

MEMO# 2123

August 15, 1990

INSTITUTE LAWSUIT CHALLENGING MINNESOTA REGISTRATION FEES

August 15, 1990 TO: UNIT INVESTMENT TRUST COMMITTEE NO. 36-90 RE: INSTITUTE
LAWSUIT CHALLENGING MINNESOTA REGISTRATION FEES

As you know, the Institute has been working for several years to establish caps on the registration fees paid to states. There remain only six states, including Minnesota, that do not have fee caps. Moreover, Minnesota is unique in that the registration fees paid by all issuers, other than mutual funds and unit trusts, are capped at \$300.00. The Institute filed a lawsuit against the State of Minnesota and the Commissioner of Commerce challenging the constitutionality of the disparate registration fee structure on December 21, 1987. The lawsuit is currently in the discovery process and a hearing on the Institute's motion for summary judgment has been tentatively scheduled for early November. Minnesota is claiming that the disparity in the fee structure is justified because issuers of securities other than mutual funds and unit trusts have a "direct economic benefit" to Minnesota. To support this claim, the Securities Division conducted a survey of non-investment company issuers that applied for registration during the calendar year 1987 and found that approximately 34% of these issuers had "a connection with Minnesota that directly impacted upon the state's economic growth". According to the State, the term "connection with Minnesota" primarily means one or more of the following: the issuer is located in Minnesota; employees are located in Minnesota; legal counsel is located in Minnesota; the underwriter is located in Minnesota; the security is issued on behalf of a Minnesota corporation; the accountant is located in Minnesota. No effort was made on behalf of the State to quantify these findings. To show that the foregoing factors are not valid distinctions in justifying the disparity in the fee structure, we would appreciate your completing the attached form and returning it to me by September 5, 1990 so that this information can be included in the Institute's brief. If you have any questions regarding the foregoing, please feel free to contact me at (202) 955-3517. We will keep you informed of developments. Patricia Louie Assistant General Counsel Attachment