Seoul High Court
Civil Division 6-1
Judgment

Case	2020NA2047374 Claim for Damages
Plaintiff, Appellant	National Health Insurance Service 32 Geongang-ro, Wonju-si (Bangok-dong, National Health Insurance Service) Chairman Ki-seok Jeong Representative Attorneys Lee Joo-hee, Lim Hyeon-jeong, Choi Gap-in Representative Daeryook & Aju LLC Representatives Kim Jong-un, Lee Sin-jeong, and Choi Jong-sun
Defendants, Appellees	1. KT&G Co., Ltd. 71 Cherry Blossom Road, Daedeok-gu, Daejeon (Pyeongchon-dong) Representative Director Bang Kyung-man Representative: Sejong Law Firm (Co., Ltd.) Attorneys: Kim Chung-nyeong, Park Kyo-seon, Song Bong-ju, Cha Hyo-jin 2. Philip Morris Korea Co., Ltd. 25th Floor, 10 Gukjegeumyung-ro, Yeongdeungpo-gu, Seoul (Yeouido-dong, One IFC) Representative Director Yoon Hee-kyung Representatives: Kim Seong-wook, Lee Cheol-won, Lee Han-il, Lee Hye-kwang 3. British American Tobacco Korea Co., Ltd.

	26, Euljiro 5-gil, Jung-gu, Seoul, 22nd Floor (Mirae Asset Center One Building, Suha-dong) Representative Director Youngjae Song, British Citizen
	4. British American Tobacco Korea Manufacturing Co., Ltd. 141 Gongdan 1-ro, Sanam-myeon, Sacheon-si Representative Director Martin Grover, British Citizen
	Defendants 3 and 4 are represented by Hwawoo Law Firm (Limited) Representing Attorneys Kyung Moon-jung, Woo Soo-yeon, Lee Soo-yeol, Lee Sung-hee, and Lee Jun-sang
First-Instance Judgment	Seoul Central District Court Decision 2014GAHAP525054 Announced November 20, 2020
Arguments concluded	May 22, 2025
Judgment announced	January 15, 2026

Order

1. Plaintiff's appeal is dismissed in its entirety.

2. Plaintiff shall bear the costs of the appeal.

Purpose of Claim and Purpose of Appeal

The First-Instance Judgment is hereby vacated. Defendants jointly and severally demand that Plaintiff pay ₩53,319,553,950, plus an annual interest rate of 20% from the day following the delivery of a copy of this complaint until September 30, 2015, 15% from the day following that date until May 31, 2019, and 12% from the day following that date until full payment.

Grounds

I. Basic Facts

1. Status of the Parties

A. Plaintiff is a corporation that, as an insurer of health insurance under Article 13 of the National Health Insurance Act, performs duties such as health insurance eligibility management, insurance premium collection, insurance benefit management, and insurance benefit payment as stipulated in each subparagraph of Article 14 of the same Act.

B. 1) Defendant KT&G Co., Ltd. (hereinafter referred to as "Defendant KT&G") was established as the Korea Tobacco Monopoly Corporation in April 1987, renamed the Korea Tobacco and Ginseng Corporation in 1989, and changed its name to its current name in December 2002. It engages in the manufacture and sale of cigarettes[1], the manufacture and sale of tobacco-related materials, and leaf tobacco cultivation guidance. It manufactures and sells cigarettes listed in Appendix 1[2] of the First-Instance Judgment, including "88 Light," "Sol Golden Light," and "MARADO."

2) In other words, domestic cigarette manufacturing and sales were monopolized by the Republic of Korea. However, with the amendments to Article 3[3] of the Tobacco Monopoly Act in December 1986 and the enactment of the Korea Monopoly Corporation Act in December 1986, the Monopoly Bureau was abolished and monopoly authority was delegated to the Korea Monopoly Corporation, an independent legal entity. The Korea Monopoly Corporation assumed the rights and obligations of the Republic of Korea regarding this business.[4] Subsequently, the Tobacco Business Act and the Korea Tobacco and Ginseng Corporation Act were enacted in December 1988, and came into effect in 1989. The Korea Monopoly Corporation was dissolved and the Korea Tobacco and Ginseng Corporation was established, comprehensively assuming the rights and obligations of the Korea Monopoly Corporation.[5] The Korea Tobacco and Ginseng

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1) The dictionary defines "tobacco" as "a general term for products made by drying and processing tobacco leaves." It encompasses both "tobacco," meaning dried tobacco leaves, and "cigarette," meaning a cigarette. However, "tobacco" hereinafter refers to a cigarette.

2) The First-Instance Judgment appendix is cited in accordance with the main text of Article 420 of the Civil Procedure Act. The same shall apply hereinafter.

3) Article 3 (Monopoly) of the Old Tobacco Monopoly Act (previously repealed by Article 2 of the Supplementary Provisions of the Tobacco Business Act, enacted on December 31, 1988)

① Tobacco is monopolized by the State.

② The monopoly and related duties under Paragraph 1 shall be entrusted to the Korea Monopoly Corporation (hereinafter referred to as the "Public Corporation"), established under the Korea Monopoly Corporation Act in accordance with the provisions of this Act.

4) Article 9 (Succession of Rights and Obligations) of the Supplementary Provisions of the former Korea Tobacco and Ginseng Corporation Act (enacted by Act No. 3868, December 26, 1986)

The rights and obligations of the State with respect to the business stipulated in Article 10 on the day prior to the commencement of the Corporation's operations shall be deemed to have been succeeded by the Corporation.

5) Article 7 (Succession of Property, Rights, and Obligations) of the Supplementary Provisions of the former Korea Tobacco and Ginseng Corporation Act (enacted by Act No. 4064, December 31, 1988)

Corporation was subsequently privatized and renamed Defendant KT&G.

3) Meanwhile, the Tobacco Business Act, implemented on January 1, 1989, initially abolished the tobacco monopoly regulations but maintained the manufacturing monopoly. 6) Accordingly, while importing and selling tobacco from overseas was permitted, domestic manufacturing was not permitted. Subsequently, the Tobacco Business Act, implemented on July 1, 2001, also abolished the tobacco manufacturing monopoly. 7) Consequently, other companies were permitted to operate tobacco manufacturing businesses in Korea.

1) Defendant Philip Morris Korea Co., Ltd. (hereinafter referred to as "Defendant Philip Morris Korea"), established in March 1989, engages in the manufacturing and sales of tobacco and is a subsidiary of the U.S. company Philip Morris International.

2) Since its establishment, Defendant Philip Morris Korea has imported and sold cigarettes listed in Appendix 2 of the First-Instance Judgment, including "Marlboro," "Parliament Light," and "Virginia Slim," in Korea. Beginning in October 2002, it has manufactured and sold these cigarettes directly in Korea.

D.1) Defendant British American Tobacco Korea Co., Ltd. (hereinafter referred to as "Defendant BATK") was established in September 1990 and engages in the import, distribution, and sale of cigarettes and related products. Defendant British American Tobacco Korea Manufacturing Co., Ltd. (hereinafter referred to as "Defendant BATKM" and collectively referred to as "Defendant BATK, etc.") was established in September 2001 and engages in the manufacture, distribution, and sale of cigarettes, tobacco raw materials, and tobacco-related products.

2) Since its establishment, Defendant BATK has imported and sold cigarettes listed in Appendix 3 of the First-Instance Judgment, including 'Dunhill' and 'Vogue," while Defendant BATKM has manufactured and sold the above cigarettes directly in Korea since its establishment.

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① All property, rights, and obligations belonging to the Korea Tobacco Monopoly Corporation at the time of enforcement of this Act shall be comprehensively succeeded by the Corporation (hereinafter omitted).
1) Article 11 (Manufacture of Manufactured Tobacco) of the former Tobacco Business Act (prior to amendment by Act No. 6460 of April 7, 2001) Except as otherwise provided for in other laws, manufactured tobacco shall be manufactured only by the Corporation.
2) Article 11 (Tobacco Manufacturing Business License) of the former Tobacco Business Act (amended by Act No. 6460 of April 7, 2001 and effective from July 1, 2001)
① Any person wishing to engage in the tobacco manufacturing business shall obtain a license from the Minister of Strategy and Finance in accordance with the provisions of the Presidential Decree..

D. In this way, Korea had a monopoly on the manufacture/sale of cigarettes in Korea until around April 1987. Defendant KT&G manufactured/sold cigarettes since April 1987 when its predecessor, the Korea Monopoly Corporation, was established. Defendant Korea Philip Morris imported/sold cigarettes after 1989 and manufactured/sold cigarettes after 2002. Defendant BATK and others imported/sold cigarettes after 1990 and manufactured/sold cigarettes after 2001.

2. Expenditures of Plaintiff's Insurance Benefits, etc.

A. Plaintiff investigated the 3,465 subjects listed in Appendix 4 of the First-Instance Judgment (hereinafter referred to as "subjects in this case") through medical benefit records, medical records, health examination data (questionnaires, etc.), in-person and telephone surveys, etc., and found that they had smoked cigarettes manufactured/sold or imported/sold by Defendants, either alone or in combination, and that their smoking history was at least 20 pack-years.

B. The subjects in this case were diagnosed with small cell lung cancer or squamous cell lung cancer, or squamous cell lung cancer (hereinafter collectively referred to as "lung cancer, etc.").

C. Plaintiff paid a total of KRW 53,319,553,950 in benefits (insurance contribution) to the subjects of this case from 2003 to 2012, with lung cancer as the main disease, as shown in the table below (hereinafter referred to as "insurance benefits in this case").

Name of Diagnosis	Subjects	Salary Expenses
Lung Cancer (Squamous Cell Carcinoma)	2,153 persons	35,341,953,140 won
Lung Cancer (Small Cell Carcinoma)	837 persons	13,270,212,740 won
Laryngeal Cancer (Squamous Cell Carcinoma)	475 persons	4,707,388,070 won
Total	**3,465 persons**	**53,319,553,950 won**

1) Smoking history of one pack of cigarettes per day for one year is called one pack-year.

3. Selection Process, Current Status, and Investigation Details of Subjects in This Case

A. The personal information of the subjects in this case, including the years of diagnosis of lung cancer and other diseases, as investigated and presented by Plaintiff, is as described in Appendix 4 of the First-Instance Judgment.

A. Based on cancer registration data from the Central Cancer Registry, the Plaintiff selected individuals diagnosed with lung cancer and other diseases between 2001 and 2010. Among them, those who had undergone a general health examination between 1992 and 1999 and were public servants, private school faculty, or their dependents were selected as subjects in this case. Those who were found to have a smoking history of 20 pack-years or more were identified as public servants, private school faculty, or their dependents.

B. The subjects of this case were born between 1913 and 1962. Among them were dependents of government officials and other individuals, and their occupations and careers were diverse (asbestos factory managers, coal mine workers, people exposed to Agent Orange, heavy equipment operators, masons, firefighters, cement factory workers, railway sanitation workers, construction workers, foundry workers, auto mechanics, and briquette factory workers, etc.).

C. The Plaintiff estimated that the subjects of this case generally began smoking in their late teens or early twenties, beginning sometime in the 1960s or 1970s.

D. Furthermore, the Plaintiff estimated smoking history using the minimum and median values of the subjects' responses to the questions “daily smoking quantity” and “smoking period” listed on questionnaires. For example, if a subject answered “smoked more than half a pack a day, but less than a pack for 30 years or more,” the estimated smoking period was 22.5 pack-years (= 0.75 packs × 30 years), indicating that the subjects had smoked for more than 30 years.

E. Additionally, the Plaintiff found that all 3,465 subjects smoked Defendant KT&G cigarettes. Of these, 71 smoked Defendant KT&G and Philip Morris Korea cigarettes, 30 smoked Defendant KT&G and BATK cigarettes, and 53 smoked all Defendants cigarettes. Meanwhile, at the time this case was filed, many of the subjects of this case had already died, and in those cases, Plaintiff also investigated their bereaved families and others about their smoking history and the types of cigarettes they smoked.

F. During the course of this litigation, Plaintiff investigated the subjects' diagnoses, including lung cancer, as well as their smoking history, occupation, family history, and smoking cessation periods through medical records (Exhibit A No. 80 (including branch number; hereinafter the same)), medical records (Exhibit A No. 143, etc.), health examination questionnaires (Exhibits A No. 81 and 89), in-person and telephone surveys, and other methods; the Plaintiff then submitted a "Smoking History and Medical Expenses by Subject" (Exhibit A No. 45), a "First Confirmation and Telephone Counseling Report" (Exhibit A No. 82) prepared around 2015 through in-person and telephone surveys, a second confirmation (Exhibit A No. 215) prepared around 2017, and a comprehensive, computerized Basic Fact Findings Report (Exhibit A No. 325), containing the above information. Additionally, a report (Exhibit A No. 392) was submitted requesting an "In-Depth Case Analysis of Heavy Smokers' Smoking Experience" targeting some smokers.

4. Progress of the Preceding Damages Claim Lawsuit Against Defendant KT&G, etc.

A. Prior to this lawsuit, smokers and their bereaved families filed several lawsuits (hereinafter referred to as "Preceding Lawsuits") against Defendant KT&G and the Republic of Korea, seeking damages on similar grounds. [9)]

B. In the prior lawsuit, judgments were made regarding the smoking behavior of nine smokers. These smokers were born between 1938 and 1949 and worked in various occupations, including farming, traveling salesmen, police officers, drivers, livestock farmers, fishermen, street vendors, restaurants, lumber companies, pharmacy operators, and oceangoing sailors. The diagnoses included lung cancer (small cell lung cancer), laryngeal cancer (squamous cell lung cancer), lung cancer (non-small cell lung cancer), lung cancer (bronchoalveolar lung cancer), lung cancer (squamous cell lung cancer), and lung cancer (adenocarcinoma). The cancers were diagnosed between 1997 and 2001, the smoking history was 20 to 40 pack-years, and the smoking initiation date was between 1957 and 1963.

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9) ① Seoul Central District Court Decision 99GAHAP104973, January 25, 2007; Seoul High Court Decision 2007Na18883, February 15, 2011 (Appeal); Supreme Court Decision 2011Da22092, April 10, 2014 (Appeal); ② Seoul Central District Court Decision 99GAHAP77378, January 25, 2007; Seoul High Court Decision 2007Na16979, February 15, 2011 (Appeal); Supreme Court Decision 2011Da23422, April 10, 2014 (Appeal); ③ Seoul Central District Court Decision 2005GAHAP73599, December 6, 2011; Seoul High Court Decision August 21, 2015. Decision 2012Na19880 (appeal trial), Supreme Court Decision 2015DA57942 (appeal trial), ④ Seoul Central District Court Decision 2004GAHAP102704 (appeal finalized), September 3, 2009.

C. The Plaintiffs in the prior lawsuit alleged defects in the cigarettes (design and labeling defects, and safety deficiencies), intentional torts (dissemination of false information about the risks of cigarettes, concealment, promotion of smoking, etc.), and violations of the duty of care under the former Consumer Protection Act. However, these claims were rejected; In particular, the court rules that ① the inherent nature of cigarettes is to burn tobacco leaves and inhale the smoke. Removing nicotine would prevent smokers from achieving the pharmacological effects they expect. Therefore, even if a method for completely removing nicotine and tar from cigarettes existed, the failure to do so would not constitute a design defect; and, ② there was no labeling defect, given the widespread recognition in society that smoking can cause lung cancer and other diseases, so that even if smoking can lead to nicotine dependence, initiating and continuing smoking is a matter of free will. Furthermore, consumers recognized the potential for difficulty quitting. Meanwhile, some rulings acknowledged a causal relationship between smoking and lung cancer for some of the Plaintiffs in the case. However, the defects in the cigarettes or the tortious acts that constituted the prerequisites for the obligation to compensate for damages were not recognized, and thus, Defendant KT&G and the Republic of Korea were not held liable for damages.

