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# STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

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## Youth Marketing Hot Quotes from Document Day 2 Minnesota Tobacco Trial Quote Sheet #4

From Documents Submitted directly to the on Jury March 13, 1998

### Philip Morris -Targeting Children as Young as 12

From "Incidence of Smoking Cigarettes," Philip Morris inter-office correspondence from the Marketing Research Department, 1973 Trial Exhibit 11.801 :

[Q]uestions were asked of a national probability sample of 452 teen-agers ages 12-17....

#### Incidence: Overall and by Sex

|       | Smoke % |      |        | Average Consumption Among Smokers (Cigarettes per day) # |      |        |
|-------|---------|------|--------|----------------------------------------------------------|------|--------|
|       | Total   | Male | Female | Total                                                    | Male | Female |
| 12-17 | 13      | 14   | 13     | 10.6                                                     | 12.0 | 8.9    |

From untitled Philip Morris document dated, 1973 Trial Exhibit 11.802 :

#### Incidence of Smoking Demographic Group

Do You Yourself Smoke Cigarettes, That Is, At Least a Pack a Week?

%Smoking

12-13 Years of Age.....

3

### R.J. Reynolds Marketing Tactics: Comics, Half-Packs, and Low Prices for Kids 12 & 14

"The lower age limit for the profile of young smokers is to remain at 14."

- RJR, April 7, 1971 "Summary of Decisions Made in M&D-Esty Meeting" Trial Exhibit 12.258

"Many manufacturers have 'studied' the 14-20 market in hopes of uncovering the 'secret' of the instant popularity some brands enjoy to the almost complete exclusion of others ... Next Steps: The recent strategic reviews (updated 2/8) focus sharply on the real need to become more aggressive against young adult males in major metro markets." This document sorts the cigarette market into age categories including groups of consumers aged "14-15," "16-17," and "18-20".

- William Esty Company "confidential" communication to RJR, 1973 "NFO Preference Share Data 'Youth Market'" Trial Exhibit 13.105

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"In view of the need to reverse the preference for Marlboros among younger smokers, I wonder whether comic strip type copy might get a much higher readership among younger people than any other type of copy. It would certainly seem worth testing a heavy dose of this type of copy in a test market to get a research reading on percentage of readership and copy recall."

- *RJR document written after the review of cigarette product formation and cigarette marketing. April 1973* Trial Exhibit 24.144

"A key finding is that younger adult males are highly sensitive to price. This suggests that the steep rise in prices expected in the coming months could threaten the long term vitality of the industry, by drying up the supply of new/younger adult smokers entering the market ... RJR has an opportunity to break this price barrier with a brand targeted to younger adult males ... I recommend marketing 'half-packs' because: Half-packs are a logical size for beginner smokers ... Younger smokers seem more sensitive to cash outlay than cost per cigarette ... Half-packs could reduce consumers' cash outlay by 30-40% versus branded 20's."

- *RJR correspondence from the Marketing Development Department, 1982 "Marketing Implications of the NBER Models"* Trial Exhibit 12.682

"Teenagers and younger adult males are highly price sensitive." This document includes charts with data on teens aged 12-17.

- *RJR correspondence from the Marketing Development Department, 1982 "NBER Models of Price Sensitivity by Age/Sex."* Trial Exhibit 12.683

"Topics.....

I. Importance of Younger Adult Smokers....

II. Why Camel has an Opportunity to Target Younger Adult Smokers ...

IV. Guidelines for Camel's Advertising Development to Achieve Its Desired Positioning Among Younger Adult Smokers...

- Excitement/Fun is Success: Younger adults center their lives on having fun in every way possible and at every time possible. Their definition of success is 'enjoying today' which differentiates them from older smokers. Advertising which incorporates an 'exciting,' 'fun,' 'humorous' theme provides a way for these smokers to 'feel good' about the message..."

- *RJR "Camel Advertising Development 'White Paper'" Undated (appears to be early to mid 1980s)* Trial Exhibit 12.934

#### Brown & Williamson Researched and Targeted "Young Smokers" - as Young as 15

"The target audience for the sampling effort on KOOL King Size ..."

The corresponding charts break smokers into categories according to age and sex, starting with smokers aged "15-24."

- *B&W December 1974. "Target Audience Appendix"* Exhibit 13.811:

"From time to time when describing market categories and target audiences we use references such as 'young smokers,' 'young market,' 'youth market,' etc... These terms do not accurately describe what we are talking about. In the future when describing the low-age end of the cigarette business please use the term 'young adult smoker' or 'young adult smoking market.' Please advise all members of your department that these terms should be used in all written materials in the future."

- B&W memo, in its entirety, sent to seven department heads, January 1975. Trial Exhibit 13.724

"[O]pportunities for KOOL Super Lights gains should come from full taste 85 smokers and from starters. Young (age 16-25) males account for a disproportionate amount of both these segments ... KOOL has the highest attraction rate (along with Marlboro) for new starters in the full taste menthol and non-menthol segments."

- B&W 1977 report written by F.E. Latimer, "Kool Super Lights Menthol Hi-Fi Switching Gains Analysis" Trial Exhibit 13.697

"Adopt the following media target audience for BELAIR" The chart includes a category of males and females aged 16-29."

- B & W "Belair 1984 Media Plan" Trial Exhibit 13.783

From "New Ventures Project: Stage II, The New Smoker" September 1974 Trial Exhibit 13.811 :

"The younger smoker is of pre-eminent importance"

- Significant in numbers
- 'Lead in' to prime market
- Starts brand preference patterning
- Still volatile in habits"

"But frustrating to reach"

- Values and behavior at variance with rest of population
- Skeptical
- Intense peer pressure
- Public policy difficulties"

"Why do they start?"

- Emulation
- Peer Pressure
- Rebellion."

Other titles in this document include:

"Trend in Share of Smokers 16-25 Years of Age," lists trends for 6 brands from 1966 through 1973."

"Estimate of Future Trends in Smoking Population by Age Groups," lists first group aged "15 - 24."

Also, various charts in this document detail smoking patterns among 16-25 year olds. Titles include:

"Trend in Share of Smokers 16-25 Years of Age."

"Brown and Williamson Brands Share of Smokers by Age and Sex."

"Changes in Type of Cigarette Smoked, Smokers by Age & Sex."

"Changes in Strength of Cigarette Smoked, Smokers by Age and Sex."

"Share of Users by Age and Sex," includes data on Marlboro, Winston, Kool and Salem, Kool 85mm.



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## Tobacco Industry Profits "Hot Quotes" from Minnesota Trial -

### Quote Sheet # 5

### Testimony And Exhibits Of Paul Much, Expert Financial Analyst, March 23rd, 1998

*In the United States, the tobacco market has historically been dominated by six manufacturers - Philip Morris, RJ Reynolds, Lorillard, Brown and Williamson, American Tobacco, and Liggett. \* This number fell to five when British American Tobacco bought American Tobacco in 1994. The State of Minnesota and Blue Cross, Blue Shield allege that since at least 1954, these companies and their trade associations have: conspired to unreasonably restrain trade and commerce, monopolized the cigarette market, engaged in unlawful and deceptive trade practices; engaged in false advertising, and engaged in consumer fraud. The testimony of the State's financial expert and his report introduced at trial lays out the incredible profits made by these companies*

### U.S. TOBACCO OLIGOPOLY AS A WHOLE

"Q. And how, if at all, does this historical trend relate to the financial condition of the tobacco companies?

A. At the heart of financial condition is profitability, and what you have here is consistent, stable, growing profitability, and that will lead to a strong financial condition." Paul Much testimony from Minnesota trial, March 23, 1998.

#### **Global Consolidated Operations, Tobacco and Non-Tobacco 1954 - 1996\***

- Operating profit: \$242,022,000,000 (*in lay terms, just over \$242 billion*)
- Revenues: \$1,928,768,000,000 (*in lay terms, more than \$1.9 trillion*)

#### **Global Tobacco Operations 1954 - 1996\***

- Operating profit: \$167,038,000,000 (*in lay terms, more than \$167 billion*)
- Revenues: \$995,166,000,000

#### **Domestic Tobacco Operations 1954 - 1996\***

- Operating profit: \$114,904,000,000 (*in lay terms, almost \$115 billion*)
- Revenues: \$463,238,000,000

\* "[T]here were gaps in B.A.T where the company did not report its revenues for more than a decade. With respect to Lorillard, there was missing information on the tobacco segment for several years. And with respect to Brown & Williamson, there was also some missing information for several years... If there was information missing for a particular year, we would basically assume that there were no revenues for that year and there were no profits for that year. If it was missing, it was treated as if it was zero... [so] it would understate the total revenues and profits." Paul Much testimony in Minnesota trial, March 23, 1998.

#### **Domestic Tobacco Operating Profits Rate of Increase between 1970s and 1980s\*: 229%**

- Domestic Tobacco Operating Profits 1970 - 1979: \$13.4 billion
- Domestic Tobacco Operating Profits 1980 - 1989: \$44.1 billion

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**Tobacco Profits Exceed Pharmaceuticals, Consumer Products between 1980 - 1989\***

-In the period 1980 - 1989, domestic tobacco's operating profits averaged 29%, compared to:

|                         |     |
|-------------------------|-----|
| Pharmaceuticals         | 26% |
| Non-Alcoholic Beverages | 16% |
| Alcoholic Beverages     | 11% |
| Branded Foods           | 10% |
| Consumer Products       | 9%  |

**Tobacco Profits Rise Again in 1990s, Continue to Exceed Profits from Other Products**

From 1990 through 1996, domestic tobacco's operating profits averaged 32%, compared to:

|                         |     |
|-------------------------|-----|
| Pharmaceuticals         | 29% |
| Non-Alcoholic Beverages | 20% |
| Alcoholic Beverages     | 15% |
| Branded Foods           | 12% |
| Consumer Products       | 11% |

"[O]perating profits have increased as a percentage of sales, they're taking up a growing slice of the growing pie. They've increased from the '50s at 12 percent to the '90s at just under 30 percent" Paul Much testimony in Minnesota trial, March 23, 1998.

**1996 Global Profits for U.S. Tobacco Companies Parent Companies: \$21,160,000,000**

**PHILIP MORRIS**

In 1994, Philip Morris (major brands include Marlboro, Merit, and Virginia Slims) held 45 percent of the U.S. cigarette market.

- Tobacco accounts for 53% of Philip Morris revenues and 65% of operating profits; food products (e.g., Kraft, Velveeta, Maxwell House, Oscar Mayer) account for 40% of revenue and 31% of operating profit; beer (e.g., Miller, Molson, Fosters, Leninkugels) generates 6% of revenues and 3% of operating profit.
- Global Philip Morris operating profits 1954 -1996, \$103.1 billion on revenues of \$681.4 billion.
- Global Philip Morris tobacco profits 1954 -1996, \$76.3 billion on revenues of \$342.6 billion

Domestic Philip Morris tobacco profits 1954 -1996, \$52.2 billion on revenues of \$165.4 billion.

- Philip Morris' global tobacco profits have been substantially higher than other branded consumer products during all time periods between 1970 and 1996.

1996 Philip Morris domestic tobacco operating profit for U.S. operations: \$4,206,000,000

**R.J. REYNOLDS**

- In 1994, R.J. Reynolds (major brands include Winston, Salem, Camel, and Doral) held 27% of the U.S. cigarette market.

- Tobacco accounts for only 48% of R.J. Reynolds revenues but for 79% of operating profit; food products (e.g., Nabisco, Planters, Life Savers) account for 52% of revenue, and 21% of profit.
- Global R.J. Reynolds operating profits between 1954 - 1996: \$46.9 billion on revenues of \$301.9 billion.
- Global R.J. Reynolds total tobacco profit, 1954 - 1996: \$36.4 billion; on revenues of \$169.2 billion.
- R.J. Reynolds domestic tobacco profits, 1954 - 1996, were \$30.4 billion on revenues of \$127.7 billion.
- 1996 R.J. Reynolds domestic tobacco operating profit for U.S. operations: \$1,084,000,000.

### **BROWN and WILLIAMSON**

- In 1994, Brown and Williamson (major brands include Kool, Viceroy, Barclay, and Raleigh) held 19 percent of the U.S. cigarette market.
- Brown & Williamson has been a subsidiary of British American Tobacco Industries, PLC since the 1920s.
- Currently 'commercial' (predominantly tobacco) accounts for 72% of revenues and 61% of profits, while financial services (e.g., Farmers Insurance Group, Canada Trust & Eagle Star) make up 28% of revenue and 39% of operating profit.
- 1996 Brown and Williamson domestic tobacco operating profit for U.S. operations: \$772,000,000.
- Brown and Williamson's Global Tobacco historical profitability has proven to be greater than most other branded consumer products.

