

### **3C. BOX 11, 12 & 13: LITIGATION WITHOUT ENABLING LEGISLATION**

The traditional method of third party recovery in the context of insurance is a device known as subrogation, whereby the rights and remedies of one party are assumed by another. If the medical treatment for a patient's injury must be paid for by the insurer, that insurer may invoke subrogation rights to recover costs from the party responsible for causing the injury. The problems with that approach are that the third party would have to plead and prove the facts with respect to each smoker suffering a tobacco-related disease, and the tobacco industry defendants would have the defences available to them that they would have against the patient whose injury they allegedly caused. This would amount to a series of individual determinations on a case-by-case basis for the state's medical insurance recipients and, as such, would not be workable.

To avoid having to rely on subrogation in the United States, the state attorneys general and the private counsel developed several alternative theories. The legal theory of unjust enrichment, that cigarette manufacturers unjustly profited while causing significant expenses to the states through their acts and omissions, was central in the first cost recovery lawsuit filed by a state, Mississippi, against the tobacco industry on May 23, 1994.<sup>1</sup> On July 2, 1997 Mississippi was also the first to settle with defendants, for more than US\$ 3 billion over 25 years.<sup>2</sup>

Finally, in April 2014, the National Health Insurance Service (NHIS) in the Republic of Korea announced that it is preparing litigation against the tobacco industry to offset treatment costs for diseases linked to smoking.

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<sup>1</sup> Complaint accessible at: <http://stic.neu.edu/ms/2moore.htm>.

<sup>2</sup> Settlement agreement available at: <http://stic.neu.edu/MS/mssettle.htm>.