5. Constitutional Court's Dismissal of Constitutional Petition Regarding the Tobacco Business Act

A. On January 11, 2012, the Plaintiffs, consisting of smokers and others, filed a constitutional petition in Constitutional Court Decision No. 2012HEONMA38, arguing that “given the harmful effects of cigarettes on the human body, the manufacture and sale of cigarettes should be fundamentally prohibited. However, the state enacted the Tobacco Business Act[10] to legally permit the manufacture and sale of cigarettes. Therefore, the Tobacco Business Act violates the Plaintiffs' right to health, right to life, right to the pursuit of happiness, and right to a decent life”;

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10) The law subject to review is the old Tobacco Business Act (amended by Act No. 9932 on January 18, 2010, and before being amended by Act No. 10786 on June 7, 2011).

On April 30, 2015, the Constitutional Court issued a decision dismissing the above claim (hereinafter referred to as the "Constitutional Court Decision 2012HEONMA38").

B. First, the Constitutional Court assumed that the fundamental right at issue in the case was the "right to the safety of life and body, commensurate with the state's duty of protection." The Court then determined that the violation of fundamental rights should be determined based on whether the state has taken at least the minimum appropriate and effective protective measures to protect the life and body of citizens, a principle known as the "principle of prohibiting insufficient protection."

C. The Constitutional Court then ruled on the harmful effects of tobacco and its dependence, judging that: ① Mainstream tobacco smoke, inhaled through filters, is estimated to contain approximately 4,000 chemicals, including tar and nicotine, which contain carcinogens. While an epidemiological correlation between passive smoking and lung cancer is recognized, lung cancer can be caused by a complex interplay of factors other than smoking, making it difficult to definitively conclude that there is a necessary relationship between smoking and lung cancer. ② Nicotine is associated with tobacco dependence, but this is largely psychological, with a low degree of physical dependence. While tobacco dependence does have a certain impact on smokers' ability to freely choose whether to smoke or continue smoking, unlike narcotics, it is difficult to conclude that it makes it impossible or significantly difficult to quit.

D. The Constitutional Court ruled that the Tobacco Business Act strictly manages the manufacture and distribution of cigarettes through regulations on the tobacco manufacturing and sales industry, and that it protects the lives and bodies of citizens from the harmful effects of tobacco by weakening incentives to purchase and smoke cigarettes and providing buyers with information on the harmful effects of cigarettes through regulations on cigarette sales conditions, including cigarette prices, labeling of tobacco ingredients, display of warning labels, restrictions on cigarette advertising, and prohibitions on bribery. The court then ruled that the Tobacco Business Act, while

permitting the manufacture and sale of cigarettes, strives to protect the lives and bodies of citizens from direct smoking through various regulations. Therefore, the court ruled that the Tobacco Business Act cannot be deemed to violate the principle of prohibition of under protection regarding the state's duty to protect the lives and bodies of citizens.

[Grounds for Acceptance] Undisputed facts, the descriptions in Exhibits 45, 69, 80, 81, 82, 89, 138, 143, 145, 215, 325, and 392, and the overall argument.

II. Judgment on Defendants KT&G, BATK, and Others' Main Defenses

1. Defense Against Litigation by a Person Without Legal Capacity

A. Summary of the Defense

According to Plaintiff's Articles of Incorporation, Plaintiff is recognized as having legal capacity only to the extent necessary to reasonably and efficiently perform its duties as stipulated in the National Health Insurance Act and other relevant laws. Plaintiff's payment of the insurance benefits in this case was merely a performance of its duties as an insurer under the National Health Insurance Act. There is no provision in the Articles of Incorporation that allows Plaintiff to claim compensation for the insurance benefits in this case as its own direct loss. Therefore, this lawsuit is unlawful as it was filed by a person without legal capacity.

B. Judgment

1) In view of this, the legal capacity of a corporation is limited by the purpose stipulated in the law and articles of incorporation that formed the basis for its establishment, but acts within the scope of that purpose are not limited to the purpose itself stipulated in the law or articles of incorporation, but include all acts directly or indirectly necessary to carry out that purpose (see Supreme Court Decision 91DA8821, November 22, 1991, Supreme Court Decision 2000GEU98, September 21, 2001, etc.).

2) Regarding this case, Article 14, Paragraph 1, Subparagraphs 3 and 5 of the National Health Insurance Act stipulate that the Plaintiff's duties include “management of insurance benefits” and “payment of insurance benefit costs.” However, the Plaintiff filed this lawsuit seeking to recover damages, claiming that “due to the Defendants' illegal acts, the Plaintiff incurred losses equivalent to the amount of the insurance benefits in this case by disbursing them.” It is reasonable to view these actions as directly or indirectly related to “management of insurance benefits” or “payment of insurance benefit costs.” The materials submitted by Defendant KT&G alone are insufficient to establish that Plaintiff's filing of this lawsuit exceeded the purpose or scope of its duties stipulated in the National Health Insurance Act, and there is no other evidence to support this. The Defendant KT&G's defense in this regard is without merit.

2. Abuse of Power Defense

A. Summary of the Defense

The Plaintiff simply paid the insurance benefits in accordance with due process in fulfillment of its legal obligations, and the payment of these benefits cannot be considered a loss to the Plaintiff. The Plaintiff's filing of this lawsuit, seeking direct damages instead of exercising its right to indemnity under the National Health Insurance Act, is an attempt to avoid the Plaintiff's burden of proof regarding the individual smoking status of the individuals in this case and the causal relationship between smoking and lung cancer, and constitutes an abuse of the right to action that severely infringes upon the Defendants' right to defend themselves. Furthermore, the Plaintiff filed this lawsuit just days after the Supreme Court finalized a prior lawsuit filed by individual smokers against tobacco companies and the Republic of Korea. These finalized cases and this lawsuit address essentially the same issues, with the sole exception of the Plaintiff, and the Plaintiff reiterates the same arguments as in the aforementioned cases. Ultimately, Plaintiff repeatedly filed this lawsuit

with the same content as the prior lawsuit, not for the purpose of seeking relief, but as part of a smoking cessation campaign, and thus this constitutes an abuse of the right to file a lawsuit.

B. Judgment

In view of this, it cannot be considered that Plaintiff abused its right to claim direct payment of damages by constructing a relationship of rights as if the cost equivalent to the insurance benefits in this case that it paid constituted Plaintiff's damages. In addition, as Defendants KT&G and BATK claim, whether the insurance benefits in this case constitute Plaintiff's damages, whether the subjects of this case smoked, and who bears the burden of proof of the individual causal relationship between smoking and lung cancer, etc. are matters that must be determined in the main case. In addition, while a prior lawsuit is a lawsuit filed by a smoker or his/her bereaved family as a Plaintiff to seek compensation for damages suffered by the smoker, this case is a lawsuit in which the Plaintiff, a corporation in charge of health insurance management, etc., seeks compensation for damages suffered by itself and, as a preliminary measure, seeks compensation for damages suffered by the smoker. Therefore, the parties and the subject matter of the lawsuit are different, and the smoker in the prior lawsuit and the smoker in this case are also different. In addition, under the principle of adversarial principle in civil litigation procedures, the conclusion may differ depending on the extent of the parties' assertions/proof of the main facts. Therefore, the fact that this lawsuit shares the same issues as the prior lawsuit and the preliminary claim and that 3.the assertions in that part are quite similar does not mean that the Plaintiff has abused his/her right to sue. The Defendants KT&G, BATK, and others' defenses regarding this matter are also without merit.

3. Defense of Lack of Legal Interest in Filing a Lawsuit

A. Summary of the Defense

The insurance benefits paid by Plaintiff in this case were funded by the National Health Promotion Contributions paid by Defendants since the enactment of the National Health Insurance Financial Soundness Special Act in 2002. Therefore, the Plaintiff cannot be deemed to have suffered any damages as a result of the payment of these insurance benefits. Therefore, the

Plaintiff has no legal interest in filing this lawsuit.

B. Judgment

In light of this, if the Plaintiff's direct claim or right of indemnity against the Defendants is recognized through this lawsuit, the Plaintiff will receive all or a portion of the insurance benefits in this case as compensation for damages. Furthermore, the fact that the Defendants paid their share of the premium as manufacturers, importers, and sellers of cigarettes, and that a portion of that premium was used to fund the insurance benefits, does not exempt the Plaintiff from its obligation to pay. Therefore, the Plaintiff cannot be said to have no legal interest. Furthermore, whether the Defendants' actions caused Plaintiff any damages is a matter to be determined on the merits of the case. Defendant KT&G's defense on this point is also without merit.

4. Voluntary Litigation Defense

A. Summary of the Defense

Unless the Plaintiff exercises its right of indemnification under Article 58 of the National Health Insurance Act for the costs equivalent to the insurance benefits in this case, the Plaintiff cannot claim compensation as a party by constituting the losses suffered by the parties in this case as its own. Therefore, the Plaintiff's peripheral claim (direct claim) constitutes voluntary litigation, which is not permitted without a legal basis. Therefore, this lawsuit is unlawful as it was filed by a person lacking legal authority or standing to be a party.

B. Judgment

In light of the above, the Plaintiff's primary cause of action is to assert its own claim for damages, based on the premise that the Plaintiff suffered damages due to the Defendants' actions, resulting in the payment of insurance benefits in this case. In a civil lawsuit, the parties are free to decide what claims to file and how to file. Therefore, the Plaintiff's claim for direct payment of damages, based on the assumption that the cost of the insurance benefits in this case constitutes the Plaintiff's own

losses, cannot be considered arbitrary litigation. Defendant KT&G's defense in this regard is also without merit.

5. Conclusion on the Preliminary Defense

Therefore, the preliminary defenses of Defendants KT&G, BATK, and others, asserting that the filing of this lawsuit was improper, are all without merit.

III. Judgment on Plaintiff's Direct Damages Claim (Peripheral Claim)

1. Summary of the Argument

The Defendants' defects in the cigarettes they imported, manufactured, and sold, as well as their other illegal acts, caused lung cancer and other diseases in the Defendants. The Plaintiff incurred a total of KRW 53,319,553,950 in costs for insurance benefits (NHI contributions) related to the Defendants. Ultimately, the Plaintiff suffered the aforementioned damages due to the Defendants' illegal acts. Therefore, as joint tortfeasors, the Defendants are jointly and severally liable to pay Plaintiff damages equivalent to the aforementioned insurance benefits.

2. Judgment

As previously noted, the Plaintiff paid insurance benefits for lung cancer and other diseases. However, the Plaintiff's claim for damages equivalent to the insurance benefits in this case is difficult to accept for the following reasons.

A. For liability for damages due to a tort to be established, not only must the victim actually suffer “damage,” but a causal relationship must be recognized between the tortfeasor's unlawful act and the resulting damage.

Here, “damage” refers to an infringement on the victim's protected legal interests. However, a mere decrease in the victim's assets or financial disadvantages caused by an act does not constitute damage constituting tort liability. Damage constituting tort liability is deemed to occur only when the decrease in assets or financial disadvantages cannot be justified by contract, law, or other legal order. Therefore, if a victim is forced to endure a decrease in assets or financial disadvantages due to a contract or law, such decrease or financial disadvantages cannot be considered damages. Furthermore, even if a victim suffers a decrease in assets or financial disadvantages, if it is not caused by the offender's unlawful act but rather arises from a third-party causal relationship, a causal relationship between the unlawful act and the damage cannot be recognized.

Regarding this case, the Plaintiff, as the insurer of health insurance supervised by the Minister of Health and Welfare (Article 13 of the National Health Insurance Act), is legally obligated to pay insurance benefits in the event of an insured event requiring medical services or care for illness, injury, childbirth, etc. of a subscriber or dependent (Article 14, Paragraph 1, Subparagraph 5 of the same Act). Furthermore, the Plaintiff collects premiums from those liable for payment to cover the costs of the health insurance program (Articles 77 and 69 of the same Act). If a subscriber fails to pay, the Plaintiff may demand payment and collect the premiums in accordance with the national tax delinquency procedure (Article 81 of the same Act). The state provides the Plaintiff with an amount equivalent to 14% of the projected premium revenue for the relevant year from the national treasury, within the scope of the annual budget. The Plaintiff may also receive funding from the National Health Promotion Fund, as stipulated in the National Health Promotion Act. This funding is used to cover insurance benefits for diseases caused by smoking for subscribers or their dependents (Article 108-2 of the same Act). In light of the various provisions of the National Health Insurance Act as

mentioned above, the Plaintiff's payment of insurance benefits to medical institutions is merely a fulfillment of its obligations as an insurer as stipulated by the National Health Insurance Act and an execution of funds collected or supported under the National Health Insurance Act. Therefore, even if the Plaintiff incurred a loss of assets or financial disadvantage due to the payment of insurance benefits, it is reasonable to conclude that this was a disadvantage that the Plaintiff had to bear as a matter of the National Health Insurance Act from the time of its establishment. Conversely, it is difficult to conclude that the Plaintiff suffered any infringement of its legal interests. Furthermore, the Plaintiff's payment of insurance benefits was not caused by the Defendants' illegal acts, but rather was merely incurred in accordance with the "insurance relationship resulting from National Health Insurance subscription." Therefore, it is difficult to establish a causal relationship between the Defendants' actions and the payment of insurance benefits.

B. Article 682, Paragraph 1 of the Commercial Act[11] establishes general provisions regarding insurer subrogation, and Article 58, Paragraph 1 of the National Health Insurance Act stipulates, "If the Corporation provides insurance benefits to a subscriber or a dependent due to the acts of a third party, the Corporation shall have the right to claim damages from the third party up to the amount of the expenses incurred in providing such benefits." The reason for establishing insurer subrogation and similar provisions, such as Article 682, Paragraph 1 of the Commercial Act and Article 58 of the National Health Insurance Act, is that "allowing the insured to retain and exercise claims against third parties even after receiving payment from the insurer results in the insured benefiting beyond compensation for their losses, thereby violating the principles of the non-life insurance system. Furthermore, it is unreasonable for a third party liable for compensation to be exempt from liability

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11) Article 682 of the Commercial Act (Subrogation of Insurance Against Third Parties)

① If damage occurs due to the actions of a third party, the insurer who paid the insurance money acquires the rights of the policyholder or insured against the third party to the extent of the amount paid. However, if the insurer has paid a portion of the insurance money to be compensated, the insurer may exercise that right to the extent that it does not infringe upon the rights of the insured.

due to the insured's receipt of the insurance proceeds. Therefore, the purpose is to eliminate this and return the benefits to the insurer" (see Supreme Court Decision 87DAKA1669, April 25, 1989, etc.). Furthermore, Article 87, Paragraph 1 of the Industrial Accident Compensation Insurance Act,[12] Article 19, Paragraph 1 of the Military Accident Compensation Act,[13] Article 33, Paragraph 1 of the Fishermen and Fishing Vessel Accident Compensation Insurance Act,[14] Article 39, Paragraph 1 of the Automobile Damage Compensation Security Act,[15] Article 21, Paragraph 2 of the Crime Victims Protection Act,[16] Article 114, Paragraph 1 of the National Pension Act,[17] contain provisions similar to Article 58, Paragraph 1 of the National Health Insurance Act.

