

GARY L. WILSON

Admitted in:  
California  
Minnesota  
Wisconsin  
(612) 349-8413

December 7, 2000

**VIA CLAD**

The Honorable Kenneth J. Fitzpatrick  
1350 Ramsey County Courthouse  
15 West Kellogg Boulevard  
St. Paul, MN 55102

**Re: State of Minnesota and Blue Cross and Blue Shield of Minnesota v. Philip Morris Incorporated, et al.**  
**Court File No.: C1-94-8565**

Dear Judge Fitzpatrick:

This letter serves to describe the various documents which plaintiffs have filed in response to defendants' numerous motions for summary judgment. Pursuant to this Court's October 20, 1997, Order, plaintiffs have responded on an individual basis to some of the issues argued by defendants in a "consolidated motion."

1. In response to Defendants' Consolidated Motion for Partial Summary Judgment Based Upon Plaintiffs' Inability to Prove Causation or Damages and Based Upon Defendants' Right to Petition the Government (CLAD 1551), plaintiffs have filed:
  - A Memorandum of Law entitled "**Causation In-Fact and Antitrust Damages**" (CLAD 1607) and the **Affidavit of Gary L. Wilson** (CLAD 1608);
  - A Memorandum of Law entitled "**Defendants' Right to Petition the Government**" (CLAD 1623) and the **Affidavit of Vincent J. Moccio** (CLAD 1624).
2. In response to Defendants' Motion for Partial Summary Judgment on Certain Damages Issues (CLAD 1549), plaintiffs have filed:
  - A Memorandum of Law entitled "**Recovery of Federal Share of Medicaid**" (CLAD 1616) and the **Affidavit of Susan Richard Nelson** (CLAD 1617).
  - A Memorandum of Law entitled "**Disgorgement of Profits**" (CLAD 1615).

- A Memorandum of Law entitled "**Minnesota Deceptive Trade Practices Act**" (CLAD 1611) and the **Affidavit of Gary L. Wilson** (CLAD 1612).
3. In response to Defendants' Consolidated Motion for Summary Judgment against Plaintiffs' Nonstatutory Counts, Counts One, Eight and Nine (CLAD 1529), plaintiffs have filed:
- **Memorandum in Opposition to Defendants' Motion for Partial Summary Judgment Against Plaintiffs' Nonstatutory Claims** (CLAD 1613) and the **Affidavit of Gary L. Wilson** (CLAD 1614).
4. In response to Defendants' Motion Based Upon Expiration of Statute of Limitations (CLAD 1537), plaintiffs have filed:
- **Plaintiffs' Memorandum of Law in Response to Defendants' Motion for Summary Judgment Based on the Statute of Limitations** (CLAD 1631) and the **Affidavit of Howard R. Orenstein** (CLAD 1632).
5. In response to Defendants' Motion for Summary Judgment on Plaintiffs' Antitrust Claims, Counts Two and Three (CLAD 1533), plaintiffs have filed:
- **Plaintiffs' Memorandum in Opposition to Defendants' Motion for Summary Judgment Dismissal of Plaintiffs' Anti-Trust Claims (Counts Two and Three)** (CLAD 1609), and the **Affidavit of Tara D. Sutton** (CLAD 1610).
6. In response to Defendants' Motion for Partial Summary Judgment or, in the Alternative, Motion in Limine, on Federal Preemption Grounds (CLAD 1546), plaintiffs have filed:
- **Memorandum in Opposition to Defendants' Motion for Partial Summary Judgment or, in the Alternative, Motion in Limine on Federal Preemption Grounds** (CLAD 1619) and the **Affidavit of Vincent J. Moccio** (CLAD 1620).
7. In response to Council for Tobacco Research's Motion for Summary Judgment (CLAD 1553), plaintiffs have filed:
- **Plaintiffs' Memorandum in Opposition to Council for Tobacco Research's Motion for Summary Judgment** (CLAD 1625) and the **Affidavit of Daniel A. O'Fallon** (CLAD 1626).
8. In response to the Tobacco Institute's Motion for Summary Judgment (CLAD 1532), plaintiffs have filed:
- **Memorandum in Opposition to the Tobacco Institute's Motion for Summary Judgment (on First Amendment Grounds)** (CLAD 1621) and the **Affidavit of Vincent J. Moccio** (CLAD 1622).
9. In response to B.A.T. Industries' Motion for Summary Judgment (CLAD 1550), plaintiffs have filed:
- **Plaintiffs' Memorandum of Law in Opposition to B.A.T. Industries' Motion for Summary Judgment Based on Lack of Personal Jurisdiction** with attached **Appendix A -- Statement of Facts** (CLAD 1628), and the **Joint Affidavit of Martha K. Wivell** (CLAD 1629).
10. In response to the Motion by British American Tobacco Co. Ltd. and B.A.T. (U.K. & Export) for Summary Judgment (CLAD 1555), plaintiffs have filed:
- **Plaintiffs' Memorandum in Opposition to the Motion of BATCo and BATUKE for Summary Judgment** (CLAD 1627) and the **Joint Affidavit of Martha K. Wivell** (CLAD 1629) responses to this

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motion. (This joint affidavit is the same as described in ¶ 9 above).

Plaintiffs have also filed, pursuant to General Rule of Practice 115(d)(3), a "**Combined Recital of Disputed Fact**" (CLAD 1633) which contains facts relevant to, and cited in, plaintiffs' various responses. The **Affidavit of Daniel A. O'Fallon** (CLAD 1634) accompanies the Combined Recital of Disputed Facts.

Defendant Liggett Group filed a motion joining in the motions made by other defendants. Thus, plaintiffs' responsive materials should be deemed a response to that motion.

Exhibits to the Affidavits will be served by messenger on Wednesday morning.

Sincerely,

**ROBINS, KAPLAN, MILLER & CIRESI L.L.P.**

Gary L. Wilson

GLW/lg