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Attorneys General Say Talks May Yield Tobacco Deal Soon

Dow Jones Newswires

WASHINGTON -- Mississippi Attorney General Mike Moore said considerable progress was made Wednesday in the tobacco talks and a resolution is possible by Thursday.

Mr. Moore said lawyers representing tobacco companies and the attorneys general will meet through the night and into Thursday. Tuesday, Mr. Moore and other attorney generals were pessimistic about a resolution, but the mood was completely different Wednesday.

"I really don't think walking away from something this important is in the best interest of the country," Mr. Moore said. "We gave an inch; they gave a lot."

Earlier, the attorneys general told the Koop-Kessler Advisory Committee on Tobacco Policy and Public Health and that the states suing tobacco companies would go forward with their lawsuits regardless whether a resolution was reached.

Washington State Attorney General Christine Gregoire said that the group wants to be tough on retailers, states and the tobacco industry. "The ultimate goal is to produce a non-addictive, safe product. The FDA will look at the entire product and test all ingredients," Ms. Gregoire said.

Ms. Gregoire said that if an agreement is reached, an outline will be delivered to the advisory committee, where members will go over it before the document is translated into a bill.



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Deal Close — Again — in Tobacco Talks

By John Schwartz and Sandra Torrey

Washington Post Staff Writers

Thursday, June 19, 1997; Page A18

Negotiators yesterday moved closer to an agreement to settle many of the largest suits against the tobacco industry, but two critical issues apparently remained unresolved.

The issues—how much protection the industry might receive from court-ordered punitive damages and the extent tobacco can be regulated by the Food and Drug Administration—have been highly contentious, and there was disagreement yesterday over how much progress has been made in resolving them.

One participant said there has been a "preliminary approval of concepts," but the state attorneys general who have served as the lead negotiators in the talks with the tobacco industry said neither issue had been fully worked through.

Mississippi Attorney General Mike Moore said the day's negotiations at two downtown hotels had been much more encouraging than the previous day's "rocky" progress. "Today has gone very, very smooth for us," Moore said. Asked whether that meant both sides had made concessions, he responded that "we haven't given an inch, and they've given plenty."

As for tough talk delivered the day before about being ready to walk out of the negotiations if the industry didn't bend, Moore said "walking away from something so important to the future of this country . . . is not an option."

Florida Attorney General Robert Butterworth said that the industry position had softened overnight. "They do not want to leave the table," he said. "there was a reality check," he said.

While one source involved in the talks said the negotiators had made great progress on clearing away some of the major obstacles to a deal, he cautioned, "There is still a mine field out there, and . . . anything could blow up at any minute."

A spokesman for the tobacco industry refused to comment on the day's events.

Seemingly on the verge of success or total collapse every day, the talks have taken on a new urgency because the first trial of a state suit against the tobacco industry is scheduled to begin July 7 in Mississippi. Thirty-nine other states have also sued the tobacco industry to recover health care costs they say they have incurred because of smoking-related illnesses.

Rumors of a settlement circulated widely yesterday afternoon, but the talks have seemed to be on such a roller coaster that at the White House, at least, the rumors were greeted with skepticism. When a television reporter piped up during press secretary Michael McCurry's daily briefing to say that he had just been told there was a deal, McCurry responded: "Call me back in a half hour and you're going to say . . . it fell apart."

Bruce Reed, the president's chief domestic policy adviser, rushed late into an interagency task force on tobacco issues yesterday at the Old Executive Office Building. He apologized and said he had heard that there was a deal in the tobacco talks; tracking down the rumor and proving it was wrong caused his tardiness, he said.

"Who knows?" he said with some amusement. "This is par for the course."

To resolve one of the most contentious issues, negotiators yesterday discussed the creation of a fund of \$40 billion to \$50 billion that would be paid by the tobacco industry as "punitive damages for past conduct," and to be used for public health purposes, according to one source involved in the talks.

In return, the tobacco companies would be protected from punitive damage awards to individuals who sued the companies for past conduct. Individuals could only seek punitive damages for conduct occurring after the date of the settlement.

Once secret, the talks are now being conducted in a Washington fishbowl, attracting a who's who of trial lawyers, state officials and prominent Washington lobbyists—but not President Clinton. A rumor that Clinton would participate—sparked by the arrival of Secret Service agents and a motorcade at one of the hotels—was only put to rest Monday when the president of Macedonia, a hotel guest, appeared in the lobby.

A top presidential aide reaffirmed yesterday that Clinton has no intention of intervening in the talks. "They have to reach this on their own," said senior adviser Rahm Emanuel. "We will then evaluate it by the concerns both for the children's health and the nation's public health interests."

In a related development, R.J. Reynolds Tobacco Corp. filed suit late Monday against the Federal Trade Commission. Last month the commission announced that the company's "Joe Camel" ad campaign could be an unfair business practice aimed at enticing minors to smoke. In a statement, the company said the commission's action involved "egregious flouting of law and procedures" and noted that underage Camel use has plummeted in recent years. "The facts suggest that the only unfair thing about the Joe Camel case is the way the commission has proceeded," the company said.

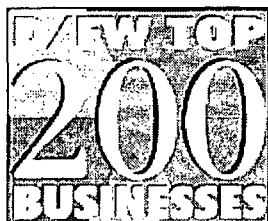
Staff writer Peter Baker contributed to this report.

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Tobacco pact seems imminent; deal may bring massive change

06/19/97

By Mark Curriden / The Dallas Morning News

WASHINGTON - Tobacco settlement negotiations moved to the brink of agreement Wednesday after industry adversaries gave ground on the right of injured smokers to sue for punitive damages and cigarette makers offered to add billions of extra dollars to any overall payoff.

Those involved in the talks said they now hope to sign a preliminary agreement Thursday that, if approved by President Clinton and Congress, could lead to unprecedented changes in the role that cigarettes play in U.S. society.

The deal under discussion would resolve most outstanding lawsuits and legal issues related to cigarette smoking and see the industry shell out as much as \$20 billion a year indefinitely in compensation to state governments, injured smokers and an array of public health programs.

It would also radically change the way tobacco is marketed in America.

Smokers would bear most of the cost of any such settlement through sharp price increases, industry analysts said. If a deal survives expected rugged congressional debate and is eventually implemented, cigarettes could go up by as much as \$1 a pack from the current range of \$2 to \$2.50, they said.

Both sides were openly optimistic late Wednesday. "I think we'll be able to get to a resolution maybe tomorrow," said Mississippi Attorney General Mike Moore, a leader of the antitobacco negotiating team.

At one point, several attorneys general took time out to pose for a photo for the cover of a national magazine.

Officially, the industry wasn't commenting. But one company bargainer agreed considerable progress had been made and predicted a deal would be struck Thursday.

Mr. Moore played down the compromises his side is prepared to make, saying, "We haven't given an inch, and they've given plenty. We are demanding that they be

severely punished and that will happen or there will be no deal."

The settlement talks between Big Tobacco and an alliance of state attorneys general, private lawyers and health advocacy groups have ebbed and flowed since April, but recently hit an impasse when tobacco companies demanded they be exempted from punitive damage claims in future individual smoker lawsuits.

Anti-tobacco forces said demands for an infringement of individuals' legal rights would kill any deal. Punitive damages are awards made by judges or juries to punish defendants and are piled on top of any compensation for actual losses.

But both sides signaled a willingness to compromise Wednesday.

In a 90-minute telephone conference call, 40 state attorneys general who have filed suits overwhelmingly agreed that they wouldn't let that keep them from reaching a settlement.

The state prosecutors gave their representatives authority to negotiate a middle ground, so long as the solution could be viewed as a punishment to the industry for misconduct, participants in the talks said Wednesday.

In return, tobacco companies said they'd be willing to pay several billion dollars extra annually.

Those involved in the talks said one specific proposal to resolve the punitive damage impasse would be an annual levy against the industry that could add up to \$50 billion or \$60 billion over 25 years. The industry has never lost a punitive damage claim in court.

Those payments would be in addition to money that would be earmarked to pay off individual smoker lawsuits and that would create a separate fund to cover state health care costs and public health programs.

In concept, negotiators said, they are shooting for an added amount that would equal about 20 percent of any basic settlement. They said they're also trying to devise language that would reduce industry profits by the proposed penalty and prevent the companies from simply recovering the extra payout by raising prices.

Negotiators also said they were close to agreeing on language that could lead to significant changes in cigarettes themselves.

They said the latest proposal would give regulatory control of the industry to the federal Food & Drug Administration. The FDA in turn would be required to order tobacco companies to develop and market "safer"

cigarettes, which contain less disease-causing toxins, if that proves possible.

The same section of the proposed deal would also instruct the FDA to force the industry to do more research on nicotine and identify the level that is addictive to cigarette smokers, participants in the talks said.

"The tobacco companies have yielded in some crucial aspects," said Connecticut Attorney General Richard Blumenthal, who has been among the more pessimistic members of the negotiating team. "It's not a done deal yet, but we're close."

Previously, bargainers settled on provisions that would force sweeping restrictions on advertising and marketing. All advertising would have to be in black-and-white text, and billboards, sports sponsorships and characters such as the Marlboro Man and Joe Camel would be banned.

Under the most recent proposal, the tobacco companies also would have to abolish two industry-funded organizations that critics say have promoted smoking and give protection to all whistle-blowers who once worked for cigarette manufacturers but who have recently provided evidence against the industry.

Cigarettes would have to be stocked behind the counter in stores, retailers would have to be licensed and laws against sales to minors would be enforced more. If after 10 years, teenage smoking didn't fall by 60 percent, the industry would face fines of \$150 million per percentage point shortfall.

If an agreement is reached, the plan would first face presidential review and then would have to be written as legislation and debated by Congress because it would change some current laws and commit the government to new policies. Negotiators predicted months of review and public debate.

Already, some members of Congress are promising to attach amendments to any proposal that is presented.

"It took us four months and a lot of pain and sweating to get to this point," said an industry official involved in the negotiation. "However, this could all be the easy part. We now have to deal with the knee-jerk politicians."

Surprisingly, one issue the two sides have spent little time discussing is precise dollar amounts the industry might pay.

The last time real money figures were mentioned in the negotiations by tobacco companies was in mid-April, when industry officials offered \$260 billion over 25 years to settle all lawsuits, according to some negotiators.

Since then, the probable price tag floated among industry critics as they've mapped strategy has skyrocketed. Antismoking forces now predict a final dollar payout of around \$20 billion a year, or nearly double the first industry offer. Also, payments wouldn't end after 25 years; they'd continue indefinitely.

Negotiators said Wednesday, however, that they don't believe final dollar amounts will be difficult to bargain once the underlying issues are ironed out.

It was unclear Wednesday what would happen to the three major state Medicaid trials set for this year if a preliminary agreement is reached.

Texas Attorney General Dan Morales said Wednesday that he has told the Texas trial team to continue preparing for its Sept. 29 court date "full force." But he said he and officials of Mississippi and Florida would decide together on possible postponements of their cases if a deal is reached. Mississippi has the nation's first court date July 7.

However, Washington Attorney General Christine Gregoire said that state trials may continue to move forward until the two sides have a signed, final agreement approved by Congress. "Even if we were to reach agreement in principle, we are going to continue to try our cases" until a settlement is finalized by Congress, Ms. Gregoire said. And if Congress makes fundamental changes, "the deal is off," she said.

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comments about the talks since initial disclosures that the high-stakes settlement negotiations were taking place, and his comments could serve to give the deadlocked negotiators a push. Previously, White House officials had said that the Clinton administration wanted to steer clear of the negotiating table.

In recent days, administration aides have said that if negotiators can resolve every other aspect of the proposed settlement, the administration would be willing to review an agreement that leaves aside the contentious issue of whether to prohibit punitive-damage awards in smokers' lawsuits and recommend a compromise.

For now, the president's statement leaves the negotiators in the difficult bind that has kept them at a serious impasse as they huddle in 11th-hour talks in Washington. The tobacco industry has been insisting that it receive immunity from punitive damages in any pact, but antitobacco negotiators are balking. Some negotiators on the antitobacco side privately have said they are looking to the White House to make the politically sensitive concession to the industry for them, thus giving them cover.

Mr. Clinton, who has opposed limits on punitive damages throughout his political career, declined to discuss the issue in the context of a tobacco settlement Wednesday. "Anything I say on that undermines the negotiating process," he said.

Various Sticking Points

In addition to the stalemate over punitive damages, the negotiators also are still at odds over how much authority to give the Food and Drug Administration over nicotine, and they disagree about the size of the industry's settlement payout. The tobacco industry has been taking a harder line in the past week, after B.A.T's chief executive officer, Martin Broughton, persuaded the leaders of his main rivals -- Geoffrey Bible at Philip Morris and Steven Goldstone at RJR -- to stand firm on punitive damages and nicotine regulation. Wednesday, the stalemate continued as the antitobacco side pledged not to compromise on the punitive-damages issue unless the industry would, as one negotiator put it, "pay through the nose."

