

### **3B. BOX 10: ACTION USING GENERAL HEALTH CARE COST RECOVERY LEGISLATION**

It is also possible to bring health care cost recovery litigation on legislation that is not limited to, or even identify, tobacco related health care costs. In Florida, since 1978, Florida had a Medicaid Third Party Liability Act to allow the state a direct right to cost recovery for health-care provided by the state through the Medicaid program.<sup>1</sup> The Act was created to ensure that Florida's Medicaid program would not be the payer of last resort where there were other responsible parties for damage caused. In 1994, the Act was amended, without specific reference to tobacco, in such a way as to provide an easier path to establish liability than under common law.

The amended Act included many of the same features found in tobacco specific enabling legislation; indeed the Canadian Provinces tobacco health care cost recover legislation is modelled on it. It abrogated affirmative defences such as comparative negligence and assumption of the risk, limited defendants' right to subrogation, and created market share liability whereby manufacturers' liability would be apportioned based on market share. It also separated the state's cause of action from that of any individual Medicaid recipient (who may have brought action against the defendant independently). The Act provided the state with the right to bring a class action without the need to identify each class member. It did not specifically make reference to smoking-caused disease or cigarette manufacturers. The Act was challenged both politically and legally. An attempt to repeal the statute failed, and the Florida Supreme Court upheld the critical provisions of the liability statute.<sup>2</sup> Florida settled with the tobacco industry on August 25, 1997 in return for payments of more than US\$ 11 billion as well as restrictions on outdoor advertising and release to the public of internal documents.<sup>3</sup>

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<sup>1</sup> Fla. Stat. Ann. § 409.910. Available at [http://www.leg.state.fl.us/statutes/index.cfm?App\\_mode=Display\\_Statute&URL=0400-0499/0409/Sections/0409.910.html](http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0400-0499/0409/Sections/0409.910.html)

<sup>2</sup> Agency for Health Care Administration et al. v. Associated Industries et al. 678 So. 2d 1239 (1996).

<sup>3</sup> Settlement available at: <http://stic.neu.edu/Fl/flsettle.htm>.