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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
GREAT FALLS DIVISION

THE STATE OF MONTANA )  
 )  
Plaintiff, ) Civil No. \_\_\_\_\_  
 )  
v. )  
 )  
BURLINGTON NORTHERN, INC. )  
 ) COMPLAINT  
Defendant. )  
\_\_\_\_\_ )

Comes now the Plaintiff State of Montana and in support of this claim for relief, on its own behalf, and on behalf of the classes hereinafter alleged, and as parens patriae on behalf of all injured natural persons within the jurisdiction of the court, and demanding a trial by jury, alleges and represents to the court as follows:

I.

Identity of Plaintiff

This action is being brought by the State of Montana, by and through its Attorney General Mike Greely on behalf of the State of Montana, its governmental entities, on behalf of classes alleged, and natural persons residing in the State of Montana as parens patriae pursuant to the authority vested in him by law as the Attorney General of the State of Montana, Section 2-15-501 Montana Code Annotated, Section 4(c) of the Clayton Act 15 USC 15(c) and the common law.

II.

Identity of Defendant

The Defendant Burlington Northern, Inc. is a corporation, incorporated in the State of Delaware doing business as a rail transportation and resource development company

1 within and without the State of Montana in both intrastate  
2 and interstate commerce.

3 III.

4 Venue

5 Venue lies in this court pursuant to Section 12 of the  
6 Clayton Act, 15 USC 22 and 28 USC 1391 and 1392. The De-  
7 fendant can be legally found doing business within the State  
8 of Montana and the claims herein set forth arose in the  
9 State of Montana as well as elsewhere.

10 IV.

11 Jurisdiction

12 This court has jurisdiction of this matter pursuant to  
13 15 USC 4, 15 USC 25 and 28 USC 1337.

14 V.

15 Nature of Action

16 This action is brought pursuant to Section 4 and 16 of  
17 the Clayton Act 15 USC 15 and 15 USC 26 to redress injuries  
18 sustained by Plaintiff and those it represents as a result  
19 of violation by the Defendant as hereinafter alleged of  
20 Section 1, 2 and 3 of the Sherman Act, 15 USC 1, 2, and 3.

21 VI.

22 Co-Conspirators

23 Various individuals and entities not named Defendants  
24 herein at this time participated in the violations here-  
25 inafter alleged and performed acts and made statements and  
26 writings in furtherance thereof.

27 VII.

28 Class Action Allegations

29 Pursuant to Rule 23(b)(3) of the Federal Rules of Civil  
30 Procedure, Plaintiff State seeks to represent a class of

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1 legal persons similarly situated. The class consists of all  
2 persons and entities within the State of Montana who had any  
3 ownership interest in, taxed, were employed by, or did  
4 business of any kind or character with the Chicago, Milwaukee,  
5 St. Paul, and Pacific Railroad Company. The class includes  
6 but is not limited to the State of Montana and all its  
7 political subdivisions, school districts, municipalities,  
8 counties, public hospitals, university units and other  
9 governmental units, the former employees of the Chicago,  
10 Milwaukee, St. Paul, and Pacific Railroad Company, and  
11 business entities and private persons doing business with  
12 the Chicago, Milwaukee, St. Paul and Pacific Railroad Company.

13 Plaintiff is a member of said class; its claims are  
14 typical of the claims of all the class members, and it will  
15 fairly and adequately protect the interests of the class.

16 The class is so numerous that joinder of all members in  
17 this action individually is impractical. At a minimum it  
18 consists of several hundred governmental entities and several  
19 thousand individuals and business entities.

20 Questions of law and fact common to the members of the  
21 class predominate over any questions affecting individual  
22 members. The common questions of fact include the existence  
23 of the conspiracy as alleged and whether the members of the  
24 class were injured by the conspiracy alleged. The questions  
25 of law common to the members of the class include the legality  
26 of the conspiracy as alleged and the liability of Defendant  
27 to class members for injury to their business or property  
28 interests.

29 The claims of Plaintiff are identical to the claims of  
30 the other members of the class, and the defenses of the De-  
31 fendant, if any, will be identical with respect to each and  
32 every member of the class.

1 A class action is superior to other available methods  
2 for the fair and efficient adjudication of this controversy  
3 and will prevent a multiplicity of suits that might otherwise  
4 occur.