If the industry were to substantially up the ante, a majority of the 40 attorneys general who are suing the tobacco industry would favor this alternative, said two people with knowledge of a conference call Wednesday in which state officials were briefed. However, as of Wednesday night, people involved in the talks said the industry was refusing to pay out more than \$308 billion -- the offer it has previously made. One negotiator in the antitobacco camp said late Wednesday night that the industry had agreed to pay as much as \$50 billion more to eliminate punitive damages.

The president's statements mirror his approach earlier this year to labor negotiations between AMR Corp.'s American Airlines and a pilots union. While the administration stayed acutely abreast of the talks, Mr. Clinton refused repeated overtures to intervene in the dispute -- until one minute after a strike deadline. Then he ordered an end to the strike and appointed a presidential emergency board to recommend a settlement.

The situations aren't identical, however, as Mr. Clinton had clear authority under federal law to intercede in the airline strike, and essentially was able to order the two sides to come to an agreement without disrupting air travel.

His involvement in the tobacco talks is seen as a far chancier proposition inside the White House. Some advisers are concerned that wading into the negotiations risks the political points the president has built up by standing up to the cigarette companies. Mr. Clinton Wednesday maintained: "Whatever I face on this, I'm going to do what I think is best for the public health and especially for the health of the kids."

With the tobacco negotiations appearing on the edge of unraveling this week, Mr. Clinton dismissed threats by the state attorneys general to walk away from the negotiating table. "All negotiations look like that in the 11th hour," Mr. Clinton declared. "... I've never been in a negotiation over anything important, where the stakes were high, where it didn't look like it was going to come apart three or four times in the 11th hour."

The tobacco settlement talks, which have been going on for more than two months, mark a major turning point in the four-decades-long history of tobacco litigation. Until now, the biggest players in the \$45 billion industry have refused either to settle lawsuits or to acknowledge that smoking causes cancer.

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6-19-97 WSD
Potus interview

Potus interview

representatives of the plaintiffs that have been injured from smoke through their lawyers, and the tobacco companies. I think this is a very different thing, and I don't believe I should have been running these negotiations.

At some point, would I consider intervening? My test will always be what I started with: I'm interested in the children's health issue and I'm interested in the public health generally. And so I don't want to say anything that prejudices or truncates these things. They need to stay there, keep working, and try to resolve this and bring us all something which we can evaluate. Then, if I think it should be modified in some way, I could tell them I thought it should be modified.

WSJ: What if it looks, as it has at times this week, like they're to the point of walking away, just throwing up their hands and walking away?

President Clinton: All negotiations look like that in the 11th hour. That's why, in a funny way, attempting to sort of invoke me as kind of a force outside the process -- that's why it's hazardous for me to encourage that, because I've never been in a negotiation over anything important, where the stakes were high, where it didn't look like it was going to come apart three or four times in the 11th hour. So that's why I think the less I say about it the better.

WSJ: But if they come to you at the end of the day and say, we've tied this agreement up except for these one or two strings, we cannot go any further; and you're convinced they cannot go any further, you're leaving the door open to dealing with those last one or two issues?

President Clinton: Whatever I face on this, I'm going to do what I think is best for the public health and especially for the health of the kids. That's what I will tell you -- whatever set of circumstances I face. But they don't need to -- they need to sort of just stay glued to those chairs in the rooms and keep working and try to resolve this among themselves.

WSJ: Could you accept a deal that did everything else you wanted and barred punitive damages?

President Clinton: I have nothing more to say than I've already said. Anything I say on that undermines the

negotiating process.

WSJ: Mr. President, on the budget, can you sign a tax bill like the Roth bill, where two-thirds of the benefits go to the top 20% of wage-earners in the country?

President Clinton: Well, first of all, my tax plan has much more benefits for middle class people. And I think that the benefits should flow to middle class people because they are the people whose taxes were raised repeatedly in the 1980s, principally through the payroll tax increases. And we were able to do some very significant things for low-income people in the 1993 plan, through the -- and not so low-income people -- through the Earned Income Tax Credit, now benefiting families of four with incomes up to \$30,000. Their taxes are about \$1,000 a year less than they would have been otherwise had we not done the Earned Income Tax Credit in '93.

There are significant benefits in the budget for them, particularly involving welfare to work funds, empowerment zones, the brownfields, the Pell Grants. On the other hand, I don't think the poor ought to be disadvantaged, if you will, sort of singled out for prejudicial treatment in the plan the way the House plan does. And I haven't seen all the details of the Senate plan.

So I have a plan for cutting taxes; I think we ought to have a tax cut. The distributional pattern of any tax plan will look somewhat skewed to upper income people if there is any kind of capital gains tax and estate tax relief in it. But that was the price of the agreement. That is, the Republicans wanted most of all the capital gains tax and the estate tax. We agreed that there ought to be some relief to help families raise their children. And I wanted the education tax relief, because I believe -- you've talked about how we're going to keep this going -- in the last two years, over half the new jobs -- and I'll come back to this -- over half the new jobs in this economy have been in higher wage categories.

But if we want to keep the wages going up, we have to educate people to those jobs. In the last five years, since I've been President, the only American group whose incomes, as a group, have not gone up, are Hispanic Americans, because they have a high school completion rate 25% lower than African Americans or

The New York Times

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Parties in Tobacco Talks Say Accord May Be Near

By BARRY MEIER

State attorneys general said Wednesday that they were narrowing their differences with cigarette producers in the tobacco talks, and some predicted that a settlement proposal could emerge as early as Thursday.

But others expressed caution, saying some important issues remain unresolved.

One potential complication is a proposal that the tobacco companies make a lump-sum payment to cover their liability for punitive damages in smoking-related lawsuits.

A settlement would be a major achievement in the 40-year battle over smoking and health. The tobacco industry has long refused to admit to the health dangers of smoking and has vigorously defended itself against the growing number of lawsuits brought by smokers. Forty states have also sued the industry to recoup the Medicaid costs of treating former smokers.

Growing political, regulatory and legal pressure on the industry has brought top tobacco executives to the negotiating table. At the same time, a number of public health organizations view the talks as an unprecedented opportunity to more aggressively regulate the industry's marketing practices.

Negotiators had recently reached roadblocks over the issues of punitive damages and nicotine regulation by the federal government. But at a press conference Wednesday in Washington, Mississippi Attorney General Michael Moore, and a leading figure in the talks, said significant progress had been made.

"We are headed toward a final resolution of this matter, very, very soon," Moore said.

Other negotiators said the punitive damages issue as well as the value of a settlement package remained unresolved and could still delay or derail any settlement.

Spokesmen for the Philip Morris Companies and RJR Nabisco Holdings Corp.,

the parent company of R.J. Reynolds Tobacco Co., the two major cigarette producers involved in the talks, declined comment.

Punitive damages are those meted out to punish a company and deter similar action. They can be awarded repeatedly by juries and can cause a company's legal costs to skyrocket.

Several state attorneys general and public health groups have backed the rights of individuals to seek punitive damages in lawsuits against the tobacco industry. But cigarette companies, hoping to predict how smoking lawsuits will affect their corporate earnings, have insisted that punitive damages be barred as part of a settlement.

Tuesday, Moore and some attorneys general suggested that while cigarette companies should be liable for any punitive damages for future wrongdoing, a settlement should cover punitive damages for past wrongdoing because there was little chance of smokers winning such awards in court.

One proposal being offered to symbolically cover punitive damages for past wrongdoing is to use a lump sum of about \$35 billion in settlement funds over the next seven years to finance health coverage for uninsured children. The plan would cover the cost of a failed congressional proposal, which would have been financed by a tax on cigarettes.

"I think it is fair to say that the payment of a children's health program is being looked at in the context of punishment for past wrongs," said Indiana Attorney General Jeffrey Modisett.

Rahm Emanuel, a White House official, reiterated Wednesday that the Clinton administration would not participate in the bargaining process and would simply review any settlement that emerged for its impact on children's and public health.

But negotiators still looked to the White House for signs and direction. Congress must approve any final settlement because it would affect regulations and individuals' legal rights.

Two sources involved with the talks said separately that White House officials had indicated that the size of the settlement under discussion was too low.

Industry has offered a settlement package worth somewhere between \$300 to \$340 billion over the first 25 years, while state officials are seeking about \$375 billion, people close to the talks said.

At a meeting Wednesday in Washington of a tobacco advisory committee headed by Dr. David Kessler, former administrator of the Food and Drug Administration, and Dr. C. Everett Koop, former surgeon general of the United States, leaders of some public health groups agreed that the industry should face more substantial penalties over time than currently being considered if the settlement failed to result in a sustained reduction in smoking by youths.

The leaders also opposed any caps on punitive damages.

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Weather

Today: Mostly sunny, hot, humid.
High 92, Low 73, Wind S 10 mph.
Sunday: Partly sunny, thunderstorms.
High 94, Low 68, Wind 7-14 mph.
Yesterday: Temp. range 67-90.
Pollen count: 108. Details on Page C2

The Washington Post

FINAL

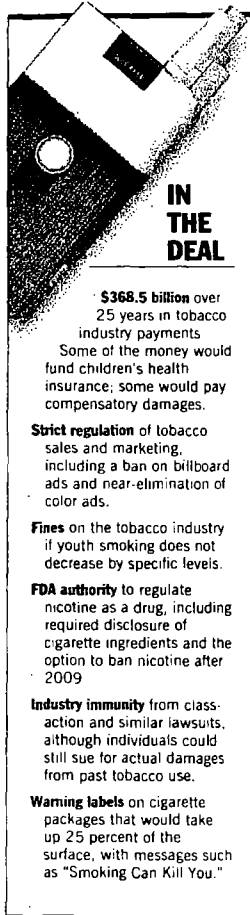
Inside: Real Estate
Today's Contents on Page A2

120TH YEAR No. 198

SATURDAY, JUNE 21, 1997

Prices May Vary in Areas Outside
Metropolitan Washington (See Box on A1)

25¢



IN THE DEAL

- \$368.5 billion** over 25 years in tobacco industry payments
- Some of the money would fund children's health insurance; some would pay compensatory damages.
- Strict regulation** of tobacco sales and marketing, including a ban on billboard ads and near-elimination of color ads.
- Fines** on the tobacco industry if youth smoking does not decrease by specific levels.
- FDA authority** to regulate nicotine as a drug, including required disclosure of cigarette ingredients and the option to ban nicotine after 2009
- Industry immunity** from class-action and similar lawsuits, although individuals could still sue for actual damages from past tobacco use.
- Warning labels** on cigarette packages that would take up 25 percent of the surface, with messages such as "Smoking Can Kill You."

THE WASHINGTON POST

Tobacco Pact Calls for Strict Federal Controls

By John Schwartz
and Sandra Torrey
Washington Post Staff Writers

The nation's biggest tobacco companies agreed yesterday to submit to strict federal control over the way they make and market cigarettes and to pay \$368.5 billion over the next 25 years to compensate states and individuals for tobacco-related health costs.

The agreement marks the first time that the industry has ever settled smoking-related legal claims. It constitutes the most restrictive set of

regulations ever imposed on an industry manufacturing legal products, and the multibillion-dollar pot far outweighs that of any settlement in history. It will continue to be collected after the initial 25-year term of the agreement.

The deal announced yesterday by a core group of attorneys general suing the industry will still have to be reviewed by the White House and passed by Congress before it can take effect. A number of critics said the proposal falls short of ideal. But if its terms become law, it will restructure the tobacco industry and revolutionize the nation's tobacco control efforts.

The deal gives anti-tobacco negotiators the things they wanted most. First, it imposes advertising and marketing agreements that would go into place as soon as the deal is finalized and that go further even than the broad restrictions called for by the Food and Drug Administration, which have been struck down by a federal court.

Yesterday's deal bans tobacco logos on T-shirts and other promotional items, as well as all outdoor advertising, tobacco sponsorship of sports events, and any character-based advertising.

"In essence, the Marlboro Man will be riding into the sunset on Joe Camel," said Robert Butterworth, Florida's attorney general, at a packed news conference yesterday afternoon.

In addition, the deal provides billions of dollars to repay states for the costs of tobacco-related health costs and to fund broad nationwide anti-smoking ad campaigns and tobacco cessation programs. Distribution of the payments would be determined by a presidential commission.

The industry will even pay for enforcement of the new rules it will have to live by. Moreover, of billions of dollars will be used to fund a national health insurance program for needy children. The industry will also pay the fees of private attorneys involved with the suits, though their share has yet to be determined.

The deal obliges tobacco companies to ensure progressive reductions in youth smoking rates over the next 10 years. Any company failing to hit the mark would be punished by

See TOBACCO, A8, Col. 1

THE POLITICS

White House, Hill Wary Of Proposed Agreement

By John F. Harris and Helen Dewar
Washington Post Staff Writers

At the White House and on Capitol Hill, the proposed settlement over tobacco yesterday was greeted with reactions so cautious they bordered on downright cool.