### **LORILLARD**

- In 1994, Lorillard (major brands include Newport, Kent and True) held 7 percent of the U.S. cigarette market.
- Currently part of Loews Corporation, a diversified tobacco, consumer products and entertainment company.
- Tobacco represents 11% of revenues and 26% of profits, while insurance (e.g., CNA Financial Corporation) represents 84% of revenue and 65% of profits. Offshore drilling makes up 3% of revenue and 8% of profits, and consumer products represent 2% of revenue and 1% of profits.
- Lorillard's historical tobacco profits have been substantially greater than comparable branded consumer products during most years between 1970 and 1996, the time period analyzed.

### **LIGGETT**

- In 1994, Liggett (major cigarette brands include L & M, Chesterfield and Lark) held 2 percent of the U.S. cigarette market.
- Currently part of Brooke Group, Ltd., which also operates a tobacco firm and a real estate firm in Russia.
- 1996 tobacco operating profits: \$5 million.

### **AMERICAN TOBACCO**

- In 1994, American Tobacco (major brands include Lucky Strike, Pall Mall, Carlton and Tareyton) held less than 1 percent of the U.S. cigarette market.
- Once the largest tobacco company in the U.S., American was bought by British American Tobacco (BAT Industries, PLC) in 1994.
- Pre-BAT 1994, tobacco accounted for 65% of revenues and 58% of profits; alcoholic beverages (e.g., Jim Beam, Whyte & Mackay) accounted for 11% of revenues and 17% of profits; home improvement (e.g., Moen, Master Lock, Aristocraft) accounted for 11% of revenues and 14% of profits; golf and leisure/office products = 13% of revenue, 11% of profits.
- BAT 1996 operating profits from U.S. tobacco operations: \$6,739,000,000.
- "[T]he cigarette industry has enjoyed a very long history of stable and growing profits, and as a result the cigarette companies have a very strong financial position." Paul Much, March 23, 1998, testifying in Minnesota trial.

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## Minnesota's Tobacco Settlement MONEY

### Money Sought by the state vs. money paid

Money sought: \$1.31 billion

Money paid: \$6.17 billion

### How Does Minnesota's Settlement Compare with Settlements in Other States?

Minnesota's settlement recovers:

- Nearly 2 times the amount paid to settle in Texas per state resident in today's dollars
- Nearly twice the amount paid in Florida per state resident in today's dollars
- Over 20 percent more than Mississippi's settlement per state resident in today's dollars

### \$6.17 Billion Dollar Payment Schedule

|                               |                  |
|-------------------------------|------------------|
| June 1998                     | \$10 Million     |
| September 1998                | \$240 Million    |
| December 1998                 | \$102 Million    |
| January 1999                  | \$220.8 Million  |
| June 1999                     | \$10 Million     |
| December 1999                 | \$114.75 Million |
| January 2000                  | \$242.5 Million  |
| June 2000                     | \$10 Million     |
| December 2000                 | \$127.5 Million  |
| January 2001                  | \$242.5 Million  |
| June 2001                     | \$10 Million     |
| December 2001                 | \$165.75 Million |
| January 2002                  | \$242.5 Million  |
| June 2002                     | \$10 Million     |
| December 2002                 | \$165.75 Million |
| January 2003                  | \$121.5 Million  |
| Every June from 2003-2007     | \$10 Million     |
| Every December from 2003-2023 | \$204 Million    |
| Every December Thereafter     | \$204 Million    |

#### Notes:

1. Dollars are calculated in today's dollars (or present value) -- the value in today's dollars of the payments to be received over the next 25 years. These numbers are calculated at a 6.5% discount rate.
2. Payments made after January of 1999 (with the exception of the \$10 million payments each January) will be raised 3% or by the national Consumer Price Index (CPI) for the previous year -- whichever is greater, and will be adjusted downward if profits go down due to falling sales.

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## Minnesota's Tobacco Settlement KIDS

- **First-Ever Court Ordered Ban on Marketing to Kids.** Each year, the tobacco industry pours over \$5 billion dollars into advertising. Evidence in Minnesota's tobacco trial detailed how the industry used this money to hook their new and best customers -- children. Tragically, their advertising has worked: of children who smoke, 86% smoke the most heavily advertised brands - Camel, Marlboro, and Newport. Under the Minnesota Tobacco Settlement, tobacco companies are specifically prohibited, by court order, from using any marketing techniques that target children. We are unaware of any comparable law or order anywhere. In the past, the only way to stop tobacco companies from targeting children has been to argue that they have broken Minnesota's consumer fraud and advertising laws. Now, they will be bound by a specific ironclad order. The court will have the power to do whatever it takes to ensure compliance, including the power to impose fines and penalties.
- **First-Ever Ban on Tobacco Industry Branded Promotional Products.** Tobacco companies spend almost \$1 billion annually on T-shirts, hats, gym bags, backpacks, CD players and other merchandise with cigarette logos, making our children "walking billboards" for cigarettes. An amazing thirty-five percent of kids from twelve to seventeen years old -- including nonsmokers -- own at least one of these promotional items. Research shows that children having these items is one of the most powerful influences on smoking behavior: children who own these items are four times more likely to start smoking than those who don't. More than 78 percent of Americans think this type of advertising should be stopped. Now it will be. Under the settlement, the distribution of branded merchandise and all branded promotional items, down to napkins and matchbooks, will be banned in Minnesota within 90 days. This is unprecedented. Violations of this ironclad order can lead to heavy monetary penalties.
- **Ban on all Cigarette Billboards and Transit Ads.** Cigarettes are the number one item advertised on billboards in Minnesota. These advertisements don't flood only our highways. They have also invaded our neighborhoods -- particularly our poorest neighborhoods. Under this settlement, all tobacco billboards come down. Fifty come down within a month and the remainder will be phased out in less than six months. Tobacco advertising on buses, bus shelters, and taxis will also end.
- **No More Product Placement in Movies Anywhere in the U.S.** People said that individual state cases couldn't force industry changes nationwide. But Minnesota's settlement does just that. One of the most insidious tobacco marketing techniques has been the secret payment of fees to movie producers to feature cigarettes and smoking in popular films, sometimes in ways that showcase particular brands. The industry claims it discontinued this practice many years ago, but a document uncovered in the Minnesota case shows that Philip Morris paid to have cigarettes used in movies as youth-oriented as the "Muppet Movie" and "Who Framed Roger Rabbit?" Speculation abounds about whether secret payoffs may have been made to the makers of recent, smoking-intensive movies as "Titanic" and "My Best Friend's Wedding." Under this settlement, the defendants are barred from making such payments, directly or indirectly. This provision is nationwide, demonstrating that state litigation can contribute significantly to national solutions to the tobacco epidemic.
- **Tobacco Industry Can't Oppose Stronger Laws to Reduce Youth Tobacco Use.** Because the tobacco companies have unrivaled lobbying power at the State Capitol, it is very difficult to pass even the smallest provisions to reduce youth tobacco use. This unprecedented provision bars the industry from opposing, directly or indirectly, legislative proposals and administrative rules to reduce youth tobacco

use.

· **Unprecedented Cessation Programs Targeted to Children.** In Minnesota, 60 teens begin smoking each day. Tragically, half of them will eventually die from a habit they develop as children. Eighty percent of those teen smokers want to and have tried to stop smoking. However, only 1.2% succeed. The Minnesota settlement appropriates \$102 million dollars to a cessation fund so that all Minnesota smokers - including teenagers -- have the opportunity for help to quit smoking.

· **The Best Prevention Program: Keeping Kids from Becoming Addicted.** The industry's own documents state that nicotine is harder to quit than alcohol, heroin, or cocaine. When kids start smoking, they think they will be able to stop. To their own and society's consternation, they are hooked before they know it. Seventy-three percent of teen smokers who think they won't be smoking in five years are still smoking five years later. And, almost three-quarters of teen smokers say that given the chance to do things differently, they never would have started to smoke. Prevention measures work to keep kids from ever starting a life of addiction to tobacco. Subject to legislative approval, the Minnesota Tobacco Settlement earmarks more than \$650 million to an endowment that focuses on preventing tobacco use by teens. This effort will include, for example: counter-advertising; community partnerships to reduce tobacco use; tobacco education in schools; enforcement of youth access policies; work site interventions; and other innovative programs to meet prevention goals.

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## Minnesota's Tobacco Settlement REFORM

· **First-Ever Court Ordered Ban on Marketing to Kids.** Each year, the tobacco industry pours over \$5 billion dollars into advertising. Evidence in Minnesota's tobacco trial detailed how the industry used this money to hook their new and best customers -- children. Tragically, their advertising has worked: of children who smoke, 86% smoke the most heavily advertised brands - Camel, Marlboro, and Newport. Under the Minnesota Tobacco Settlement, tobacco companies are specifically prohibited, by court order, from using any marketing techniques that target children. We are unaware of any comparable law or order anywhere. In the past, the only way to stop tobacco companies from targeting children has been to argue that they have broken Minnesota's consumer fraud and advertising laws. Now, they will be bound by a specific ironclad order. The court will have the power to do whatever it takes to ensure compliance, including the power to impose fines and penalties.

· **Unprecedented Court Ordered Ban Against Misrepresenting Health Hazards of Tobacco Use.** The tobacco companies insist to this day that nicotine is not addictive. Yet documents presented in the Minnesota trial showed that the companies had known for 30 years how nicotine addiction works and had manipulated the levels and potency of nicotine to keep smokers hooked. The tobacco industry has also publicly stated for decades that their products do not cause lung cancer, emphysema, heart disease, or other health problems. Under this settlement, the tobacco companies are prohibited from making any material misrepresentation of fact about the health consequences of smoking. This means they cannot say, for example, that nicotine has not been proven to be addictive, or that smoking has not been proven to be addictive, or that smoking has not been proved to call disease.

· **Unprecedented Court Ordered Ban Against Further Conspiracy to Suppress Health Information.** One of the main charges in Minnesota's case against tobacco industry was that beginning in 1954, the industry joined together in a conspiracy to keep smoking and health research, and information about the health hazards of their products, from ever seeing the light of day. The State also alleged that the companies conspired to see that discoveries they had made about how to make safer cigarettes were never revealed or put into practice. Under this settlement, these industry practices must stop or the industry will face contempt of court charges, including monetary penalties.

· **Dissolve the Council for Tobacco Research (CTR) -- the Industry's "Health" Propaganda Machine.** In our lawsuit, the State alleged that the tobacco industry used its so-called "scientific arm," the CTR, as a tool in its conspiracy to mislead Americans about the health problems with tobacco and to suppress research and development of safer cigarettes. The state alleged that the CTR provided the industry with "cover" by mounting endless research designed to perpetuate the myth that the link between smoking and disease was still unproved. Under the settlement, this trade group is dissolved. The industry is permanently barred from reviving the CTR or anything similar. The CTR must forward all of its research on smoking and health to the Food and Drug Administration, which has asserted regulatory control over tobacco. Because the CTR is a defendant in numerous state lawsuits against the tobacco industry, a shell will continue to exist solely to represent the CTR in other trials.

· **Protecting the Integrity of the Legislative Process.** The settlement contains a provision that keeps the industry from attacking Minnesota's current tobacco laws. The industry is specifically prohibited from challenging the validity of Minnesota's existing laws including; the youth access to tobacco law; the Clean Indoor Air Act; the law against distribution of free tobacco samples; and a soon-to-be

implemented tobacco product ingredient disclosure law adopted in 1997.

· **Tobacco Industry Can't Oppose Stronger Laws to Reduce Youth Tobacco Use.** Because the tobacco companies have unrivaled lobbying power at the State Capitol, it is very difficult to pass even the smallest provisions to reduce youth tobacco use. This unprecedented provision bars the industry from opposing, directly or indirectly, specified legislative proposals to reduce youth tobacco use.

· **Unprecedented New Lobbying and Public Policy Disclosure.** The tobacco industry is notorious for manipulating the political process and wielding its considerable clout through front-groups, highly paid lobbyists and secret surrogates. The settlement imposes new disclosure requirements on the industry, beyond those of Minnesota's lobbying laws, to shine the light of public scrutiny on the industry's efforts to influence Minnesota law making. This provision forces the industry to file quarterly reports; reveal the amounts paid to its lobbyists and to other organizations that lobby; reveal payments made to third parties who testify in hearings; and report on the use of industry controlled or funded foundations, non-profits, firms, or other affiliates that make gifts that benefit Minnesota officials.

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## Minnesota's Tobacco Settlement TRUTH

· **Millions of Pages of Industry Documents Remain Public Forever.** One of the three major goals of Minnesota's litigation was to uncover the truth about the tobacco industry's forty-year conspiracy of lies. During four years of bitter litigation, the State forced the industry to turn over their secret documents on science and health, safer cigarettes, manipulating nicotine, manipulating kids, and manipulating public policy. Pressure brought by Minnesota forced the industry to open the Minnesota Document Depository and start putting the documents on the Internet. With this agreement, health professionals, scientists and members of the general public are assured access to the millions of pages of industry secrets at the Minnesota Depository. These documents will be maintained for at least ten years at the industry's expense, and by the State thereafter.