5 VIII.

6 Facts Regarding Defendant Income and Organization

7 During the year 1978 the Defendant owned property  
8 valued at One Billion Five Hundred Thirty-four Million, Six  
9 Hundred Four Thousand, Two Hundred and Fourteen Dollars  
10 (\$1,534,604,214.00) of which Two Hundred Forty Nine Million,  
11 Forty Five Thousand, One hundred and Thirty-eight Dollars  
12 (\$249,045,138.00) was located within the State of Montana.  
13 That in that same year the gross amount of its receipts  
14 derived from its business transacted within Montana totalled  
15 Three Hundred Forty Five Million, Eight Hundred Thirty-nine  
16 Thousand, Seven Hundred Fifty-one Dollars (\$345,839,751.00)  
17 and its gross receipts nationally were Two Billion, Sixty-  
18 five Million, Nine Hundred Sixty-two Thousand, Four Hundred  
19 Fifty-eight Dollars (\$2,065,962,558.00). The amount of its  
20 stated capital at the end of 1978 was Six Hundred Eighty One  
21 Million, Eight Hundred Sixty Four Thousand, Six Hundred  
22 Ninety Nine Dollars (\$681,864,699.00). As of February 28,  
23 1979 it had Seventeen Million, Three Hundred Eighty Two  
24 Thousand, Five Hundred Thirty Seven (17,382,537) issued  
25 shares of capital stock.

26 That as of April 5, 1979 its Board of Directors con-  
27 sisted of the following persons:

28	Royal D. Alworth, Jr.	1605 Alworth Building Duluth, MN 55802
29	Donald C. Dayton	4124 IDS Center 80 South 8th St. 30 Minneapolis, MN 55402
31		
32		

1	Charles Devens	265 Franklin Street Boston, MA 02110
2	Robert W. Downing	W. 214 High Drive Spokane, WA 99203
3		
4	W. John Driscoll	2100 1st National Bank Bldg 332 Minnesota St. St. Paul, MN 55101
5		
6	Mary Garst	Box 77 Coon Rapids, IA 50058
7		
8	Robert M. Hendrickson	1285 Avenue of the Americas New York, NY 10019
9	Pemberton Hutchinson	2500 Fidelity Building Philadelphia, PA 19109
10		
11	N.M. Lorentzsen	176 East 5th St. St. Paul, MN 55101
12	Louis W. Menk	176 East 5th St. St. Paul, MN 55101
13		
14	Philip H. Nason	E-1220 1st National Bank Bldg 332 Minnesota Street St. Paul, MN 55101
15		
16	Paul L. Parker	Box 1113 Minneapolis, MN 55440
17	Bruce M. Rockwell	Box 5168 Terminal Annex Denver, CO 80217
18		
19	Gerald C. Ryan	Box 388 East Grand Forks, MN 56721
20		
21	Robert B. Wilson	1033 American Bank Bldg. 621 S. W. Morrison St. Portland, OR 97225
22		

23 At the same date its elective officers with position held were:

24	Louis W. Menk	Chairman of the Board
25	N. M. Lorentzsen	President & Chief Executive Officer
26	C. R. Binger	President, Resources Division
27	T. J. Lamphier	President, Transportation Division
28	Frank H. Coyne	Executive Vice President Finance and Administration
29		
30	F. S. Farrell	Vice President - Law
31	J. C. Ashton	Vice President and Secretary
32	R. C. Burton, Jr.	Assistant Vice President, Financial Planning and Treasurer

1           That the funds derived from the Defendant's business  
2 activities, the products produced by it, the railroad  
3 trains run by it, the stock sold by it and dividends paid  
4 thereon all flowed or moved in interstate commerce, and the  
5 alleged illegal acts herein complained of had a direct and  
6 substantial impact on the flow or movement of such items in  
7 interstate commerce.

8                               IX.

9                       Facts Constituting Antitrust Violations

10           In 1970 the Interstate Commerce Commission approved the  
11 merger of the Northern Pacific Railway Company (NP), the  
12 Great Northern Railway Company (GN) and the Chicago, Bur-  
13 lington and Quincy R. R. Company (CB&G) and the Pacific  
14 Coast Railroad Company in what is known as the Burlington  
15 Northern Merger Finance Docket No. 21478.

16                               X.

17           As an integral part of that merger and as a specific  
18 condition thereof, and for the purpose of strengthening the  
19 competitive position of the Chicago, Milwaukee, St. Paul and  
20 Pacific Railway Company (CMSP&P), the Interstate Commerce  
21 Commission granted to the CMSP&P eleven gateways into the  
22 merged lines including the following:

23                       Bozeman, Montana  
24                       Butte, Montana  
25                       Fargo, North Dakota  
26                       Great Falls, Montana  
27                       Judith Gap, Montana  
28                       Linton, North Dakota  
29                       Miles City, Montana  
30                       Missoula, Montana  
31                       Seattle, Washington  
32                       Spokane, Washington

1 Tacoma, Washington

2 XI.

3 Immediately before and after the said merger became  
4 effective, the Defendant Burlington Northern Railway Company  
5 began a secret plan and conspiracy to eliminate any com-  
6 petitive advantage to CMSP&P that may have resulted or been  
7 the effect of these Interstate Commerce Commission gateway  
8 merger conditions.

