

105TH CONGRESS
2D SESSION

H. R. 4375

To provide provisions relating to Castano actions.

IN THE HOUSE OF REPRESENTATIVES

JULY 31, 1998

Mr. MEEHAN introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committees on Ways and Means, and the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide provisions relating to Castano actions.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. TEXT OF H.R. 3868.**

4 For purposes of this Act, the text of H.R. 3868 shall
5 be considered to be a part of this Act.

6 **SEC. 2. CASTANO ACTIONS.**

7 The text of H.R. 3868 included in this Act under sec-
8 tion 1 is amended by adding at the end of title VIII the
9 following:

1 **“Subtitle C—Castano Actions**

2 **“SEC. 821. CASTANO ACTIONS.**

3 “(a) IN GENERAL.—The rights and benefits afforded
4 in titles III and V of this Act are provided in settlement
5 of, and shall constitute the exclusive remedy for the pur-
6 pose of determining, civil liability as to addiction/depend-
7 ency claims asserted in the various Castano Actions
8 against the manufacturers of cigarettes and others All
9 bases for any such claim under the laws of any State are
10 preempted (including State substantive, procedural, reme-
11 dial, and evidentiary provisions) and settled, with reserva-
12 tion of the rights of individual class members to pursue
13 their claims in a civil action not based on addiction or
14 dependency in accordance with this Act. For purposes of
15 determining the applicable statute of limitation or repose,
16 individual actions filed by those who were included within
17 such class actions shall be considered to have been filed
18 as of the date of the filing of the original class action.

19 “(b) ARBITRATION PANEL AND AWARDS.—

20 “(1) ESTABLISHMENT.—For the purposes of
21 awarding of attorneys’ fees and expenses relating to
22 litigation affected by, or legal services that resulted
23 in whole or in part in, this Act, there is established
24 an Arbitration Panel which shall consist of 3 mem-
25 bers appointed as follows:

1 “(A) one member shall be appointed by the
2 manufacturers;

3 “(B) one member shall be appointed jointly
4 by the private attorneys and Attorneys General
5 who were signatories to the Memorandum of
6 Understanding dated June 20, 1997, by and
7 between manufacturers, the Attorneys General,
8 and the private attorneys (one vote to the pri-
9 vate attorneys and one vote to the Attorneys
10 General); and

11 “(C) one member shall be appointed jointly
12 by the aforementioned private attorneys, manu-
13 facturers, and Attorneys General.

14 “(2) OPERATION.—

15 “(A) ESTABLISHMENT.—The members of
16 the Arbitration Panel shall be appointed not
17 later than 30 days after the date of enactment
18 of this Act. In the event either the manufactur-
19 ers or the private attorneys/Attorneys General
20 fail to timely appoint their arbitrator, the Sen-
21 ior Judge for the United States Court of Ap-
22 peals for the District of Columbia shall appoint
23 such arbitrator within 10 days after receipt of
24 a petition to do so from a party which was re-
25 quired to appoint an arbitrator. In the event

1 the manufacturers, the private attorneys, and
2 the Attorneys General are unable to agree upon
3 the third arbitrator within a period of 10 days
4 after the later of their appointments, then any
5 of them may petition the Senior Judge for the
6 United States Court of Appeals for the District
7 of Columbia to appoint that arbitrator and the
8 Senior Judge shall do so within 10 days after
9 the receipt of a petition requesting the appoint-
10 ment.

11 “(B) PROCEDURES.—Not later than 30
12 days after the date on which all members of the
13 Arbitration Panel are appointed, the Panel shall
14 establish the procedures under which the Panel
15 will operate which shall include—

16 “(i) a requirement that any findings
17 by the Arbitration Panel must be in writ-
18 ing and supported by written reasons;

19 “(ii) procedures for the exchanging of
20 exhibits and witness lists by the various
21 claimants for awards;

22 “(iii) to the maximum extent prac-
23 ticable, requirements that proceedings be-
24 fore the Panel be based on affidavits rath-
25 er than live testimony; and

1 “(iv) a requirement that all claims be
2 submitted to the Arbitration Panel not
3 later than 3 months after the date of en-
4 actment of this Act and a determination
5 made by the Panel with respect to such
6 claims not later than 6 months after such
7 date of enactment.

8 “(3) RIGHT TO PETITION.—Any individual at-
9 torney or group of attorneys involved in litigation af-
10 fected by this Act or the rendering of legal services
11 that resulted, in whole or in part, in this Act, shall
12 have the right to petition the Arbitration Panel for
13 attorneys’ fees and expenses.

14 “(4) CRITERIA.—In making any award pursu-
15 ant to this section, the Arbitration Panel shall con-
16 sider the following criteria:

17 “(A) The time and labor required by the
18 claimant.

19 “(B) The novelty and difficulty of the
20 questions involved in the action for which the
21 claimant is making a claim.

22 “(C) The skill requisite to perform the
23 legal service involved properly.

1 “(D) The preclusion of other employment
2 by the attorney due to acceptance of the action
3 involved.

4 “(E) Whether the fee is fixed or a percent-
5 age.

6 “(F) Time limitations imposed by the cli-
7 ent or the circumstances.

8 “(G) The amount involved and the results
9 obtained.

10 “(H) The experience, reputation, and abil-
11 ity of the attorneys involved.

12 “(I) The undesirability of this action.