The hesitancy in both places made clear that the grand accord—so painstakingly crafted in the secretive confines of downtown luxury hotels—is in for some sharp poking and prodding in the less delicate arenas of the capital where laws actually get made. No important voice in political Washington immediately embraced the settlement, and both President

Clinton and a variety of congressional leaders said they need to know far more about its details before they will hazard a judgment.

White House aides said Clinton is casting a skeptical, if undecided, eye on several provisions, especially its implications for the Food and Drug Administration's jurisdiction to regulate nicotine. It will probably be at least a month before Clinton offers a clear thumbs up or down, senior White House aides said, and in the meantime a multiagency review is underway.

Several lawmakers said they considered the deal unveiled yesterday

See FUTURE, A8, Col. 4



BY LARRY MORRIS—THE WASHINGTON POST
Negotiator Mike Moore called talks "most contentious I've ever seen."

THE ECONOMICS

Smokers Would Pay Bills For Previous Generations

By Steven Pearlstein
Washington Post Staff Writer

Over the years, anti-smoking forces have tried to bury the tobacco industry under an avalanche of liability claims, ostracize it from respectable society and strangle it in a tangle of regulation.

But in a universal settlement hammered out with 40 state attorneys general and lawyers for diseased smokers, the tobacco industry would be allowed to continue earning generous profits for many years even as it is forced gradually to price and market itself out of business.

"The paradox here is that we have had to keep the industry financially healthy in order to finance its own demise," explained Iowa Attorney General Thomas Miller, a hard-liner among the attorneys general.

In effect, the proposed settlement would translate into a 75-cent-per-pack increase in the federal cigarette tax that would require each new generation of smokers to pay for the health consequences of smoking by previous generations. The gamble by government officials and public health advocates is that this sharp rise in the price of cigarettes—along with advertising curbs, a

See SMOKING, A8, Col. 1

CIGARETTE MAKERS IN A \$368 BILLION ACCORD TO CURB LAWSUITS AND CURTAIL MARKETING

Impact on Health: Hazy

*Despite a Pact, Will Cigarette Companies
Still Find a Way to Reach More Smokers?*

By BARRY MEIER

The \$368 billion pact reached yesterday by tobacco companies, health groups, state attorneys general and lawyers for sick smokers represents the most determined effort in the nation's history to reduce cigarette smoking, which ranks as the leading preventable cause of death in the United States and takes 400,000 lives a year.

But even after painstaking negotiations over matters of money and marketing, fundamental questions of public health are likely to bedevil the landmark agreement, just as they clouded the talks since they began more than two months ago. If the agreement wins necessary approval by Congress and the White House, will cigarette companies still find a way to circumvent the toughest warning labels and advertising restrictions ever, surviving and prospering as they have for decades? Will Americans in substantially greater numbers stop smoking and, just as important, will more of them never start?

Battles over smoking and health have been waged for more than 40 years, and during that time cigarette companies showed remarkable resourcefulness in their ability to increase sales even though nearly every year brought new scientific evidence that linked smoking to cancer, emphysema, heart disease and other ailments. The industry also proved skillful at turning Federal regulation

to its own advantage.

Although tobacco companies fought warning labels on cigarette packages, which were first mandated by Federal law in 1965, they later used the statements as a shield to protect themselves against smokers' lawsuits. In 1971, when cigarette advertising on television was banned, producers quickly shifted to other venues, including billboards, magazines, concerts and sports events.

Now cigarette company executives are taking the remarkable step of asking to be a heavily regulated industry, declaring their intention to work with the Government to reduce smoking by young people. But some public health experts worry that the industry may yet again find ways of peddling what is widely considered one of the most deadly legal products available.

Donald Shopland, head of the smoking and tobacco control program at the National Cancer Institute in Bethesda, Md., calls the agreement's impact on the nation's smoking rates "the \$64,000 question."

The agreement provides for a wide range of measures to reduce cigarette use. Billboards promoting cigarettes will be banned, and figures like the Marlboro Man and Joe Camel will disappear. Billions of dollars will be poured into programs intended to help smokers quit. And massive

Continued on Page 9



From left, Attorneys General Christine Gregoire of Washington, Michael Moore of Mississippi, Richard Blumenthal of Connecticut, Grant Woods of Arizona and Jeffery Modisett of Indiana at a news conference.

*"We wanted to do things that would punish
this industry for its past misconduct, and we have done that."*

MICHAEL MOORE, Mississippi's Attorney General and a lead negotiator

Terms of the Agreement

Here is a look at the details from the \$368.5 billion settlement reached yesterday among state attorneys general, tobacco companies and anti-smoking groups.

Payments					Restrictions	
ANNUAL PAYMENTS	LIABILITY	PUNITIVE DAMAGES	SMOKING CESSATION	YOUTH SMOKING	ADVERTISING	GOVERNMENT REGULATION
\$10-billion initially; rises to \$15 billion a year. Divided among the state attorneys general, public health groups and a fund to pay for damage claims from.	Awards against tobacco companies not to exceed \$5.25 billion a year. Ban on future class-action lawsuits. Individual	\$50 billion up front. In return for ban on future punitive damages. Some will probably be used for health coverage for uninsured children.	\$2 billion per year. For programs to help people stop smoking or get medical treatment.	Up to \$2 billion a year if goals are not met. Cigarette companies must reduce smoking among youths by 67 percent in the next 10 years. Inter-	A ban on billboards, on the Internet, in sports promotions; cigarette companies will pay for anti-tobacco advertising. Cigarette packages will carry larger, stronger	The Food and Drug Administration will regulate nicotine as a drug.

Lawmakers Vow Close Scrutiny of Tobacco Pact

By JERRY GRAY

WASHINGTON, June 20 — News of a settlement between tobacco companies and anti-smoking forces today stirred cautious reactions from many on Capitol Hill and outright skepticism from others. But members of Congress on both sides of the debate agreed that any deal that eventually wins their approval will require a mountain of legislative and bureaucratic changes.

"We're going to look at it slowly and carefully," Speaker Newt Gingrich said.

News of the \$360 billion settlement between the tobacco companies and the attorneys general of 40 states hit Capitol Hill when many lawmakers were already headed home.

Significantly, none of those who were still at work and eager to take

the microphone to react, rejected the idea of a settlement outright. But within an hour, some lawmakers were making it clear that today's agreement would be taken by Congress as essentially a rough draft that would have to be rewritten.

"I don't expect Congress to rubber-stamp it," said Senator Frank R. Lautenberg, a New Jersey Democrat and one of the most ardent tobacco foes on Capitol Hill. "There are devils in the agreement that we will have to get out of there."

Mr. Lautenberg said that among the "devils in the details" he foresaw were the need to enact laws to limit the liability of the tobacco industry and to decide who gets what money, including how much lawyers should be paid.

Senator Edward M. Kennedy, Democrat of Massachusetts, complained that the proposal was "clear-

ly under-funded" and contained one "glaring omission."

"Any agreement should include a very substantial payment to the Federal Government for the costs incurred by Medicare, veteran's health programs and other Federal health programs for the treatment of tobacco-related illnesses," Mr. Kennedy said.

Initial reactions like those hinted at the subtle ways that the politics of tobacco have changed as the negotiations over today's agreement proceeded — and at how the two sides of the fight over cigarettes will have to find new ways to accommodate.

President Clinton, for example, took credit in Denver today for forcing the tobacco companies to the bargaining table by seeking to regulate the industry. But he held the bargain itself at arm's length, as the White House had carefully kept the negotiations at arm's length, saying he needed to give the agreement "strict scrutiny" to see if it advances the public health and will reduce the number of children who are smoking cigarettes.

As expected, Senator Lauch Faircloth, a North Carolina Republican who is one of the staunchest defenders of tobacco, expressed some opposition, but was careful to phrase it in populist terms. Mr. Faircloth warned that he would fight any proposal by big lawyers that he felt hurt the little guy — tobacco farmers who form the base of his state's agricultural economy.

Continued on Page 8

MAJOR CONCESSIONS

Industry Would Pay for the Costs of Treating Smoking Diseases

By JOHN M. BRODER

WASHINGTON, June 20 — Tobacco negotiators announced a historic settlement proposal today that, if ratified, promises to change forever the way cigarettes are marketed in the United States, to provide billions of dollars in compensation to states and to permanently alter the nation's legal, regulatory and public health landscape.

But despite concessions from the cigarette makers, the groundbreaking proposal would allow the tobacco industry to win reprieve from the gravest legal and financial threats it has ever faced.

The complex agreement, negotiated by a group of state attorneys general, plaintiffs' lawyers and industry representatives, would require cigarette companies to pay \$368.5 billion over the next 25 years to compensate states for the costs of treating smoking-related illness, to finance nationwide anti-smoking programs and to underwrite health care for millions of uninsured children. [Excerpts from announcement, page 10.]

Under terms of the proposed settlement, the tobacco industry would admit for the first time in prominent new warning labels on every package of cigarettes that smoking by an estimated 45 million Americans is lethal and addictive. The plan imposes strict new limits on tobacco marketing and advertising, including a ban on vending machines and outdoor billboards. And it gives the Food and Drug Administration new powers to regulate nicotine as a drug and cigarettes as drug delivery devices. The nation's four major cigarette makers described the proposed settlement "a bitter pill" that required previously unimaginable concessions. In a statement that came as close to a tone of contrition as the industry ever has, the companies said the deal was the best they could hope to achieve in an extremely hostile environment.

Negotiations of this size and scope create compromise, not perfection, the companies said. But on balance this plan is preferable to the continuation of a decades-long controversy that has failed to produce a constructive outcome for anyone.

The statement was released jointly by the Philip Morris Companies, R.J.R. Nabisco Holdings Corporation, B.A.T. Industries P.L.C., the British parent of the Brown & Williamson Tobacco Corporation, and the Loews Corporation, which owns the Lorillard Tobacco Company.

Most of the money the cigarette companies would have to pay — \$10 billion upon signing the agreement, \$8.5 billion a year for five years and about \$15 billion a year thereafter — would be tax-deductible, forcing taxpayers to effectively share in the cost of the settlement.

In exchange for their concessions, the tobacco companies won the promise of relief from dozens of potentially ruinous lawsuits filed by states and diseased smokers. No lawsuit filed against cigarette makers has succeeded thus far, although the Liggett Group, a subsidiary of the Brooke Group Ltd., broke with the industry to negotiate its own settle-

Companies' Cost Would Be Great, But So Is Their Outlook for Profit

By BARNABY J. FEDER

In reaching an agreement that would cost them billions of dollars a year and poses the potential to chase away customers, cigarette companies calculated that they would still be left with sufficiently lucrative business that would not continue to be haunted by lawsuits that have depressed their stock prices, consumed ever more of their resources and given their industry an image as America's corporate rogue.

The tobacco settlement announced yesterday would cost the highly profitable industry an average of \$14.7 billion annually over the next 25

years, more than twice its profits from domestic cigarette sales in 1996. The industry called that, and other terms of the deal, a "bitter pill."

But the companies' stock prices have risen in the two months since negotiations on a settlement began, a sign of investor recognition that the companies have much to gain from an agreement even as they pay what looks like a steep price.

Although the combative tobacco industry has had great success in the courts at defeating lawsuits brought by sick smokers, it came, under enough pressure in the last several years to force it to the bargaining table for the first time in four decades of nasty battles over tobacco's health effects. Central elements of that pressure were the lawsuits brought by more than three dozen states in an effort to recover Medicaid costs of smoking-related illnesses.

At the same time, the industry was confronted with the very real prospect of vastly expanded Federal regulation, power that it would now concede under the agreement. Two months ago, a Federal judge in

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MARKETPLACE

Advertising: The Marlboro Man is dead, but cigarette advertising isn't Page B11.

Media: Magazine editors worry about trend of warning advertisers Page B11.

THE SETTLEMENT

Critics Vow to Fix, Not Destroy, Tobacco Deal

The tobacco agreement still faces months of intense scrutiny, but key players in Washington appear to want to make a deal into law.

What ultimately emerges almost certainly will look different from the package

By Wall Street Journal staff reporters Laurie McGinley, Hilary Stout and Jeffrey Taylor

announced on Friday. President Clinton and congressional leaders are likely to demand important changes, and the effort could easily collapse if any one participant thinks it's giving up more than it's gaining.

But virtually no one who matters is vowing to kill the deal. Even those who are most critical of the terms seem determined to amend them, rather than try to scuttle the entire package.

"Some of the elements are wonderful and I support them, but other elements have to be rewritten," said David Kessler, the former Food and Drug Administration chief whose support will be crucial to the plan's acceptance by the White House and the public.

