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March 5, 2010

Via Hand Delivery

Clerk of Appellate Courts
305 Minnesota Judicial Centre
25 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

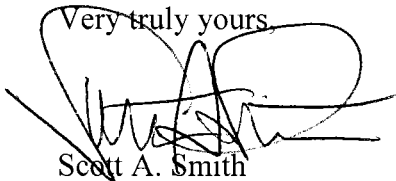
Re: ***Curtis, et al. v. Altria Group, Inc., et al.***
Case No. A10-215

Dear Clerk of Appellate Courts:

Enclosed herewith for filing in the above entitled matter, please find the original and four copies of the Notice and Petition of the Chamber of Commerce of the United States of America to Appear as *Amicus Curiae* in Support of Defendants'-Respondents' Cross-Appeal of Order Granting Class Certification.

By copy of this letter, we are serving counsel of record by mail. If any questions arise, please do not hesitate to contact me.

Very truly yours,



Scott A. Smith

SAS:cjw
Enclosure

cc: Benjamin J. Velzen
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CASE NO. A10-215

STATE OF MINNESOTA
IN THE COURT OF APPEALS

Gregory Curtis, et al., Appellants

v.

Altria Group, Inc., et al., Respondents

NOTICE AND PETITION OF THE CHAMBER OF COMMERCE OF THE
UNITED STATES OF AMERICA TO APPEAR AS *AMICUS CURIAE* IN
SUPPORT OF DEFENDANTS'-RESPONDENTS' CROSS-APPEAL OF
ORDER GRANTING CLASS CERTIFICATION

The Chamber of Commerce of the United States of America (“the Chamber”) hereby moves, pursuant to Minnesota Rule of Appellate Procedure 129.01, for leave to file a brief as *amicus curiae* in support of Defendants'-Respondents' cross-appeal of the trial court's order granting class certification. In support of this motion, the Chamber states the following:

1. The Chamber is the world's largest business federation, representing 300,000 direct members and indirectly representing an underlying membership of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. The Chamber is well positioned to assist the Court in evaluating the parties' arguments because the

Chamber regularly advances the interests of its members in courts throughout the country on issues of critical concern to the business community, and has participated as *amicus curiae* in numerous cases addressing class certification.

2. Plaintiffs-Appellants alleged that Defendants-Respondents deceptively marketed Marlboro Lights cigarettes. The trial court granted class certification of Plaintiffs'-Appellants' claims under the Minnesota Consumer Fraud, False Advertising, Deceptive Trade Practices, and Unfair Trade Practices Acts.

3. Minnesota courts have interpreted this State's consumer protection laws to require plaintiffs to demonstrate a causal nexus between a defendant's allegedly deceptive conduct and a plaintiff's alleged injury. Courts around the country have recognized under similar statutes that class certification is improper where plaintiffs allege that they would not have purchased a product but for the defendant's alleged misrepresentations. As these courts have noted, determining whether there is a causal nexus between an alleged fraud and a consumer's decision to purchase a product requires an inherently individualized inquiry, unsuited for a classwide proceeding. The trial court's order runs contrary to that well-reasoned precedent.

4. Allowing the order to stand will threaten the ability of Minnesota businesses to fairly defend themselves against potentially bankrupting lawsuits. It

will also impose substantial costs on automobile, pharmaceutical, chemical and numerous other companies that do business in Minnesota – both in terms of increased litigation expenses and by imposing a competitive disadvantage vis-à-vis companies not subjected to the same litigation burdens. As previously noted, the Chamber is uniquely suited to assist the Court in its disposition of this case because the organization has a wealth of experience in class action litigation.

4. The Chamber’s interest has both private and public dimensions. Its interest is private in the sense that many of its members are private businesses whose interests are implicated by the outcome of this case. But its interest is also public. Many of the Chamber’s members are publicly-held corporations, meaning that the outcome of this case will affect not only the interests of these businesses, but the great many people, including Minnesota citizens, who have an ownership interest in the form of stock in those businesses. Furthermore, the Chamber’s interest in this case extends to the important public policy implications of the class certification decision below, which will affect businesses, consumers, and the basic functioning of trial courts in this State.

5. This application is timely because it is filed “no later than 15 days after the filing of the notice of appeal” by the Defendants-Respondents. *See* R. 129.1. Although an earlier notice of appeal was filed in this case by Plaintiffs-

Appellants, the Chamber proposes to file a brief in support of the cross-appeal of Defendants-Respondents. Thus, the relevant notice of appeal for the purposes of this motion is the one filed on February 19, 2010.

WHEREFORE, the Chamber of Commerce of the United States of America respectfully requests that this Court grant it leave to appear as *amicus curiae* and to file a brief in support of the cross-appeal of the trial court's order granting class certification.

Dated: March 5, 2010

~~NILAN JOHNSON LEWIS PA~~

By 

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Carol J. Wochnick

Subscribed and sworn to before me
this 5th day of March, 2010



Kathleen A. Kullmann
Notary Public