13 “(5) APPEAL AND ENFORCEMENT.—The find-
14 ings of the Arbitration Panel shall be final, binding,
15 nonappealable, and payable within 30 days after the
16 date on which the finding is made public, except that
17 if an award is to be paid in installments, the first
18 installment shall be payable within such 30-day pe-
19 riod and succeeding installments shall be paid annu-
20 ally thereafter.

21 “(6) SOURCE AND PAYMENT OF AWARDS.—In
22 no event shall any award of the Arbitration Panel be
23 paid from, credited against, or otherwise affect, in
24 any way any other payments that are required to be
25 made by a manufacturer under any other provision

1 of this Act. Any such award shall be payable jointly
2 and severally by the manufacturers and liability
3 therefor cannot be discharged or avoided in bank-
4 ruptcy proceedings. In any bankruptcy proceedings,
5 all awards of the Arbitration Panel shall be afforded
6 the same status as payments to be made pursuant
7 to this Act.

8 “(7) VALIDITY AND ENFORCEABILITY OF PRI-
9 VATE AGREEMENTS.—Notwithstanding any other
10 provision of this Act, nothing in this section shall be
11 construed to abrogate or restrict in any way the
12 rights of any parties to mediate, negotiate, or settle
13 any fee or expense disputes or issues to which this
14 section applies, or to enter into private agreements
15 with respect to the allocation or division of fees
16 among the attorneys party to any such agreement.
17 “(c) DEFINITIONS.—As used in this subtitle:

18 “(1) CASTANO ACTIONS.—The term ‘Castano
19 actions’ means the following civil actions: Glona
20 Wilkinson Lyons, et al. v. American Tobacco Co., et
21 al. (USDC Alabama 96–0881–BH); Agnes McGinty,
22 et al. v. American Tobacco Co., et al. (USDC Arkan-
23 sas LR–C–96–861); Willard R. Brown, et al. v. R.J.
24 Reynolds Tobacco Co., et al. (San Diego, California-
25 00711400); Gray Davis & James Ellis, et al. v. R.J.

1 Reynolds Tobacco Co., et al. (San Diego, California-
2 00706458); Chester Lyons, et al. v. Brown &
3 Williamson Tobacco Corp., et al. (Fulton County,
4 Georgia-E-59346); Roselyn Peterson, et al. v. Amer-
5 ican Tobacco Co., et al. (USDC Hawaii-97-00233-
6 HG); Jean Clay, et al. v. American Tobacco Co., et
7 al. (USDC Illinois Benton Division-97-4167-JPG);
8 William J. Norton, et al. v. RJR Nabisco Holdings
9 Corp., et al. (Madison County, Indiana 48001-
10 9605-CP-0271); Alge Emig, et al. v. American To-
11 bacco Co., et al. (USDC Kansas-97-1121-MIB);
12 Gloria Scott, et al. v. American Tobacco Co., et al.
13 (Orleans Parish, Louisiana-97-1178); Vern
14 Masepohl, et al. v. American Tobacco Co., et al.
15 (USDC Minnesota-3-06-CV-888); Matthew Tepper,
16 et al. v. Philip Morris Incorporated, et al. (Bergen
17 County, New Jersey-BER-L-4983-97-E); Carol A.
18 Connor, et al. v. American Tobacco Co., et al.
19 (Bernalillo County, New Mexico-CV96-8464); Edwin
20 Paul Hoskins, et al. v. R.J. Reynolds Tobacco Co.,
21 et al.; Josephine Stewart-Lomantz v. Brown &
22 Williamson Tobacco, et al.; Rose Frosina, et al. v.
23 Philip Morris Incorporated, et al.; Catherine Zito, et
24 al. v. American Tobacco Co., et al.; Kevin
25 Mroczkowski, et al. v. Lorillard Tobacco Company,

1 et al. (Supreme Court New York County, New York-
2 110949 thru 110953); Judith E. Chamberlain, et al.
3 v. American Tobacco Co., et al. (USDC Ohio-
4 1:96CV2005); Brian Walls, et al. v. American To-
5 bacco Co., et al. (USDC Oklahoma-97-CV-218-H);
6 Steven R. Arch, et al. v. American Tobacco Co., et
7 al. (USDC Pennsylvania-96-5903-CN); Barreras-
8 Ruiz, et al. v. American Tobacco Co., et al. (USDC
9 Puerto Rico-96-2300-JAF); Joanne Anderson, et
10 al. v. American Tobacco Co., et al. (Knox County,
11 Tennessee); Carlis Cole, et al. v. The Tobacco Insti-
12 tute, Inc., et al. (USDC Beaumont Texas Division-
13 1:97CV0256); Carrol Jackson, et al. v. Philip Morris
14 Incorporated, et al. (Salt Lake County, Utah-CV
15 No. 98-0901634PI).

16 “(2) ADDICTION CLAIMS.—The term ‘addiction
17 claims’ or ‘dependency claims’ refers only to any
18 cause of action where the claim for relief seeks a
19 cessation program or other means to reduce or elimi-
20 nate the user’s addiction to or dependency on to-
21 bacco products, and as used in this subtitle is
22 brought by those who claim the need for nicotine re-
23 duction assistance. Neither addiction claims or de-
24 pendency claims includes claims based upon mani-

- 1 festation of tobacco-related illnesses or tobacco-relat-
- 2 ed diseases.”.

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