· **Selected Guildford, England Documents Will Be Sent to Minnesota and the Guildford Depository Will be Maintained for Ten Years.** Millions of pages of documents that BAT Industries PLC and its subsidiary British-American Tobacco Company produced in the Minnesota case are housed in a depository in Guildford, England. BAT Industries and its affiliates (including subsidiary Brown & Williamson), make up the world's second largest tobacco manufacturing business. Under this settlement, copies of the BAT documents selected for use in Minnesota's case will be placed in the Minnesota Document Depository, where, like all the other documents there, they will be public forever. In addition, the Guildford Document Depository will be maintained, at the industry's expense, for ten years.

· **Subject to Court Approval, More "Privileged" Documents Will Be Public.** During the litigation, Minnesota alleged that the tobacco industry misused and abused the attorney-client privilege in an attempt to hide the most incriminating evidence. Time and again, the Judge ruled in the State's favor and ordered documents produced. The industry just lost its battle to keep secret 39,000 of these documents, a battle they fought all the way to the United States Supreme Court. While some of these formerly "privileged" documents are now available on the Internet, under this agreement, the State will seek the approval of the Court to make all of the "privileged" documents produced to the State public.

· **The Industry's Road Maps to All the Documents Now Available to All.** Finally, the public will have the road maps (computerized databases known as the "4A indices") that the tobacco companies made for themselves to navigate through the millions of pages of documents that will be housed in the Minnesota Document Depository. No longer will researchers, reporters and others have to struggle with the cryptic, vague indices that the industry has already made public.

· **All Industry "Formulas" go to the FDA for the First Time.** Prior to this settlement, the tobacco industry has never revealed how much, or in what combinations, they employ any of the almost 700 additives they have publicly admitted may be present in cigarettes. When all cigarette "Secret Formulas" are turned over, the U.S. Food and Drug Administration (FDA), which has major responsibility for regulating product safety, will finally be able to create a complete list of substances present in tobacco products and explore how they react in combination with each other and in the ways they are actually used. The FDA will be able to see, for example, which cigarettes contain substances like ammonia (toilet bowl cleaner), formaldehyde (embalming fluid), and arsenic (rat poison), and act if it finds these or other ingredients pose a health threat.

· **No More Tobacco Industry Agreements to Suppress Research, Limit New Products, or Withhold**

**Information About Tobacco Use Consequences.** One of the main charges in Minnesota's case against the tobacco industry was that beginning in 1954, the industry joined together in a conspiracy to keep smoking and health research, and information about the health hazards of their products, from ever seeing the light of day. The State also alleged that the companies conspired to see that discoveries they had made about how to make safer cigarettes were never revealed or put into practice. Under this settlement, these industry practices must stop or tobacco companies will face contempt of court charges, including monetary penalties.

· **No More Lying about Health Issues.** When the CEOs of the major tobacco companies told Congress in 1994 that nicotine was not addictive, people were incredulous. When they said it again in 1998, after documents presented in the Minnesota trial showed that the companies had known for 30 years how nicotine addiction works and had manipulated the levels and potency of nicotine to keep smokers hooked, people were outraged. The tobacco industry has also publicly stated for decades that their products do not cause lung cancer, emphysema, heart disease or other health problems. Under this settlement, the tobacco companies are prohibited from making any material misrepresentation of fact about the health consequences of using any tobacco product. This means they cannot say, for example, that nicotine has not been proven to be addictive, or that smoking has not been proven to cause disease.

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## Minnesota's Tobacco Settlement HEALTH

· **Smoking Cessation For Every Smoker.** About 750,000 Minnesotans smoke - even though 50,000 of them are under 18. Even teen smokers want to quit--of every 100 teen smokers, 80 have tried to stop, and yet, in any given year, only 1 out of 100 succeed. The vast majority of adult smokers also want to stop smoking, but because nicotine is more addictive than heroin or cocaine, many people relapse. Treatment of tobacco dependence is the most cost-effective clinical preventive service in all of health care. Under the settlement, \$102 million, to be paid in January 1999, will be set aside for a smoking cessation fund to make at least one state-funded opportunity for smoking cessation treatment available to every Minnesota smoker who wants to quit.

· **A Permanent Endowment for Tobacco Prevention and Control.** As recommended by the Koop-Kessler Advisory Committee on Tobacco Policy and Public Health, the settlement calls for the creation of an endowed foundation that will develop the world's largest and most comprehensive tobacco prevention and control program. Run by a board drawn mainly from scientific and public health organizations, its purpose will be to reduce teen smoking and combat the social and economic harms caused by tobacco. Subject to the approval of the legislature, over a six-year period this foundation will receive more than \$650 million to be used to finance a large and sustained counter-advertising campaign, community partnerships to reduce tobacco use, tobacco education in schools, enforcement of youth access policies, worksite interventions, innovative prevention programs, and any other efforts deemed appropriate to meet the goal. This foundation offers the best hope for saving future generations from becoming addicted to the world's deadliest consumer product.

· **\$100 Million for Research to Get at the Roots of the Tobacco Epidemic.** Each year for the next ten years, the tobacco industry will pay \$10 million into an account to fund research to learn why kids start smoking and how best to target prevention strategies, how to help kids and adults stay off this highly addictive and harmful substance, and how to end the tobacco epidemic.

· **No More Tobacco Industry Agreements to Suppress Research, Limit New Products, or Withhold Information About Tobacco Use Consequences.** One of the main charges in Minnesota's case against the tobacco industry was that, beginning in 1954, the industry joined together in a conspiracy to keep smoking and health research, and information about the health hazards of their products, from ever seeing the light of day. The State also alleged that the companies conspired to see that discoveries they had made about how to make safer cigarettes were never revealed or put into practice. Under this settlement, these industry practices must stop or tobacco companies will face contempt of court charges, including monetary penalties, injunctions or fines.

· **No More Lying about Health Issues.** To this day, tobacco companies claim nicotine is not addictive. Documents presented in the Minnesota trial showed that they have known for 30 years how nicotine addiction works, and have manipulated the levels and potency of nicotine to keep smokers hooked. People were outraged. The tobacco industry has also publicly stated for decades that their products do not cause lung cancer, emphysema, heart disease or other health problems. Under this settlement, the tobacco companies are prohibited from making any material misrepresentation of fact about the health consequences of using any tobacco product. This means they cannot say, for example, that nicotine has not been proven to be addictive, or that smoking has not been proven to cause disease.

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

THE STATE OF MINNESOTA, **Case Type: Other Civil**

BY HUBERT H. HUMPHREY III, **Court File No. C1-94-8565**

ITS ATTORNEY GENERAL,

and

BLUE CROSS AND BLUE SHIELD

OF MINNESOTA,

Plaintiffs,

vs.

PHILIP MORRIS INCORPORATED,

R.J. REYNOLDS TOBACCO COMPANY,

BROWN & WILLIAMSON TOBACCO

CORPORATION, B.A.T. INDUSTRIES

P.L.C., BRITISH-AMERICAN TOBACCO

COMPANY LIMITED, BAT (U.K. &

EXPORT) LIMITED, LORILLARD

TOBACCO COMPANY, THE AMERICAN

TOBACCO COMPANY, LIGGETT GROUP,

INC., THE COUNCIL FOR TOBACCO

RESEARCH-U.S.A., INC., and THE

TOBACCO INSTITUTE, INC.,

Defendants.

**SETTLEMENT AGREEMENT AND STIPULATION**

**FOR ENTRY OF CONSENT JUDGMENT**

THIS SETTLEMENT AGREEMENT AND RELEASE ("Settlement Agreement") is made as of the date hereof, by and among the parties hereto, as indicated by their signatures below, to settle and resolve with finality all claims of the State of Minnesota relating to the subject matter of this action which have been or could have been asserted by the State of Minnesota.

WHEREAS, the State of Minnesota, through its Attorney General Hubert H. Humphrey III, and Blue Cross and Blue Shield of Minnesota, commenced this action on August 17, 1994, asserting various claims for monetary, equitable and injunctive relief on behalf of the State of Minnesota and Blue Cross and Blue Shield of Minnesota against certain tobacco manufacturers and others as Defendants;

WHEREAS, the Defendants have denied each and every one of Plaintiffs' allegations of unlawful conduct or wrongdoing and have asserted a number of defenses to Plaintiffs' claims, which defenses have been contested by Plaintiffs;

WHEREAS, the parties hereto wish to avoid the further expense, delay, inconvenience, burden and uncertainty of continued litigation of this matter (including appeals from any verdict), the State of Minnesota and the Settling Defendants have agreed to settle this litigation pursuant to terms which will achieve for the State of Minnesota (and thus for the people of the State of Minnesota) significant funding for the advancement of public health, the implementation of important tobacco-related public health measures in Minnesota, as well as funding for national research dedicated to studying and significantly reducing the use of Tobacco Products by youth;

WHEREAS, the State of Minnesota and Settling Defendants have agreed to settle this lawsuit on terms set forth in this Settlement Agreement and Stipulation for Entry of Consent Judgment and the attached Consent Judgment;

WHEREAS, the parties have further agreed to jointly petition the Court for approval of the Consent Judgment, on the grounds that settlement would be in the public interest;

NOW, THEREFORE, BE IT KNOWN THAT, in consideration of the payments to be made by the Settling Defendants, the dismissal and release of claims by the State of Minnesota and such other consideration as described herein, the sufficiency of which is hereby acknowledged, the parties hereto, acting by and through their authorized agents, memorialize and agree as follows:

## **I. GENERAL PROVISIONS**

**A. Jurisdiction.** The State and the Settling Defendants acknowledge that this Court has jurisdiction over the subject matter of this action and over each of the parties to this Settlement Agreement, and that this Court shall retain jurisdiction for the purposes of implementing and enforcing this Settlement Agreement. The parties hereto agree to present any disputes under this Settlement Agreement, including without limitation any claims for breach or enforcement of this Settlement

Agreement, exclusively to this Court. The Court may, upon the State's application, enter a Consent Judgment in the form attached hereto as Exhibit A. The cumulative terms of this Settlement Agreement and Stipulation for Entry of Consent Judgment, and the attached Consent Judgment, may be referred to for convenience as this "Agreement" or "Settlement Agreement."

B. Voluntary Agreement of the Parties. The State and the Settling Defendants acknowledge and agree that this Settlement Agreement is voluntarily entered into by all parties hereto as the result of arm's-length negotiations during which all such parties were represented by counsel. The State and Settling Defendants understand that Congress may enact legislation dealing with some of the issues addressed in this Agreement. Settling Defendants and their assigns, affiliates, agents, and successors hereby waive any right to challenge this Agreement or the Consent Judgment, directly or through third parties, on the ground that any term hereof is unconstitutional, outside the power or jurisdiction of the Court, preempted by or in conflict with any current or future federal legislation (except where non-economic terms of future federal legislation are irreconcilable).

C. Definitions.

For the purposes of this Settlement Agreement and attached Consent Judgment, the following terms shall have the meanings set forth below:

1. "State" or "State of Minnesota" means the State of Minnesota acting by and through its Attorney General;
2. "Blue Cross" means BCBSM, Inc., d/b/a Blue Cross and Blue Shield of Minnesota, and all of its administrators, representatives, employees, directors, officers, agents, attorneys, parents and divisions;
3. "Settling Defendants" means those Defendants in this action that are signatories hereto;
4. "Defendants" means Philip Morris Incorporated, R.J. Reynolds Tobacco Company, Brown & Williamson Tobacco Corporation, B.A.T Industries P.L.C., British-American Tobacco Company Limited, BAT (U.K. and Export) Limited, Lorillard Tobacco Company, The American Tobacco Company, The Council for Tobacco Research-U.S.A., Inc., and the Tobacco Institute, Inc. and their successors and assigns;
5. "Consumer Price Index" shall mean the Consumer Price Index for All Urban Consumers, for the most recent twelve-month period for which such percentage information is available as published by the Bureau of Labor Statistics of the U.S. Department of Labor.