Ultimately, considering the legislative intent of Article 682, Paragraph 1 of the Commercial Act and Article 58 of the National Health Insurance Act, it is reasonable to interpret the legislature's provision regarding insurer subrogation as predicated on the premise that insurers, etc., cannot directly seek compensation from the perpetrator (if insurers were permitted to directly seek compensation from the perpetrator, there would be no need to establish a procedure for recovering the insurance payments paid by the insurer).

C. Meanwhile, the Plaintiff's right under Article 58 of the National Health Insurance Act is the right of the perpetrator to seek compensation from third parties, within the limits of the costs incurred

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12) Article 87 of the Industrial Accident Compensation Insurance Act (Right to Recourse Against Third Parties)
① If the Corporation pays insurance benefits for an accident caused by the acts of a third party, it shall subrogate the recipient's right to claim compensation for damages against the third party, up to the amount of the benefit.
13) Article 19 of the Military Accident Compensation Act (Right to Claim Compensation Against Third Parties)
① If the Minister of National Defense pays benefits due to the acts of a third party, the Minister shall acquire the beneficiary's right to claim compensation for damages against the third party, up to the amount of the benefit, as prescribed by Presidential Decree.
14) Article 33 of the Fishermen and Fishing Vessel Accident Compensation Insurance Act (Subrogation of Claims for Damages, etc.)
① If the Central Association pays insurance benefits to a fisherman, etc., due to a disaster caused by the acts of a third party, the Central Association shall subrogate the recipient's claim for damages against the third party to the extent of the amount of the payment.
15) Article 39 of the Automobile Damage Compensation Security Act (Subrogation of Claims, etc.)
① If the government compensates damages pursuant to Article 30, Paragraph 1, the government may, within the limit of the amount of compensation, exercise the victim's claim for damages against the person liable for damages pursuant to Article 3.
16) Article 21 of the Crime Victims Protection Act (Relationship to Compensation for Damages)
② The state shall, within the scope of the relief funds paid, subrogate the recipient's claim for damages arising from the criminal damage subject to the relief.
17) Article 114 of the National Pension Act (Right of Subrogation, etc.)
① If the Corporation pays a disability pension or survivor's pension due to the actions of a third party, the Corporation shall act as subrogation to the beneficiary in respect of the beneficiary's claim for damages against the third party, up to the amount of the benefit.

for the benefits (see Supreme Court Decision 2012DA200028, December 13, 2012, etc.). Therefore, the perpetrator can still assert defenses, such as statute of limitations and negligence setoff, that the perpetrator is able to assert, against the Plaintiff, who succeeds to the insured's claim for damages. However, if the Plaintiff pays the insurance benefit cost, and it is interpreted that the Plaintiff acquires a claim for damages as a victim separately from the rights stipulated in Article 58 of the National Health Insurance Act, the perpetrator would be able to assert a defense against the Plaintiff who is acting as a subrogator for the perpetrator's claim for damages, but the Plaintiff, who claims to be the direct victim, would be placed in a disadvantageous position where he or she would no longer be able to assert such a defense, which is unreasonable.

D. Meanwhile, the Plaintiff argues that there is a legal basis for a peripheral claim, based on the following Supreme Court ruling:

1) The Plaintiff, basing its decision on the Supreme Court's April 13, 1982, decision 81DAKA737, which stated that “if a close relative takes time off work to care for the victim, they may seek damages for the loss of income (lost profits) due to the loss of work,” argues that since the Defendants' tortious conduct caused the insurance benefits, the Plaintiff can seek damages from them.

However, the Supreme Court decision held that if a close relative, closely related to the victim, directly cares for the victim as part of their support obligations and is thus unable to work and earn an income, the victim may seek damages equivalent to the cost of the care. If the victim fails to make such a claim, the close relative who provided the care may also seek compensation. Furthermore, the close relative may seek compensation for the loss of income without seeking compensation for the cost of the care. This is because it takes into account the status of a close relative as a supporter due to their close relationship with the victim, and it is difficult to see it as applying to a case where a third party who is not in this position cares for the victim. Therefore, it is not appropriate to apply it as it is to the Plaintiff, who is in a position to pay the insurance

benefit costs scheduled under the National Health Insurance Act and bear the burden of paying those costs.

2) Furthermore, the Plaintiff argues based on the Supreme Court's decision in 94DA5472, rendered on January 26, 1996, and the Supreme Court's decision in 2005DA31361, rendered on March 10, 2006, that “indirect damages, not damages to the direct target of the tort, are damages caused by special circumstances, and the tortfeasor is liable for compensation only when it is recognized that he or she knew or should have known of the circumstances,” so that even if the amount of insurance benefits paid by the Plaintiff cannot be considered direct damages, it can at least be considered indirect damages; the Defendants argue that the Plaintiff is liable for compensation because it knew or should have known that it would pay insurance benefits related to lung cancer, etc. that occur in cigarette smokers.

However, the direct and indirect damages described in the above Supreme Court decisions are all premised on the occurrence of “infringement on the protected legal interests enjoyed by the victim.” Therefore, it is reasonable to assume that indirect damages are only liable if the perpetrator is deemed to have been aware of or should have been aware of the special circumstances.[18] As discussed above, in this case, even if Plaintiff paid the insurance benefits, it is difficult to consider this as an infringement on Plaintiff's protected legal interests, i.e., the damage itself. Consequently, the circumstances of this case are different from those of the

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18) ○ The Supreme Court decision in case 94DA5472 above judged whether liability for damages and the scope of damages were established based on the possibility of foreseeability, in a case in which an entity struck a utility pole located in a factory area and a power line was cut, and the victim, who was operating a factory by receiving electricity through the power line suffered business losses due to the factory being shut down for a considerable period of time due to the power outage, and the sudden stoppage of the factory caused a breakdown in a machine that was in operation at the time and the loss of data being worked on. In other words, in the case of the above Supreme Court decision, the loss of operating profit, machine breakdown, and data damage, which were all considered indirect damages, were all considered infringements on the property rights that the victim was enjoying, and it was difficult for the court to find that the victim had a legal obligation to bear the above damages, so that they were ‘damages’ that constituted tort liability; this was a case where the question of whether or not compensation for indirect damages should be paid was determined based on whether or not they were foreseeable.
○ The Supreme Court's decision in 2005DA31361 above determined that ‘where the Defendant sold the Plaintiffs fertilizer with a labeling defect that generated ammonia gas far beyond the period of ammonia gas generation indicated on the packaging, etc., and the roses Plaintiffs were growing died due to long-term exposure to the gas; considering the Plaintiffs’ business type, the purpose and circumstances of purchasing this fertilizer, the place of purchase, and other circumstances, it is reasonable to assume that Defendant knew or could have known that Plaintiffs would use the fertilizer to grow roses for market shipment when supplying it to Plaintiffs through its fertilizer sales agent, and therefore, liability for damages is acknowledged.” The case was one in which it was determined that the damage caused by the death of roses due to a defect in the labeling of fertilizer constituted indirect damage that infringed upon the legal interests of the Plaintiffs, who were rose growers, and the foreseeability of such damage was also acknowledged.

above Supreme Court decisions, and the above Supreme Court decisions cannot be directly applied to this case.

3) Further, the Plaintiff asserts that it can directly seek damages from the tortfeasor, based on Supreme Court decision 2009DA78214, dated March 28, 2013, which stated that "In a case where doctors affiliated with a university hospital, a medical institution, prescribed out-of-hospital prescriptions in violation of the medical care benefit standards and issued prescriptions for these prescriptions as medical care benefit recipients, the act of issuing the prescriptions constituted an illegal act under Article 750 of the Civil Act in relation to the Plaintiff, the insurer, and the damages suffered by the Plaintiff amounted to the medical care benefit costs"; Supreme Court decision 2011DA96550, dated December 26, 2013, which stated that "If a bioequivalence test institute, etc. manipulated bioequivalence test data to write a test result report, thereby causing the Plaintiff to pay more than the medical benefits it should have originally paid for the generic drug, the manipulation constituted an illegal act against the Plaintiff, and the Plaintiff suffered damages equivalent to the overpaid medical benefits"; and Supreme Court Decision 2014DA229399, dated May 29, 2015, which stated that "'If a person who cannot be the founder of a medical institution hires a doctor to establish a medical institution, has the hired doctor perform medical treatment, and then claims and receives medical treatment costs that are not included in the medical treatment benefits from the Plaintiff, this is an act that causes damage by forcing the Plaintiff, the insurer, to pay medical treatment costs for medical treatment that is not included in the medical treatment benefits, and is an illegal act in relation to the Plaintiff."

However, the above Supreme Court decisions are all cases in which the Plaintiff was a direct victim of illegal acts such as violation of the medical care benefit standards by a medical institution, manipulation of test data by a testing institution, and establishment of a medical institution by an unqualified person, and the medical institution's prescription or treatment itself did not constitute illegal acts against the patient, so there is no subrogated party who can exercise the right of subrogation.

However, in this case, Plaintiff's alleged illegal acts include “the Defendants' manufacturing and selling defective cigarettes to the victims, or their failure to properly inform or conceal the risks of cigarettes.” These actions only constitute illegal acts against the victims, not direct acts against the Plaintiff; the Plaintiff's payment of insurance benefits to the victims in this case was a normal payment procedure as stipulated by the National Health Insurance Act, and the Defendants' fraudulent or improper actions did not intervene in the process. Therefore, the above Supreme Court rulings cannot be directly applied to this case, as the circumstances are different.

4) Furthermore, the Plaintiff argues that, according to the Supreme Court's en banc decision 2018da287935, March 18, 2021, which declared the legal principle of so-called “offset of fault after deduction,” the Plaintiff, who paid the insurance benefits, bears an excessive burden compared to the at-fault victim, and therefore, in accordance with the principle of equity, the Plaintiff should be granted a direct claim against the at-fault party to alleviate such burden.

However, the purpose of the above Supreme Court ruling is to balance the burden of the insurance premium between the Plaintiff and the victim, the insured person, to avoid adverse consequences for the victim. Even if the Plaintiff's burden increases due to “offsetting fault after deduction,” this cannot be considered unfair. Rather, if the Plaintiff's right to direct claim is recognized and the Plaintiff is permitted to directly claim “the amount of the National Health Insurance Service's burden equivalent to the victim's percentage of fault” from the at-fault party, the victim's burden will inevitably increase beyond the amount calculated pursuant to the above Supreme Court ruling, due to the principles of at-fault liability and prohibition of excessive compensation. This would lead to an

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19) If the Corporation provides insurance benefits to the victim of an illegal act and then subrogates the victim's claim for damages against the perpetrator for existing medical expenses pursuant to Article 58, Paragraph 1 of the National Health Insurance Act, the scope of subrogation is not limited to the full amount of the insurance benefit cost (hereinafter referred to as the “Corporation Contribution”) borne by the Corporation up to the amount of compensation for damages by the perpetrator, but rather to the amount corresponding to the perpetrator's proportion of responsibility, and the remaining amount (the amount corresponding to the victim's proportion of fault among the Corporation's contributions) cannot be subrogated to the victim, and it should be viewed that the Corporation ultimately bears the burden for the victim who has not yet received compensation for damages even after the insurance benefit has been paid. In this way, if a victim who received insurance benefits under the National Health Insurance Act files a claim for damages against the perpetrator, and the victim's negligence contributed to the occurrence of the damage, the amount of the victim's claim for damages related to existing medical expenses should be calculated by first deducting the corporation's share from the total amount of existing medical expenses and then calculating the negligence offset using the 'deduction and then negligence offset' method.

unreasonable outcome, avoiding the burden relationship stipulated by the above Supreme Court ruling.

3. Conclusion on the Peripheral Claims

Therefore, the Plaintiff, as a direct victim who incurred insurance benefits related to the subjects of this case, cannot seek damages against the Defendants. Therefore, the Plaintiff's claim regarding the peripheral cause of action is without merit, and there is no need to further examine the remaining elements of tort liability.

IV. Judgment on the Claim for Damages under the Product Liability Act (First Preliminary Claim)

1. Summary of the Preliminary Claim, etc.

A. The Plaintiff assumes that the subjects of this case, as health insurance subscribers, have claims against the Defendants for damages under ① product liability (first preliminary claim), ② general tort (second preliminary claim), and ③ breach of obligations under the former Consumer Protection Act or the Framework Act on Consumers (third preliminary claim); as the insurer of the health insurance, the Plaintiff seeks payment of damages equivalent to the insurance benefits in this case from the Defendants pursuant to Article 58, Paragraph 1 of the National Health Insurance Act on behalf of the subjects of this case.

B. Therefore, we will examine whether the subjects of this case have acquired each of the above claims against the Defendants.

2. Summary of the Argument Regarding the Claim for Damages Under the Product Liability Act (first preliminary claim)

The Defendants bear the high risk prevention obligations required of manufacturers when manufacturing and selling cigarettes. Nevertheless, the Defendants manufactured and sold cigarettes that had the following design and labeling defects

and lacked the safety features normally expected. The Defendants also violated their duty of care as manufacturers. Therefore, the Defendants are liable for damages against the Defendants in this case pursuant to Article 3, Paragraph 1, and Article 5 of the Product Liability Act.

A. Design Defect

1) Violation of the Duty to Prevent High Risk

a) In a case involving a Vietnam War veteran seeking compensation for damages caused by Agent Orange, the Supreme Court ruled that manufacturers who design and manufacture chemical products containing toxic substances harmful to the human body are responsible for a high degree of risk prevention. If a manufacturer violates this duty and designs, manufactures, and sells a chemical product that poses a risk of harm to life and body, the chemical product is deemed to have a design defect that lacks the safety generally expected by society.

b) Cigarettes contain various harmful additives during their manufacturing process, and tar, a toxic substance harmful to the human body, is generated during combustion. The chemicals contained in cigarette smoke are carcinogenic. Smokers are continuously and repeatedly exposed to these harmful substances during the smoking process, and unless manufacturers eliminate the risks by verifying the potential harm to the human body from additives and tar, consumers will find it difficult to avoid these risks. Since these cigarettes are similar to Agent Orange, the Defendants who design, manufacture, and sell tobacco products bear a high degree of risk prevention obligation. If the Defendants manufacture and sell cigarettes in violation of this high degree of risk prevention obligation, the tobacco product should be considered to have a design defect.

2) Failure to adopt an alternative design that does not induce dependence (First Design Defect)

a) Cigarettes have little practical utility. Even if the nicotine contained in cigarettes possesses some pharmacological effects, alternative designs are possible that can achieve the same pharmacological

effects without leading to nicotine dependence. Tobacco companies have researched nicotine levels that do not induce nicotine dependence, and in the United States, a product with a 97% reduction in nicotine content has been released. In the United States, removing nicotine from natural tobacco has been technically feasible since the 1940s, and a court ruled that 0.4-0.5 mg of nicotine was considered a “non-addictive nicotine content,” acknowledging a design defect.[20]

b) The standard for determining the feasibility of an alternative design for a product that poses a direct risk to the body must be the highest level of technology available at the time of distribution. Furthermore, since the 1950s, tobacco companies have been manufacturing and selling cigarettes using technology to control nicotine content, so it cannot be said that cigarettes with reduced nicotine content are uneconomical. Furthermore, even if sales of cigarettes with reduced nicotine content decrease the sales of the Defendants, the benefits of reduced risks to life and health through the introduction of alternative designs outweigh the benefits of increased sales. Therefore, the Defendants' failure to adopt alternative designs containing only non-addictive levels of nicotine constitutes a design defect.