9 XII.

10 The Defendant Burlington Northern Railway Company  
11 immediately upon the merger becoming effective, instituted a  
12 program of elimination of merger related short hauls known  
13 as Action Program No. 1052 under which they identified  
14 CMSP&P short haul shippers through the gateways and then  
15 went to those shippers and by various means induced them to  
16 terminate usage of the CMSP&P, and to use instead the De-  
17 fendant Railway.

18 XIII.

19 In addition to the Action Program No. 1052, the Defen-  
20 dant Burlington Northern committed other acts calculated to  
21 eliminate any competitive advantage the CMSP&P may have  
22 initially had as a result of the Interstate Commerce Com-  
23 mission Gateway merger condition including refusing to  
24 cooperate with the Milwaukee even when such cooperation may  
25 have been to the advantage of the Defendant itself.

26 XIV.

27 The management of the Defendant was aware and had been  
28 advised by legal counsel and/or others that such activities  
29 as heretofore alleged were improper and illegal, and not-  
30 withstanding such advice they proceeded to do the same.

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XV.

1  
2 The acts of Defendant under the foregoing circumstances  
3 were not exempted from the antitrust laws of the United  
4 States of America and were in fact in restraint of trade or  
5 commerce and attempts to monopolize in violation of Sections  
6 1, 2, and 3, of the Sherman Act 15 USC 1, 2, and 3,

7 XVI.

8 The aforesaid acts of Defendant had the direct result  
9 and effect of eliminating and restraining competition and  
10 creating a monopoly which in fact has now occurred with an  
11 ultimate resultant increase in prices to the Plaintiff and  
12 those it represents, as well as a loss of tax revenues from  
13 the CMSP&P and a loss of income to employees of the CMSP&P,  
14 all to their damage in a yet undetermined sum but in excess  
15 of millions of dollars.

16 XVII.

17 Plaintiff contends that the running of any statute of  
18 limitations herein has been suspended and tolled with respect  
19 to any claim of the Plaintiff and those it seeks to represent  
20 and any damages to them as a result of the acts of Defendant  
21 alleged herein and with respect to Plaintiff's right to in-  
22 junctive relief, by virtue of the doctrine of fraudulent  
23 concealment and the doctrine of equitable estoppel in that:

24 a. Defendant and co-conspirators through various de-  
25 vices and techniques, fraudulently concealed the existence,  
26 of the unlawful activities alleged herein and,

27 b. Plaintiff and those it seeks to represent had no  
28 knowledge of such unlawful conduct until some time shortly  
29 before filing this complaint or of facts which might have  
30 led to the discovery thereof with the exercise of due  
31 diligence.

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XVIII.

Prayer For Relief

Wherefore, Plaintiff prays for the following relief:

(a) the Court determine that this action may be maintained as a class action under Rule 23(b)(3) of the Federal Rules of Civil Procedure and direct and reasonable notice of this action, as provided by Rule 23(c)(2) Federal Rules of Civil Procedure be given each and every member of the class represented by the Plaintiff in this action;

(b) the court determine that this action may be maintained as a parens patriae action by the Attorney General of the State of Montana pursuant to Section 4C of the Clayton Act, 15 USC 4, on behalf of those natural persons residing within the jurisdiction of this court;

(c) the unlawful acts of the Defendants alleged herein be adjudged and decreed to be unlawful, unreasonable restraints of trade or commerce, and attempts to monopolize in violation of Sections 1, 2, and 3 of the Sherman Act 15 USC, Sections 1, 2, and 3;

(d) Plaintiff and those it seeks to represent in this action recover threefold the damages determined to have been sustained by each of them upon appropriate proof, and that judgment be entered in favor of Plaintiff against the Defendant herein for such sum;

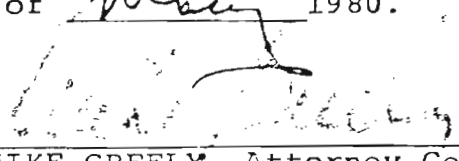
(e) Plaintiff and those it seeks to represent recover the cost of suit herein, including reasonable attorney fees as provided by law;

(f) Plaintiff and those it seeks to represent herein be granted such other further and different relief as the nature of the case may require or as may seem to be just and proper in this court under the circumstances;

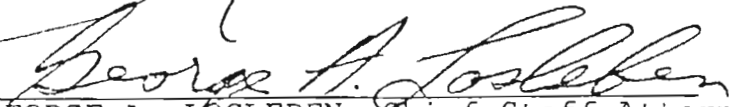
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1 (g) trial of this matter be by jury which the Plaintiff  
2 does hereby demand.

3 DATED this 1st day of May 1980.

4  
5   
6 MIKE GREELY, Attorney General  
7 State of Montana

8   
9 JEROME J. CATE, Chief  
10 Antitrust Enforcement Bureau

11   
12 GEORGE A. LOSLEBEN, Chief Staff Attorney  
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Attorneys for Plaintiff  
State of Montana