ingredients are deemed to be combustion products of tobacco leaves, ④ nicotine exists in the natural state of tobacco leaves and is absorbed in vivo when the leaves are combusted and inhaled, and such method of smoking was not developed by the Defendants, ⑤ nicotine does not seem to cause dependency on all the smokers and even if a dependency on nicotine occurred, it can be deemed as a matter of selection by free will on determining not only whether to start smoking but also to continue smoking, considering the degree of such dependency, and the symptoms and severity of disorders caused, ⑥ the Defendants' manufacturing of **tobacco** have been allowed by laws and regulations, etc. even if there exists carcinogens in the **tobacco** manufactured by the Defendants and the smoke thereof, or if the nicotine contained in the **tobacco** smoke may cause dependency on nicotine, impedes the quitting of smoking and contributes to the production of cancer, it is difficult to deem based only on these facts that there is a defect of lacking safety, etc. ordinarily expected of **tobacco** manufactured by the Defendants (See Supreme Court Decision 2011Da22092 decided on April 10, 2014).

4) Sub-conclusion

Therefore, it is difficult to deem that the Defendants bear obligations for unlawful acts under the Product Liability Act regarding the Persons subject to this Case based only on the evidence submitted by the Plaintiff.

D. Whether an obligation for general unlawful act is established

1) The Plaintiff's assertion

As the Defendants knew as the importer·manufacturer·seller of the **tobacco** that **tobacco** are products with harmfulness and addictiveness, they have the fault for not taking sufficient measures even though they should have taken necessary measures to avoid or reduce the risks (violation of the duty to evade the results); rather proactively denied, or reduced and concealed the risks by using advertising phrases as 'low tar, low nicotine,' giving the perception to **tobacco** consumers that **tobacco** with less tar or nicotine is less harmful, thereby conducting a fraudulent act of encouraging smoking (on actively fraudulent conducts). Moreover, the Defendants committed unlawful acts such as increasing the smoking population, etc. through illegal promotional activities, etc. (other unlawful acts) Therefore, the Defendants bear the obligation for unlawful acts regarding the Persons subject to this Case as joint tort-feasors.

2) Decision

Comprehensively taking into account the following circumstances recognized based on the evidences examined earlier and the entire pleading, the evidences submitted by the Plaintiff does not suffice to recognize that the Defendants violated the duty to evade the results or committed unlawful acts defrauding, etc. the tobacco consumers including the Persons subject to this Case and there is no evidence to recognize it otherwise.

- A) The fact that it is difficult to deem that there is any defect in the design or the indication of the **tobacco** imported, manufactured and sold by the Defendants or that such **tobacco** lack safety ordinarily expected of a product is as examined earlier. Thus, the Plaintiff's assertion that the Defendants performed the measures to evade the results on the premises that the **tobacco** have defect in the design or the indication and lack ordinary safety cannot be accepted as is (on violation of the duty to evade the results).
- B) The Plaintiff asserts that the Defendant K reduced the harmfulness or the addictiveness of smoking by denying the danger of smoking through the publication and distribution of the booklet titled, 'Is smoking that harmful to health?' (Evidentiary Document Gab No. 258), introducing research findings reducing the risk of smoking, or having interviews to that effect. However, even if the above conducts of the Defendant K constitute unlawful acts, it must be recognised that such conducts above of the Defendant K targeted the

Persons subject to this Case, or encouraged smoking or such acts impeded the quitting of smoking, but there is no evidence to recognize that the Persons subject to this Case have been distributed the above booklet, or saw or heard of any research findings or interviews as stated above and there is no evidence to recognize that such conducts changed the existing smoking behaviour (increased the smoking amount), or continued the existing smoking behaviour by destroying or reducing the will to quit smoking (on actively fraudulent conducts i).