3) Use of Additives in the Tobacco Manufacturing Process (Second Design Defect)

a) Additives such as ammonia compounds, sugars, and flavorings are added during the tobacco manufacturing process. These additives are intended to manage the effects and delivery of nicotine and to refine the taste of cigarettes, thereby exacerbating the harmful effects and addiction potential of cigarettes. Ammonia compounds, in particular, are added to control the pH of cigarettes. By altering the chemical structure of nicotine, they allow it to reach the brain more quickly, resulting in an immediate drug reaction. Sugars produce acetaldehyde when burned, which strengthens dependence on cigarettes.

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20) Willie Evans v. Lorillard Tobacco Company judgment

The Defendants knew that the additives described above could increase dependence by adjusting the pH of tobacco and tobacco smoke, yet they added various additives during the tobacco manufacturing process.

b) The additives used during the tobacco manufacturing process are included in the U.S. Food and Drug Administration's list of foods recognized as safe for human consumption. However, since tobacco is intended for inhalation through combustion, the mere inclusion of the additives on the list, which does not presuppose combustion, does not guarantee safety.

c) The Defendants were fully aware of the increased harmful effects of additives on tobacco. Therefore, they should have investigated the potential risks posed by the additives used during the tobacco manufacturing process and taken the best possible measures to minimize or avoid such risks. However, the Defendants failed to take such measures and instead added the additives during the tobacco manufacturing process, which constitutes a design defect.

4) Introduction of Perforated Filters (Third Design Flaw)

a) Perforated filters were introduced to reduce the amount of tobacco smoke inhaled by perforating the cigarette filter. However, this method does not actually reduce tar and nicotine inhalation. Rather, it exploits a loophole in the International Organization for Standardization (ISO) method for measuring tobacco smoke components to reduce the amount of tar and nicotine produced.

b) The ISO method measures tobacco smoke components by fixing the cigarette to a measuring device. However, cigarettes with perforated filters have air drawn in through the perforations, diluting the smoke and resulting in underestimated tar and nicotine production. When smoking, smokers often hold the filter with their fingers or cover it with their lips, blocking the perforations. This blocks airflow through the perforations, eliminating the smoke dilution effect. As a result, the actual tar and

nicotine inhaled is significantly higher than the level of the ISO method. According to the Health Canada method (HC method), which analyzes cigarettes with the perforations blocked to reflect the smoking behavior of actual smokers, tar and nicotine levels are measured higher than those measured using the ISO method.

c) Furthermore, perforated filters induce compensatory smoking habits, which involve increasing smoking intensity to maintain nicotine intake, and alter the burning rate of cigarettes, leading to greater smoke inhalation.

d) Ultimately, perforated filters are not a technology designed to reduce the amount of harmful substances inhaled through cigarettes. Rather, they are designed to artificially lower the tar and nicotine output of cigarette smoke measured by a machine. This actually promotes the inhalation of more tar and nicotine, making them a design defect.

B. Labeling Defects

1) Labeling defects are recognized under the Product Liability Act when a manufacturer fails to reasonably and sufficiently disclose the potential harm caused by a product. According to the so-called RICO ruling,[21] it was recognized that American tobacco companies were aware of the dangers of cigarettes as early as the early 1950s and that they had reinforced cigarette dependence through nicotine manipulation. Therefore, it is reasonable to assume that not only Defendants Korea Philip Morris and BATK, but also Defendants KT&G, which were in the same industry, were aware of the dangers of cigarettes. Even if this is not the case, it is reasonable to assume that all Defendants were fully aware of the dangers of cigarettes by the time the 1964 Surgeon General's report, which officially acknowledged the dangers of cigarettes, was released.

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21) United States v. Philip Morris USA Inc judgment

2) On the other hand, during the 1960s and 1970s, when the subjects in this case began smoking, public awareness of the dangers of cigarettes was very low, and conflicting reports about their risks were frequent. Furthermore, the Defendants actively denied the dangers of cigarettes. Therefore, it cannot be said that at the time the subjects in this case began and continued smoking, the general public knew beyond the abstract perception that cigarettes were harmful to health, specifically the risks of smoking, such as causing lung cancer and high levels of dependence.

3) Even if warning labels had been included on cigarette packs since around 1976, this was only the minimum required by relevant laws. Merely fulfilling administrative obligations under relevant laws does not exempt consumers from liability under the Product Liability Act. Furthermore, ① warnings regarding product risks must be provided in a manner that can reasonably be expected to attract the attention of the average user. However, warning statements in effect from 1976 to 1996, such as “Avoid excessive smoking for your health” and “Smoking can cause lung cancer, etc.,” were highly abstract. These statements alone failed to provide concrete information on the risks of smoking. Rather, they could mislead consumers into believing that moderate smoking is not dangerous. ② The dangers of cigarettes stem not only from the harmful substances they contain but also from their inherent dependence. However, the Defendants only began warning consumers about cigarette addiction in 2008, using vague and insufficient statements like, “Cigarettes are harmful to your health, and once you start smoking, it's very difficult to quit.” They failed to provide any warnings about the harmful effects of additives, which account for 10% of cigarette ingredients. ③ The Defendants also attempted to neutralize the effectiveness of the warnings through advertisements that utilized phrases like “natural,” “pure,” “1mg,” “light,” and “mild,” along with images that emphasized health benefits. The use of misleading statements such as the above was prohibited through the amendment of the Tobacco Business Act on January 21, 2014. However, according to

the RICO ruling, it must be seen that the Defendants knew that cigarettes advertised as “light” and “mild” were more dangerous long before the new prohibition on misleading statements was enacted. Defendant KT&G also published and distributed a pamphlet titled “Is Smoking Really That Harmful?” in January 1990, and Defendant Korea Philip Morris advertised in 2004 that low-tar cigarettes were not less harmful. Thus, the Defendants failed to adequately warn consumers, including the individuals in this case, about the dangers of cigarettes or advertised in a way that neutralized warning labels. Therefore, the cigarettes manufactured and sold by the Defendants are labeled with defects under the Product Liability Act.

C. Lack of Expected Safety

A defect is recognized when a product's structure, quality, or performance falls short of the objectively expected safety level, considering the technological level and economic feasibility at the time of manufacture and sale. The Defendants have not verified the safety of cigarettes. Despite the potential for eliminating or minimizing the risks associated with cigarettes by reducing nicotine and tar content and removing additives, they failed to take such measures. Therefore, cigarettes possess defects that defy the safety standards typically expected.

D. Violation of the Manufacturer's Duty of Observation

Manufacturers have a duty to continuously monitor distributed products for defects. If a defect is discovered, even after the fact, they must take measures to avoid the risk, such as recalling the product. However, despite confirming that “light cigarettes” were no less harmful than other cigarettes, the Defendants failed to stop labeling and advertising such claims. They concealed this fact and actively manufactured and sold the products, thus violating the manufacturer's duty of observation.

3. Judgment

A. Premise of the Reasoning, etc.

1) Nature of Liability Before and After the Enforcement of the Product Liability Act

a) The Product Liability Act was enacted on January 12, 2000, and took effect on July 1, 2002. Article 2 of the Supplementary Provisions of the Product Liability Act stipulates, “This Act shall apply to products first supplied by a manufacturer after the enforcement of this Act.” However, since the subjects in this case smoked cigarettes before the enforcement of the Product Liability Act, some of the cigarettes smoked by the subjects in this case were manufactured before the enforcement of the Product Liability Act and are therefore excluded from the application of the Act.

b) However, even if the Product Liability Act does not apply, manufacturers who manufacture and sell goods are responsible for manufacturing and selling products that are safe and durable, within the expected range of safety and durability, considering the technological level and economic feasibility at the time of distribution, in terms of structure, quality, and performance; if damage occurs to consumers due to defects that fail to meet these safety and durability requirements, they are liable for damages resulting from tort (see Supreme Court Decision 75DA2092, January 25, 1977; Supreme Court Decision 92DA18139, November 24, 1992; Supreme Court Decision 2003DA16771, March 12, 2004; etc.); even if strict product liability, which does not presuppose intent or negligence on the part of the manufacturer, is not applicable because the Product Liability Act does not directly apply, civil law tort liability may be recognized for manufacturing defective products that fail to meet safety requirements (see Supreme Court Decision 2022 DA230677, rendered May 18, 2023, etc.). Furthermore, the terms and meanings used by Plaintiff and the Defendants in this case in relation to cigarette defects appear to be consistent with the provisions of the Product Liability Act. Below, we will examine the Plaintiff's arguments based on the provisions of the Product Liability Act.

2) Requirements for Recognizing Tort Liability under the Product Liability Act and the Order of Judgment

a) Mainstream cigarette smoke, which is absorbed into the body through filters, contains approximately 4,000 chemical substances, consisting of approximately 500 gaseous substances (nitrogen, carbon monoxide, carbon dioxide, ammonia, hydrogen cyanide, benzene, etc.) and approximately 3,500 particulate substances. Among the components of cigarette smoke, nicotine (a basic organic compound found in plants of the Solanaceae family, including tobacco, a natural alkaloid found bound to organic acids in tobacco leaves) and tar (a mixture of particulate matter from cigarette smoke, excluding nicotine and water) are known to be harmful to the human body. Nicotine is known to induce cigarette dependence, and tar, in particular, contains numerous known carcinogens. Furthermore, an epidemiological correlation between cigarette smoking and the development of lung cancer and other diseases is recognized. Ultimately, tobacco, which contains carcinogens and has a recognized epidemiological correlation with lung cancer and other diseases, is clearly harmful to the human body. However, opinions differ regarding the degree of dependence and harmfulness.

b) Meanwhile, tobacco was introduced to Korea in the early 1600s and has been consumed since then by burning dried tobacco leaves and inhaling the smoke. The government has implemented a monopoly since the 1930s. As previously noted, the Constitutional Court's decision 2012HEONMA38, issued after this case was filed, rejected the Plaintiffs' argument that “in light of the harmful effects of tobacco on the human body, the manufacture and sale of tobacco should be fundamentally prohibited.” Instead, it ruled that the Tobacco Business Act, which permits the legal manufacture and sale of tobacco, did not violate the “right to life and physical safety corresponding to the state's duty of protection.” And the Constitutional Court ruled that the right to smoke, including the free decision to smoke and the act of smoking, is recognized to the extent that it does not infringe on the right not to smoke or the right to be free from smoking (see Constitutional Court Decision 2003HEONMA457, August 26, 2004, etc.).

Ultimately, in Korea, cigarettes have been viewed as a type of luxury good, and their manufacture, sale, and smoking have been legally and socially permitted. This legal framework and social norms were maintained even when the subjects in this case smoked.

c) The development of lung cancer and other diseases due to cigarette smoking involves a series of events: “manufacturing and selling harmful cigarettes,” “purchasing cigarettes and initiating and continuing smoking,” and the resulting “development of lung cancer and other diseases.” This distinction differs from general risk situations in that the smoker's own actions are intervening (see Constitutional Court Decision 2012HEONMA38).

d) Liability under the Product Liability Act requires that the product be defective, that damage has occurred, and that there is a causal relationship between the defect and the damage. As previously discussed, considering that the manufacture and sale of harmful cigarettes is permitted and that smokers' purchase and smoking are intermediaries in the process of developing lung cancer and other diseases caused by cigarettes, it is difficult to hold a manufacturer or seller liable under the Product Liability Act solely on the grounds that a smoker voluntarily smoked harmful cigarettes and developed lung cancer. Furthermore, it must be proven that a defect in the cigarette abnormally increased the harmfulness of the cigarette or that the defect induced the smoker's purchase and smoking.

(1) In other words, when determining whether a cigarette is defective, it is necessary to examine two factors: 1) whether the cigarette contains a defect that increases the harmfulness of the cigarette (primarily related to a design defect); and 2) whether the defect influences the initiation or continuation of smoking (this often involves both a design defect and a labeling defect). In order to determine that a defect in the cigarette caused the initiation or continuation of smoking, a causal relationship must be established between the two. In particular, while the subjects of this case generally started smoking between the 1960s and 1970s, Defendants Korea Philip Morris and BATK

began importing, manufacturing, and selling cigarettes in 1989. Therefore, the Defendants did not influence the subjects of this case to start smoking. Furthermore, if the subjects in this case were aware of the harmfulness and dependence of cigarettes and initiated and continued smoking, it would be difficult to establish a causal relationship between such defect and the initiation/continuation of smoking, even if there were defects in the labeling of such harmfulness and dependence.

(2) If it is proven that the subjects in this case smoked cigarettes with design defects, or initiated/continued smoking due to design or labeling defects, the question arises as to whether a causal relationship exists between the subjects' smoking and the occurrence of lung cancer, etc., which is the damage claimed by Plaintiff. Therefore, the following will be examined in the above order.

B. Recognition of a High-Level Risk Prevention Obligation

1) Relevant Legal Principles

If a manufacturer designs/manufactures a chemical product containing toxic substances harmful to the human body, and the product's intended use and method of use suggest that users or those around them may be continuously or repeatedly exposed to the toxic substances, and while the toxic substances have no or minimal functional utility, there is a risk of harm to the life or body of users due to continued/repeated exposure to the toxic substances, if it is difficult for users to avoid the harm unless the manufacturer takes appropriate risk prevention measures in advance, the manufacturer is responsible for a high-level risk prevention obligation. In such cases, manufacturers must thoroughly verify the safety of their products and eliminate/minimize any potential risks through investigations and research, using the best available technology at the time. If it is unclear whether the risk has been properly eliminated/minimized, or if it is difficult to adequately warn actual users of the risk, the chemical product must not be distributed until it is confirmed that the risk has been eliminated/minimized to a sufficient degree to ensure safety.

Therefore, if a manufacturer violates this high-level risk prevention obligation and designs and manufactures/sells a chemical product that poses a risk of harm to life and body, it is reasonable to assume that the chemical product has a design defect that prevents it from meeting the safety standards commonly expected, unless there are special circumstances (see Supreme Court Decision 2006DA17539, July 12, 2013, etc.).

2) Specific Judgment

a) The above Supreme Court Decision 2006DA17539 recognized the manufacturer's high-level risk prevention obligation in the design/manufacture of Agent Orange. The Plaintiff argues that, given the similarities between Agent Orange and tobacco, the legal principles regarding the high-level risk prevention obligation in the Agent Orange case should also apply to this case. The Plaintiff's argument is tied to the Defendants' assertion that the cigarettes they manufacture contain design flaws. Specifically, the Defendants argue that, to ensure the safety of their cigarettes, they must: 1) investigate and confirm the nicotine content standards that do not induce dependence, and then design cigarettes that meet these standards; 2) investigate and confirm the safety of additives used in the cigarette manufacturing process, and then use only those additives whose safety has been confirmed, and refrain from using those whose safety has not been confirmed; and 3) investigate and confirm the safety of perforated filters, ensuring that there is no risk of increased nicotine and tar inhalation due to smoking methods or compensatory smoking, before introducing perforated filters. Ultimately, it is understood that the Defendants, who are cigarette manufacturers, must prove that they have investigated and confirmed that the nicotine content standard does not cause dependence, that the additives are not harmful to the human body, and that there is no risk of additional inhalation of nicotine and tar due to the perforated filter.

b) Considering the following factors, it is difficult to impose a high level of risk prevention obligations on cigarette manufacturers, similar to those imposed on Agent Orange: ① Agent Orange was not intended for direct or indirect human use and was randomly sprayed during the war, regardless of individual choice. As a result, it caused skin diseases such as chloracne in the affected veterans. Cigarettes, on the other hand, were initially used by burning dried tobacco leaves and inhaling the smoke. Despite their physical hazards, they were considered a luxury item by social convention and were consumed for a long time. ② The random spraying of Agent Orange made it unlikely that veterans could voluntarily avoid exposure, and it is difficult to say that they were adequately informed of the health risks posed by Agent Orange. In contrast, cigarettes allowed veterans to choose whether to start or continue smoking. As seen below, the physical hazards and dependence of Agent Orange were widely known. Smokers could also avoid lung cancer and other health problems by quitting. ③ TCDD, a toxic byproduct of Agent Orange manufacturing, had no effect on the herbicidal effect and was therefore of no use. While this has been revealed, as seen below, additives added to cigarettes during the manufacturing process are used to reduce the bitterness of cigarettes, increase the smoothness of cigarette smoke, or improve the flavor or aroma of tobacco products. These additives are generally listed as food additives approved by the U.S. Food and Drug Administration or are generally considered safe. Furthermore, there has been no sufficient evidence that additive-free cigarettes are less harmful than those with additives. Therefore, it is difficult to impose a high level of risk prevention obligations on cigarette manufacturers, similar to those imposed on Agent Orange. We reject the Plaintiff's argument in this regard.