The vetting begins immediately. The Clinton administration is launching what

Hurdles to Approval

■ **The Clinton administration:** Before a presidential endorsement is forthcoming, the deal will be scrutinized by an array of federal agencies, including the Health and Human Services, Justice and Agriculture departments. Policy wonks will be hunting for possible loopholes, while political advisers will be weighing the public-relations risks vs. the benefits.

■ **Congress:** Antitobacco lawmakers already are raising questions about the deal, which must wend its way through a

thicket of congressional committees in a very busy year.

■ **Outside agitators:** The public's view will be shaped in large part by such well-known tobacco foes as former Surgeon General C. Everett Koop and David Kessler, the former Food and Drug Administration commissioner. Both are arguing for major changes. Public health groups, such as the American Lung and American Heart associations, also will be influential in shaping public opinion.

White House support would also give Republican and Democrat lawmakers political cover. If the president signs off on the deal, lawmakers won't have to worry about being portrayed as friendly to tobacco.

For now though, Mr. Clinton said he hadn't reviewed the settlement in detail. "We need to take time, and really make sure that there's not something there that has unintended consequences," he said at a press conference in Denver yesterday.

Several key provisions are already coming under intense review:

• **FDA Authority:** Public-health advocates dispute the assertion of the attorneys general that the deal "greatly strengthens" the hand of regulators. Earlier this year, the FDA scored a historic victory when a federal judge ruled the agency has the authority to regulate tobacco as a drug. But the settlement, public-health advocates say, blunts that victory by erecting tricky legal obstacles to any effort to order reductions in nicotine and other harmful cigarette ingredients.

Dr. Kessler is especially concerned. Please Turn to Page B10, Column 5

Donna Shalala, the secretary of the department of Health and Human Services, called "a very tough-minded review" of the pact. "All we know at this point," she said in an interview, "is that the tobacco industry is satisfied."

Adds Bruce Reed, the White House domestic policy chief who is co-chairing the administration's review with Ms. Shalala: "We're going to take a long, hard look at the terms to determine whether the

country will be healthier with the settlement or without."

While the White House is likely to run from anything that looks like a favor to the tobacco industry, there are powerful incentives for Mr. Clinton to support the deal. The pact offers the president a tempting opportunity to make a mark on history: He could be remembered as the president who forced tobacco to its public reckoning.

Big Winners in the Settlement Could Be the Lawyers

By RICHARD B. SCHMITT

Staff Reporter of THE WALL STREET JOURNAL
Many lawyers involved in the tobacco deal say it represents their finest hour.

It's also likely to be their most lucrative.

The details of the plaintiffs lawyers' fees have yet to be hammered out, but the total could run into billions of dollars, setting a record for fees on a single case. Several of the states' attorneys have deals that could pay them as much as 25% of what the state recovers, although their fees may well fall short of that.

Taken together, the fees may ultimately seem "a little obscene," acknowledges Mississippi trial attorney Richard Scruggs, a major force behind suits filed by more than half of the 40 states seeking reimbursement from the tobacco industry for Medicaid expenditures. The suits would be settled under the pact.

"But we have to come up with a fair way to compensate everybody," he adds, noting that the cases have attracted hundreds of lawyers. "There's going to be a lot of roosters taking credit for the sunrise."

Besides Mr. Scruggs, a country lawyer who flies around in a Lear jet, there

is South Carolina lawyer Ronald Motley, his partner in the state cases, who like several of the antitobacco lawyers made millions representing asbestos victims a decade ago. Others with a stake include Maryland's Peter Angelos, the owner of the Baltimore Orioles baseball team, who went to bat for his home state in court in one of the Medicaid suits, under a contingency-fee agreement that would pay him 25% of whatever the state recovers. Messrs. Scruggs and Motley also signed deals with the states for fees of up to 25%.



Richard Scruggs

Another 60 prominent plaintiffs' firms that have filed class-action suits against the industry around the country also stand to win big amounts from the industry.

"The fees should be more substantial than any legal fees paid in any litigation in the history of the country," says Russ Herman, a New Orleans trial lawyer who is a

negotiator on behalf of the class-action group. Mr. Herman suggests that a base fee on the order of 3% of the \$368.5 billion settlement fund — or about \$11 billion paid to all the lawyers over a number of years — would be "fair and reasonable."

Just 1% of the settlement would put total fees at nearly \$4 billion. That would easily dwarf any fees in history, including the current record of \$1 billion awarded to lawyers who cleaned up in the wake of the 1989 Exxon Valdez oil spill; that award is up in the air because of a pending appeal by the company.

"There is just nothing that comes close," says Charles Silver, a University of Texas law professor who tracks lawyers' fees and is advising the plaintiffs' lawyers in the Texas Medicaid case. For years, he notes, the standard for large fees was considered the estimated \$400 million won by Houston trial lawyer Joseph Jamail for winning the Pennzoil Co.-Texaco Inc. dustup in the mid-1980s. The tobacco fees, he says, "will make that seem small."

The tobacco agreement itself is sparse on details of the fees. It calls for the industry to pay the lawyers' fees and costs

separately from the settlement fund, but without setting any specific sums.

The lawyers say they have been focusing on the terms of the deal, and haven't given their fees much thought; some also concede that because large fees could be politically explosive, they have consciously chosen to defer action on them. Already, members of Congress, including House Speaker Newt Gingrich, have said they would look askance at any tobacco deal that would include a windfall for trial attorneys.



Ronald Motley

"Everybody is trying to shove this [fee] issue under the rug," says John Banzhaf, an antismoking activist and professor at George Washington University law school. "I don't think the public is going to have a great deal of confidence when they look at the fees the plaintiffs' attorneys are asking for."

Please Turn to Page B11, Column 1

Facts About the Global Tobacco Business



SMOKING IN AMERICA

Percentage of American adults who smoke: **25.5%**
 Men: **28.2%**
 Women: **23.1%**
 1996 consumer spending on tobacco products: **\$46.6 billion**
 1st state and local excise taxes collected from cigarettes in 1996: **\$13.1 billion**
 Average number of Americans who die each day from smoking-related illnesses: **1,145**
 Health-care costs of smoking-related illnesses: **\$50 billion**
 Largest tobacco-producing state: North Carolina: **\$943 million**
 Average price per pack nationwide: **\$1.91**



THE GLOBAL MARKET

World-wide sales of cigarettes in 1996: **\$295.8 billion**
 Total number of cigarettes sold last year: **5,505 billion**
 Average number of cigarettes sold per second: **174,562**
 Top five cigarette markets in 1996, in billions of cigarettes:
 China: **1,791**
 U.S.: **488**
 Japan: **335**
 Russia: **180**
 Indonesia: **173**
 World market share of five largest tobacco companies:
 Philip Morris: **18.2%**
 B.A.T.: **12.8%**
 R.J. Reynolds: **5.9%**
 Japan Tobacco: **5.1%**
 Rothmans: **4.2%**

Biggest cigarette brands and world market share:

Marlboro (Philip Morris): **8.4%**
 Mild Seven (Japan Tobacco): **2.3%**
 L&M (Philip Morris/Liggett): **1.8%**
 Winston (R.J. Reynolds): **1.8%**
 Camel (R.J. Reynolds): **1.2%**

Highest annual per capita spending on tobacco:
 Denmark: **\$407.80**

U.S. annual per capita spending on tobacco products: **\$185.30**

Countries with the heaviest smokers (annual per capita smoking rate):

1. Greece: **2,774 cigarettes, 139 packs**
 2. Japan: **2,669 cigarettes, 133 packs**
 3. Poland: **2,365 cigarettes, 118 packs**
 11. U.S.: **1,831 cigarettes, 92 packs**



ADVERTISING AND HOLLYWOOD

Spending on advertising and promotion in the U.S. by cigarette companies in 1994: **\$4.83 billion**

Number of Marlboro men who have died from smoking-related illnesses in the past five years: **Three**

Percentage of 133 top-grossing movies in 1994 and 1995 showing tobacco use: **77%**

Smokiest U.S. television network.
 Fox: **with 2.67 smoking scenes an hour**



SMOKING AND KIDS

Percentage of U.S. high-school kids in 1995 who said they had smoked in the past month: **34.8% (27.5% in 1991)**

Number of kids who become regular smokers each day:

3,000

Average age kids start smoking:

13

Number of U.S. children under age 18 today who are expected to die from smoking-related illnesses: **5 million**



TRYING TO QUIT

Percentage of smokers who say they want to quit: **70%**

Annual U.S. spending on products to help people quit smoking: **\$417.7 million**

Average weight gained when a smoker quits: **Three to five pounds**



OTHER TOBACCO PRODUCTS

Fast-growing tobacco product in the U.S. in 1996
 Cigars: **+18%**

Value of Cuban cigars seized by U.S. customs in 1996: **\$1 million (\$140,000 in 1994)**

—Tara Parker-Pope

Sources: World Tobacco Market report from Chicago-based Euromonitor; Centers for Disease Control; U.S. government data (Department of Agriculture, Commerce Department, Federal Trade Commission, Food and Drug Administration); American Lung Association; Center for Tobacco Free Kids; Tobacco Institute; Information Resources Inc.

Illustrations by Elizabeth Taylor

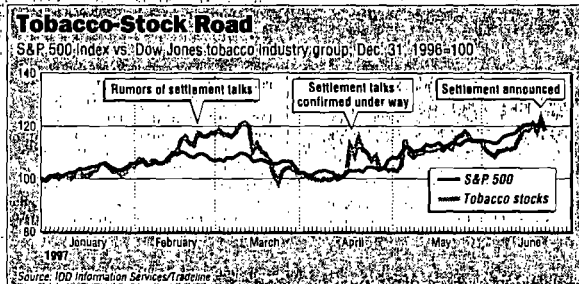
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Investors Dump Tobacco Stocks Despite Accord

Profit-Taking, Severity of Pact Cited for Slump



Most Funds Fail to Jettison Tobacco Stocks

HEARD ON THE STREET

FUND TRACK

By E.S. BROWNING
Staff Reporter of THE WALL STREET JOURNAL

Analysts agree the tobacco settlement should be good news for cigarette stocks. It takes a few worst-case scenarios off the table, such as unlimited legal liability or devastating regulation. So how come so many investors are dumping the stocks?

Philip Morris, the world's premier cigarette maker, gained for about 20 minutes following Friday's announcement, but then closed down 2, or 4.2%, at 45 1/4. RJR Nabisco Holdings lost 3/4 at 35. Loews, which owns the Lorillard brand in addition to extensive insurance activities, fell 3/4 to 103 1/4.

Some investors were taking profits; others said they were surprised at the severity of some settlement provisions or worried about possible trouble getting needed congressional approval.

Rex Wardlaw, who manages money for Wells Fargo Bank's asset-management unit, still holds a lot of Philip Morris. But he says he has been taking some profits in the stock, which looks a lot less cheap than it did a few weeks ago. In anticipation of the settlement and because of some court victories, Philip Morris has gained a hefty 60% from its low of the past 52 weeks, even counting Friday's drop.

Wells Fargo is advising clients to cut back to the standard 2% weighting dictated by Philip Morris's size in the Standard & Poor's 500 index, after previously urging them to take an "overweight" position in the stock.

PaineWebber analyst Emanuel Goldman says he was surprised the companies

agreed to pay \$368.5 billion over 25 years. Money manager Ben Fischer of NFJ Investment Group in Dallas notes that they still could be subject to some lawsuits and that nicotine could be banned entirely in 2009.

Messrs. Wardlaw, Goldman and Fischer all expect the stocks to gain in the longer run. Mr. Fischer says he will hang on to his group's more than one million shares of RJR, but he isn't buying more.

"What gets me is that this isn't the end — this is only the beginning," Mr. Fischer says. "You have to ask, is this really a panacea? And then, what happens if Congress takes this for a year and chews on it?" He worries that the stocks could be in for volatility.

Sen. Trent Lott, the Republican majority leader, has said it will be September of October at the earliest before Congress can consider the issue. In the meantime, opponents will scrutinize the proposal for defects and mount their attack. "There is a risk of negative news now," notes Robert Bissell, chief investment officer at the Wells Fargo asset management unit.

All the same, tobacco analysts including Mr. Goldman of PaineWebber, David Adelman of Morgan Stanley and Gary Black of Sanford C. Bernstein all say they expect Congress to approve the deal, probably by year-end. Too many powerful parties, from politicians and lawyers to investors and health-care providers, stand to benefit.

But passage is far from a sure thing.

Mr. Black, one of the leading advocates of a settlement on Wall Street, puts the chances at only 60% to 65% that Congress will enact the deal by year-end.

Can the cigarette companies make the huge settlement payments and continue to profit? Mr. Black notes that cigarettes are a rare case of a still-legal, and relatively cheap item that people can use to relax and relieve stress. He thinks demand will continue, even if prices rise and ads are restricted.

"How do you know people will still want to smoke in 20 years? Well, I say, just look at marijuana," the Bernstein analyst says. That drug is neither legal nor advertised, he notes, but "people are still smoking it."