- C) Moreover, the evidences submitted by the Plaintiff do not suffice the recognition that the Defendants reduced and concealed the harmfulness or addictiveness of **tobacco** while they were sufficiently aware of such fact (on actively fraudulent conducts ii).
- D) There does exist research findings that smoking low-tar or low-nicotine **tobacco** is not particularly different from regular **tobacco** in the aspect of harmfulness or addictiveness. However, it is difficult to specify the persons, among the Persons subject to this Case, who smoked the cigarettes with advertising phrases such as 'low-tar, low-nicotine' among the **tobacco** manufactured and sold by the Defendants and it is insufficient to recognize that the cigarettes with such names had negative impact on quitting smoking or on the smoking amount, and there is no evidence to recognize it otherwise (on actively fraudulent conducts iii).
- E) Furthermore, taking into account the fact that ① the perception of low and nicotine **tobacco** to be less harmful to health has been maintained for a long period, ② the amount of tar or nicotine in the body will be lower than regular cigarettes in case the smoker does not inhale low tar and nicotine **tobacco** and therefore the amount of tar or nicotine depends on the smoking behavior, smoking environment or the smoking circumstances of the smoker and on the selection of the smoker, ③ the amount of tar and nicotine inhaled in vivo is expected to reduce in case of smoking under the same conditions in the same way when the amount of tar and nicotine in the smoke of a single **tobacco** are reduced, it is not sufficient to recognize that the Defendants' indication and advertisements as low tar, low nicotine, etc. are fraudulent conducts against the Persons subject to this Case incurring the obligation to compensate for damages under the Civil Act, and there is no evidence to recognize it otherwise (on actively fraudulent conducts iv).
- F) Even if the Defendants carried out illegal promotional activities by way of offering profits, etc. to the tobacco consumers, there is no evidence to recognize that the Persons subject to this Case started smoking or continued smoking by the illegal promotional activities of the Defendants, and as long as it is difficult to recognize that the tobacco imported, manufactured and sold by the Defendants have defects as examined earlier, it is also difficult to deem that a causal relationship is recognized between the illegal promotional activities of the Defendants and the Diseases in the Cases developed in the Persons subject to this Case even if the Defendants carried out illegal promotional activities (on other illegal acts).

3) Sub-conclusion

Thus, as the evidences submitted by the Plaintiff do not suffice to recognize that unlawful acts were conducted against the Persons subject to this Case and there is no evidence to recognize it otherwise, the Defendants should not bear the obligations for the damages due to general unlawful acts.

E. Whether the obligation for unlawful acts in violation of the obligation under the former Consumer Protection Act or the Framework Act on Consumers is established

1) The Plaintiffs assertion

As the Defendants violated the obligation to protect the consumers, prescribed in the former Consumer Protection Act or the Framework Act on Consumers, they bear the obligation for the damages caused by violating the above Act and subordinate statutes against the Persons subject to this Case

2) Decision

A) The former Consumer Protection Act (hereinafter the provisions of the Act will be based on the provisions at the time of enactment), enacted on January 1, 1980, of which the name is to be amended to the 'Framework Act on Consumers' by Act No. 7988 on September 27, 2006, prescribes that the State shall protect the safety of the consumers' lives and bodies and their economic rights, and establish and execute necessary policies and achieve rationalization of their daily lives as consumers (Article 2); the competent Minister may determine or change the criteria to be observed by business entities in order to prevent any danger or injury of consumers due to the contents or the method of use of goods, etc. supplied by business entities with regards to the contents of the goods such as the ingredients, contents, structure, etc. of goods, contents and method to be indicated for using goods, etc., such as directive matters, cautions, etc. and other matters as deemed necessary for preventing any danger or injury (Article 12(1)); that those manufacturing, selling or providing goods shall endeavor to protect the consumers and fully cooperate in consumer protection policies implemented by the State and local governments (Article 3) and shall not manufacture or sell any goods in contravention of the criteria specified in Article 12(1) (Article 13); and Article 19(3) of the same Act does prescribe that 'business entities shall sincerely provide consumers with accurate information on goods, etc.'

B) However, even if the above regulations of the former Consumer Protection Act or the Framework Act on Consumers are deemed to have been determined not merely to aim for the interests of the public in general or the entire people but also to protect the safety and interests of individual society members even incidentally, taking into account the various circumstances as examined earlier i.e. the progress of

researches on the epidemiological causal relationship between smoking and lung cancer, etc. and the media coverage thereon, the degree of perception of the **tobacco** consumers regarding the harmfulness of smoking, and the details of the warning statements the Defendants indicated on the **tobacco** pack, etc. since 1976, it is difficult to deem that the Defendants have faults of violating the obligations under the former Consumer Protection Act or the Framework Act on Consumers even if the Defendants conducted any explanation, warning, promotion, etc. regarding the harmfulness and addictiveness identical to the Plaintiff's assertion or did not take measures such as determining the criteria therefor (See Supreme Court Decision 2011Da22092 decided on April 10, 2014).