C. Whether a design defect is recognized

1) Relevant legal principles

a) ‘Design defect’ refers to a case where the manufacturer failed to adopt a reasonable alternative design, which could have reduced or avoided damage or risk, and the product became unsafe (Article 2, Paragraph 2 of the Product Liability Act).

b) Generally, manufacturers and sellers of products must manufacture products that are safe within the expected range, considering the current state of technology and economic feasibility, in terms of structure, quality, and performance. If damage occurs to a user due to a defect that fails to meet this safety standard, the manufacturer is liable for damages in tort. Among such defects, the manufacturer primarily refers to cases where damage or risk could have been reduced or avoided by adopting a reasonable alternative design, but the failure to adopt such an alternative design renders the product unsafe. The determination of whether a product is unsafe is based on a comprehensive consideration of various factors, including the product's characteristics and intended use, the user's expectations regarding the product, the nature of the anticipated risk, the user's perception of the risk, the user's ability to avoid the risk, the feasibility and economic cost of alternative designs, and the relative advantages and disadvantages of the adopted design and the alternative design, in light of generally accepted social norms. (see Supreme Court Decision 2011DA22092, April 10, 2014, etc.)

2) Specific Judgment

Considering the aforementioned evidence, Party A's Exhibits 3, 4, 7, 8, 10, 11, 12, 152 to 159, 161 to 214, 216 to 221, 224 to 230, 236, 237, 239, 240 to 246, 260 to 281, 329 to 346, 363, 367 to 370, Party B's Exhibits 8, 80 to 86, Party B's Exhibits 47 to 53, 56 to 61, and Party C's Exhibits 6 to 11, and the overall intent of the argument, the following circumstances are considered acceptable: Based solely on the materials submitted by Plaintiff, it is not possible to conclude that the cigarettes imported, manufactured, and sold by Defendants had the same design as Plaintiff asserts. It is insufficient to admit that there is a defect, and there is no other evidence to support this.

a) Failure to adopt an alternative design that does not induce dependence (Design Defect #1)

(1) In Korea, tobacco is considered a luxury good, and its manufacture/sale and smoking have been legally and socially permitted. Therefore, manufacturing and selling tobacco by processing tobacco leaves to a natural state is not prohibited. Burning tobacco leaves and inhaling the smoke is an inherent characteristic of tobacco. The taste of tobacco varies depending on the amount of nicotine and tar contained in the smoke. Tobacco consumers choose and smoke cigarettes that best suit their preferences. Considering that tobacco consumers smoke for the pharmacological effects of nicotine, such as a sense of security, and that individual preferences for nicotine levels vary, the failure to manufacture cigarettes with a certain level of nicotine or tar contained in natural tobacco leaves cannot be considered a design defect.

(2) Furthermore, this argument assumes an objective standard for nicotine intake that does not induce nicotine dependence or compensatory smoking habits. Regarding this, the Plaintiff suggests that the maximum nicotine intake per cigarette is 0.17mg (assuming nicotine bioavailability is 40%, this equates to approximately 0.4-0.5mg per cigarette), citing research results[22] and foreign court decisions[23] as evidence.

However, it is difficult to definitively conclude that these research results enjoy general academic support, and it is also difficult to confirm instances of implementing nicotine intake restrictions based on this standard of nicotine intake that does not induce nicotine dependence. Rather, smokers have different constitutions such as nicotine bioavailability and sensitivity to nicotine, and their smoking methods and habits are also different. Therefore, even if they smoke the same cigarette, the amount of nicotine inhaled by each smoker can be different. Therefore, it seems difficult to set a

22) Reducing the nicotine content to make cigarette less additive, Neal L Benowitz, Jack E Henningfield, etc.
23) Willie Evans v. Lorillard Tobacco Company judgment

“standard for nicotine content that does not cause dependence” that can be applied to all smokers. Even according to Plaintiff's argument, the nicotine content per cigarette is controlled. However, for smokers who smoke multiple cigarettes in succession, the effect of nicotine content restriction appears difficult to achieve. Furthermore, it is difficult to find objective evidence to predict that compensatory smoking for additional nicotine intake will not occur. In addition, assuming this part of Plaintiff's argument is based on the premise that cigarettes with a maximum nicotine content of 0.17mg per cigarette are safer than cigarettes with a lower nicotine content, this is difficult to generalize.

b) Use of Additives in Tobacco Manufacturing (Second Design Defect)

In light of the following circumstances, the evidence submitted by Plaintiff alone is insufficient to establish that Defendants' use of additives in cigarette manufacturing has increased the harmfulness or dependence of cigarettes, or that not using additives in cigarette manufacturing constitutes a safer and reasonable alternative design. Furthermore, there is no other evidence to support this.

(1) Tobacco additives, which account for approximately 10% of cigarettes, are substances such as preservatives, humectants, flavorings, and processing aids added during the tobacco manufacturing process. Approximately 600 substances are used as additives in tobacco manufacturing, with major additives including sugars, ammonia compounds, and flavorings (cocoa). Additives are used to reduce the bitterness of tobacco, enhance the smoothness of tobacco smoke, or improve the taste and aroma of tobacco products.

(2) Approximately 98% of these tobacco additives are approved by the U.S. Food & Drug Administration (FDA) as food additives or are included on the FDA's Generally

Recognized As Safe (GRAS) list or the Flavor and Extract Manufacturers Association (FEMA) list. The remaining 2% are approved by other government agencies, are not subject to regulatory approval, or are generally considered food items.

(3) Meanwhile, tobacco smoke itself is physically harmful, and many of the substances in tobacco additives (ammonia, pyridine, methylamine, dimethylamine, hydrazine, formic acid, acetic acid, etc.) whose harmfulness is questionable are also contained in tobacco leaves. Therefore, it is difficult to determine whether additives have increased the harmfulness of tobacco.

(4) The European Union's Tobacco Products Directive (TPD) stipulates enhanced reporting obligations for certain additives used in tobacco products (Article 6). Consequently, in 2016, after the filing of this lawsuit, the European Union's Scientific Committee[24] sequentially submitted three opinions (Plaintiff Exhibits A159 and 216, and Defendant Exhibit 61)[25] regarding additives used in tobacco products. The above opinion document, reflecting existing research findings and other criteria established in the Tobacco Guidelines, established a list of additives based on the following criteria: ① contribution to the toxicity or addictiveness of the product, ② production of a characteristic flavor (taste), ③ facilitation of inhalation or nicotine absorption, and ④ formation of substances with CMR26) properties. The document then called for further research on these additives and reporting. The first opinion document presented a list of 30 priority additives[27] (48 single chemicals organized

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24) It was originally called SCENIHR (Scientific Committee on Emerging Newly Identified Health Risks), but was merged with other committees in 2006 and reorganized into SCHEER (Scientific Committee on Health, Environmental and Emerging Risks). Hereinafter, it is collectively referred to as the "Scientific Committee."
25) Final Opinion on Additives Used in Tobacco Products (Opinion 1) dated January 25, 2016 (Plaintiff Exhibit No. 159, hereinafter referred to as the "First Opinion"), Preliminary Opinion on Additives Used in Tobacco Products (Opinion 2) dated July 6, 2016 (Plaintiff Exhibit No. 216, hereinafter referred to as the "Second Preliminary Opinion"), Opinion on Additives Used in Tobacco Products (Opinion 2, hereinafter referred to as the "Second Opinion") dated December 16, 2016 (Plaintiff Exhibit No. 345, Defendant Exhibit No. 61, Defendant Exhibit No. 10).
26) Carcinogenicity, Mutagenicity, Repro-toxicity

into chemical groups), while the final opinion document, the second opinion document, presented a list of 15 priority additives[28] (cocoa is included in both the first and second opinions). Sugars and ammonium compounds were included in the list of the first opinion, but were excluded from the second opinion. We will now consider the major ingredients of the individual additives: cocoa, sugars, and ammonia compounds.

(a) Regarding cocoa, Plaintiff argues that theobromine and caffeine in cocoa have a bronchodilatory effect and are therefore harmful to humans. However, the second opinion states, “The cocoa content used in cigarettes ranges from 0.2% to 0.66%, which is too low to produce a bronchodilatory effect in the lungs and increase nicotine absorption.” Furthermore, while cocoa contains ingredients that could theoretically increase addictiveness, there is insufficient evidence to determine whether the actual levels in cigarettes have a significant impact on humans.

(b) Regarding sugars, research suggests that higher sugar content in tobacco increases the amount of acetaldehyde, a potential carcinogen in mainstream smoke, and thus increases tobacco dependence. Animal studies have also shown that acetaldehyde combines with nicotine to enhance its addictive properties. However, sugars can comprise up to 20% of the mass of natural tobacco leaves, and only 4% of the mass is added during the manufacturing process. Research findings include that “acetaldehyde in cigarette smoke is primarily produced by the combustion of polysaccharides such as cellulose contained in natural tobacco leaves,” that “analysis of sugar pyrolysis products revealed no acetaldehyde or trace amounts,” and that “analysis of acetaldehyde in cigarette smoke after adding 10.5% sugar, a higher amount than the standard, showed no

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27) acetarsiole, aliphatic gamma-lactones, ammonium compounds, benzaldehyde, benzoic acid and sodium benzoate, benzyl alcohol, caramel colours, carob bean extract, cellulose, cocoa, diacetyl, 2-furfural, geraniol, glycerol, guaiacol, guargum, limalol, liquorice, maltol, menthol, natural/botanical extracts, phenyl acetic acid, piperonal, propylene glycol, sorbitol, sugars, titanium dioxide, trimethyl(cyclohex-1-enyl)but-2-en-4-one(β-damascone), vanillin, weak organic acids.
28) carob bean, cocoa and cocoa products(powder, extracts, shells of cocoa bean etc.), diacetyl, fenugreek extract, fig extract, geraniol, glycerol, guaiacol, guar gum, liquorice, maltol, menthol, propylene glycol, sorbitol, titanium dioxide.

significant difference compared to sugar-free cigarettes." A 2002 report by the Dutch Health Authority also stated, "Acetaldehyde in cigarette smoke does not have a direct reinforcing effect on humans, and there is no evidence that acetaldehyde in cigarette smoke reaches the brain." The first opinion paper also presented research findings demonstrating a positive correlation between sugar content and acetaldehyde production in certain tobacco products. However, it also noted that "the contribution of sugars to acetaldehyde production in mainstream smoke is no greater than the total amount of acetaldehyde produced from natural tobacco polysaccharides, including cellulose." Meanwhile, according to the International Agency for Research on Cancer (IARC) list of carcinogens, acetaldehyde in mainstream tobacco smoke is classified as a "possibly carcinogenic to humans" (Group 2B) among Groups 1, 2A, 2B, 3, and 4.[29] Despite considerable research on tobacco additives, it remains unclear whether the addition of sugars increases the risk of harm or whether acetaldehyde causes lung cancer and other conditions.

(c) Regarding ammonia compounds, the Plaintiff argues that tobacco companies add ammonia compounds during the manufacturing process, liberating (non-ionizing) the nicotine present in the tobacco leaf as a salt, thereby increasing nicotine absorption in the body and strengthening tobacco dependence. While research suggests that the addition of ammonia compounds increases nicotine's blood absorption, other studies have shown no difference in nicotine absorption when smoking cigarettes with different ammonia contents, and others have shown that the addition of ammonia compounds during the manufacturing process has no

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29) In the list of carcinogens above, Group 1 corresponds to substances with confirmed human carcinogenicity (carcinogenic to humans), Group 2A corresponds to substances with probable human carcinogenicity (probably carcinogenic to humans), and Group 3 corresponds to substances with unclassifiable human carcinogenicity (not classifiable as to its carcinogenicity to humans).

substantial effect on nicotine vaporization efficiency. Ammonia is also present in natural tobacco leaves. According to the first and second opinions, nicotine biomarker analysis of blood samples from smokers who smoked cigarettes with different ammonia contents did not indicate that differences in ammonia content in cigarettes increased the rate or amount of nicotine absorbed from the lungs into the arterial bloodstream. Furthermore, the possibility that the effects of ammonia compounds are due to the presence of ammonia compounds in natural tobacco leaves cannot be ruled out, and further research is needed. Therefore, Plaintiff's claims regarding ammonia compounds appear to remain controversial.30)

(5) he second opinion stated that “due to the high toxicity of tobacco products themselves, it is difficult to demonstrate changes (increases or decreases) caused by additives using currently available testing methods and methodology.” In other words, due to the toxicity of tobacco products themselves, it is difficult to analyze the harmful effects of additives using existing research methods that compare cigarette smoke components from cigarettes containing additives suspected of being potentially harmful substances with those from cigarettes without such additives (control group). Furthermore, the second opinion stated that even if an ingredient has been guaranteed safe in food, it cannot be definitively determined to be safe when inhaled after pyrolysis as a component of tobacco. It also proposed research methods for identifying the pyrolysis products of additives. In light of these circumstances, it appears that verifying the harmful effects of additives was a difficult task, at least using the research methods typically employed when the subjects in this case smoked.

(6) In particular, for the Defendants to recognize that the use of additives in the manufacture of cigarettes constitutes a design defect, cigarettes without additives must be considered a

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30) In this regard, the Plaintiff argues that the Defendants added ammonia compounds to cigarettes to promote nicotine absorption (the Defendants dispute the fact of adding ammonia compounds), and that this is confirmed through RICO decisions, etc. However, as previously seen, unless it is confirmed that the addition of ammonia compounds significantly increases the harmfulness of cigarettes, the presence or absence of such addition does not affect the conclusion of this case.

reasonable alternative design. The World Health Organization (WHO) Framework Convention on Tobacco Control's Fourth Conference of the Parties guidelines state, “Reducing the appeal of cigarettes by eliminating or reducing certain ingredients does not mean that the product is less harmful to health.” The American Cancer Society also published research findings stating, “While some cigarettes are marketed as being free of chemicals or additives and rolled with 100% cotton, there is no evidence that these cigarettes are healthier or safer than other cigarettes, and there is no basis for believing otherwise.”

c) Introduction of Perforated Filters (Third Design Defect)

In light of the circumstances below, the evidence submitted by the Plaintiff alone is insufficient to determine that the use of perforated filters in cigarette manufacturing constituted a design defect.

(1) A perforated filter is a filter with small holes in the cigarette filter to allow air to enter during smoking. As cigarette smoke passes through the filter, air is drawn in through the perforations and mixed with the cigarette smoke. Therefore, with each puff, smokers inhale more air than with a simple filter, resulting in less smoke inhaled.

