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Overview:

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# STATE OF ALASKA

TONY KNOWLES, GOVERNOR

**DEPARTMENT OF LAW**  
*OFFICE OF THE ATTORNEY GENERAL*

P.O. BOX 110300  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 465-3600  
FAX: (907) 465-2075

February 10, 2000

The Honorable Drue Pearce, President  
The Honorable Brian Porter, Speaker  
State Capitol  
Juneau, AK 99801

Dear President Pearce and Speaker Porter:

Several questions have arisen in the last few days concerning the provision in the Charter for Development on reimbursement of the State of Alaska's attorneys' fees and costs related to the merger of BP/Amoco and ARCO. Section G of the Charter requires BP/Amoco and ARCO to reimburse the State of Alaska for its reasonable attorneys fees and costs related to the merger, and the State's reasonable attorneys fees and costs related to Charter implementation and compliance between the date of the Charter and 12 months after the merger is completed.

This letter will explain our practice and procedure with regard to the recovery of the State's attorneys' fees and costs in antitrust and consumer matters, and how our department handles such monies.

It is standard practice for a state to seek recovery of its attorneys' fees and costs in antitrust and consumer investigations and litigation, and we routinely do so in our cases. Indeed, this has been the practice in Alaska since the enactment of our consumer protection laws in 1970 (AS 45.50.471 – AS 45.50.561) and our antitrust laws in 1975 (AS 45.50.562 – 45.50.596). Some recent examples illustrate this point.

In the Carrs/Safeway merger, we negotiated with the merging companies, and included in the Consent Decree, a provision requiring the companies to pay the State's attorneys' fees and costs incurred through the date the Decree was entered, as well as the State's reasonable attorneys' fees and costs relating to implementation and compliance with the Consent Decree. This provision was modeled after a consent decree entered in a grocery store merger case in California.

The Consent Decree filed in federal court in Alaska in the recent Exxon/Mobil merger included a provision for reimbursement of attorneys' fees and costs incurred by Alaska, California, Oregon and Washington. In addition, if any of these

states successfully brings an action to enforce the decree, Exxon/Mobil is required to reimburse the states for all reasonable costs and attorneys' fees. The consent decrees entered in the Exxon/Mobil merger by other states (Texas, New Jersey, Maryland, New York, Pennsylvania, and Vermont) included similar provisions for the reimbursement of those states' attorneys' fees and costs.

The policy behind these provisions is that the merging companies, not the citizens of the state, should ultimately pay for the investigation, review, implementation and enforcement of a merger. Further, this enables states to investigate transactions that impact the public that they may not otherwise have the resources to undertake. Where it can be anticipated that the state will incur additional costs in the implementation and compliance phase of an antitrust settlement or decree, states will often require reimbursement of those fees - as we did in Carrs/Safeway, BP/Amoco - ARCO, and Exxon/Mobil.

We also routinely recover our attorneys' fees and costs in multi-state antitrust and consumer protection cases. A few examples are the Toys-R-Us, Reebok, and the airline price-fixing multi-state antitrust settlements. We have also been reimbursed our attorneys' fees in multi-state consumer protection cases, including cases involving America on Line, Direct American Marketers, Montgomery Ward/General Electric, and Sears.

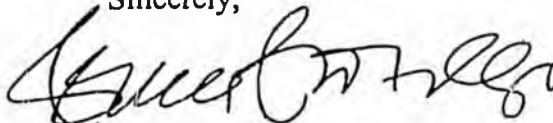
Another recent example is the multi-state Tobacco Litigation. In this antitrust/consumer protection case, the multi-state master settlement agreement required the industry to pay our in-house attorneys' fees and costs incurred in the investigation, litigation and settlement of the case. At this point we have been reimbursed 80 percent of that amount and expect to receive the balance in the near future.

Where does all this money go? Most of the money we receive in these cases is deposited by our Administrative Services Division into the Unrestricted General Fund. In Fiscal Year 2000, the Department of Law has deposited into the General Fund \$2,312,671.04 recovered as attorneys' fees and costs in antitrust and consumer protection cases. This includes the \$1,512,198.00 received in the BP/Amoco - ARCO merger. We also have FY 00 budget authority for \$180,000 in statutory designated program receipts and \$50,000 in program receipts in the Civil Division, Fair Business Practices Component. We have received these funds and have recorded them appropriately. Thus, 91 percent of the total receipts in antitrust and consumer protection cases to date in FY 00 went to the General Fund.

I believe that this historic and near universal approach is good public policy. It is evident, however, that some members of the legislature believe otherwise. If the legislature desires to change this long-standing practice for the recovery of attorneys' fees and costs in antitrust and consumer protection investigations and litigation, it must do so by statute.

Please let me know if you would like to discuss this matter. I would like further information.

Sincerely,



Bruce M. Botelho  
Attorney General

BMB:kh

cc: The Honorable Sean Parnell  
The Honorable John Torgerson  
The Honorable Eldon Mulder  
The Honorable Gene Therriault