3) Sub-conclusion

Thus, the Defendants do not bear the obligation to compensate for damages in accordance with the former Consumer Protection Act or the Framework Act on Consumers.

F. Whether a causal relationship is recognized between the Defendants' acts and the onset of the Diseases in this Case⁹

1) Relevant legal principle

Epidemiology is an academic field of analyzing the occurrence, distribution, extinction, etc. of diseases as group phenomena and the impact thereto to investigate the correlations with various natural and social factors by using statistical methods and thereby to identify the methods to prevent and/or reduce the onset of the diseases.

Epidemiology investigates and identifies the cause of a disease as a group phenomenon, and does not prove the cause of a disease developed in an individual of the concerned group. Therefore, even if it is recognized that a correlation exists between a certain risk factor and a certain disease, the cause of the disease of an individual in the concerned group is not proved from such correlations, and it is only possible to derive the possibility of the disease of an individual in the concerned group depending on the degree in case the incidence rate of the group exposed to a certain risk factor is higher than that of another general group not exposed to the such factor.

Meanwhile, unlike 'specific disease' that occurs by a specific cause and of which the cause clearly corresponds to

⁹ The evidences submitted by the Plaintiff do not suffice to recognize that there are defects in the design or the indication in the tobacco imported, manufactured and sold by the Defendants and, moreover, it is insufficient to recognize that the acts of the Defendants are unlawful acts under the Civil Act or in violation of the obligations under the former Consumer Protection Act or the Framework Act on Consumers, as was examined earlier. Therefore, although it is not necessary to further examine whether a correlation is recognized between the Defendant's acts and the onset of the Disease in this Case, this will be constituted and decided as an individual item since it is an issue in this Case.

the outcome, the so-called ‘non-specific disease’ is a disease of which the cause and mechanism are complicated and is caused by the combined action of congenital factors such as heredity, constitution, etc. and acquired factors such as drinking, smoking, age, eating habits, occupational and environmental factors, etc. In the case of non-specific diseases, even if it is recognized that there is an epidemiological correlation between a specific risk factor and the concerned non-specific diseases, such correlation merely implies that there is a risk of or the risk increases for catching the disease as long as there always is a possibility of an individual or a group being exposed to the concerned risk factor and does not mean that the specific risk factor is the cause of the concerned disease. Therefore, in the case of non-specific diseases, even if it is recognized that there is an epidemiological correlation between a specific risk factor and the concerned non-specific diseases, merely proving the fact that a specific individual has been exposed to the concerned risk factor and caught that non-specific disease cannot be deemed as a proof of the probability sufficient to recognize the correlation between the two. In this case, it must be proven that there is a probability that the concerned non-specific disease may have been caused by that specific risk factor through an epidemiological investigation carried out by comparing the group exposed to the concerned risk factor with another general group not exposed to the risk proving that the rate of catching the non-specific disease is significantly higher in the group exposed to the concerned risk than in the group not exposed, and additionally proving the time when the individual in the concerned group has been exposed to the risk factor and the degree of exposure, the time of onset of the disease, and the physical condition, living habits, change in the state of the disease, family history, etc. prior to the exposure to the concerned risk factor (See Supreme Court Decision 2011Da22092 decided on April 10, 2014).

2) Whether the correlation is recognized

A) Whether the correlation is assumed as a specific disease

(1) Recognized facts

According to the details in each of the Evidentiary Documents Gap No. 23, 49 and 83 and the entire pleading, it is recognized that domestic researchers announced research findings as follows in 2005.

(A) The relative risk¹⁰ of a potential lung cancer (small cell carcinoma) of a smoker is 21.7 times higher than that of a nonsmoker, a potential lung cancer (squamous cell carcinoma) of a smoker is 11.7 times

¹⁰ The relative risk is an index indicating the correlations between a certain risk factor and a disease, and is calculated by dividing the incidence rate of the group exposed to the risk factor by the incidence rate of the group not exposed to the risk factor.

higher and the relative risk factor of a potential laryngeal cancer of a smoker is 5.4 times higher than that of a lifelong nonsmoker.