6. "*Court*" means the District Court of the State of Minnesota, County of Ramsey, Second Judicial District;
7. "*Market Share*" means a Settling Defendant's respective share of sales of cigarettes by unit for consumption in the United States during (i) with respect to payments made pursuant to Paragraph II.D. of this Settlement Agreement, the calendar year ending on the date on which the payment at issue is due, regardless of when such payment is made, and (ii) with respect to all other payments made pursuant to this Settlement Agreement, the calendar year immediately preceding the year in which the payment at issue is due, regardless of when such payment is made;
8. "*Cigarettes*" means any product which contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (i) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or (ii) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (iii) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subparagraph (i) of this paragraph;
9. "*Smokeless Tobacco*" means any powder that consists of cut, ground, powdered, or leaf tobacco that contains nicotine and that is intended to be placed in the oral cavity;
10. "*Tobacco Products*" means Cigarettes and Smokeless Tobacco;
11. "*Billboards*" includes billboards, as well as all signs and placards in arenas and stadiums, whether open-air or enclosed. "Billboards" does not include (1) any advertisements placed on or outside the premises of retail establishments which sell tobacco products, or any retail point-of-sale; and (2) billboards or advertisements in connection with the sponsorship by the Defendants of any entertainment, sporting or similar event, such as NASCAR, that appears in the State of Minnesota as part of a national or multi-state tour;
12. "*Children*" or "*youth*" means persons under the age of

18;

13. "Depository," unless otherwise specified, means the Minnesota document depository established by the Court's Order dated June 16, 1995. "Depositories" includes both the Minnesota depository and the Guildford, U.K. document depository established by the Court's Order dated September 6, 1995;
14. "Transit Advertisements" means advertising on private or public vehicles and all advertisements placed at, on or within any bus stop, taxi stand, waiting area, train station, airport or any similar location. "Transit Advertisements" does not include any advertisements placed on or outside the premises of retail establishments licensed to sell Tobacco Products or any retail point-of-sale;
15. "Special State Counsel" means Robins, Kaplan, Miller & Ciresi L.L.P. or a successor, if any; and
16. "Final Approval" means the date on which this Settlement Agreement and the form of State Escrow Agreement are approved by the Court. At the time of such approval, the settlement between the parties is final.

## II. SETTLEMENT PAYMENTS

- A. Settlement Receipts. The payments to be made by the Settling Defendants under this Settlement Agreement are in satisfaction of all of the State of Minnesota's claims for damages incurred by the State in the year of such payment or earlier years related to the subject matter of this action, including, without limitation, claims for equitable and injunctive relief, claims for health care expenditures and claims for punitive damages, except that no part of any payment under this Settlement Agreement is made in settlement of an actual or potential liability for a fine, penalty (civil or criminal) or enhanced damages.
- B. Settlement Payments to the State of Minnesota. Each Settling Defendant severally shall cause to be paid to an account designated in writing by the State of Minnesota in accordance with and subject to paragraph II.E. of this Settlement Agreement, the following amounts: the amount listed for it in Schedule A hereto, such amount representing its share of \$240,000,000, to be paid on or before September 5, 1998; pro rata in proportion to its Market Share, its share of \$220,800,000, to be paid on or before January 4, 1999; pro rata in proportion to its Market Share, its share of \$242,550,000, to be paid on or before January 3, 2000; pro rata in proportion to its Market Share, its share of \$242,550,000, to be paid on or before January 2, 2001; pro rata in proportion to its Market Share, its share of \$242,550,000, to be paid on or

before January 2, 2002; and pro rata in proportion to its Market Share, its share of \$121,550,000, to be paid on or before January 2, 2003. The payments made by the Settling Defendants pursuant to this Paragraph shall be adjusted upward by the greater of 3% or the Consumer Price Index applied each year on the previous year, beginning with the payment due to be made on or before January 3, 2000. The payments due to be made by the Settling Defendants pursuant to this Paragraph on or before January 3, 2000, on or before January 2, 2001, on or before January 2, 2002, and on or before January 2, 2003, will also be decreased or increased, as the case may be, in accordance with the formula for adjustments of payments as set forth in Appendix A. The payments due to be made by the Settling Defendants pursuant to this Paragraph on or before September 5, 1998, and on or before January 4, 1999, shall not be subject to inflation escalation and volume adjustments described in the preceding sentences.

In the event that any of the Settling Defendants fails to make any payment required of it pursuant to this Paragraph (a "Defaulting Defendant") by the applicable date set forth in this paragraph II.B. (a "Missed Payment"), the State of Minnesota shall provide notice to each of the Settling Defendants of such non-payment. The Defaulting Defendant shall have 15 days after receipt of such notice to pay the Missed Payment, together with interest accrued from the original applicable due date at the prime rate as published in the Wall Street Journal on the latest publication date on or before the date of default plus 3%. If the Defaulting Defendant does not make such payment within such 15-day period, the State of Minnesota shall provide notice to each of the Settling Defendants of such continued non-payment. Any or all of the Settling Defendants (other than the Defaulting Defendant) shall thereafter have 15 days after receipt of such notice to elect (in such Settling Defendant's or such Settling Defendants' sole and absolute discretion) to pay the Missed Payment, together with interest accrued from the original applicable due date at the prime rate as published in the Wall Street Journal on the latest publication date on or before the date of default plus 3%. In the event that the State of Minnesota does not receive the Missed Payment, together with such accrued interest, within such additional 15-day period, all payments required to be made by each of the respective Settling Defendants pursuant to this Paragraph shall at the end of such additional 15-day period be accelerated and shall immediately become due and owing to the State of Minnesota from each Settling Defendant pro rata in proportion to its Market Share; provided, however, that any such accelerated payments (a) shall all be adjusted upward by the greater of (i) the rate of 3% per annum or (ii) the actual total percent change in the CPI, in either instance for the period between January 1 of the year in which the acceleration of payments pursuant to this Paragraph occurs and the date on which such accelerated payments are due pursuant to this subsection,

and (b) shall all immediately be adjusted in accordance with the formula for adjustments of payments set forth in Appendix A.

Nothing in this Paragraph shall be deemed under any circumstance to create any obligation on the part of any Settling Defendant to pay any amount owed or payable to the State of Minnesota by any other Settling Defendant. All obligations of the Settling Defendants pursuant to this Paragraph are intended to be and shall remain several, and not joint.

C. Public Health Foundation. The Attorney General will propose, and the Settling Defendants have agreed not to oppose, that the Legislature appropriate to a foundation one-half the payments due in September 1998, and in January of the years 1999 through 2003, to be used for such activities as the directors of the foundation may determine will diminish the human and economic consequences of tobacco use. It is contemplated that the directors of the foundation will include public representatives, and representatives of such groups as the American Lung Association, Minnesota Chapter; the University of Minnesota School of Public Health; the Minnesota SmokeFree 2000 Coalition; the American Cancer Society, Minnesota Division; the American Heart Association, Minnesota Chapter; the Association for Non-Smokers' Rights--Minnesota; and the Mayo Clinic Nicotine Dependence Center.

D. Annual Payments. Each of the Settling Defendants agrees that, beginning on December 31, 1998, and annually thereafter on December 31st of each year after 1998 (subject to final adjustment within 30 days), it shall severally cause to be paid to an account designated in writing by the State of Minnesota in accordance with and subject to paragraph II.E. of this Settlement Agreement, pro rata in proportion to its respective Market Share, its share of 2.55% of the following amounts (in billions):

| <u>Year</u>   | 1998 | 1999   | 2000 | 2001   | 2002   | 2003 | thereafter |
|---------------|------|--------|------|--------|--------|------|------------|
|               | 1    | 2      | 3    | 4      | 5      | 6    |            |
| <u>Amount</u> | \$4B | \$4.5B | \$5B | \$6.5B | \$6.5B | \$8B | \$8B       |

The payments made by Settling Defendants pursuant to this Paragraph shall be adjusted upward by the greater of 3% or the Consumer Price Index applied each year on the previous year, beginning with the annual payment due on December 31, 1999. Such payments will also be decreased or increased, as the case may be, beginning with the annual payment due on December 31, 1999, in accordance with the formula for adjustments of payments set forth in Appendix A.

Payment of Settlement Proceeds. Any payment made pursuant to this Settlement Agreement shall be made to an account designated in writing by the State of Minnesota or the Court, as applicable; provided that

after Final Approval, if the Court's approval is challenged by any third party, payments due to be made shall be paid into a special escrow account (the "State Escrow Account"), and held in escrow pursuant to this Section V.B. and the State Escrow Agreement.

Adjustments in Event of Federal Legislation. The enactment of federal tobacco-related legislation shall not affect the payments required by this Agreement except as follows:

1. If federal tobacco-related legislation providing for the resolution or other disposition of State Attorney General actions brought against tobacco companies is enacted on or before November 30, 2000, and if such legislation provides for payment(s) by tobacco companies (whether by settlement payment, tax or any other means), all or part of which is made available to States, the State of Minnesota shall elect to receive any funds that are (i) unrestricted as to their use, or (ii) are restricted to any form of health care or to any use related to tobacco (collectively "Federal Settlement Funds"), and Settling Defendants shall receive a dollar-for-dollar offset up to the full amount of payments required under Section II.D of this Agreement for any and all Settlement Funds received by the State of Minnesota, until all Federal Settlement Funds provided however:
  - a. There shall be no offset to payments required by this Agreement on account of any federal program, subsidies, payments, credits or other aid to the State which are not conditioned or tied to the settlement of a state tobacco-related suit or the relinquishment of state tobacco-related claims;
  - b. The State relinquishes no rights or benefits under this Agreement except for payments subject to the offset;
  - c. There are no federally imposed preconditions to the receipt of Federal Settlement Funds other than (i) the settlement of any state tobacco-related lawsuit or the relinquishment of state tobacco-related claims, (ii) actions or expenditures related to tobacco, including but not limited to, education, cessation, control or enforcement, or (iii) actions or expenditures related to health care;
  - d. If Settling Defendants enter into any pre-verdict settlement agreement (subsequent to the date of this Agreement) of similar litigation brought by a non-federal governmental plaintiff which does not require such an offset, this Section is null and void;
  - e. If Settling Defendants enter into any pre-verdict settlement agreement (subsequent to the date of this Agreement) of similar litigation brought by a non-federal governmental plaintiff which has an offset term more favorable to the plaintiff, this Settlement Agreement shall, at the option of the Office of the Attorney General of the State of Minnesota, be revised to include a comparable term.
2. Nothing in this section is intended to or shall reduce the total

amounts payable to the State under this Agreement by Settling Defendants beyond the amount of Federal Settlement Funds actually received by the State of Minnesota.

#### I. DISMISSAL OF CLAIMS AND RELEASES

- A. State of Minnesota's Dismissal of Claims. Upon approval of this Settlement Agreement by the Court, the Court shall enter a Final Judgment dismissing with prejudice all claims as to all Defendants.

This Agreement resolves all claims between the State and the Defendants, except for issues pending before the court pertaining to the discoverability or production of documents for which the Defendants reserve their rights of appeal.

- B. State of Minnesota's Release and Discharge. Upon Final Approval, the State of Minnesota shall release and forever discharge all Defendants and their present and former parents, subsidiaries (whether or not wholly owned) and affiliates, and their respective divisions, organizational units, officers, directors, employees, representatives, insurers, suppliers, agents, attorneys and distributors (and the predecessors, heirs, executors, administrators, successors and assigns of each of the foregoing) from any and all manner of civil claims, demands, actions, suits and causes of action, damages whenever incurred, liabilities of any nature whatsoever, including civil penalties, as well as costs, expenses and attorneys' fees, known or unknown, suspected or unsuspected, accrued or unaccrued, whether legal, equitable or statutory ("Claims") that the State of Minnesota (including any of its past, present or future administrators, representatives, employees, officers, attorneys, agents, representatives, officials acting in their official capacities, agencies, departments, commissions, and divisions, and whether or not any such person or entity participates in the settlement), whether directly, indirectly, representatively, derivatively or in any other capacity, ever had, now has or hereafter can, shall or may have, as follows:

- a. for past conduct, as to any Claims relating to the subject matter of this action which have been asserted or could be asserted now or in the future in this action or a comparable Federal action by the State; and
- b. for future conduct, only as to monetary Claims directly or indirectly based on, arising out of or in any way related to, in whole or in part, the use of or exposure to Tobacco Products manufactured in the ordinary course of business, including without limitation any future claims for

reimbursement for health care costs allegedly associated with use of or exposure to Tobacco Products;

(such past and future Claims hereinafter referred to as the "Released Claims"); provided, however, that the foregoing shall not operate as a release of any person, party or entity (whether or not a signatory to this Agreement) as to any of the obligations undertaken in this Agreement in connection with a monetary breach or default of this Agreement.

The State of Minnesota hereby covenants and agrees that it shall not hereafter sue or seek to establish civil liability against any person or entity covered by the release provided under Paragraph III.B based, in whole or in part, upon any of the Released Claims, and the State of Minnesota agrees that this covenant and agreement shall be a complete defense to any such civil action or proceeding.