Mr. Black does the math this way. Without any settlement, he projects 1998 per-share earnings for Philip Morris of \$3.45. Based on Friday's close, the company's stock trades at 13 1/2 times that amount, compared to 19 times for stocks in the Standard & Poor's 500; liability worries mean investors today won't pay as much for a tobacco stock as for other consumer stocks.

To finance the settlement, the Bernstein analyst expects cigarette makers to raise prices about 50 cents a pack wholesale (more at retail), which he figures will cut consumption by about 11% and knock 15 cents off Philip Morris per-share earnings. Interest costs of financing settlement payments will knock off another 10 cents.

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By KAREN DAMATO
Staff Reporter of THE WALL STREET JOURNAL

While lots of Americans profess to be anti-tobacco, they have shown little interest so far in posting "no smoking" signs in their mutual-fund portfolios.

A year after the American Medical Association called on investors to dump funds with tobacco holdings, there hasn't been a perceptible shift of money into "socially conscious" funds, those that avoid the securities of companies selling tobacco, alcoholic beverages and other potentially harmful products.

Such funds account for a minuscule 0.17% of the assets in diversified U.S. stock funds, about the same level as in 1995 and lower than five years ago, according to fund researchers Morningstar Inc. in Chicago.

And responding to the low demand among investors, few fund companies have accepted the AMA's invitation to swear off tobacco and win some free publicity for their no-smoking funds as members of the "AMA Coalition for Tobacco-Free Investments." After sending written invitations to thousands of funds, the AMA has come up with a list of just 53 coalition funds, out of a universe of about 7,000 funds. Almost all of the 53 funds are socially conscious funds that have shunned tobacco stocks and bonds for years.

"Public sentiment is increasingly turning against the tobacco industry, but whether that translates into consciousness among investors remains to be seen," says Doug Cogan, who tracks tobacco-investing issues for the nonprofit Investor Responsibility Research Center.

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Illicit drugs

Global turnover \$400bn,
8% of world trade

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World Business Newspaper, <http://www.ft.com>

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Clinton agrees to tighter standards for air quality

US environmental campaigners have claimed a victory after President Clinton broadly upheld Environmental Protection Agency proposals for much tighter air quality standards. Officials said the changes would lead to significant improvements in air quality and would reduce disease attributable to air pollution. **Page 14**

Blair warns Sinn Féin on Ulster peace timetable

British prime minister Tony Blair has said that new arrangements for the government of Northern Ireland will be determined by the middle of next year, even if nationalist party Sinn Féin remains outside talks in September. "The settlement train is leaving, with or without Sinn Féin", Mr Blair told Parliament. **Page 9**

Morgan Stanley earnings decline: Morgan Stanley Dean Witter Discover, Wall Street's newest investment banking giant, recorded an 8 per cent decline in quarterly earnings in the first period since the merger which created it last May. The weaker results reflected US stockmarket jitters and a merger-related restructuring charge. **Page 15; Lex, Page 14**

Thailand gets tough: Thailand's central

BAT calls targets for under-age smoking reductions unrealistic

Tobacco chief attacks pact

By Richard Tomkins
in New York

One of the three tobacco chiefs who last week signed a \$368.5bn settlement between the US tobacco industry and its foes says the pact will fail to meet one of its main objectives: achieving drastic cuts in teenage smoking.

In an interview, Mr Martin Broughton, chief executive of BAT Industries, the British tobacco and insurance group, described the targets for reductions in under-age smoking as "unrealistic", saying: "My expectation is that we will fail to meet them."

Mr Broughton's comments could severely damage the chances of the White House and Congress giving their approval by reinforcing the belief among anti-smoking

groups that the settlement will benefit tobacco companies more than society. New federal legislation, giving the industry immunity from big legal claims, is a condition of the deal.

Mr Broughton said the tobacco companies had only agreed to have the under-age smoking targets written into the agreement because their opponents had insisted that a deal could not be done without them.

"You must remember that this whole deal is not something we agree with," he said. "We don't support a lot of things that are in this package. But it is a package we are prepared to support overall in order to get a deal."

US president Bill Clinton is heavily committed to reducing under-age smoking, having

made the issue part of his re-election campaign last year, and he faces a decision fraught with political risk as he weighs up whether or not to support the tobacco settlement.

BAT is the parent company of Brown & Williamson Tobacco, the biggest cigarette company in the US after Philip Morris and RJR Nabisco. All three companies were represented in the negotiations that ended last Friday, but Mr Broughton is the only executive yet to have spoken out about the deal.

The settlement sets out to achieve a gradual reduction in smoking by discouraging young people from taking it up. It proposes extensive advertising restrictions, including a ban on the use of human or cartoon figures, and controls on teenage access to

cigarettes, including a ban on vending machines and a licensing system for cigarette vendors.

Under age smoking is targeted to fall by 30 per cent in five years and 60 per cent in 10 years, with the tobacco industry to be penalised by up to \$2bn a year if the targets are missed. But these payments can be reduced by 75 per cent if the industry can show it has "pursued all reasonably available measures" to achieve the goals.

Mr Broughton called the targets unrealistic. He said they were based on the "totally false premise" that youngsters only smoked because cigarette companies advertised to them and made their products freely available to them.

"It makes a ridiculous assumption that it is nothing

to do with societal factors or peer pressure or parental pressure," he said.

"All these things are swept under the carpet, and the assumption on the anti-smoking side is that, if it weren't for the cigarette companies marketing their product directly to kids, they would never smoke. It's a stupid position. It's a totally unsupported position."

● An influential panel of public health advocates headed by Mr David Kessler, former Food and Drug Administration commissioner, and Mr C Everett Koop, former surgeon general, yesterday rejected a key part of the tobacco settlement, saying conditions attached to the FDA's powers to regulate nicotine were "unacceptable".

BAT chief fumes, **Page 3**

Andersen partners fail again to agree on new chief

By Jim Kelly in London

Partners of Andersen Worldwide have plunged the world's largest accounting and consulting organisation into turmoil by rejecting for the second time their board's nomination of a new chief executive.

The board, meeting by teleconference, was told that the 2,700 partners had failed to provide the required two-thirds majority to elect Mr George Shaheen, the head of Andersen Consulting worldwide.

Earlier this month Mr Jim Wadia, head of accountants Arthur Andersen in the UK, won a majority of votes cast

THE WALL STREET JOURNAL
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And a Rebate if Smoking Drops Off****By ALIX M. FREEDMAN and SUEIN L. HWANG**
Staff Reporters of THE WALL STREET JOURNAL

Get ready for a scorching national debate over whether the cigarette industry came away from the historic tobacco settlement with too sweet a deal.

**Return To
TOBACCO
Settlement**

The pact announced Friday by a host of state attorneys general, plaintiffs' lawyers, public-health advocates and the nation's cigarette makers would place

sweeping restrictions on America's most lethal consumer product. That would have been unimaginable as recently as a year ago.

If Congress blesses it, the industry could pay \$368.5 billion over the next 25 years and succumb to a ban on billboards, vending machines, sports promotions and ads with people and cartoon characters, such as Joe Camel and the Marlboro Man. It would yield to regulation by the Food and Drug Administration and print dire new warning labels such as "Smoking Can Kill You." And it would stop hiding what it knows about the deadly effects of smoking -- for the first time, telling smokers just how much tar and nicotine they are really inhaling and disclosing the additives believed to make U.S. cigarettes among the world's most hazardous.

But the pact, banged together after nearly three months of fractious negotiations, could help the cigarette industry by spawning a potentially huge new market for "safer" cigarette designs that manufacturers previously shied away from for fear of waving a red flag to liability lawyers. And the settlement is pockmarked with loopholes that would probably let tobacco companies keep racking up huge profits from addicted smokers, while restricting legal redress in the courtroom.

Fewer Smokers

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The industry is likely to pass along to smokers its massive settlement bill in the form of price increases of 35 to 50 cents a pack. The industry says that the one-time hit would probably cut the ranks of the nation's 45 million smokers by 15% during the next two years. But one mechanism in the proposed agreement could ensure that the industry won't lose too many smokers too quickly.

If sales of cigarettes purchased by adults drop below 1996 levels, companies would get a big rebate in their annual settlement payments, which after an upfront \$10 billion payment will begin at \$8.5 billion and ascend to \$15 billion in the fifth year of the agreement. That rebate, in turn, could let the industry lower prices and thus reignite sales.

"In order to get the \$368 billion, we need to keep people smoking," says Attorney General Joseph Curran of Maryland, one of the 40 states that sued the industry. "This is a real paradox that's very troubling."

On paper, the agreement gives the FDA authority to reduce and even eliminate levels of nicotine in cigarettes -- perhaps its best tool for bringing smoking rates down. But don't hold your breath. Although a landmark federal-court ruling this year said the FDA has the power to regulate nicotine as a drug, the settlement creates a new set of hurdles before the agency can take that step.

Among them, the FDA would have to prove that ratcheting down nicotine in U.S. cigarettes wouldn't create "significant demand for contraband." Regulators freely concede they don't have any idea how to prove that.

Shadowy Subject

The agreement also stipulates that the industry can take the agency to court to dispute its evidence, and orders judges to defer to the FDA's judgment only in areas where the agency has expertise. Nobody expects the FDA to claim expertise on the shadowy subject of contraband.

Indeed, some industry chieftains are already offering reassurances that the pact won't be a major disruption in the cigarette business.

"After the shock of the 15% drop over the next couple of years, thereafter we'll be back to the normal trend," predicts Martin Broughton, chief executive of B.A.T Industries PLC, whose Brown & Williamson Tobacco Corp. is the U.S.'s No. 3 cigarette supplier. "This gives shareholders and employees more certainty and consumers a respite from the constant

demonization of cigarettes."

In an interview, Mr. Broughton, who emerged as the most stiff-spined chief executive in the settlement talks, says he isn't worried about the FDA ever regulating nicotine. "It's an unlikely prospect," he says. "The contraband part gives me the most comfort."

And in a letter to employees the day the settlement was announced, Steven Goldstone, chief executive of No. 2 player RJR Nabisco Holdings Corp., said he had "every confidence" that the tobacco company will be able to "make critically important financial contributions" to the parent company. He added that RJR has already been operating in heavily regulated overseas markets, an area the cigarette makers are actively exploring, and "we don't see any reason to doubt the future of the domestic market under similar conditions."

Public Debate

Thus, as Congress and the White House launch a review of the agreement that is certain to be long and bruising, the pact thrusts the nation into a wrenching public debate over how to regulate its most controversial product ever.

The debate will be shaped by powerful crosscurrents running through America at the end of the century. On the one hand, thanks to a surging reverence for individual responsibility, there is a widely held belief that smokers should be accountable for their own behavior and don't need the FDA to wean them off nicotine. The cigarette industry has pressed this point successfully over and over to avoid courtroom losses and regulations it branded unduly paternalistic.

At the same time, the industry has until now maneuvered to be virtually untouched by the wave of consumer and environmental protection that has transformed so many other industries. The result: A product believed to be responsible for 425,000 deaths each year gets less government oversight of its contents and marketing than ice cream. And supporters of harsh regulation of cigarettes have made their cause hugely popular by focusing on the heavy toll on minors.

"We've reached a point in our political warfare in which public-health forces have the power and influence to counteract the tobacco lobby, but even among the most zealous of advocates there is a recognition of the right of consenting adults to commit smoking to their own home," says Michael Pertschuk, a former commissioner of the Federal Trade Commission and veteran antismoking

advocate. "Finding the right balance will test the responsiveness of our democratic institutions and is going to be a challenge the nature of which we have never before faced in America."

Instant Criticism

The loopholes in the agreement drew instant criticism from some public-health advocates and lawmakers, who argued that negotiators gave away too much to an industry on the ropes. Nonetheless, inside the tobacco camp some officials were shaken as they totted up the damage of a settlement that gave up far more than they ever imagined.

When the CEOs of RJR and industry leader Philip Morris Cos. kicked off negotiations on April 3, they intended to pay about \$200 billion in exchange for full protection from liability lawsuits. Instead, they would be forced to pay almost double that amount for legal insulation that falls far short of what they had hoped.

There are about 600 individual liability suits pending against the tobacco industry that aren't erased by the agreement. (It affects only suits brought by 40 state governments and another group of state class-action suits.) Current and former smokers would remain free to press claims, with no limits on compensatory damages.

Moreover, the tobacco industry fears those claims would be strengthened by internal industry documents on smoking and health that could become available to any U.S. citizen under the deal. "The potential class of plaintiffs is still humongous," one negotiator says. "The upperclass plaintiffs bar will be less interested in representing plaintiffs because they can't hit a \$10 million home run, but a whole new bar will be created in America."

Warning Labels

The cigarette industry has a long history of shrewdly turning what appeared to be crushing defeat to its advantage. While the companies fought warning labels on cigarette packs when they were first mandated in 1965, they later used the little-read warnings as a shield against lawsuits.