(2) There are two main methods for measuring tobacco components: the ISO method and the HC method. The existing ISO method measures the components of tobacco smoke by holding a cigarette in place and inhaling 35ml of smoke for two seconds every minute. The HC method, proposed in the 1990s, measures the components of tobacco smoke by blocking the holes in a perforated filter with tape and inhaling 55ml of smoke for two seconds every 30 seconds. Plaintiff claims that cigarettes equipped with perforated filters exploit this loophole in the ISO method to produce lower component readings than actual values. However, the Plaintiff's claims regarding the labeling of tobacco

components can be resolved by adopting the HC method, and do not appear to be a problem with the perforated filter itself. Furthermore, the existing ISO method has been widely accepted not only in Korea but also globally. Therefore, as the Defendants labeled the tar and nicotine content measured using the ISO method in accordance with the Tobacco Business Act,[31] it is difficult to view this as illegal.

(3) The Plaintiff claims that smokers hold their cigarettes so that they significantly block the perforations with their fingers or cover the perforations with their lips before smoking, resulting in inhaling more tar and nicotine than indicated, or that perforated filters induce compensatory smoking. However, the Plaintiff's claims are unlikely to be universal or typical for all smokers. If even a portion of the perforations are uncovered, air dilution likely plays a role. The Plaintiff claims that perforated filters increase the risk of lung cancer, based on some research results. However, other research suggests that perforated filters reduce the risk of lung cancer and other diseases.

(4) Even according to data published by the International Agency for Research on Cancer (IARC) in 1986, “while the introduction of low-tar cigarettes may lead smokers to change their smoking habits, resulting in compensatory smoking, smoking does not generally result in a level that fully compensates for the tar and nicotine levels of previous smoking.” Furthermore, long-term use of unfiltered, high-tar cigarettes carries a higher risk of lung cancer than the use of filtered, low-tar cigarettes. Based on these research findings, the conclusion that filtered cigarettes are safer than unfiltered cigarettes was maintained in data published by the U.S. Department of Health and Human

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31) ○ Article 25-2 of the Tobacco Business Act (Labeling of Tobacco Ingredients, etc.)
① Manufacturers and importers and sellers shall label the main ingredients and their content in the smoke of a single cigarette on the cigarette packaging and in advertisements prescribed by Presidential Decree.
○ Article 9-4 of the Enforcement Decree of the Tobacco Business Act (Measurement Standards for Tobacco Ingredients, etc.)
① The measurement standards prescribed in Article 25-2, Paragraph 3 of the Act shall be based on the tobacco smoke component testing methods established by the International Organization for Standardization (ISO). The specific measurement standards shall be prescribed by a Ministry of Strategy and Finance Ordinance.

Services in 1991. In other words, filters are designed to reduce the amount of nicotine and tar in cigarette smoke inhaled by smokers, and perforated filters are a design method adopted to further reduce nicotine and tar compared to simple filters. If the Plaintiff's argument is that the introduction of perforated filters constitutes a design defect, then simple filters without perforations should be installed. However, it is difficult to generalize that cigarettes equipped with simple filters, where smoke cannot be diluted by air, would be less harmful than cigarettes equipped with perforated filters.

D. Recognition of Defects in Labeling

1) Relevant Legal Principles

If a manufacturer, etc. could have reduced or avoided damage or risk caused by a product by providing reasonable explanations, instructions, warnings, or other labeling, but failed to do so, such labeling defects (defects in instructions or warnings) may be held liable in tort. When determining whether such defects exist, various factors must be comprehensively considered, including the characteristics of the product, typical usage patterns, user expectations of the product, anticipated risks, user awareness of the risks, and the user's ability to avoid risks, and the judgment must be made in light of generally accepted social norms. (see Supreme Court Decision 2011DA22092, April 10, 2014; Supreme Court Decision 2017DA213289, July 14, 2022).

2) Specific Judgment

Considering the aforementioned evidence, including the descriptions in the Plaintiff's Exhibits Nos. 160, 238, 248 through 256, 272, 289 through 295, the Defendants' Exhibits Nos. 7, 87 through 93, and 98, the Defendants' Exhibits Nos. 54 and 63, the overall tenor

of the argument, and considering the following circumstances, it is difficult to conclude that the Defendants' failure to display additional explanations, warnings, or other labels on cigarette packs in addition to the legally required warning labels indicates a defect in the labeling of cigarettes manufactured and sold by the Defendants regarding the harmfulness and dependence of tobacco. Furthermore, considering the general public's perception of the harmfulness and dependence of tobacco, it is also difficult to conclude that the subjects in this case initiated or continued smoking due to a lack of understanding of the harmfulness and dependence of tobacco.

a) As stated in the relevant laws and regulations in Appendix 5 of the First-Instance Judgment, manufacturers and sellers of cigarettes were required to display warning labels on cigarettes regarding the dangers of smoking. As shown below, Defendants complied with the labeling obligations stipulated in the relevant laws and regulations during the manufacturing and sale of cigarettes.

(1) In 1975, the World Health Organization (WHO) recommended that cigarettes be labeled with the warning, “Smoking is harmful to your health.” Beginning on January 1, 1976, cigarette packs manufactured and sold in Korea began displaying the warning, “For your health, avoid excessive smoking.”

(2) Since the Tobacco Business Act stipulated that cigarette packs must display a warning clearly stating that smoking is harmful to health (Article 25, Paragraph 1), the warning phrase “Warning: Smoking can cause lung cancer, etc., and is particularly harmful to the health of pregnant women and adolescents” has been displayed on the side of cigarette packs manufactured/sold since December 17, 1989.

Meanwhile, around 1989, the only countries that displayed warning labels comparable to those in Korea were the United States (Surgeon General's Warning: “Smoking causes lung cancer, heart disease, emphysema, and may adversely affect pregnancy”; “Smoking during pregnancy can cause fetal harm, premature birth, and low birth weight”; “Cigarette smoke contains carbon monoxide”;

“Stopping smoking now will significantly reduce the serious risks to your health”) and the United Kingdom (Health Department Medical Director's Warning: “Smoking can cause fatal illness”; “Smoking can cause fatal heart disease”; “Smoking during pregnancy can harm the fetus and cause premature birth”; “Smoking can cause lung cancer, bronchitis, and other lung diseases”; “More than 30,000 people die from lung cancer in the UK each year”; “Quitting smoking reduces the risk of serious illness”). Other countries Warnings displayed around 1989 included statements such as, “Smoking can be dangerous to your health” (France), “Smoking is harmful to your health. Smoking one cigarette contains the same amount of nicotine and tar as indicated on the tax certificate according to German industrial standards” (Germany), and “For your health, please refrain from excessive smoking” (Japan).

(3) The National Health Promotion Act, enacted on January 5, 1995, required cigarette manufacturers to display warnings on the front and back of cigarette packs, stating that smoking is harmful to health (Article 8, Paragraph 3). Accordingly, cigarette packs manufactured and sold in Korea are labeled on the front with the phrase, “Smoking causes lung cancer and other diseases, and is particularly harmful to the health of pregnant women and adolescents.” The back of the packs bears one of the following statements: “Quit smoking and you will be healthy and live a long life,” “When you smoke, you harm the health of others,” “Smoking also harms the health of your children,” or “Smoking causes stroke and heart disease.”

(4) On March 7, 1997, the Youth Protection Act was enacted, requiring manufacturers to label products harmful to youth, including tobacco. Accordingly, the following text was added to the back of cigarette packs: “Cigarettes cannot be sold to minors under the age of ⑲” in a square at least one-fifth the size of the back of the pack.

(5) Beginning in 2007, the front of cigarette packs displayed the following text: “Smoking causes lung cancer and other diseases, and is particularly harmful to the health of pregnant women and

adolescents." The back of cigarette packs also displayed the following text: "Do not sell to minors under the age of 19! It will make your children sick."

(6) From 2008 to 2013, the front of cigarette packs displayed the following statements: "Cigarettes are harmful to your health. Once you start smoking, it's very difficult to quit," and "Cigarette smoke contains carcinogenic substances: naphthylamine, nickel, benzene, vinyl chloride, arsenic, and cadmium." The back of cigarette packs displayed the following statements: "Do not sell to minors under 19! It harms your child's health," and "Cigarette smoke contains carcinogenic substances: naphthylamine, nickel, benzene, vinyl chloride, arsenic, and cadmium." Starting in 2013, these statements were supplemented with statements like "Smoking Cessation Hotline 1544-9030" and "The amount of tar inhaled may vary depending on the smoker's smoking habits."

b) Since its introduction to Korea in the early 1600s, tobacco has been consumed by burning dried tobacco leaves and inhaling the smoke. Since the introduction of tobacco, debate has persisted over the health risks and benefits of smoking—both the potential health risks and the perceived benefits it can provide for mental and physical well-being.

c) Regarding the harmful effects of tobacco, historical records dating back to the Joseon Dynasty warn of its harmful effects. Warnings about its dangers have persisted even after modernization, the Japanese colonial period, and the Korean War.

(1) On April 19, 1901, independent newspapers reported the findings of a Russian doctor, stating, "16 out of 100 smokers suffered from bronchial disease, compared to only 10 out of 100 non-smokers. Digestive diseases were present in 11 out of 100 smokers and 9 out of 100 non-smokers." This underscored the health risks of smoking.

(2) In the 1920s and 1930s, Christian temperance movements led by Protestant churches and other groups educated people about the harmfulness and addiction of tobacco and encouraged them to

resolve to quit smoking and to do so. The Dong-A Ilbo, dated October 20, 1921, said, “People who enjoy smoking a lot say they would rather skip a meal than live without smoking for a while.” The Dong-A Ilbo, dated March 16, 1925, said, “Cigarettes are also harmful, and nicotine addiction causes great harm to the brain.” The Dong-A Ilbo, dated March 31, 1931, said, “Once you acquire the bad habit of smoking, it becomes a lifelong chronic disease.” The Dong-A Ilbo, dated February 3, 1938, said, “Unfortunately, alcohol and cigarettes are highly addictive in direct proportion to each other, and once anyone develops an addiction after smoking for a certain period of time, it is difficult to quit, even with a strong determination.”

(3) In March 1938, when the Government-General of Korea decided to implement the Minor Smoking Prohibition Act, enacted in 1900, in Korea as well, starting on April 1, 1938, the Chosun Ilbo welcomed this in an editorial on March 27, 1938, stating that “since time immemorial, numerous patriots have emphasized that smoking is harmful and useless both for health and social education, and many government authorities have acknowledged it.”

(4) In the Ministry of Education's approved textbook for middle school social studies, published around 1949 and 1950, under the heading “Drug Detoxification and the Harmful Effects of Alcohol and Tobacco,” it states, “Nicotine addiction in tobacco impairs mental function, causing dizziness, insomnia, impaired vision, and even forgetfulness. Indigestion reduces appetite and leads to weight gain. Arteriosclerosis raises blood pressure, shortening life expectancy. If adolescents smoke, their physical and mental development is stunted, their memory declines, and they become completely unable to study.” “After one or two cigarettes, they become addicted to nicotine, making it difficult to abstain from smoking. It is said that the nicotine in a single cigarette is enough to kill a rat.”

(5) Meanwhile, Richard Doll and Bradford Hill conducted an interview survey of 5,000 hospitalized patients in England from 1948 to 1952, dividing them into a group of 1,465 lung cancer patients and a group of patients hospitalized for other diseases (control group), and

announced the results of their study in 1952 under the title “Study on the Etiology of Lung Cancer”: “25% of male lung cancer patients were smokers (an average of 25 cigarettes per day), whereas only 13.4% of male control patients smoked.” Following this announcement, numerous epidemiological studies on the link between smoking and lung cancer followed. The Encyclopedia of Family Medicine, published in Korea in 1959, noted, “There is a theory that smoking is the cause of bronchial cancer,” and introduced Richard Doll's paper, “Smoking can cause lung cancer.”

(6) Subsequently, the 1964 U.S. Surgeon General's Report acknowledged an epidemiological causal relationship between smoking and lung cancer based on the relative risk of lung cancer in smokers and non-smokers. From then until the 1990s, various daily newspapers published articles on the risks of smoking, as described in Appendix 1-1 through 1-7 of this ruling.

d) In light of the relevant laws and regulations mentioned above, the content of cigarette pack labels pursuant to these laws, newspaper articles on the harmful effects of cigarettes, and other sources, the content of warning labels on cigarette packs has gradually evolved in line with societal perceptions and demands regarding smoking. Furthermore, compared to international examples, the level of warnings in Korea regarding the dangers of cigarettes does not appear to be low. Moreover, the fact that smoking can cause various diseases, including cancer of the respiratory system involving the lungs, and that smoking can lead to addiction, appears to be widely known to tobacco consumers and society at large through media reports and legal regulations; therefore it is difficult to conclude that the Defendants' failure to provide additional explanations, warnings, or other labels beyond the legally required warning labels on cigarette packs constitutes a defect in the labeling of the cigarettes they manufactured and sold regarding the harmful effects and addictions of cigarettes. In addition, it is also difficult to conclude that

the Defendants in this case initiated and continued smoking due to a lack of understanding of the harmful effects and addictions of cigarettes.

e) The Plaintiff argues that the harmful effects and dependence of smoking were not widely known to the public until the 1970s, when the subjects in this case began smoking. The Plaintiff cites newspaper articles, such as those listed in Appendix 2 of this decision, as evidence. However, although newspaper articles contain some content denying the harmfulness of cigarettes, the number of such newspaper articles is significantly less than the newspaper articles on the harmfulness of cigarettes mentioned above. Other newspaper articles contain content such as “there is controversy or rebuttal about the harmfulness of cigarettes, or the harmfulness of cigarettes is exaggerated,” “there is no scientific confirmation of the connection between smoking and diseases such as lung cancer,” “tobacco has some pharmacological effects,” “the words of people who have lived long lives even though they are cigarettes,” but the content of these newspaper articles itself involves the harmfulness of cigarettes, so it does not appear that the harmfulness or dependence of cigarettes was unknown to the public based on the content of the newspaper articles mentioned above by the Plaintiff alone.

f) The Plaintiff asserts that the Defendants have been advertising cigarettes using phrases such as “natural,” “pure,” “1mg,” “light,” and “mild” and images that emphasize health, thereby invalidating warning labels. The Defendants acknowledge that they have used such phrases and bright images to advertise tobacco products.

However, in light of the following factors: ① As previously discussed, the harmful effects and addiction of cigarettes appear to be widely recognized in society; ② Reducing the amount of tar and nicotine contained in the smoke of a single cigarette is expected to reduce the amount of tar and nicotine inhaled by the smoker under the same conditions and methods; this also

holds true when the amount of tar and nicotine is reduced by a perforated filter; ③ The above expressions actually describe the characteristics of tobacco products, which allow for relatively low tar and nicotine inhalation. It is difficult to consider advertising with such phrases illegal in situations where advertising is not restricted by relevant laws. Furthermore, misleading phrases that neutralize the risks of tobacco appear to have been banned by relevant laws, and such phrases and images appear to have ceased to be used; and ④ The subjects in this case had generally begun smoking prior to the 1970s, and there is no clear evidence to suggest that the Defendants continued to smoke after the sale and advertising of tobacco products using such phrases; it is difficult to conclude that the Defendants" use of the above phrases invalidated the warnings on cigarette packs. Furthermore, it is difficult to establish a causal relationship between the use of the above phrases and the initiation and continuation of smoking by the subjects in this case. Consequently, the Plaintiff's argument on this point is also without merit.