C. Settling Defendants' Release and Discharge. Upon Final Approval, Settling Defendants shall release and forever discharge the State of Minnesota (including any of its past, present or future administrators, representatives, employees, officers, attorneys, agents, representatives, officials acting in their official capacities, agencies, departments, commissions, and divisions, and whether or not any such person or entity participates in the settlement) from any and all manner of civil claims, demands, actions, suits and causes of action, damages whenever incurred, liabilities of any nature whatsoever, including costs, expenses, penalties and attorneys' fees, known or unknown, suspected or unsuspected, accrued or unaccrued, whether legal, equitable or statutory, arising out of or in any way related to, in whole or in part, the subject matter of the litigation of this lawsuit, that Settling Defendants (including any of their present and former parents, subsidiaries, divisions, affiliates, officers, directors, employees, witnesses (fact or expert), representatives, insurers, agents, attorneys and distributors and the predecessors, heirs, executors, administrators, successors and assigns of each of the foregoing, and whether or not any such person participates in the settlement), whether directly, indirectly, representatively, derivatively or in any other capacity, ever had, now has or hereafter can, shall or may have.

D. Limited Most-Favored Nation Provision. In partial consideration for the monetary payments to be made by the Settling Defendants pursuant to this Settlement Agreement, the State of Minnesota agrees that if the Settling Defendants enter into any future pre-verdict settlement agreement of other similar litigation brought by a non-federal governmental plaintiff on

terms more favorable to such non-federal governmental plaintiff than the terms of this Settlement Agreement (after due consideration of relevant differences in population or other appropriate factors), the terms of this Settlement Agreement shall not be revised except as follows: to the extent, if any, such other pre-verdict settlement agreement includes terms that provide (a) for joint and several liability among the Settling Defendants with respect to monetary payments to be made pursuant to such agreement; (b) a guarantee by the parent company of any of the Settling Defendants or other assurances of payment or creditors' remedies with respect to monetary payments to be made pursuant to such agreement; or (c) for the implementation of non-economic tobacco-related public health measures different from those contained in this Settlement Agreement, then this Settlement Agreement shall, at the option of the Office of the Attorney General of the State of Minnesota, be revised to include terms comparable to such terms.

## II. DEFENDANTS' ASSURANCES

A. Settling Defendants agree not to directly or indirectly, including through any third party or affiliate:

1. Oppose the passage of those future Minnesota legislative proposals or administrative rules intended by their terms to reduce tobacco use by children listed on Schedule B. (The foregoing does not prohibit Settling Defendants from resisting enforcement of, or suing for declaratory or injunctive relief with respect to any such legislation or rule on any grounds.)
2. Facially challenge the enforceability or constitutionality of existing Minnesota laws or rules relating to tobacco control, including, but not limited to, Minnesota Statutes Section 461.17 regarding the disclosure of certain ingredients in cigarettes; Minnesota Statutes Sections 461.12, et. seq., and 609.685 regarding the sale of tobacco to minors; Minnesota Statutes Section 325F.77 regarding the distribution of samples; and Minnesota Statutes Section 144.411 et. seq. regarding clean indoor air.
3. Support in Congress or any forum, legislation, rules or policies which would preempt, override, or abrogate or diminish the State's rights or recoveries under this Agreement. Except as specifically provided in the foregoing sentence, nothing in this Agreement shall be deemed to restrain the parties from advocating terms of any national settlement or taking any other positions on issues relating to tobacco. The State and its attorneys specifically reserve the right to continue to litigate or advocate for additional document disclosure beyond that ordered by the Ramsey County District Court, in any forum

outside of Minnesota.

4. Settling Defendants' obligation to produce documents in discovery pertaining to enactment or repeal of, or opposition to, state legislation or state executive action relating to tobacco in Minnesota is extended beyond August 17, 1994, to the date of this Agreement, with Settling Defendants required to produce these documents within thirty (30) days of the date of this Agreement.

B. Disclosure of Payments Likely to Affect Public Policy.

1. Each Settling Defendant shall disclose to the Office of the Attorney General and the Office of the Governor, at the times and in the manner provided below, information about the following payments:
  - a. Any payment to a "lobbyist" or "principal" within the meaning of Minnesota Statutes, Section 10A.01, subdivisions 11 and 28, if Settling Defendant knows or has reason to know that the payment will be used, directly or indirectly, to influence legislative or administrative action, or the official action of state or local government in Minnesota in any way relating to Tobacco Products or their use.
  - b. Any payment to a third party, if the Settling Defendant knows the payment is partly in consideration for the third party attending, offering testimony at, or participating before a state or local government hearing in Minnesota in any way relating to Tobacco Products or their use; and
  - c. Any payment (other than a "political contribution" under Minn. Stat. § 10.01, subd. 7, or 2 USC § 431(8)(A)) to, or for the benefit of, a state or local official in Minnesota, whether made directly by a defendant or indirectly through an employee acting in the scope of his employment, affiliate, lobbyist, or other agent acting under the substantial control of a defendant.
2. Disclosures required under this section shall be filed with the Office of the Attorney General and with the Office of the Governor on the first day of January, April, July and October of each year for any and all payments made through the first day of the previous month and shall be transmitted in electronic format or such format as the attorney general may require, with the following information:
  - a. The name, address, telephone number and e-mail address of the recipient.

- b. The amount of each payment described in Paragraph B(1).
  - c. The aggregate amount of all payments described in Paragraph B(1) to the recipient in the calendar year.
- 3. Information filed under this section is "public data" within the meaning of the Minnesota Government Data Practices Act.
- C. Settling Defendants agree to discontinue all Billboards and Transit Advertisements of Tobacco Products in the State. Settling Defendants shall use their best efforts in cooperation with the State to identify all such Billboards that are located within 1000 feet of any public or private school or playground in the State, and shall provide the State with a preliminary list of the location of all Billboards and stationary Transit Advertisements within 30 days from the date hereof, such list to be finalized within an additional 15 days. Settling Defendants shall, at the earlier of the expiration of applicable contracts or four months from the date the final list is supplied to the State, remove all Billboards and Transit Advertisements for Tobacco Products from within the State, leaving the space unused or used for advertising unrelated to Tobacco Products; or at the option of the State of Minnesota, will allow the State, at its expense, to substitute for the remaining term of the contract, alternative advertising intended to discourage the use of Tobacco Products by children and their exposure to second-hand smoke. The parties also agree to secure the expedited removal of up to 50 Billboards or stationary Transit Advertisements for Tobacco Products designated by the State within 30 days after their designation. Each Settling Defendant which has Billboard advertising in the State shall provide the Court and the Attorney General, or his designee, with the name of a contact person to whom the State may direct inquiries during the time such Billboards and Transit Advertisements are being eliminated, from whom the State may obtain periodic reports as to the progress of their elimination and who will be responsible for ensuring that appropriate action is taken to remove any Billboards that have not been timely eliminated.
- D. Settling Defendants shall not make, in the connection with any motion picture made in the United States, or cause to be made any payment, direct or indirect, to any person to use, display, make reference to, or use as a prop any cigarette, cigarette package, advertisement for cigarettes, or any other item bearing the brand name, logo, symbol, motto, selling message, recognizable color or pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, those used for any brand of domestic tobacco products.

- E. On and after December 31, 1998, Settling Defendants shall permanently cease marketing, licensing, distributing, selling or offering, directly or indirectly, including by catalogue or direct mail, in the State of Minnesota, any service or item (other than tobacco products or any item of which the sole function is to advertise tobacco products) which bears the brand name (alone or in conjunction with any other word), logo, symbol, motto, selling message, recognizable color or pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, those used for any brand of domestic tobacco products.
- F. Settling Defendants and the Law Firm of Robins, Kaplan, Miller & Ciresi L.L.P. ("RKM&C") have reached a separate agreement for the payment of the State's costs and attorneys fees. In consideration for said agreement, RKM&C has released the State from its obligation to pay costs and attorneys fees under the Special Attorney Appointment dated May 23, 1994.

#### I. MISCELLANEOUS PROVISIONS

- A. Representations of Parties. The respective parties hereto hereby represent that this Settlement Agreement has been duly authorized and, upon execution, will constitute a valid and binding contractual obligation, enforceable in accordance with its terms, of each of the parties hereto. The State represents that all of its outside counsel that have represented it in this action are, by and through their authorized representatives, signatores to this Settlement Agreement.
- B. Court Approval. The Parties agree to submit this Settlement Agreement to the Court for its review and approval on Friday, May 8, 1998. If the Court declines to approve this Settlement Agreement, the Blue Cross Settlement Agreement, the form of State Escrow Agreement, and the form of Blue Cross Escrow Agreement, the matter will be immediately submitted to the jury. If the Court, as a condition of approval or otherwise, requires any change in the Agreements which any signatory is unwilling to make, the case will be immediately submitted to the jury. If before the Court approves the Agreements, any third-party seeks to intervene for the purpose of opposing the Settlement Agreement, the Blue Cross Settlement Agreement, the State Escrow Agreement, and the Blue Cross Escrow Agreement, any Party at its sole election, may withdraw from this Agreement, after first giving notice to the Court and all of the Parties before the jury is dismissed, and submit the case to the jury. If the Court approves the Settlement Agreement as submitted, the Agreement will be final and binding upon all Parties.

In the event that there is a challenge to any provision of this Settlement Agreement by anyone other than the Attorney General of the State of Minnesota as of the date of this Agreement, BCBS or Settling Defendants ("a third-party challenge@) after Final Approval, any amounts required to be

paid by Settling Defendants pursuant to this Settlement Agreement shall be paid into escrow pursuant to the State Escrow Agreement. If, as a result of such a challenge, any material term of Sections II, III, IV of this Settlement Agreement is modified or rendered unenforceable, the parties shall negotiate an equivalent or comparable substitute term or other appropriate credit or adjustment. In the event that the parties are unable to agree on such a substitute term or appropriate credit or adjustment, then the parties will submit the issue to the Court for resolution, subject to any available appeal rights. In the event that any third-party challenge is made after December 31, 1998, any payments due under Paragraph II.B. shall be made to the State according to the terms of this Settlement Agreement, and only those payments due under Paragraph II.D. shall be placed into escrow as provided above.

In the event that the Court determines that there has been a failure of consideration legally sufficient to warrant termination of this Settlement Agreement, then this Settlement Agreement may be terminated by the party adversely affected. In the event of such termination, the action will be reinstated and all decisions of the trial court, and any party's appeal or other rights with respect thereto, will have the same force and effect as if this Settlement Agreement had never been entered into.

- C. Obligations Several, Not Joint. All obligations of the Settling Defendants pursuant to this Settlement Agreement are intended to be and shall remain several, and not joint.
- D. Headings. The headings of the paragraphs of this Settlement Agreement are not binding and are for reference only and do not limit, expand or otherwise affect the contents of this Settlement Agreement.
- E. No Determination or Admission. This Settlement Agreement and any proceedings taken hereunder are not intended to be and shall not in any event be construed as, or deemed to be, an admission or concession or evidence of any liability or any wrongdoing whatsoever on the part of any party hereto or any person covered by the releases provided under paragraphs III.B. and C. hereof. The Settling Defendants specifically disclaim and deny any liability or wrongdoing whatsoever with respect to the allegations and claims asserted against them in this action and enter into this Settlement Agreement solely to avoid the further expense, inconvenience, burden and uncertainty of litigation.
- F. Non-Admissibility. The settlement negotiations resulting in this Settlement Agreement have been undertaken by the parties hereto in good faith and for settlement purposes only, and neither this Settlement Agreement nor any evidence of negotiations hereunder shall be offered or received in evidence in this action, or any other action or proceeding, for any purpose other than in an action or proceeding arising under this Settlement Agreement.

G. Amendment; Waiver. This Settlement Agreement may be amended only by a written instrument executed by the Attorney General and the Settling Defendants. The waiver of any rights conferred hereunder shall be effective only if made by written instrument executed by the waiving party. The waiver by any party of any breach of this Settlement Agreement shall not be deemed to be or construed as a waiver of any other breach, whether prior, subsequent or contemporaneous, of this Settlement Agreement.

H. Notices. All notices or other communications to any party to this Settlement Agreement shall be in writing (and shall include telex, telecopy or similar writing) and shall be given to the respective parties hereto at the following addresses. Any party hereto may change the name and address of the person designated to receive notice on behalf of such party by notice given as provided in this paragraph.

For the State of Minnesota:

Hubert H. Humphrey III

Attorney General

102 State Capitol

St. Paul, MN 55155

Fax: 612.297.4193

with copies to:

Michael V. Ciresi

Robins, Kaplan, Miller & Ciresi L.L.P.