In 1971, after voluntarily removing their ads from the airwaves to blunt increasingly effective antismoking spots, the companies simply shifted their brand imagery to frequently televised sporting events and lavish giveaways like Camel Cash and Marlboro Unlimited. They saved millions on TV-advertising expenses, and the TV ban made it hard for upstart brands to claim market share.

If the settlement goes through, regulators concede they have no plans to fiddle with cigarettes -- partly because they have only begun to educate themselves about one of the most highly engineered products in the U.S. market. Under the terms of the agreement itself, reducing or purging cigarettes of nicotine and its nearly 600 additives would be virtually impossible.

Until now, FDA rulings couldn't be overturned unless a judge deemed them "arbitrary and capricious." But under this settlement, the agency would have to provide "substantial evidence" to back up its assertions -- a tough new standard that makes it far easier for the industry to block the FDA in court.

In addition, every time the FDA tried to modify cigarettes -- either to reduce addictiveness or eliminate certain hazardous compounds -- it would have to go through an intricate process called "formal rulemaking," similar to a trial. How intricate? The last time the FDA recalls having used it was in the late 1960s, when it took almost 10 years to determine the percentage of peanuts that had to be in peanut butter.

One of the settlement's most touted provisions for reducing youth smoking is the "lookback." It is designed to guarantee that cigarette makers will drive down youth smoking rates by 30% in five years, 50% in seven years and 60% in 10 years by levying stiff penalties of as much as \$2 billion annually if those targets are missed. But here is the catch: The industry could get 75% of its money back.

The way this works is that the industry, after paying its fine, can petition the FDA for a hearing. If the companies can establish they pursued all "reasonably available measures" to reduce youth smoking and did nothing to undermine the pact's goals, they get 75% of their money back. If the FDA turns them down, the companies can appeal the matter in court.

Health Consciousness

"These provisions have been very well lawyered by the tobacco industry to thwart gains already made," charges former FDA Commissioner David Kessler, who launched the Clinton administration's war on youth smoking and has emerged as the settlement's most vocal opponent.

Even as the industry sells its conventional smokes, it is expected to start to peddle health-consciousness, too. With the threat of liability reduced and the FDA's role spelled out, companies are expected to introduce safer cigarettes and even

smoking-cessation products. Smokers have overwhelmingly rejected the few such safe-cigarette products that have come to market so far, most notably Reynolds's no-smoke Premier.

Now, the settlement creates powerful incentives to make these products work. One big lure: Safer cigarettes would be exempt from the agreement's Draconian marketing curbs. Already, smaller rivals are gearing up. Star Tobacco, a tiny marketer of discount cigarettes in Petersburg, Va., has just filed papers seeking FDA approval for a new way of processing tobacco that eliminates nitrosamines, the most abundant carcinogens in cigarettes.

Success in safer cigarettes is particularly crucial to RJR. Pointing to its relatively small presence abroad and some aging brands, observers believe RJR hopes that research and development will now count for more than camels and cowboys. "To the extent fewer marketing tools will be available, product attributes may become more of a selling feature," an RJR spokesman says.

Test Market

Already, Reynolds has spent more than \$1 billion working on Premier and, more recently, Eclipse, a low-smoke product that functions largely by heating tobacco, not burning it. Eclipse, being test-marketed in Tennessee, has taken about 0.5% of that market. While one person inside Reynolds describes it "in both taste and useability as probably like what Tab was to colas," he promises there will be more to come. (Philip Morris has been working on a cigarette that heats tobacco since the early 1990s.)

Even so, the settlement represents a high-stakes gamble for Reynolds, which had just begun to crawl out from under the huge debt load of its celebrated 1989 leveraged buyout. With an annual cash flow of just \$650 million a year, it may have to turn to banks or public markets to pay its share of the \$10 billion upfront payment.

One person involved in the talks recalls that at one point when antitobacco negotiators were pressing for \$15 billion, an RJR representative shot back: "If you want us bankrupt, go ahead." By the end of the talks, Mr. Goldstone was even more upset: Congress was also considering levying a 20-cents-per-pack excise tax. RJR declined to comment on the matter.

On the upside, with removal of the legal clouds, RJR shareholders -- including Mr. Goldstone, an early supporter of settlement talks -- stand to make a fortune by completing a long-contemplated spinoff of the company's Nabisco food operations. RJR

management has feared that a spinoff could face a legal challenge on the ground that the company was shielding Nabisco from its tobacco liabilities.

Philip Morris's Outlook

The outlook is even rosier for Philip Morris, whose juggernaut Marlboro brand dominates the global tobacco market. Huge cash flow means the company can easily afford its settlement share. And its surging sales overseas make the fate of the U.S. market less important.

Because Philip Morris has so much to gain from a settlement, its rivals sniped throughout the talks that it was willing to give away the store. At one point, Philip Morris contemplated making billions of dollars worth of grants to restaurateurs for state-of-the-art ventilation to rid the last wisp of smoke from dining areas. Its competitors nixed the plan. A Philip Morris spokesman declined to comment.

The industry's astonishing gamble is predicated on legal calculations, too. Smokers likely will discover that their newfound knowledge of additives and nicotine will be of scant use in the courtroom. Under the settlement's terms, class-action and states' lawsuits would be barred outright. Despite the industry's fears, there would probably be little economic incentive for smokers to bring individual suits. In the end, a number of plaintiffs' lawyers say, the industry has the immunity it was seeking all along.

These lawyers say that by banning class-action suits, the agreement strips plaintiffs of the economies of scale that make it possible to take on Big Tobacco, which spends \$600 million a year on its legal tab. Without the incentive of recouping punitive damages, pursuing individual claims for compensatory damages would be even more prohibitive. Another layer of complication involves the potentially explosive documents on smoking and health that the industry has agreed to release. The three-judge panel appointed to resolve document disputes with the industry will take away the decision from local judges handling the cases, making smoker litigation even more protracted.

Cottage Industry

But the industry's most potent legal weapon may be, quite simply, the 68-page "Proposed Resolution" itself. The agreement contains scores of terms and definitions that are certain to create a new cottage industry for lawyers. Just one example: a requirement that companies give the FDA access to all records

about their ingredients "with protection of proprietary information."

Says John Banzhaf, a George Washington University law professor and smoking foe: "This is going to be the Lawyers' Relief Act in terms of all these definitions."

Still, there are a couple of wild cards. Perhaps most worrisome for the industry is the possibility that developing countries, where cigarette sales are exploding, will one day decide to import the U.S. regulatory and liability scheme to their shores.

During the talks, no company was more vociferous in its objections to the FDA's encroachment than Brown & Williamson. The reason: Brown & Williamson's London parent is the most entrenched overseas. While B.A.T controls only 17% of the U.S. market, it derives fully 75% of its tobacco volumes from developing markets like China, India and Eastern Europe.

Until now, though, antitobacco crusades in these countries have been embryonic, at best. Publicly, B.A.T's Mr. Broughton plays down the prospect that bureaucrats in other countries will clone the U.S. settlement.

For some, the proposed tobacco settlement will clearly yield an unprecedented windfall. All 50 states will reap 40% to 50% of the industry largess, negotiators say. The plaintiffs' lawyers who worked on the settlement are likely to pocket giant fees.

Even the FDA and the Department of Health and Human Services, among the settlement's most implacable foes, will collect more than \$1.5 billion a year for enforcement activities and other initiatives like research and a massive campaign aimed at youths.

There will be economic losers, too. Among them: magazines like Rolling Stone and Details that cater to young readers and enjoy streams of ad dollars from cigarette ads; the billboard industry; and the thousands of stores and supermarkets that will face onerous new restrictions on selling cigarettes.

For now, the landmark tobacco settlement faces a bruising fight in Congress, which it is expected to survive. But regardless of the outcome, the place of cigarettes in American culture and society will never again be the same.

"Cigarettes have always been associated with risk, menace and the intimation of mortality," says Richard Klein, author of "Smoking Is Sublime." "The

more you interdict them, the more people enjoy the danger of transgressing."

But with the stripping away of the deception and manipulation that for four decades have marked the relationship between smokers and sellers, cigarettes, an enduring outlaw symbol, are on the verge of going respectable; they are about to become a regulated drug marketed with full disclosure of its risks. On paper at least, wringing every last shred of mystique out of the cigarette business promises to make for a more honest compact between buyer and seller. In the process of this catharsis, tobacco executives clearly hope to dispel their merchant-of-death image, too.

As Mr. Goldstone put it in his letter to RJR employees on Friday: "Most important, the agreement secures the tobacco industry's rightful place in the mainstream of legitimate U.S. commerce."

--Milo Geyelin contributed to this article.

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Racism and the Burning of Churches

Like an ostrich that hides its head in the sand rather than face reality, Michael Fumento, in writing "Who's Fanning the Flames of Racism?" (editorial page, June 16), pretends that the rash of arsons and firebombings of black churches has nothing to do with racism and everything to do with an elaborate "hoax" foisted on the public.

He is, far from the truth. And he abuses and misinterprets the first-year report of the National Church Arson Task Force to support his contention. The report states clearly that its numbers are restricted by the ability to convict in a court of law, that its conclusions are preliminary, and that its investigations continue into questions of motivation and conspiracy. The task force further acknowledges that its numbers do not reflect all of the racism involved.

The National Church Arson Task Force is itself a response to the National Council of Churches call for the federal government to respond to the crisis confronting churches across America. Attacks on houses of worship, particularly those against black churches, were receiving little national attention. Many investigations either were perfunctory or scapegoated the congregations. Many congregations were left with inadequate resources for rebuilding and little clout to demand justice. The NCC commends the federal government for moving swiftly to investigate the fires, prosecute the arsonists, rebuild burned houses of worship and prevent additional fires.

If Mr. Fumento were to listen to the stories of the pastors of burned churches, 80 of whom met together in Washington, June 8-10, he would know that racism is a powerful factor in the burnings. He would know about the racism, the repeated vandalisms, the hate mail and phone calls, and, yes, the white supremacist activity directed against many of these churches, as well as against synagogues and mosques. He would know that the National Council of Churches appeal for help for these churches is no attempt to pit one race against another. Rather, he would know that our efforts to organize a response is simply what people of faith do when faced with sin: They confront it.

It would be easier to confront the attacks on houses of worship if they were orchestrated by one central controlling entity. Remove that entity and the burnings should stop. But racism is not that simple. And black and multiracial houses of wor-

ship still are being burned on a regular basis—six just last month—and no amount of histrionics and blame-shifting on Mr. Fumento's part will have any impact on those two realities.

To date, more than 25 foundations have contributed nearly \$4.3 million to the Burned Churches Project. Individuals, religious organizations and other companies have brought total income to \$8.5 million in cash and \$2.65 million in-kind. Mr. Fumento has his facts wrong on how money has been spent. In the first year, \$5.5 million in cash and \$1.5 million in-kind went to 90 burned churches (along with volunteer labor valued at \$780,000). About half have completed rebuilding and almost all the rest are in process or will break ground this summer. Also, \$1.5 million went for administrative leadership and work for racial justice and reconciliation. The remaining \$1.5 million in cash and \$1.1 million in-kind carry over into the project's second year, during which the NCC expects to help rebuild another 30 burned churches.

The people who have contributed recognize that the rebuilding work is incomplete unless we also work to confront the underlying racism and address the isolation of many of these churches from their communities. And we must join hands with all who share our concern that any attack on a house of worship is an affront to the whole community. That is the "advocacy" that Mr. Fumento chides so derisively. There is work to do to confront the sin of racism that plagues our country. And confront it we will.

THE REV. DR. JOAN BROWN CAMPBELL
General Secretary
National Council of Churches
Of Christ in the USA

New York

The Absolute Risks Of Cigarette Smoking

Steven Goldberg's May 22 editorial-page article "Why Scientists Filter the Facts on Smoking" erroneously asserts that scientists don't know or won't reveal the absolute risks of cigarette smoking: estimates of the absolute risk from smoking have been published for at least a decade. Researchers at the American Cancer Society recently reported that the smoker's risk of dying from lung cancer by age 85 was 1 in 4 for men and 1 in 9 for women. Over time, the absolute risks for women may approach those of men.

Even as great as the risk is of dying from lung cancer, more smokers die prematurely from other diseases caused by smoking (for example, from cancers of the mouth, larynx, esophagus and pancreas; heart disease; stroke; and non-cancerous lung diseases). In 1994, researchers from Oxford University, the World Health Organization and the American Cancer Society reported that about one-half of continuing smokers eventually will be killed by smoking.

Cigarette smoking has caused more than 10 million deaths in the U.S. since the release of the first Surgeon General's report in 1964; if current patterns continue, about 25 million Americans who are currently alive will die prematurely from their smoking. This epidemic is largely preventable.