E. Lack of Normally Expected Safety

A. Under the Product Liability Act, a defect includes a lack of "normally expected safety" (Article 2, Paragraph 2 of the Product Liability Act). Normally the expected safety of a product should be considered to mean a lack of safety within an objectively expected range, considering the technological level and economic feasibility at the time of manufacture/sale, in terms of the product's structure, quality, and performance.

B. In light of the circumstances and evidence presented above, and the intent of the entire argument, the considering the following: ① In Korea, cigarettes are viewed as a type of luxury good, and their manufacturing, sale, and smoking have been legally and socially permitted without any restrictions on their quality or level, and there are no circumstances that can be considered to

have changed the legal system or social norms. Therefore, it is difficult to view cigarettes themselves, as a luxury good, as lacking the safety that can normally be expected simply because of the presence of carcinogens in cigarettes and their smoke, or the potential health risks and dependence of smokers due to these; ② Carcinogens can be present even in unprocessed foods, and the types of carcinogens become more diverse when foods are heated; ③ Even before the Defendants began manufacturing cigarettes after tobacco was introduced to Korea, tobacco consumption was conducted by placing dried tobacco leaves in pipes or pipes, or rolling them in paper, lighting them, and inhaling the smoke. Burning dried tobacco leaves produces harmful substances, including tar, nicotine, and carbon monoxide, in the smoke, and it is acknowledged that most of these harmful substances are combustion products of the tobacco leaves; ④ Nicotine is present in natural tobacco leaves and is absorbed into the body when burned. However, this smoking method was not developed by the Defendants; and ⑤ Nicotine does not appear to cause dependence in all smokers. Even if nicotine dependence does occur, the degree of dependence, the symptoms of disability, and the severity of the dependence determine not only the decision to start smoking but also whether to continue. Considering the fact that it can be viewed as a matter of free will and that the Defendants' cigarette manufacturing has been permitted by law; even if the cigarettes manufactured by the Defendants and their smoke contain carcinogens, or that the nicotine contained in cigarette smoke can cause addiction, hinder smoking cessation, and contribute to carcinogenesis, it is difficult to conclude that the cigarettes manufactured by the Defendants lack the safety expected by the general public based solely on these facts (see Supreme Court Decision 2011DA22092, April 10, 2014).

F. Manufacturer's Violation of Duty of Observation

The Plaintiff asserts that the Defendants, despite confirming that “light cigarettes” were no less harmful than other cigarettes, failed to cease labeling and advertising this claim, concealing it, and actively manufacturing and selling the product, thereby breaching the manufacturer's duty of observance.

Article 4, Paragraph 2 of the Product Liability Act prohibits a manufacturer from claiming partial immunity if, after supplying the product, it knew or should have known of the existence of a defect in the product but failed to take appropriate measures to prevent damages caused by the defect. However, as previously discussed, the existence of defects in the cigarettes manufactured and sold by the Defendants has not been proven. Therefore, the Plaintiff's argument, based on a different premise, is rejected.

4. Conclusion on the First Preliminary Claim

Therefore, the Plaintiff's first preliminary claim, which presupposes that the Defendants in this case have a right to claim damages against the Defendants under product liability, is without merit.

V. Whether Defendants are Recognized as Tort Liable (Second Preliminary Claim)

1. Summary of the Argument

A. Breach of Duty to Avoid Consequences

As recognized in RICO decisions and other cases, tobacco companies have known since the 1950s that cigarettes are highly likely to cause lung cancer and other cancers. Therefore, the Defendants must be considered aware of the risks of cigarettes. Consequently, the Defendants were able to foresee the risk of lung cancer and other cancers and bear the “duty to avoid consequences.” They must specifically inform consumers of the risks of cigarettes they are aware of, or make efforts to

eliminate or reduce the risks inherent in cigarettes by thoroughly verifying their safety and improving their manufacturing methods. However, the Defendants violated their duty to avoid consequences by displaying only the minimum warning label required by relevant laws and failing to make a sincere effort to inform consumers of the dangers of tobacco.

B. Active deception and concealment, and illegal advertising practices that minimize and distort the dangers of tobacco

Defendant KT&G conducted interviews denying the harmful effects of tobacco even after the 1964 U.S. Surgeon General's report was published. The Defendants actively denied the dangers of tobacco by issuing a joint opinion statement regarding the 1994 National Health Promotion Act, stating that there was no scientific basis for claims regarding the harmful effects of smoking on the human body. These actions actively deceived consumers and concealed the dangers of tobacco. Furthermore, the products promoted by the Defendants as “low tar” and “light” merely exploited loopholes in the mechanical measurement of tobacco components. These products can actually be more dangerous due to compensatory smoking. Even though tobacco companies were aware of the risks of these products since the 1950s, they continued to advertise and sell these cigarettes by linking them to a healthy image. This practice led to the Defendants being subject to corrective action by the Fair Trade Commission. Furthermore, after the opening of the Korean tobacco market in 1988, smoking rates skyrocketed. During the same period, the number of cases of false advertising and free gifts also increased, which can be attributed to the tobacco companies' advertising and promotional practices. The Defendants thus committed illegal acts by deceiving smokers, including the victims in this case.

C. Increased Risk through Additives and Intentional Cigarette Design

The Defendants' intentional use of additives in the cigarette manufacturing process to increase tobacco dependence constitutes illegal activity.

2. Judgment

Considering the aforementioned evidence, including the descriptions in the Plaintiff's Exhibits Nos. 258, 259, 282, 285 through 288, and 296 through 319, the Defendants' Exhibits Nos. 7, 87 through 93, and 98, and the Defendants' Exhibits Nos. 54 and 63, and the overall tenor of the argument, and considering the following circumstances, it follows that the evidence submitted by the Plaintiff alone is insufficient to establish that the Defendants committed the alleged tort against the subjects of this case. Furthermore, there is no other evidence to support this assertion. Therefore, the Plaintiff's argument is not accepted.

A. Despite the physical harm of cigarettes, their manufacture and sale have been legally and socially permitted. As previously noted, the evidence submitted by the Plaintiff alone is insufficient to establish that the cigarettes imported, manufactured, and sold by the Defendants contain design or labeling defects, or lack the typical safety of a product. Therefore, the Plaintiff's argument that the Defendants failed to take adequate measures to avoid design or labeling defects in the cigarettes and the lack of typical safety features is difficult to accept at face value.

B. It is acknowledged that the representative of our country's Monopoly Bureau gave an interview on January 14, 1964, after the release of the U.S. Surgeon General's report, denying the harmfulness of cigarettes; that Defendant KT&G expressed the opinion that smoking is a matter of personal choice; that the director of the Korea Ginseng and Tobacco Research Institute gave an interview saying that they would develop a "health cigarette"; that Defendant KT&G's research institute announced research results showing that cigarettes reduce the incidence of dementia; that Defendant KT&G published a booklet in 1989 stating that "there is no scientific basis for the connection between smoking and health"; that the president of Defendant KT&G gave an interview in 2013 stating that "there are some doubts about the claim that cigarettes contain thousands of carcinogens"; and that the Korea Tobacco Association, to which Defendants belong, submitted a joint opinion in 1994 regarding the National Health Promotion Act, stating that there is no objective and scientific basis for saying

that smoking is harmful to human health.

However, as previously noted, the harmful effects and addiction of tobacco were widely recognized in society at the time the subjects in this case began or continued smoking. The Defendants' interviews, research findings, publication of pamphlets, and submission of joint opinions merely expressed their opinions from an individual's perspective, presented certain pharmacological effects of tobacco, produced pamphlets for distribution to Defendant KT&G employees and tobacco sellers, and presented the tobacco manufacturing company's position on relevant legislation to the government. It is difficult to conclude that these actions were intended to conceal the dangers of tobacco or were sufficient to conceal them. Furthermore, there is no evidence to support the conclusion that the subjects in this case began or continued smoking as a result of the Defendants' actions.

C. As previously noted, it is difficult to conclude that the Defendants' promotion of low-tar, low-nicotine cigarettes constitutes a labeling defect, as it nullifies the warning label on cigarette packs. Furthermore, there is no evidence to support the claim that the Defendants initiated or continued smoking due to the Defendants' promotional activities, such as the above-mentioned promotional activities or free gifts.

D. As previously discussed, it is difficult to sufficiently establish that additives used in cigarettes increase cigarette dependence. Furthermore, even if the Defendants did increase cigarette dependence by using additives during the cigarette manufacturing process, there is no evidence to support the claim that these additives caused the Defendants to initiate or continue smoking.

3. Conclusion on the Second Preliminary Claim

Therefore, the Plaintiff's second preliminary claim, which presupposes that the Defendants in this case have a right to claim damages against the Defendants for general tort, is without merit.

VI. Whether or not compensation obligations under the former Consumer Protection Act, etc. are recognized (Third Preliminary Claim)

1. Summary of the Argument

Despite the fact that the subjects of this case were not fully aware of the risks of cigarettes, the Defendants violated their consumer protection obligations under the former Consumer Protection Act or the Consumer Basic Act by displaying insufficient warning labels or advertising them in a way that neutralized the warning labels.

2. Judgment

A. The former Consumer Protection Act (enacted on January 4, 1980, and before its complete revision by Act No. 7988 on September 27, 2006, and its name changed to the "Consumer Basic Act"; hereinafter referred to as the "Old Consumer Protection Act") stipulated that at the time of its enactment, the state shall establish and implement necessary policies to protect the life and physical safety of consumers and their economic rights and interests and to promote the rationalization of consumer life (Article 2); the competent minister may establish or amend standards to be observed by businesses regarding the content of products, such as ingredients, contents, and structure, instructions for use, warnings, and other information and methods of labeling, and other matters deemed necessary to prevent harm to consumers due to the content or method of use of products under his/her jurisdiction (Article 12, Paragraph 1). Those who manufacture, sell, or provide products shall endeavor to protect consumers and comply with the standards implemented by the state and local governments. It stipulates that businesses must actively cooperate with consumer protection policies (Article 3) and must not manufacture or sell products that violate the standards of Article 12, Paragraph 1 (Article 13). Article 19, Paragraph 1 of the Consumer Basic Act stipulates that “Businesses must take necessary measures to prevent harm to life, body, or property of consumers due to products, etc.”, and Article 19, Paragraph 3 of the same Act stipulates that “Businesses must provide consumers with information on products, etc. in a sincere and accurate manner.”

B. However, even if, as the Plaintiff argues, the provisions of the former Consumer Protection Act or the Consumer Basic Act were not solely intended to promote the interests of the general public or the entire nation, but rather to protect the safety and interests of individual members of society, even if only incidentally, considering the various circumstances discussed above, such as the progress of research on the epidemiological causal relationship between smoking and lung cancer and various media reports on such research, the level of tobacco consumer awareness of the harmful effects of smoking, and the content of the warning labels that the Defendants have placed on cigarette packs since 1976, it is difficult to conclude that the Defendants have violated their obligations under the former Consumer Protection Act or the Consumer Basic Act simply because they failed to take measures such as providing explanations, warnings, and publicity regarding the harmful effects and addictiveness of cigarettes, or establishing standards for such actions, as Plaintiff asserts (refer to the reasoning behind the Supreme Court's decision, 2011DA22092, rendered on April 10, 2014).

3. Conclusion on the Third Preliminary Claim

Therefore, Plaintiff's third preliminary claim, which presupposes that the Defendants in this case have a right to claim damages against the Defendants for breach of their obligations under the former Consumer Protection Act, is without merit.

VII. Additional Judgment

1. Causal Relationship between the Defendants' Acts and the Subjects' Smoking and the Development of Lung Cancer, etc.

As previously discussed, the evidence submitted by Plaintiff alone is insufficient to establish that the cigarettes imported, manufactured, and sold by the Defendants had defects in design or labeling, or lacked safety, and that the Defendants' actions constituted torts or breaches of their obligations under the former Consumer Protection Act, etc.

Therefore, there is no need to further examine whether a causal relationship exists between the Defendants' actions or the subjects' smoking and the development of lung cancer. However, since the legal doctrine regarding this causal relationship is at issue in this case, we will examine it further.

2. Summary of Plaintiff's Argument

A. Application of the Doctrine of Reduced Burden of Proof in Public Nuisance Litigation

While it is difficult or impossible to scientifically prove the entire causal link between smoking and the development of lung cancer, the Defendants have been involved in the collection, blending, and processing of raw materials used in cigarette manufacturing, and have not disclosed the specifics of these activities due to trade secrets. Furthermore, the Defendants were aware that smoking could cause lung cancer and even included warnings on their cigarette packs. Therefore, the doctrine of reduced burden of proof in pollution litigation can be similarly applied to proving a causal relationship between smoking and the development of lung cancer.

B. Estimating Individual Causality Using Epidemiological Correlations

1) According to epidemiological studies, the relative risk of smoking is 21.7 for small cell lung cancer, 11.7 for squamous cell carcinoma, and 5.4 for laryngeal cancer. Consequently, the risk of developing lung or laryngeal cancer in smokers is 5-20 times higher than in non-smokers, and the attributable risk of smoking for lung cancer is over 85-95%. These epidemiological studies were conducted according to generally accepted standards and methods in the field of epidemiology, and therefore should be given weight when proving causality. Consequently, based solely on the epidemiological correlations above, which indicate that smoking is the risk factor with the highest relative and attributable risks among lung cancer causes, an individual causal relationship between smoking and lung cancer can be inferred.

2) Even if the combined attributable risk of smoking and other risk factors for lung cancer exceed 100% and lung cancer is classified as a non-specific disease, smoking is clearly a significant risk factor for lung cancer, and other factors have little influence on lung cancer. Therefore, a separate causal relationship between smoking and lung cancer must be presumed. Even if some smokers with a smoking history of 20 pack-years or more do not develop lung cancer, this is merely a matter of inter-individual variation; smoking is clearly an absolute risk factor for lung cancer. Furthermore, even if multiple factors compete for a disease, a specific risk factor does not necessarily have to be the sole cause. Realistically, it is impossible to assume that a single factor alone contributes to the development of cancer, while others do not. Consequently, even if a smoker is exposed to other risk factors, such as alcohol, occupational factors, family history, medical history, or pre-existing conditions, smoking should be considered the primary risk factor unless there is proof of the extent to which these factors contributed to lung cancer.

3) All of the subjects in this case began smoking at a young age and had a smoking history of more than 20 pack-years for more than 30 years. They were diagnosed with lung cancer (squamous cell carcinoma, small cell carcinoma) or laryngeal cancer (squamous cell carcinoma). Therefore, smoking can be considered a major factor in the development of lung cancer or a significant risk factor sufficient to establish a significant causal relationship, and consequently, a causal relationship between smoking and the development of lung cancer can be presumed to exist; the Defendants bear the burden of proof to prove, through counter-evidence, that the subjects' lung cancer was caused by other factors.

3. Judgment

A. Applicability of the doctrine of reduced burden of proof regarding causation in pollution lawsuits

1) Relevant legal principles

Typically, in lawsuits seeking compensation for damages resulting from tort, the burden of proof lies with the victim, the claimant. However, in lawsuits seeking compensation for damages due to air or water pollution, the causal substances emitted by companies often indirectly cause damage through water. Furthermore, some aspects of pollution are beyond the scope of current scientific understanding, so that scientifically proving each link that constitutes the causal relationship between the harm and the damage is often extremely difficult or impossible. Requiring victims to provide rigorous scientific proof of a causal relationship in these pollution lawsuits risks effectively denying them access to judicial relief for pollution. Furthermore, the offending company often has a much easier time investigating the cause than the victim, both technically and economically. In addition, there is a risk of concealment, and if the offending company emits a harmful substance that reaches the damaged property and causes damage, the offending party must prove that it is not the cause. It is consistent with the concept of social equity to believe that liability cannot be avoided unless harmlessness can be proven (see Supreme Court Decisions 2000DA65666 and 65673, rendered on October 22, 2002, etc.)