2800 LaSalle Plaza

800 LaSalle Avenue

Minneapolis, MN 55402-2015

Fax: 612.339.4181

Chief Deputy Attorney General

State of Minnesota

102 State Capitol

St. Paul, MN 55155

Fax: 612.297.4193

For Philip Morris Incorporated:

Martin J. Barrington

Philip Morris Incorporated

120 Park Avenue

New York, NY 10017-5592

Fax: 212.907.5399

With a copy to:

Meyer G. Koplow

Wachtell, Lipton, Rosen & Katz

51 West 52nd Street

New York, NY 10019

Fax: 212.403.2000

For R.J. Reynolds Tobacco Company:

Charles A. Blixt

General Counsel

R.J. Reynolds Tobacco Company

401 North Main Street

Winston-Salem, NC 27102

Fax: 910.741.2998

With a copy to:

Arthur F. Golden

Davis Polk & Wardwell

450 Lexington Avenue

New York, NY 10017

Fax: 212.450.4800

For Brown & Williamson Tobacco Corporation:

F. Anthony Burke

Brown & Williamson Tobacco Corporation

200 Brown & Williamson Tower

401 South Fourth Avenue

Louisville, KY 40202

Fax: 502.568.7297

With a copy to:

Stephen R. Patton

Kirkland & Ellis

200 East Randolph Dr.

Chicago, IL 60601

Fax: 312.861.2200

For Lorillard Tobacco Company:

Arthur J. Stevens

Lorillard Tobacco Company

714 Green Valley Road

Greensboro, NC 27408

Fax: 910.335.7707

- A. Cooperation. The parties hereto agree to use their best efforts and to cooperate with each other to cause this Settlement Agreement to become effective, to obtain all necessary approvals, consents and authorizations, if any, and to execute all documents and to take such other action as may be appropriate in connection therewith. Consistent with the foregoing, the parties hereto agree that they will not directly or indirectly assist or encourage any challenge to this Settlement Agreement by any other person. All parties hereto agree to support the integrity and enforcement of the terms of this Settlement Agreement.
- B. Governing Law. This Settlement Agreement shall be governed by the laws of the State of Minnesota, without regard to the conflicts of law rules of such state.
- C. Construction. None of the parties hereto shall be considered to be the drafter of this Settlement Agreement or any provision hereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.
- D. Severability. Subject to the provisions of Paragraph V.B., the terms of this Agreement are severable. If any term of this Agreement is found to be unlawful, the remaining terms shall remain in full force and effect, and the parties agree to negotiate a substitute term of equivalent value.
- E. Intended Beneficiaries. This action was brought by the State of Minnesota, through its Attorney General, and by Blue Cross to recover certain monies and to promote the health and

welfare of the people of Minnesota. No portion of this Settlement Agreement shall provide any rights to, or be enforceable by, any person or entity that is neither a party hereto nor a person encompassed by the releases provided in paragraphs III.B. and C. of this Settlement Agreement. Except as expressly provided in this Settlement Agreement, no portion of this Settlement Agreement shall bind any non-party or determine, limit or prejudice the rights of any such person or entity. None of the rights granted or obligations assumed under this Settlement Agreement by the parties hereto may be assigned or otherwise conveyed without the express prior written consent of all of the parties hereto.

F. Counterparts. This Settlement Agreement may be executed in counterparts. Facsimile or photocopied signatures shall be considered as valid signatures as of the date hereof, although the original signature pages shall thereafter be appended to this Settlement Agreement.

IN WITNESS WHEREOF, the parties hereto, through their fully authorized representatives, have agreed to this Comprehensive Settlement Agreement and Release as of this 8th day of May, 1998.

STATE OF MINNESOTA, acting by and through Hubert H. Humphrey III,  
its duly elected and authorized Attorney General

By:

Hubert H. Humphrey III

Attorney General

Lee E. Sheehy

Chief Deputy Attorney General

Eric A. Johnson

Executive Assistant to the Attorney General

Thomas F. Pursell

Senior Counsel to the Attorney General

D. Douglas Blanke

Director of Consumer Policy

## COUNSEL TO THE STATE OF MINNESOTA

By:

Michael V. Ciresi

Robins, Kaplan, Miller &amp; Ciresi L.L.P.

PHILIP MORRIS INCORPORATED

By:

Meyer G. Koplow

Counsel

By:

Martin J. Barrington

General Counsel

R.J. REYNOLDS TOBACCO COMPANY

By:

D. Scott Wise

Counsel

By:

Charles A. Blixt

General Counsel

.BROWN &amp; WILLIAMSON TOBACCO CORPORATION

By:

Stephen R. Patton

Counsel

By:

F. Anthony Burke

Vice President and General Counsel

LORILLARD TOBACCO COMPANY

By:

Arthur J. Stevens

Senior Vice President & General Counsel

#### SCHEDULE A

AMOUNTS PAYABLE BY SETTLING DEFENDANTS ON OR  
BEFORE SEPTEMBER 5, 1998 PURSUANT TO  
PARAGRAPH II.B. OF THE SETTLEMENT AGREEMENT

| <u>Date</u>                            | <u>9/5/98</u>         |
|----------------------------------------|-----------------------|
| <u>Settling Defendants</u>             |                       |
| Philip Morris Incorporated             | \$ 163,200,000        |
| R.J. Reynolds Tobacco Company          | \$ 16,320,000         |
| Brown & Williamson Tobacco Corporation | \$ 42,960,000         |
| Lorillard Tobacco Company              | \$ 17,520,000         |
| <b>Total Amount</b>                    | <b>\$ 240,000,000</b> |

#### SCHEDULE B

##### Potential Future Legislation to Reduce Tobacco Use by Children

⌘ Legislation to expand the self-service-sale restrictions of the youth access to tobacco law and to remove the current exception for sales of cigars.

⌘ Legislation to clarify the current youth access law provision on vending machines, making clear that machines equipped with automatic locks or that use tokens are vending machines within the meaning of the law.

⌘ Legislation providing enhanced or coordinated funding for

enforcement efforts under sales-to-minors provisions of the criminal code or the youth access statute and ordinances.

❖ Legislation to encourage or support the use of technology to increase effectiveness of age-of-purchase laws, such as, without limitation, the use of programmable scanners or scanners to read drivers' licenses.

❖ Legislation or rules restricting the wearing, carrying or display of tobacco indicia in school-related settings, including, without limitation, in school facilities, on school premises, or in connection with school-sponsored activities.

❖ Legislation to create or stiffen non-monetary incentives for youth not to smoke, such as expansion of youth community service programs.

#### APPENDIX A

##### FORMULA FOR CALCULATING

##### STATE OF MINNESOTA VOLUME ADJUSTMENTS

Any payment that by the terms of the Settlement Agreement is to be adjusted pursuant to this Appendix (the "Applicable Base Payment") shall be adjusted pursuant to this Appendix in the following manner:

(A) in the event the aggregate number of units of Tobacco Products sold domestically by the Settling Defendants in the Applicable Year (as defined hereinbelow) (the "Actual Volume") is greater than the aggregate number of units of Tobacco Products sold domestically by the Settling Defendants in 1997 (the "Base Volume"), the Applicable Base Payment shall be multiplied by the ratio of the Actual Volume to the Base Volume;

(B) in the event the Actual Volume is less than the Base Volume,

(i) the Applicable Base Payment shall be multiplied by the ratio of the Actual Volume to the Base Volume, and the resulting product shall be divided by 0.98; and

(ii) if a reduction of the Applicable Base Payment results from the application of subparagraph (B)(i) of this Appendix, but the Settling Defendants' aggregate net operating profits from domestic sales of Tobacco Products for the Applicable Year (the "Actual Net Operating Profit") is greater than the Settling Defendants' aggregate net operating profits from domestic sales of Tobacco Products in 1997 (the "Base Net Operating Profit") (such Base Net Operating Profit being adjusted upward by the greater of the rate of 3% per annum or the actual total percent change in the Consumer Price Index, in either instance for the period between January 1, 1998 and

the date on which the payment at issue is made), then the amount by which the Applicable Base Payment is reduced by the application of subparagraph (B)(i) shall be reduced (but not below zero) by 2.55% of 25% of such increase in such profits. For purposes of this Appendix, "net operating profits from domestic sales of Tobacco Products" shall mean net operating profits from domestic sales of Tobacco Products as reported to the United States Securities and Exchange Commission ("SEC") for the Applicable Year or, in the case of a Settling Defendant that does not report profits to the SEC, as reported in financial statements prepared in accordance with generally accepted accounting principles and audited by a nationally recognized accounting firm. The determination of the Settling Defendants' aggregate net operating profits from domestic sales of Tobacco Products shall be derived using the same methodology as was employed in deriving such Settling Defendants' aggregate net operating profits from domestic sales of Tobacco Products in 1997. Any increase in an Applicable Base Payment pursuant to this subparagraph B(ii) shall be payable within 120 days after the date that the payment at issue was required to be made.

(C) "Applicable Year" means (i) with respect to the payments made pursuant to paragraph II.D of the Settlement Agreement, the calendar year ending on the date on which the payment at issue is due, regardless of when such payment is made; and (ii) with respect to all other payments made pursuant to this Settlement Agreement, the calendar year immediately preceding the year in which the payment at issue is due, regardless of when such payment is made.

## STATE OF MINNESOTA DISTRICT COURT

## COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

THE STATE OF MINNESOTA, Case Type: Other Civil

BY HUBERT H. HUMPHREY Court File No.  
III, C1-94-8565

ITS ATTORNEY GENERAL,

and

BLUE CROSS AND BLUE  
SHIELD

OF MINNESOTA,

Plaintiffs,

vs.

PHILIP MORRIS  
INCORPORATED,R.J. REYNOLDS TOBACCO  
COMPANY,**CONSENT JUDGMENT**BROWN & WILLIAMSON  
TOBACCO CORPORATION,  
B.A.T. INDUSTRIES  
P.L.C.,  
BRITISH-AMERICAN  
TOBACCO COMPANY  
LIMITED, BAT (U.K. &  
EXPORT) LIMITED,  
LORILLARD TOBACCO  
COMPANY, THE AMERICAN  
TOBACCO COMPANY,  
LIGGETT GROUP, INC.,  
THE COUNCIL FOR TOBACCO  
RESEARCH-U.S.A., INC.,  
and THE TOBACCO  
INSTITUTE, INC.,

Defendants.

WHEREAS, the State of Minnesota, by its Attorney General, Hubert H. Humphrey III, and Blue Cross and Blue Shield of Minnesota filed their Complaint herein on August 17, 1994, and their Second Amended Complaint on January 6, 1998;

**EXHIBIT A**

WHEREAS, Defendants have contested the claims in the Plaintiffs' Complaint and Second Amended Complaint;

WHEREAS, the parties recognize that Congress is considering national tobacco legislation and have agreed to settle this case on a basis which acknowledges possible federal legislation, but which guarantees to the people of Minnesota the relief granted herein;

WHEREAS, Settling Defendants, in the Settlement Agreement and Stipulation for Entry of Consent Judgment, have waived as specified therein their right to challenge the terms of this Consent Judgment as being superseded or preempted by future Congressional enactments; and

WHEREAS, the Attorney General believes the entry of this Consent Judgment is appropriate and in the public interest;

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

**I. JURISDICTION AND VENUE**

The Court has jurisdiction over the subject matter of this action and over the Settling Defendants under Minn. Stat. §§ 8.31, 325D.15, 325D.45, 325D.58, 325F.70 and 484.01 (1994). Venue is proper in Ramsey County pursuant to Minn. Stat. §§ 325D.65 and 542.09 (1994) in that Settling Defendants do business in Ramsey County.

**I. DEFINITIONS**

The definitions set forth in the Settlement Agreement and Stipulation for Entry of Consent Judgment ("Settlement Agreement") are incorporated by reference herein.

**I. APPLICABILITY**

This Consent Judgment applies only to Settling Defendants in their corporate capacity acting through their respective successors and assigns, directors, officers, employees, agents, subsidiaries, divisions, or other internal organizational units of any kind or any other entities acting in concert or participation with them. The remedies and penalties in Sections XD. and E. herein for a violation of this Consent Judgment shall apply only to Settling Defendants, and shall not be imposed or assessed against any employee, officer or director of Settling Defendants or other person or entity as a consequence of such a violation, and there shall be no jurisdiction under this Consent Judgment to do so.

**I. EFFECT ON THIRD PARTIES**

This Consent Judgment is not intended to and does not vest standing in any third party with respect to the terms hereof, or create for any person other than the parties hereto a right to enforce the terms hereof.

**I. INJUNCTIVE RELIEF**

Settling Defendants are permanently enjoined from:

- A. On and after December 31, 1998, marketing, licensing, distributing, selling or offering, directly or indirectly, including by catalogue or direct mail, in the State of Minnesota, any service or item (other than tobacco products or any item the sole function of which is to advertise tobacco products) which bears the brand name (alone or in conjunction with any other word), logo, symbol, motto, selling message, recognizable color or pattern of colors, or any other indicia or product identification identical or similar to, or identifiable with, those used for any domestic brand of tobacco products.
- B. Making any material misrepresentation of fact regarding the health consequence of using any tobacco product, including any tobacco additives, filters, paper or other ingredients.

Nothing in this paragraph shall limit the exercise of any First Amendment right or any defense or position which persons bound by this Consent Judgment may assert in any judicial, legislative, or regulatory forum.