GARY A. GIOVINO, PH.D.
Chief, Epidemiology Branch
Centers for Disease Control and
Prevention
Department of Health and
Human Services

Atlanta

(The letter was also signed by Michael P. Eriksen, Sc.D., director of the Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion; and both Michael J. Thun, M.D., co-director of Analytic Epidemiology, and Clark W. Heath Jr., M.D., vice president of Epidemiology and Surveillance Research, of the American Cancer Society's Department of Epidemiology and Surveillance.)

It Wasn't Mere Flaw That Led to Tragedy

I found your article ("A Promising Career Comes to a Tragic End," page one, May 9) about the career and recent suicide of Duquesne Light's Dianna Green both sad and disturbing—but not so much for the reasons you reported.

Following the headline that "Pittsburgh's Dianna Green Overcame Racial Barriers to Help Lead Big Utility," you quote CEO David Marshall's memo in which he stated that Ms. Green "is leaving the company . . . to begin pursuing other career interests that she has had for many years" (emphasis mine). The article continues: "The memo made no mention of Ms. Green's rise to power—how she had catapulted through the ranks. . . ."

Later, readers learn that, "She was fired after the company learned that she had lied in a sworn deposition and on her resume, falsely claiming she had a master's degree in business administration."

Earl Hord, who "is black and is managing general partner of Pittsburgh-based Keystone Minority Capital Fund," was quoted saying that "if you are black, you have to be twice as good [as white counterparts] to be equal" and that "The same scale is used when you are found to have flaws. You don't get the same kind of soft landing that is given to white male executives."

Flaws? This is outrageous. Ms. Green lied, for heaven's sake. Is that now merely a flaw? She should have been fired—and for cause. Indeed, she shouldn't have been hired in the first place. In this connection, had Wesley von Schack, Mr. Marshall's predecessor as CEO, done his homework when he hired Ms. Green some nine years ago, perhaps she would not have received the opportunity he afforded her to "catapult through the ranks." Or did Mr. von Schack hire her anyway, maybe even with the knowledge that Ms. Green lied about having an M.B.A.?

As for the "soft landing" purported by Mr. Hord as being available only to "white male executives," it seems to me that Ms. Green was being positioned by Duquesne Light to receive just that. After all, "The company hired a New York attorney to conclude a severance settlement with her." I wonder how many other people who are fired because they lied receive severance settlements. Alas, even Mr. Marshall seemed a bit disingenuous in the soft tone of his announcement of Ms. Green's departure when he stated that her "other career interests" were ones "that she has had for many years."

CHARLES F. MANSFIELD JR.

New York

Love's Sweet Sound 'Tis a Baying Hound

So hunters set great store by the noise their dogs can make ("To Raccoon Hunters, A Coonhound's Bark Just Begins at 'Arf,'" page one, May 28). That's been true for at least 400 years. "A Midsummer Night's Dream" portrays Hippolyta, the Amazon queen, as coolly diplomatic with her conquering bridegroom—until he tries impressing her with his dogs:

My Love shall hear the music of my hounds.

Uncouple in the Western valley, let them go;

... We will, fair Queen, up to the Mountain's top.

And mark the musical confusion Of hounds and echo in conjunction.

This sparks an animated discussion of hounds and their sounds that goes on for another fifteen-and-a-half lines. Theseus's gambit seems to work; by their next entrance, the couple's relationship is markedly warmer. The scene also indicates that the stereotype of the horsey aristocrat, the way to whose heart is through her hounds, is nothing new.

CASH TILTON

New York

Clinton Strikes Out Again at the Supreme Court

The Supreme Court has badly embarrassed the Clinton administration twice in under a month. Less than four weeks after unanimously rejecting the president's arguments in the Paula Jones case, the court refused on Monday to review a lower court order requiring the production of certain documents to Independent Counsel Kenneth Starr.

The documents are notes taken by two government attorneys of conversations with Mrs. Clinton about her activities in the hours after Vincent Foster's death and in connection with the mysterious reappearance in the White House living quarters of "lost" Whitewater billing records.

Rule of Law

By Douglas R. Cox

Rather than comply with the order to produce the notes, Mr. Clinton asked the justices to review the case further, which would have delayed Mr. Starr's investigation for many months.

The justices gave no indication of their reasons for refusing to hear the appeal, and it is unwise to read too much into the court's decision not to review a lower-court opinion. But the decision in such a high-profile case, however cryptic, inevitably carries some significance. Three things are striking about the court's refusal even to entertain President Clinton's arguments.

First, it suggests that the Supreme Court gives less weight to the Clinton administration's judgment that a case merits review than it has traditionally afforded the legal arguments of past administrations. Historically, the court has been inclined to place considerable weight on the president's belief that a case is worthy of

the court's time and attention. For whatever reasons, legal briefs from this White House are apparently received with greater skepticism by the court.

The court's skepticism is all the more striking in this case because the Clinton administration had raised the stakes so dramatically: The White House treated the case as one of extraordinary importance to the daily functioning of the executive branch, even enlisting two different sets of attorneys to make two different arguments. Lawyers from the law firm where Clinton confidant and former Commerce Secretary Mickey Kantor is now a partner argued on the president's behalf and at taxpayer expense for an absolute attorney-client privilege for government attorneys, a privilege so sweeping that it could be invoked in the most unlikely of circumstances to halt grand jury investigations into high-level wrongdoing by any administration.

In case that position struck the court as a little too reminiscent of the divine right of kings, the administration had another taxpayer-funded brief, submitted by its Justice Department, that advocated a less extreme version of the attorney-client privilege. The Justice Department's brief is of historic significance, because it takes a position in conflict with the department's law-enforcement function—a function that Mr. Starr championed.

Although restrained by the tradition of Supreme Court advocacy, which favors understatement over hyperbole, the president's rhetoric was designed to persuade the court that it was obligated to hear the case. For example, the independent counsel's arguments were "irresponsible," the lower court's decision was "extraordinary and unprecedented" and unless the court granted review, the president's ability to obtain sound legal advice would be "sub-

stantially impaired." A friend-of-the-court brief was even more apocalyptic, warning that the lower court's decision "will likely have an adverse effect on the current and future operation of not only the Office of the President of the United States, but also government at all levels."

Thus, the administration took unusual steps to persuade the justices that the case merited review. That the court nonetheless refused to hear the case only makes the administration's failure all the more remarkable. If the court's evident distrust continues, the Clinton administration will

The justices may have been reluctant to lend themselves to the administration's strategy of delay.

need to take that distrust into account in other cases in the years ahead. If the skepticism persists into the next administration, the relationship between the court and the executive branch will have changed profoundly.

Second, any skepticism about the administration's litigation position may have been underscored by the court's sensitivity to issues of delay. Both versions of the administration's argument shared one common element: They would have brought the independent counsel's investigation to a halt. Mr. Starr argued that Supreme Court review "would delay a highly sensitive criminal investigation; indeed several parts of the investigation could remain frozen for an additional three to twelve months."

The Supreme Court had seen this Clinton tactic before, in the Paula Jones case.

There, the president's legal arguments were ultimately rejected unanimously, but only after the president enjoyed the political advantages of months of delay, extending through the 1996 election cycle. The justices may have been reluctant to lend themselves to what could be characterized as a similarly cynical strategy of delay, in the context of a grand jury investigation.

Third, President Clinton has now twice brought claims of privilege to the high court—a "temporary immunity" privilege in the Paula Jones case and attorney-client privilege in the notes case—and has lost both times. In his dealings with Congress, he routinely relies on another privilege, the "executive privilege" made notorious by Richard Nixon. Mr. Clinton has greatly expanded the scope of executive privilege, invoking it far more times than President Bush did and extending it into novel settings, in efforts to avoid complying with congressional subpoenas. The administration's failures before the Supreme Court may embolden congressional investigators to test the president's unprecedented use of executive privilege as well.

By advancing extreme legal arguments, in settings in which the president has an unusual personal stake in the outcome, the Clinton administration has invited its two recent rebuffs by the Supreme Court and has undermined the credibility of the White House and the Justice Department in the process. As with so many of the administration's problems, its legal wounds are largely self-inflicted.

Mr. Cox, a Washington attorney, served in the Office of Legal Counsel in the Reagan and Bush administrations.

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The Wall Street Journal Interactive Edition -- June 25, 1997

Once Players Hash Out Deal, Details May Go Up in Smoke

By LAURIE MCGINLEY and JEFFREY TAYLOR

Staff Reporters of THE WALL STREET JOURNAL

WASHINGTON -- Suddenly, the nation's capital has a new summer sport: deciding the fate of Big **Tobacco**. It is a perfect pastime, featuring cartons of complex but potentially explosive details and truckloads of money.

The White House is in the game. The American Heart Association is, too. And so are teams of federal bureaucrats, public-health advocates and industry lobbyists charged with analyzing every line of last week's proposed settlement with the **tobacco** industry. In the end, though, the fate of the \$368.5 billion package will be decided by a small coterie of high-placed people in the Clinton administration, Congress and dueling interest groups. These few players are likely to dominate debate on the **tobacco** settlement, both in public and behind the scenes.

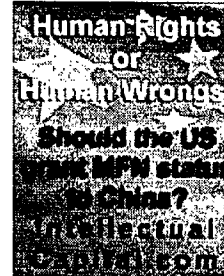
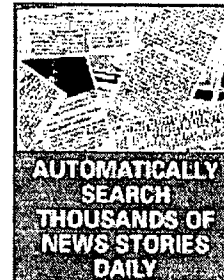
Here's who they are, and where things are headed:

First stop is the Kessler-Koop commission, the 22-member panel of health groups led by two highly visible, longtime tobacco-industry foes -- David Kessler, a former head of the Food and Drug Administration, and C. Everett Koop, a former surgeon general. Anti-industry members of Congress convened the panel to get guidance on the **tobacco** issue, but the administration -- and the public -- will pay close attention as well.

The panel will tackle the proposed settlement in detail and is sure to express consternation over a potential reduction in FDA authority on nicotine regulation. The group may present as early as Wednesday its own blueprint for a pact with the **tobacco** industry. One possible recommendation: Begin penalizing the cigarette makers after two years, not five, if teen smoking doesn't decline.

Major Changes Are Sought

Unanimity may prove elusive. Members of the American Medical Association, which was involved in



the final leg of the settlement talks, are debating whether to support the plan. The American Lung Association is implacably opposed to it. Most important, the marquee players, Drs. Kessler and Koop, are demanding major changes. Can the administration put together a winning strategy without them? "It would be tough," says Jerry Klepner, former assistant secretary for legislation at the Department of Health and Human Services.

The administration team, meanwhile, is plowing ahead with its own 30-day review, led by two senior officials: Bruce Reed, a moderate Democrat who was a chief architect of the president's welfare-overhaul strategy and is now the White House domestic policy chief, and Donna Shalala, who as secretary of Health and Human Services has made children's health issues a top priority. Ms. Shalala, in particular, has urged caution. "I never thought the settlement was going to be the be-all and the end-all," she says.

An array of agencies from the Justice Department to the White House budget office will be involved. HHS plans a three-hour organizational meeting Wednesday. The department will seek preliminary input from the FDA on a raft of regulatory issues and from the National Institutes of Health on addiction questions.

But much of the power play will be at the White House. Key to deciding whether President Clinton accepts the plan, and under what conditions, will be Deputy White House Counsel Bruce Lindsey, who kept tabs on the **tobacco** negotiations and is one of Mr. Clinton's closest friends. Vice President Al Gore also will be highly influential, since he could pay a heavy political price if the final deal is judged a pig in a poke a few years from now.

The administration plans to consult a wide range of interests from consumer groups to **tobacco** farmers before approving any final plan. And it will seek to get members of Congress involved as well. A daunting array of congressional committees have -- or can claim -- jurisdiction over various parts of the package; these groups include the Commerce, Judiciary, Ways and Means and Agriculture committees.

Disproportionate Influence

Chairmen and key members of these panels fall into both the pro and antitobacco camps, and lawmakers with long records of involvement in the **tobacco** issue will wield disproportionate influence over the legislation. They include Thomas Bliley, Republican chairman of the House Commerce Committee and a longtime friend of **tobacco** who has resisted the FDA's past efforts to regulate it. He has said little about his plans, but is expected to staunchly defend the interests

of **tobacco** farmers in his home state of Virginia and elsewhere.

On the other side will be Rep. Henry Waxman, a California Democrat whose stature as a persistent **tobacco** foe makes his an influential voice in the debate. Mr. Waxman has already sounded some of the loudest warnings about the settlement, citing among its "huge failings" the immunity it grants **tobacco** companies from punitive awards for past misconduct.

Senate Majority Leader Trent Lott of Mississippi, another key player, says Congress won't take up the issue until at least after Labor Day, and others say it won't until next year. But some lawmakers aren't waiting to put their stamp on the settlement. Senate Judiciary Chairman Orrin Hatch, a Utah Republican who is a **tobacco** opponent, has scheduled a hearing Thursday to quiz negotiators who struck the deal.