(B) On the other hand, the relative risk factor of a potential lung cancer (adenocarcinoma) is 2.1 times higher than that of a nonsmoker.

(2) Whether to apply the legal principal of assuming the correlation

(A) In view of the above legal principal, a disease should occur by a certain cause and the cause and outcome clearly corresponds to each other to be a 'specific disease,' and a specific disease should almost not occur if there was no exposure to a certain cause.

(B) However, comprehensively taking into account the following circumstances recognized based on the aforementioned evidences and in addition to the details specified in the Evidentiary Documents Gab No. 53, 90 and 141, EulGa No. 11 through 13, 15 through 19, 22 through 27, 29 through 54, 73, 75, 76 and 77, EulNa No. 10 and 42 and the entire pleading, i. e. ① it is not possible to exclude that small cell carcinoma and squamous cell carcinoma, which are types of lung cancer, may also develop from factors other than smoking, such as the individual living habits, heredity, surrounding environment, occupational characteristics, etc. ② there actually exists research findings that various factors such as pollution, family history, past medical history, drinking, stress, occupational history, etc. may be the cause of lung diseases (including the Diseases in this Case) ③ there are cases where the Diseases in this Case developed in nonsmokers ④ in particular, drinking alone may be the cause of laryngeal cancer and there are various research findings that the risk of a potential laryngeal cancer is significantly impacted as the amount of drinking increases, and even by considering that the relative risk of the Diseases in this Case developed in the Persons subject to this Case is higher than that of nonsmokers as is recognized above, and that the relative risk of the Disease in this Case is even higher than the relative risk of laryngeal cancer (among lung cancer), it cannot be deemed that the Diseases in this Case are specific diseases

B) Whether the correlation is assumed as a non-specific disease

(1) Thus, the Plaintiff must prove that there is a probability that the concerned non-specific disease may have been caused by that specific risk factor through an epidemiological investigation carried out by comparing the group exposed to the concerned risk factor with another general group not exposed to the risk proving that the rate of catching the non-specific disease is significantly higher in the group exposed to the concerned risk than in the group not exposed, and additionally proving the time when the individual in the concerned group has been exposed to the risk factor and the degree of exposure, the time of onset of the disease, and the physical

condition, living habits, change in the state of the disease, family history, etc. prior to the exposure to the concerned risk factor.

(2) In advance, according to the facts recognized earlier, it is negotiable to deem that the incidence rate of the Diseases in this Case in the group exposed to smoking significantly exceeds the incidence rate of the Diseases in this Case in the nonsmoking group.

(3) However, in order to recognize that there is a correlation between smoking and the Diseases in this Case, additional proving of indirect facts deemed difficult of risk factors other than smoking in the process of investigating the evidence of the Persons subject to this Case such as the time when exposed to smoking and the degree of exposure, the time of onset of the disease, and the physical condition, living habits, change in the state of the disease, family history, etc. prior to the exposure to smoking, but it is merely possible to know that the Persons in this Case has at least 20 pack-years of smoking history and that they were diagnosed with the Diseases in this Case from the details specified in each of the Evidentiary Document Gab No. 80, 89, 143 and 215 submitted by the Plaintiff.

According to the factual relationship above, even if it may be recognized that there is an epidemiological correlation between smoking, which is the risk factor, and the non-specific diseases, that are the Diseases in this Case, as was suggested by research findings, etc. examined earlier, it is difficult to conclude that the probability sufficient to recognize the correlation has been proven by merely proving the fact that the Persons subject to this Case smoked and developed Diseases in this Case or to deem that the Plaintiff fulfilled its burden of proof

(4) Thus, the evidences submitted by the Plaintiff do not suffice to recognize the correlation between smoking the tobacco imported, manufactured and sold by the Defendants, and there is no proof to recognize it otherwise.

G. Conclusion on the preliminary cause of action

The Plaintiff's assertion the Plaintiff's claim related to the preliminary cause of action on different premises has no reason requiring further examination with regards to whether there is a joint-relatedness among each of the acts of the Defendants, as long as the Defendants do not bear the obligation to compensate for the damages from unlawful acts against the Persons subject to this Case.

5. Final Conclusion

Therefore, the Plaintiff's claim against the Defendant is dismissed in entirety as it is without cause. It is so decided as per the text of a judicial decision.