- A. Entering into any contract, combination or conspiracy between or among themselves, which has the purpose or effect of: (1) limiting competition in the production or distribution of information about the health hazards or other consequences of the use of their products; (2) limiting or suppressing research into smoking and health; or (3) limiting or suppressing research into, marketing, or development of new products.
- B. Taking any action, directly or indirectly, to target children in Minnesota in the advertising, promotion, or marketing of cigarettes, or taking any action the primary purpose of which is to initiate, maintain or increase the incidence of underage smoking in Minnesota.

#### I. DISSOLUTION OF DEFENDANT COUNCIL FOR TOBACCO RESEARCH

Settling Defendants represent that they have the authority to effectuate the following and will do so within 90 days of this Agreement: The Council for Tobacco Research-U.S.A. Inc. shall cease all operations except as necessary to comply with existing grants or contracts and to continue its defense of other lawsuits and will be disbanded and dissolved within a reasonable time period thereafter. To the extent not required elsewhere in this Consent Judgment, the Council for Tobacco Research shall forward all smoking and health research in its possession or control to the Food and Drug Administration subject to appropriate confidentiality protection required by contracts between the Council for Tobacco Research and any third party. Defendants shall preserve all other records of the Council for Tobacco Research which relate in any way to issues raised in this or any other Attorney General lawsuit. Defendants may not reconstitute the Council for Tobacco Research or its function in any form.

#### I. PUBLIC ACCESS TO DOCUMENTS AND COURT FILES

- A. The Court's previous Protective Orders are hereby dissolved with respect to all documents, including the 4A and 4B indices and the privilege logs, which have been produced to the Plaintiffs and for which Defendants have made no claim of privilege or Category II trade secret protection. Such documents shall be made available to the public at the Depository, in the manner provided as follows:
1. The public shall be given access to all non-privileged documents contained in the Minnesota Depository, including all documents set forth in Paragraph VII.A. above.
  2. Plaintiffs and Settling Defendants shall meet with representatives of the current Minnesota Depository administrators, Smart Legal Assistance and Merrill Corporation, and/or other appropriate persons, to discuss staffing issues and the procedures that should be implemented to continue the operation of the Minnesota Depository, thereby to ensure broad and orderly access to these documents.
  3. Category II documents shall be returned to the Defendants as soon as practical, provided that Defendants, upon receiving appropriate assurances of trade secret protection from the Food and Drug Administration, shall forward a copy of the Category II documents bearing the Bates numbers from this action to said agency. Plaintiffs shall retain the Bates stamp numbers of all Category II documents produced in this case.
- B. The documents produced in this case are not "government data" under the Minnesota Government Data Practices Act.
- C. For documents upon which a privilege was claimed and found not to exist, including any briefs, memoranda and other pleadings filed by the parties which include reference to such documents, Plaintiffs may seek court approval to make such documents available to the public, provided that any such request be made to the Court within 45 days of the date of entry of this Consent Judgment.
- D. Defendant British-American Tobacco Company Limited shall maintain and operate the Guildford Depository for a period of ten years. Defendant British-American Tobacco Company Limited shall have the option of maintaining such depository at its current location or at an appropriate alternative location. All documents, except those identified in Paragraph VII.A.3 above, which were selected by plaintiffs from the Guildford Depository in response to the Plaintiffs' discovery requests shall be moved to and retained at the Minnesota Depository.
- E. The Minnesota Depository shall be maintained and operated

at Settling Defendants' sole expense, in the manner set forth above for ten years after the date hereof, or such longer period as may be provided in federal legislation for a national document depository. At the end of such period, or sooner, at the State's discretion, the documents shall be transferred to the State Archives or other appropriate state body, where they shall remain available for historical and research purposes. The parties and the Depository staff shall cooperate with the State Archivist or such other state officials as may be involved in transferring the documents to the custody of the State.

- F. Settling Defendants shall provide to the State for the Depository a copy of all existing CD-ROMs of documents produced in this action that do not contain any privileged or work-product documents or information, to be placed in the Depository.
- G. Defendants shall produce to the Depository all documents produced by such defendants in other United States smoking and health litigation but not previously produced in Minnesota, within 30 days of their production such the other litigation, provided Defendants do not claim privilege with respect to such documents, and provided such documents are not subject to any protective order.

## II. EQUITABLE RELIEF: NATIONAL RESEARCH; DEPOSIT OF FUNDS.

- A. In furtherance of the equitable relief sought by the State, pursuant to the Court's equitable powers to shape appropriate injunctive relief, in light of the public health interests demonstrated by the evidence in this case, and pursuant to the agreement of the parties:
  - 1. Consistent with the Prayer for Relief in the State's Complaint and Amended Complaints that the Defendants fund cessation programs in the State of Minnesota, the amount due in December, 1998 (\$102 million), pursuant to the Settlement Agreement, Section II.D, shall be deposited into a separate cessation account and used to offer smoking cessation opportunities to Minnesota smokers, and shall be administered as ordered by the Court.
  - 2. In addition to other money paid under this Consent Judgment and the Settlement Agreement and Stipulation for Entry of Consent Judgment, each Settling Defendant shall pay pro rata in proportion to its Market Share, on or before June 1, 1998, and no later than June 1 of each succeeding year through and including June 1, 2007, its share of \$10 million into a national research account, to be administered as ordered by the Court. The parties envision that approximately 70% of the \$100 million total will be used for research grants relating to the elimination of tobacco use by children, and 30% for program implementation, evaluation and other tobacco control

purposes; provided, however, the administrator of the national research account may, in its discretion, change the allocation.

3. The State shall submit a plan for the administration and authorized uses of the funds payable under this section within 45 days of the date of entry of this Consent Judgment.
4. Monies payable under this section and Section V.B. of the Settlement Agreement shall be deposited in interest bearing accounts at a bank to be designated by the Commissioner of Finance. Settling Defendants' payment of the amounts set forth above are Settling Defendants' sole obligation under this section.

B. Except as specified in this section and Section V.B of the Settlement Agreement, all monies payable under Sections II.B. and D. of the Settlement Agreement between the parties shall be deposited into the general fund of the State of Minnesota.

### III. FINAL DISPOSITION

This Consent Judgment resolves all claims set forth in the State's Second Amended Complaint against Defendants, which are hereby dismissed with prejudice, and shall constitute the final disposition of this action.

### IV. MISCELLANEOUS PROVISIONS

- A. Jurisdiction of this case is retained for the purpose of enforcement and enabling the continuing proceedings contemplated herein. Any party to this Consent Judgment may apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction and enforcement of this Consent Judgment.
- B. This Consent Judgment is not intended to be and shall not in any event be construed as, or deemed to be, an admission or concession or evidence of personal jurisdiction or any liability or any wrongdoing whatsoever on the part of any Defendant. The Defendants specifically disclaim any liability or wrongdoing whatsoever with respect to the claims and allegations asserted against them in this action and Settling Defendants have stipulated to entry of this Consent Judgment solely to avoid the further expense, inconvenience, burden and risk of litigation.
- C. Except as provided in Section III.D. of the Settlement Agreement and Stipulation for Entry of Consent Judgment, this Consent Judgment shall not be modified unless the party seeking modification demonstrates, by clear and convincing evidence, that it will suffer irreparable harm from new and unforeseen conditions; provided, however, that the

provisions of Section III of this Consent Judgment shall in no event be subject to modification. Changes in the economic conditions of the parties shall not be grounds for modification. It is intended that Settling Defendants will comply with this Consent Judgment as originally entered, even if Settling Defendants' obligations hereunder are greater than those imposed under current or future law. Therefore, a change in law that results, directly or indirectly, in more favorable or beneficial treatment of any one or more of the Settling Defendants shall not support modification of this Consent Judgment.

- D. In enforcing this Consent Judgment the Attorney General shall have the discovery powers of Minn. Stat. § 8.31 (1996), as amended. Any Settling Defendant which violates this Consent Judgment shall be subject to contempt and to the remedies provided in Minn. Stat. § 8.31 (1996), as amended. In addition, in any proceeding which results in a finding that a Settling Defendant violated this Consent Judgment, the responsible Settling Defendant or Settling Defendants shall pay the State's costs and attorneys' fees incurred in such proceeding.
- E. The remedies in this Consent Judgment are cumulative and in addition to any other remedies the State may have at law or equity. Nothing herein shall be construed to prevent the State from bringing any action for conduct not released hereunder, even though that conduct may also violate this Consent Judgment.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated:

KENNETH J. FITZPATRICK

Judge of District Court

#### JUDGMENT

Pursuant to the foregoing Consent Judgment, judgment is hereby entered accordingly.

Dated:

Court Administrator



# STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

HUBERT H. HUMPHREY III  
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL  
STATE OF MINNESOTA  
TELEPHONE: 612-297-2200

**FOR IMMEDIATE RELEASE:**  
Friday, May 8, 1998

**CONTACT:** Eric Johnson (612) 296-2643  
Leslie Sandberg (612) 296-2069  
pager (612) 538-3707

## **HUMPHREY ACHIEVES HISTORIC \$6.1 BILLION SETTLEMENT OF TOBACCO LAWSUIT WITH IRONCLAD BAN AGAINST MARKETING TO CHILDREN**

*Settlement includes unprecedented industry reforms and full truth revealed to the public*

After a four year legal battle with the tobacco industry, Attorney General Hubert H. Humphrey III and Andy Czajkowski, CEO of co-plaintiff Blue Cross and Blue Shield of Minnesota, today announced a historic agreement that requires the industry to pay \$6.1 billion to the State of Minnesota and imposes the strongest ban in the nation against marketing cigarettes to children. The landmark agreement requires disclosure of secret tobacco documents, unprecedented reform of the industry, closure of the tobacco research and propaganda arm, the Council for Tobacco Research, and first-in-the-nation bans on tobacco branded merchandise and secret payments for using cigarettes in movies.

"When we launched this historic lawsuit against the tobacco cartel, the critics said we'd never prevail against this powerful industry," Humphrey said. "Today, the tobacco industry has surrendered -- and they have surrendered on our terms. Groundbreaking terms that will expose the truth to the public, recover record amounts for taxpayers, impose stringent reforms on the industry and, most important, protect future generations of kids."

The final agreement, reached early Friday morning, marks the end of a four-year legal battle to bring the tobacco industry to justice. Humphrey was the first state attorney general in the nation in August, 1994 to file a consumer fraud and antitrust lawsuit against the tobacco industry.

### **The Truth Comes Out**

The Minnesota case stood out among all state lawsuits because unprecedented document discovery broke through the industry's 40-year conspiracy to hide what they knew about the health effects of smoking. Now these hard-won documents will become public.

The settlement calls for continued document disclosure and a lifting of the protective order which kept the most important road maps to the industry's decades-long conspiracy from the public. The millions of documents open to the public at the Minnesota document depository will remain open at industry expense for the next 10 years. Selected key documents from the document depository in England will be transferred to the Minnesota depository.

(more)

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## **HUMPHREY ACHIEVES HISTORIC SETTLEMENT OF TOBACCO LAWSUIT**

Page 2

"The hallmark of our case has been our unwavering search for the truth," Humphrey said. "Now we intend to expose the remaining secrets of the industry's 40-year fraud, conspiracy and deception. The settlement will unseal the secret documents, including the 4-A indexes that we fought all the way to the Supreme Court to uncover and provide a roadmap to the documents."

### **Paying for the Harm Tobacco Caused**

The tobacco industry will pay the State \$6.1 billion over the next 25 years, making this the largest recovery in Minnesota history and the third largest in American history. The settlement is more than four times the amount sought in damages, which was \$1.3 billion. The total amount is 20 to 100 percent higher per capita than any other state settlement.

The figure also represents over \$2 billion more than what the state would have received if it had gone along with the proposed June 20 bailout deal. That deal was supported by most Attorneys General and the industry. But Humphrey led the fight to defeat it, arguing it was too weak and represented a huge financial windfall for the companies because they would have won immunity from lawsuits like the Minnesota case.

"The magnitude of these payments breaks the mold of big tobacco's sweetheart deal and sends the message to Congress that they must pay much more for the harm they've caused," Humphrey said.

### **Protecting Kids**

- ***A Ban on Marketing to Kids***

For the first time in history, the tobacco companies face an ironclad ban against marketing to children in the form of a permanent injunction. Under the settlement, the tobacco companies are specifically prohibited, by court order, from using any marketing techniques that target children. This order is unprecedented. In the past, the only way to stop tobacco companies from targeting children has been to argue they are engaged in deceptive advertising or violation of similarly general laws. Now they will be bound by a specific, ironclad order.

"This injunction puts the tobacco industry on parole," Humphrey said. "If we find new evidence that they are marketing their deadly product to kids, we're going back into court to hold them in contempt and impose fines or damages. It's ironclad justice -- swift and certain punishment that will save kids' lives."