2) Specific Judgment

a) In the case of a pollution lawsuit, if the Plaintiff proves without contradiction ① that the Defendant, the offending company, emitted a causal substance that could have a certain adverse effect, ② that the substance reached the Plaintiff, and ③ that damage occurred to the Plaintiff thereafter, the causal relationship between the Defendant's emission of the causal substance and Plaintiff's damage is deemed to have been proven; the Defendant can be exempted from liability only if he proves ① that the Defendant's emissions do not contain a causative agent that can cause damage to the Plaintiff, and ② that even if the Defendant's emissions contained a causative agent, it was not sufficient to cause damage, or if he proves through indirect evidence that the Plaintiff's

damage was entirely caused by a cause other than the Defendant's emissions. The reason for this easing of the burden of proof regarding causality is that in lawsuits for damages resulting from pollution, it is often difficult or impossible to scientifically prove the entire causal link between the offending act and the damage. Furthermore, the offending company has a technological and economic advantage over the victim in investigating the cause, and it bears a social obligation to prove that the substances it emits are not harmful; consequently, a substance emitted by the offending company reaches the damaged property and causes damage, the offending company cannot avoid liability unless it can prove its non-hazardous nature. This is consistent with the concept of social equity.

b) Regarding this case, adding the previously admitted facts and evidence to the overall argument, it is recognized that the carcinogens contained in cigarette smoke are inherently harmful by their very nature; that these carcinogens are presumed to be formed not only from atmospheric substances but also from components contained in tobacco leaves, paper, and additives, and through chemical transformations caused by heat; and that these substances are absorbed into the body through the respiratory tract of smokers through the act of smoking. Considering the following circumstances: ① That the amount of carcinogens that can be absorbed into the body through a single cigarette is small, making it difficult to acknowledge the occurrence of significant carcinogenic effects from a single cigarette; ② That there are various risk factors other than smoking that have been identified as being associated with lung cancer, making it difficult for smokers to scientifically explain the causal link between smoking and lung cancer; ③ That the chemical components and their characteristics in cigarettes and cigarette smoke have not been clearly identified to this day; and ④ That it is practically impossible to confirm the effects of chemical components on the human body through in vivo experiments; it is significantly difficult, if not nearly impossible, to scientifically confirm whether individual lung cancer cases are caused by an individual's smoking. The Defendants,

as importers/manufacturers/sellers of tobacco, are involved in the collection, blending, and processing of raw materials used in tobacco manufacturing. Furthermore, for business reasons, it is difficult to disclose the specific details of these activities. Considering these circumstances, there are similarities between the application of the burden of proof principle in pollution lawsuits and the application of the burden of proof principle in smoking-related damages lawsuits.

However, the manufacturing of cigarettes themselves cannot be considered an act of transmitting harmful substances. Unlike pollution, the transmission of carcinogens to smokers is due to the smoker's intention, i.e., the purchase and smoking process. This distinction distinguishes pollution from smoking. Furthermore, it's difficult to see how the Defendants could more easily investigate the causes of lung cancer in the subjects of this case than the Plaintiff. As discussed below, lung cancer is a non-specific disease. Therefore, to determine the cause of lung cancer, additional information must be gathered regarding the subjects' smoking initiation and duration, the time of lung cancer onset, their health status prior to smoking, their lifestyle habits, changes in their condition, and their family history. This information is held by the subjects of this case, not the Defendants, the tobacco companies, or is more readily available. Furthermore, the Plaintiff, as the insurer, can easily obtain the subjects' medical information. Consequently, it is difficult to directly apply the legal principle of reduced burden of proof in pollution lawsuits to this case, and the Plaintiff's argument in this regard is not accepted.

B. Inference of Individual Causality Based on Epidemiological Correlation

1) Relevant Legal Theory

Epidemiology is the study of the occurrence, distribution, and extinction of diseases as a collective phenomenon, as well as their impacts. It uses statistical methods to identify correlations with various

natural and social factors, and thereby discover methods to prevent and reduce the occurrence of diseases. Epidemiology investigates and elucidates the causes of diseases as a group phenomenon, not the causes of diseases suffered by individuals within that group. Therefore, even if an epidemiological correlation is recognized between a risk factor and a disease, this does not necessarily elucidate the cause of the disease suffered by individuals within that group. However, if the incidence of a disease in a group exposed to a risk factor is higher than that of a general population not exposed to that risk factor, the degree of this higher incidence can be used to infer the likelihood that the disease suffered by individuals within that group was caused by that risk factor.

Unlike "specific diseases," which are caused by a specific etiology and have a clear correlation between cause and effect, so-called "non-specific diseases" have complex causes and mechanisms, resulting from the complex interaction of congenital factors such as genetics and constitution, and acquired factors such as alcohol consumption, smoking, age, dietary habits, occupational and environmental factors. In the case of non-specific diseases, even if an epidemiological correlation is recognized between a specific risk factor and the non-specific disease, as there is always the possibility that individuals or groups exposed to that risk factor may also have been exposed to other risk factors, this epidemiological correlation only implies that exposure to that risk factor increases or increases the risk of developing the disease. It does not necessarily lead to the conclusion that the risk factor is the cause of the disease.

Consequently, even if an epidemiological correlation is recognized between a specific risk factor and a non-specific disease, simply proving that an individual was exposed to that risk factor and contracted the non-specific disease does not sufficiently establish a causal relationship. In such cases, an

epidemiological study comparing a group exposed to the risk factor with a general population not exposed to the risk factor must demonstrate that the rate of non-specific disease in the group exposed to the risk factor significantly exceeds the rate in the group not exposed to the risk factor. Furthermore, evidence must be provided, including the time and degree of exposure of individuals in the group to the risk factor, the time of onset, their health status prior to exposure, lifestyle habits, changes in disease status, family history, etc., proving the likelihood that the non-specific disease was caused by the risk factor (see Supreme Court Decision 2011DA22092, April 10, 2014; Supreme Court Decision 2011DA23422, April 10, 2014).

2) Specific Judgment

Considering the aforementioned evidence, including Plaintiff Exhibits 23, 47 through 54, 84 through 86, 90, 91, 92, 375, 387 through 391, Defendant Exhibits 10 through 14, and Defendant Exhibits 4, 11, 45, 55, and 72, and the overall tenor of the argument, and considering the following circumstances, it is inappropriate to infer an individual causal relationship between smoking and the development of lung cancer in the subjects of this case based on epidemiological correlation. Therefore, this part of Plaintiff's argument is also rejected.

a) As previously discussed, epidemiology investigates and elucidates the causes of diseases as a group phenomenon, not the causes of diseases suffered by individuals within that group. Epidemiological research results can only provide statistical insight into the distribution and determinants of disease occurrence within a population. Applying epidemiological findings to the individual level merely assumes that the average values for the target population are the same for a specific individual. Consequently, epidemiological research results cannot provide accurate

information about the specific causes of a specific individual's disease. Identifying the specific causes of an individual's disease requires individualized basic and clinical medical review.

b) Relative risk (RR), a concept in epidemiology, refers to the ratio of the disease incidence rate in individuals exposed to a risk factor (the exposed group) to the disease incidence rate in individuals not exposed to that risk factor (the non-exposed group).[32] It indicates the degree of "association" between a risk factor and the disease. Attributable risk (AR) refers to the proportion of disease events attributable to a risk factor, i.e., the "probability that the risk factor actually played a causal role" (i.e., the probability that the disease would not have occurred if the risk factor had not been present).[33]

c) The Plaintiff, based on epidemiological studies of Korean patients (Cases 23 and 49), argues that the relative risk of smoking for lung cancer and other cancers is 21.7 for small cell lung cancer, 11.7 for squamous cell carcinoma, and 5.4 for laryngeal cancer. These are extremely high risks, suggesting that epidemiological studies alone can be used to infer a causal relationship between smoking and lung cancer.

However, even based on the relative risk and attributable risk of smoking derived from these epidemiological studies, it is not possible to infer a causal relationship between smoking and lung cancer and other cancers. The attributable risk calculated through the relative risk only means ‘the proportion of smokers who developed lung cancer whose lung cancer was caused by smoking’ (the proportion of smokers who developed lung cancer who would not have developed lung cancer if

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32) Relative risk (RR) = (Disease incidence rate in the exposed group) / (Disease incidence rate in the non-exposed group). This can be expressed as a formula as follows:

$$RR = \frac{P(D|E)}{P(D)|E^c)}$$

33) Attributable risk (AR) = [(Disease incidence rate in the exposed group) - (Disease incidence rate in the non-exposed group)] / (Disease incidence rate in the exposed group). This can be expressed as a formula as follows:

$$AR = \frac{RR-1}{RR} = 1 - \frac{1}{RR}$$

they had not smoked), and the attributable risk alone cannot provide any information about the presence or absence of other factors, the relationship between smoking and other factors, or the degree of their influence. This fact is also evident in the fact that the sum of the individual contributing risks of risk factors for a specific disease can exceed 100%.

d) As previously discussed, lung cancer is a non-specific disease, caused by a complex interaction of congenital factors such as heredity and constitution, as well as acquired factors such as alcohol consumption, age, dietary habits, occupational and environmental factors. Therefore, additional proof of smoking as the cause of the disease is required. Regarding this, the Plaintiff argues that it is inappropriate to distinguish between specific and non-specific diseases and determine individual causality based on the multifactorial theory, which states that "all diseases are caused by the complex interaction of multiple factors." However, even if we adopt the multifactorial approach, as suggested by the Plaintiff, and assume that tuberculosis and cholera are non-specific diseases, not everyone exposed to Mycobacterium tuberculosis or Vibrio cholerae will develop tuberculosis or cholera. While all people with tuberculosis or cholera are infected with Mycobacterium tuberculosis or Vibrio cholerae, approximately 10-15% of all lung cancer patients are non-smokers, and among those who develop lung cancer, both smokers and non-smokers are present. Therefore, it is not inappropriate to treat the level of evidence for individual causality differently based on these differences.

e) The Plaintiff argues that lung cancer and other diseases can be influenced by factors other than smoking; however, the epidemiological correlation between smoking and the development of lung cancer and other diseases is acknowledged. Furthermore, the Defendants in this case had a smoking history of more than 30 years and 20 pack-years, and were diagnosed with lung cancer (squamous cell carcinoma, small cell carcinoma) or laryngeal cancer (squamous cell carcinoma). Therefore, smoking is an absolutely significant factor in the development of lung cancer and other diseases, and consequently, a causal relationship between smoking and lung

cancer and other diseases can be inferred. The Defendants argue that the burden of proof lies in proving that the occurrence of lung cancer, etc. in these cases was caused by other factors.

However, in a claim for damages due to an illegal act, the burden of proof of the causal relationship between the act of harm and the occurrence of the damage lies with the victim, who is the claimant. However, it is difficult to find clear grounds for shifting the burden of proof based solely on the high possibility of damage occurring due to the act of harm. It is also not easy to present objective standards regarding the degree of possibility of damage occurring necessary for shifting the burden of proof. Moreover, if the burden of proof is shifted as the Plaintiff argues, the Defendants would have to investigate the subjects' smoking initiation and duration, the onset of lung cancer and other diseases, their health prior to smoking, their lifestyle habits, changes in lung cancer and other diseases, and their family history. However, these data are either held by the subjects themselves, not the Defendants, or are more easily accessible. Many of the subjects in this case were already deceased at the time of filing this lawsuit. Therefore, shifting the burden of proof as the Plaintiff argues would be excessively detrimental to the Defendants, and it is difficult to find a justifiable basis for the Defendants to bear this disadvantage.

f) Meanwhile, the Plaintiff argues that individual causal relationships can be established through the concept of causal probability. In epidemiology, the probability of causation (PC) refers to the probability that exposure played a role in disease occurrence in a given individual. In other words, the PC represents the probability that a randomly selected patient with a specific disease will develop a disease due to that factor. Since it is calculated using relative risk, it is fundamentally an epidemiological concept (Exhibit A, page 30).[34)] The PC assumes that the average effect observed

across the entire population also applies to a specific individual, and therefore does not reflect the involvement of other factors or individual differences. In other words, the concept of causality, like the relative risk and attributable risk of epidemiological correlations, has limitations in that it cannot capture information about the presence or absence of other factors, the relationship between smoking and other factors, or the extent of their influence.

4. Regarding the Determination of Individual Causality

A. To impose liability for damages resulting from a tort, there must be a substantial causal relationship between the unlawful act and the damage suffered by the Plaintiff. The existence of such a causal relationship must be determined comprehensively by considering factors such as the likelihood of the outcome occurring, the nature of the unlawful act, and the nature of the harmed interest (see Supreme Court Decision 2021DA300791, rendered on May 26, 2022, etc.). In civil disputes, causality is not a medical or scientific causality, but a social and legal causality. This causality does not necessarily require clear medical or scientific proof (see Supreme Court Decision 99DA67147, March 28, 2000, and Supreme Court Decision 2002DA564, October 11, 2002, etc.). Furthermore, proving causality in civil litigation requires proving a high degree of probability, based on empirical rules, that a certain fact caused a certain outcome. The verdict is sufficient if it is so certain that an ordinary person would not doubt its truthfulness (see Supreme Court Decision 89DA7730, June 26, 1990, etc.).

B. Regarding this case, the Plaintiff's assertions—namely, the epidemiological correlation between smoking and the development of lung cancer, and the fact that the subjects in this case had a smoking history of more than 30 years (20 pack-years) and were diagnosed with lung cancer (squamous cell carcinoma, small cell carcinoma) or laryngeal cancer (squamous cell carcinoma)—constitute the "probability of lung cancer caused by smoking," one of the criteria for determining individual causality. To determine the existence of an individual causal relationship, the court must

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34) $PC = AR = 1 - \frac{1}{RR}$

consider the subjects' dates of smoking initiation and duration, the timing of lung cancer onset, their health status prior to smoking, their lifestyle habits, changes in lung cancer and other disease states, family history, and other basic medical and clinical diagnostic findings. In this case, individual causality is strictly a social/legal causality, and in light of the facts that the degree of proof is such that an ordinary person would be confident of its truthfulness without raising doubts, that the epidemiological correlations derived from epidemiological research findings allow for statistically identifying the distribution and determinants of disease occurrence within a population, and that the public's confidence in epidemiological correlations are derived according to causal criteria based on epidemiological research conducted by professional epidemiological investigation agencies, it is reasonable to consider the impact of the Plaintiff's assertion of epidemiological correlations and the significant smoking history of the subjects in this case on the likelihood of developing lung cancer and other diseases.

C. However, as previously discussed, this is insufficient to establish that the cigarettes imported, manufactured, and sold by the Defendants are defective, that the Defendants' actions constitute illegal acts, or that they violate obligations under the former Consumer Protection Act. Therefore, we will not proceed to determine the individual causal relationship between the 3,465 individuals in this case (unless the Plaintiff's peripheral and alternative claims are all admitted, we will not proceed to determine the Plaintiff and Defendants' remaining arguments, which assume the above claims to be admitted.)

VIII. Conclusion

Therefore, the Plaintiff's peripheral and alternative claims are without merit and should be dismissed. The first-instance judgment is consistent with this conclusion and is justified. Therefore, the Plaintiff's appeal is without merit and is entirely dismissed.