(more)

## **HUMPHREY ACHIEVES HISTORIC SETTLEMENT OF TOBACCO LAWSUIT**

Page 3

- ***Tobacco Billboards Come Down***

Cigarettes are the number one item advertised on billboards in Minnesota. But not for long. Under the settlement, tobacco billboards come down. Fifty come down within a month, and the rest will be phased out in less than six months. Tobacco advertising on buses, taxis and at bus stops also will end.

"The Marlboro Man and Joe Camel will no longer be hovering over our children near schools, parks and child care centers," Humphrey said.

- ***No More Branded Merchandise***

Under the settlement, Minnesota will be the first state in the nation to ban branded merchandise and all branded promotional items. Tobacco companies spend hundreds of millions of dollars annually on T-shirts, hats, gym bags, backpacks, CD players and other merchandise with cigarette logos, making our children walking billboards for cigarettes. An amazing 35 percent of kids from 12 to 17 years old -- including nonsmokers -- have at least one of these promotional items. Recent research shows these products may be one of the most powerful influences on getting teens to smoke.

- ***No More Secret Payoffs to Movie Producers -- Nationwide***

One of the most insidious tobacco marketing techniques has been the secret payment of fees to movie producers to feature cigarettes and smoking in popular films, sometimes in ways that showcase particular brands. A document uncovered in the Minnesota case shows that Philip Morris provided products for use in movies as recent and as youth-oriented, as "The Muppet Movie" and "Who Framed Roger Rabbit?" Under this settlement, the companies are barred from making such payments, directly or indirectly, anywhere in the nation.

"This ban on payments to place tobacco products in movies applies nationwide. It shows that state litigation can be used to create national solutions to the tobacco epidemic," Humphrey said.

### **Protecting Public Health**

- ***Cessation for Every Minnesota Smoker***

The settlement provides for money to be set aside for a smoking cessation fund to make smoking cessation treatment available at no expense for every Minnesota smoker who wants to quit. Under the settlement, \$102 million will be earmarked for this first-of-its-kind fund to be operated by health experts.

(more)

## **HUMPHREY ACHIEVES HISTORIC SETTLEMENT OF TOBACCO LAWSUIT**

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"Our trial made clear that the tobacco industry lied to the American public to protect their corporate profits. The result has been decades of crippling disease," Humphrey said. "We can't quell the heartbreak of those who have lost loved ones. But if we work together, we can and we will save future generations from tobacco addiction and disease."

- ***The World's Strongest Tobacco Control Program***

The settlement calls for creation of a non-profit foundation, run by a board of directors drawn mainly from prominent public health groups, to develop the world's most comprehensive and effective program to reduce teen smoking and combat the social and economic harm caused by tobacco.

Subject to the approval of the legislature, this foundation would ultimately oversee a trust fund of over \$650 million to fund a large and sustained counter-advertising campaign; classroom education; community partnerships; research, advocacy and innovative prevention programs.

"This trust fund represents less than 11 percent of this historic settlement. But with it, Minnesota can create the world's most comprehensive and effective campaign to save the next generation from becoming addicted to the most deadly consumer product," Humphrey said.

### **Reforming the Industry**

"The tobacco industry's 40-year campaign of deception and fraud is the saddest chapter in the history of corporate America," Humphrey said. "Neither I nor the American people can trust them to reform themselves. So we are using the power of the law to change their corporate conduct."

- ***Tobacco Trade Group Must Disband***

In its lawsuit, the State had alleged that the tobacco industry used a trade group, the Council for Tobacco Research (CTR), as a propaganda machine to mislead Americans and suppress health research. Under the settlement, the CTR is dissolved. The industry is permanently barred from reviving the CTR or anything similar.

- ***Expanded Lobbying Disclosure***

The tobacco industry is notorious for manipulating the political process and wielding its considerable clout through front-groups, highly paid lobbyists and secret surrogates. The settlement imposes new disclosure requirements on the industry, beyond those of Minnesota's lobbying laws, to shine the light of public scrutiny on the industry's efforts to influence Minnesota lawmaking.

(more)

## **HUMPHREY ACHIEVES HISTORIC SETTLEMENT OF TOBACCO LAWSUIT**

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Among the enhanced disclosures will be requirements that the industry reveal the amounts paid to its lobbyists and to other associations, reveal payments made to third parties to testify in hearings, and report on the use of controlled foundations to make gifts that benefit Minnesota officials. This is unprecedented.

- ***Protecting the Integrity of the Legislative Process***

The settlement contains provisions that help preserve Minnesota's tobacco laws and limit the industry's ability to block future legislation. The industry is specifically prohibited from bringing any legal or constitutional challenge to Minnesota's existing laws against: selling tobacco to minors; the Clean Indoor Air Act; the law against distribution of free tobacco samples; and a new ingredient disclosure law adopted in 1997 and not yet implemented. In addition, the industry is barred from opposing certain future legislation to reduce tobacco use by children.

### **Attorneys Fees**

No attorneys fees will be deducted from the settlement amount. The Robins, Kaplan, Miller and Ciresi law firm will waive its special attorney appointment agreement with the state. The tobacco industry, which deployed more than 30 law firms and hundreds of lawyers to fight the state, agreed to pay all of the firm's fees for waging this four-year legal battle. The industry will pay attorneys fees amounting to about 7 percent of the settlement, less than one-third of the original 25 percent agreement.

"I'm old-fashioned enough to believe if you stand up for your principles, if you act from your heart, things will work out for the best," Humphrey said. "Well, we stood firm. And the result is a triumph of truth and justice for taxpayers. It is a monumental advancement for public health. And it's a bright and healthy future for our children."

The settlement agreement will be posted on the Attorney General's web site at: [www.ag.state.mn.us](http://www.ag.state.mn.us). Click on "news," then click on "tobacco litigation news."

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Case Type: Other Civil

THE STATE OF MINNESOTA,

BY HUBERT H. HUMPHREY, III,  
ITS ATTORNEY GENERAL,

and

BLUE CROSS AND BLUE SHIELD  
OF MINNESOTA,

Plaintiffs,

Court File No. C1-94-8565

vs.

PHILIP MORRIS INCORPORATED,  
R.J. REYNOLDS TOBACCO COMPANY,  
BROWN & WILLIAMSON TOBACCO CORPORATION,  
B.A.T. INDUSTRIES P.L.C.,  
BRITISH-AMERICAN TOBACCO COMPANY LIMITED,  
LORILLARD TOBACCO COMPANY,  
THE AMERICAN TOBACCO COMPANY,  
LIGGETT GROUP, INC.,  
THE COUNCIL FOR TOBACCO RESEARCH - U.S.A., INC., and  
THE TOBACCO INSTITUTE, INC.,

JURY INSTRUCTIONS

Defendants.

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**GENERAL INTRODUCTORY JURY INSTRUCTIONS**

Jury Instruction No. 1

DUTIES OF JUDGE AND JURY

Members of the jury:

Now that the evidence in this case has been presented, the time has come for me to instruct you on the law. My instructions will cover three areas: first, some instructions on general rules that define and control your duties; second, the instructions that supply the law applicable to the claims and defenses in the case; and third, some guidelines and rules for your deliberations. A copy of these instructions will be available for you in the jury room to consult if you find it necessary.

DUTIES OF THE JURY

In defining the duties of the jury, let me first give you a few general rules:

It is your duty to find the facts from all the evidence in the case. To the facts as you find them you must apply the law as I give it to you.

The questions that you must decide will be submitted to you in the form of a special verdict consisting of 25 questions. You must answer these questions by applying the facts as you may find them to be. I shall give to you the rules of law that apply to these questions and you must apply them in arriving at your answers. It is the duty of the court to order judgment according to the law and the answers you have returned.

You must follow the law as I give it to you, whether you agree with it or not. And you must do your duty as jurors regardless of any personal likes or dislikes, opinions, prejudices or sympathy. That means that you must decide the case solely on the evidence before you.

In following my instructions, you must follow all of them and not single out some and ignore others; they are all equally important. And you must not read into these instructions, or into anything the court may have said or done, any suggestion from the court as to how special verdict questions should be answered.

Deciding questions of fact is your exclusive responsibility. In doing so, you must consider all the evidence you have heard and seen in this trial, and the reasonable inferences to be drawn from that evidence. And you must disregard anything you may have heard or seen elsewhere about this case. Whether or not a particular answer is favorable to one party or the other should not concern you.

**Jury Instruction No. 2**

**STATEMENTS OF COUNSEL AND JUDGE**

Attorneys are officers of the court. It is their duty to present evidence on behalf of their clients and to make such objections as they deem proper, and to argue fully their client's cause. However, the arguments or other remarks of the attorneys are not evidence in this case.

If the attorneys have made, or if I have made or should make, any statement as to what the evidence is, which differs from your recollection of the evidence, then you should disregard the statement and rely solely upon your own memory. If the attorneys' arguments contain any statements of the law which differ from the law which I give you, you should disregard their statements.

Jury Instruction No. 3

RULINGS ON OBJECTIONS TO EVIDENCE

During this trial I have ruled on objections to certain testimony and exhibits. You must not concern yourselves with the reasons for my rulings since they are controlled by rules of law.

Objections to questions are not evidence. Lawyers have an obligation to their clients to make an objection when they believe evidence being offered should not be admitted under the rules of evidence. If the objection is sustained, ignore the question. If it is overruled, treat the answer like any other. By receiving evidence to which objection was made, I did not intend to indicate the weight to be given such evidence. You are to disregard all evidence ordered stricken.

**Jury Instruction No. 4**

**BIAS**

Do not let bias, prejudice or sympathy play any part in your deliberations. This case should be considered and decided by you as an action between persons of equal standing in the community, of equal worth, and holding the same or similar stations in life. A corporation or governmental entity is entitled to the same fair trial at your hands as a private individual. All persons, including corporations, government entities, non-profit health services plans, unincorporated associations, and other organizations, stand equal before the law, and are to be dealt with as equals in a court of justice.

Jury Instruction No. 5

BURDEN OF PROOF

The burden of proof is on the plaintiffs, that is, the State of Minnesota and Blue Cross and Blue Shield of Minnesota, to prove every essential element of each of their claims by the greater weight of the evidence.

Greater weight of the evidence means that all of the evidence, by whomever produced, must lead you to believe that it is more likely that the fact is true than not true. If the evidence does not lead you to believe that it is more likely that the fact is true than not true, then the fact has not been proved by the greater weight of the evidence.

The greater weight of the evidence does not necessarily mean that the party on whom the burden rests must produce more witnesses than does the other side, nor does it mean that it must have met its burden by producing the greater volume of testimony. It refers to the credibility of the evidence and testimony. Any believable evidence may be a sufficient basis to prove a fact.

There is a higher burden of proof -- clear and convincing evidence -- on the plaintiffs for their claim for punitive damages. I will instruct you on that burden of proof later in these instructions.

Those of you who have sat on criminal cases will have heard of proof beyond a reasonable doubt. That is a stricter standard than either the greater weight of the evidence standard or the

clear and convincing evidence standard. The beyond a reasonable doubt standard does not apply to a civil case such as this one.

Jury Instruction No. 6

**DIRECT AND CIRCUMSTANTIAL EVIDENCE**

A fact may be proved by either direct or circumstantial evidence, or by both. The law does not prefer one form of evidence over the other.

A fact is proved by direct evidence when, for example, it is proved by witnesses who testify to what they saw, heard, or experienced, or by physical evidence of the fact itself. A fact is proved by circumstantial evidence when its existence can be reasonably inferred from other facts proved in the case.

**Jury Instruction No. 7**

**EVALUATION OF TESTIMONY--CREDIBILITY OF WITNESSES**

You are the sole judges of whether a witness is to be believed and of the weight to be given to the testimony of each. There are no hard and fast rules to guide you in this respect. In determining believability and weight you should take into consideration as to the witnesses the following:

1. Their interest or lack of interest in the outcome of the case.
2. Their relationship to the parties.
3. Their ability and opportunity to know, remember, and relate the facts.
4. Their manner and appearance.
5. Their age and experience.
6. Their frankness and sincerity, or lack thereof.
7. The reasonableness or unreasonableness of their testimony in the light of all the other evidence in the case.
8. Any impeachment of their testimony.
9. And any other factors that bear on believability and weight.

You should in the last analysis rely upon your own experience, good judgment, and common sense.

**Jury Instruction No. 8**

**EXPERT TESTIMONY**

A witness who has special training, education or experience in a particular science, profession or calling, is allowed to express an opinion. In determining the believability and the weight to be given such opinion evidence, you may consider, among other things:

1. The education, training, experience, knowledge, and ability of the witness.
2. The reasons given for the witness' opinion.
3. The sources of the witness' information.
4. Factors already given you for evaluating the testimony of a witness.

Such opinion evidence is entitled to neither more nor less consideration by you than the other fact evidence presented.