The **tobacco** companies also are wasting little time. Corporate executives and lobbyists have begun making phone calls and personal visits on Capitol Hill. And the industry's lawyers are hard at work, drafting legislation based on the settlement, which they plan to ask sympathetic lawmakers to introduce. "There will no doubt be proposed language from all interested parties, but ultimately Congress will write the bill," an industry spokesman says.

Industry players include Haley Barbour, former Republican Party chairman-turned-tobacco-lobbyist, and J. Phil Carlton, a former North Carolina Supreme Court justice, who served as negotiator for the **tobacco** companies during the settlement talks. At the **tobacco** concerns themselves, Steve Parrish, vice president of corporate affairs for Philip Morris Cos., and Tom Griscom, RJR Nabisco Holdings Corp. executive vice president for external relations, will also be heavily involved. So will Michael McGraw, senior vice president of Brown & Williamson **Tobacco** Corp., a unit of B.A.T Industries PLC.

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Economic Scene

Peter Passell

Who will pay the tobacco industry's huge bills? Smokers.

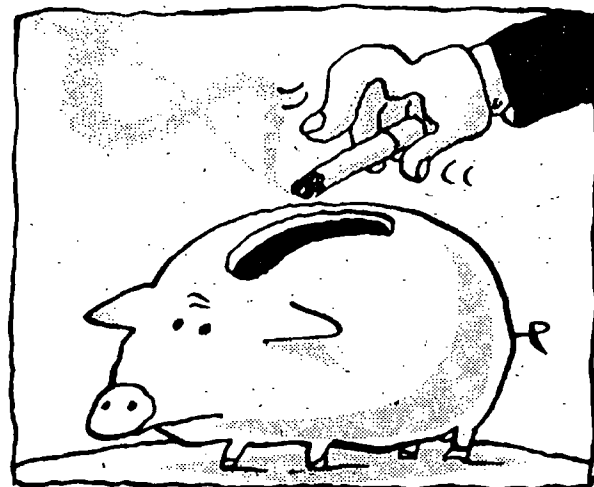
THE \$368 billion in damages to be exacted from the tobacco industry if the settlement announced last week is ultimately approved has already been sold as punishment that fits the crime. But that is not the way economists are likely to interpret it: since tobacco consumption by adults is not particularly sensitive to price, the industry should be able to pass nearly all of the \$368 billion on to their customers.

Well, smokers burden others with their smoking-related medical bills. Isn't it about time they paid their own way?

The best guess is that they already do. The deal struck by the state attorneys general may spare millions of young Americans from addiction to nicotine. But it will come at a considerable cost to those who cannot kick the habit. And a disproportionate percentage of those happen to be poor.

Under the agreement, damage payments will be linked to sales, much like an excise tax that is simply added to the price. Studies show that the demand for cigarettes is only modestly affected by price increases — a 10 percent increase, say, will reduce sales by far less than 10 percent. That means most of the cost will fall on consumers. Joseph Newhouse, an economist at Harvard's Kennedy School of Government, estimates that at least two-thirds of the bill will come directly out of the pockets of smokers.

Actually, smokers' share of the burden might prove considerably higher since the settlement is intended to make the market for cigarettes less competitive. Today price increases are constrained by the risk that one of the manufacturers will not go along with a price rise by the others. But in the post-settlement market, tobacco companies would have strong incentives to act in concert.



Niculae Asciu

Indeed, the agreement calls for legally sanctioned price-fixing, explicitly asserting that "in order to promote maximum reduction in youth smoking, the statute would provide for the annual payments to be reflected in the prices manufacturers charge for tobacco products." Analysts estimate that the cost of a pack of cigarettes, now \$1.80 to \$2, would rise at least 50 cents and perhaps as much as \$1.

Even if part of the settlement cost does come out of profits, David Vladeck, director of Public Citizen's litigation group, points out that the impact will be buffered by Uncle Sam. "The settlement specifies that all payments will be treated as ordinary business expenses," he notes. So unlike punitive damages awards levied by a court, they are fully deductible from corporate income taxes.

Forcing smokers to bear much of the cost of compensating the states for Medicaid payments for smoke-related illnesses looks like rough justice. Since the health care costs of smoke-related illnesses are estimated at about \$50 billion annually — nearly four times the excise taxes collected last year on tobacco products — it seems only fair to add the \$20 billion or so in annual payments required by the tobacco settlement.

But the arithmetic here is not so straightforward. The total lifetime outlays for smokers' medical care are not much larger than for non-smokers. And since smokers die earlier, they collect less from Social Security and pensions.

A Rand Corporation study in the late 1980's directed by Willard Manning, now an economist at the University of Minnesota, estimated that the cost of smoking not paid by smokers themselves came to just 15 cents a pack — less than state and Federal tobacco excise taxes. This cost is probably higher now since medical bills have risen and the health impact of secondhand smoking is greater than estimated a decade ago. But so, too, are excise taxes. The Federal excise tax on cigarettes is 24 cents a pack, while state taxes vary from 2.5 cents in Virginia to 82.5 cents in Washington.

Smokers, it so happens, are less able to afford new taxes than the population as a whole. And while some of the money from the proposed settlement would be used to finance medical care for poor children, the overall distributional impact of the settlement is almost certainly regressive.

Still, Michael Pertchuk, a former chairman of the Federal Trade Commission who now heads the Advocacy Institute, a nonprofit organization with close ties to the anti-smoking movement, views the settlement in pragmatic terms. A deal now, even on terms favorable to the industry, he argues, is better than a harsher deal years down the road. The combination of higher cigarette prices, tighter rules on marketing and direct financial incentives to end recruitment of new smokers should have an enormous positive impact on public health.

And Jeffrey O'Connell of the University of Virginia Law School points to another reason to move ahead despite the flaws. A failure to short-circuit the legal battle over cigarette liability could tie up the courts for decades, deny financial relief to the sick and funnel even more of the money from any settlement to trial lawyers. "Almost anything," he said, "is better than litigation."

Tobacco Deal Gives Billions to the Undeserving

To the Editor:

Re "Cigarette Makers in a \$368 Billion Accord to Curb Lawsuits and Curtail Marketing" (front page, June 21):

The Value Line Investment Survey forecasts 1997 tobacco industry profits to be \$13 billion and expects the long-term net profit growth rate to be 11 percent a year, excluding any impact from the negotiations.

Adding in the settlement payments, we can calculate that the tobacco industry is giving up 41 percent of future net profits to settle a bottomless pit of potential penalties for "past misconduct." Good deal for tobacco, yet probably more than the taxpayers are entitled to!

We've known for 30 years that cigarettes cause serious health problems. The Surgeon General first forced the tobacco industry to put warning labels on cigarettes in 1965. Since then, more severe warnings have been added, and restrictions have been imposed on advertising and on where people are allowed to smoke.

Yet the Government has continued to subsidize the cultivation of tobacco, and Federal and state governments have found it convenient to rely on the tax revenue resulting from cigarette sales.

The tobacco companies aren't the villains; they engaged in the sale of a legal product. The villains are we taxpayers and our elected representatives, who allowed the subsidies to continue despite the research demonstrating the harmful effects of smoking.

BRYANT A. MUENZEN
Westford, Mass., June 21, 1997

No Rights for Deceived

To the Editor:

Everyone but young people, nicotine addicts and the public seems to be benefiting from the tobacco deal (front page, June 21). Any agreement that limits the Government's ability to regulate nicotine or the rights of a person who has been sickly hustled as an adolescent into a nicotine addiction is a bad deal for the public.

GEORGE LAKEHOMER
Chicago, June 21, 1997

Addicted to Revenue

To the Editor:

What is most pernicious about the proposed tobacco settlement (front page, June 21)?

In order to pay \$368 billion over 25 years, the industry would have to earn that much. Americans would become invested in tobacco's well being, paying the cost in health and lives.

Tobacco would become like the gambling industry, regulated but also promoted by state and local governments addicted to a revenue source.

JONATHAN D. KAUFELT
Santa Monica, Calif., June 23, 1997

Willing Consumers

To the Editor:

Whether or not the tobacco deal is worthy, arguments against it based on its inability to "force the industry to actually reduce the amount of smoking by youngsters under 18" (editorial, June 21) are irrelevant. How do we expect big tobacco to curb use by children? Cigarette packs already carry dire labels that under the agreement will grow more dire.

The news media regularly make the industry the villain. Will campaigns by the industry itself be of more than marginal value? Since when is it incumbent on a business to enforce laws regulating its own product rather than simply abide by them? Do we force car makers to chastise children without licenses not to drive?

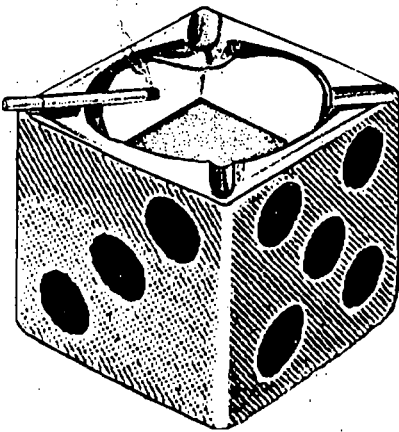
The real culprit is the willing consumer, and the inability of that consumer's role models — teachers, parents and schools — to provide better direction. And if tobacco companies find ways around restrictions, it is because millions want their product.

JEFF PHILLIPS
Austin, Tex., June 21, 1997

Put Limits on Production

To the Editor:

The proposed tobacco agreement, though giving states some additional income and further enriching some trial lawyers, misses the most im-



Cathy Hull

portant public health requirement (front page, June 21): to guarantee a decrease in cigarette consumption.

Experience has shown that reductions in tar and/or nicotine content do not necessarily reduce cigarette-related health problems. Only with a required annual reduction in cigarette production could we be sure that the cigarette-related health problems would disappear.

Congress can make this possible by mandating the decrease. Annual decreases of 5 percent would reduce consumption to 60 percent of the

present level in 10 years and 36 percent in 20 years. Price increases would insure that the proportion of sales to teen-agers would also decrease.

HOWARD AYER

Cincinnati, June 21, 1997

The writer is professor emeritus of environmental health at the University of Cincinnati.

U.S. Exports Disease

To the Editor:

"A Worrisome Tobacco Deal" (editorial, June 21) pays inadequate attention to its worst aspect.

The settlement encourages tobacco barons to continue undermining the health of children by exporting their product all over the world, as it selfishly attempts to protect our youth.

HAROLD HOWE 2D
Hanover, N.H., June 23, 1997

Nation of Victims

To the Editor:

I am appalled at the tobacco settlement, our judiciary's latest effort to encourage irresponsibility (front page, June 21). The tobacco companies will now be required to compensate states for the costs of treating smoking-related illnesses. But should a smoker who has chosen to puff his life away be considered a victim?

If this assumption has any validity, shouldn't junk-food companies pay for diabetic patients? And liquor companies for alcohol-related illnesses? Or should people who choose to imperil their health be responsible for the costs? Whatever happened to reason?

ELIZABETH SERENI

New York, June 21, 1997

Courts Beat Congress

To the Editor:

Philip K. Howard (Op-Ed, June 24) is right that our legislative leaders, not the courts, have the responsibility to pass laws that protect the public from harmful corporate activity. But for decades they have been unable or unwilling to exercise this right with or without a "settlement" from the industry. The tobacco lobby, facilitated by our faulty campaign finance system and manipulated public opinion, has worked to prevent this.

Only the threat of huge punitive judgments from civil class-action and state government lawsuits has forced the tobacco industry to agree to stop its interference and submit to legislative control.

Understandably, the industry would like to see Congress disarm the judicial system so that it can resume its fight another day with a new strategy. Let's not bargain away the judge and jury until Congress demonstrates that the politicians can do a better job.

BILL WOERNER
Portsmouth, N.H., June 24, 1997

The New York Times

THURSDAY, JUNE 26, 1997

Citing Flaws, Health Panel Rejects Deal On Tobacco

By NEIL A. LEWIS

WASHINGTON, June 25 — A panel of the nation's leading public health experts set up to advise Congress on the proposed \$368.5 billion tobacco settlement today called the agreement unacceptable, saying it would undermine the Government's ability to regulate nicotine in cigarettes.

In the first major concerted response by health advocates to the proposed settlement announced last Friday, the special committee said it contained another major flaw: that the proposed penalties on the nation's cigarette makers if they failed to reduce smoking levels among young people were far too small to have an impact.

The panel includes representatives of the American Medical Association, the American Cancer Society, the American Lung Association, the American Heart Association, the American Academy of Pediatrics and the American Academy of Family Physicians as well as several anti-smoking groups. It is headed by Dr. C. Everett Koop, a former surgeon general, and Dr. David A. Kessler, a former head of the Food and Drug Administration, both prominent in the public health field.

The committee members offered a variety of other complaints about the proposed settlement, which was negotiated by the industry, plaintiffs' lawyers and state attorneys general. But the greatest concern was about restrictions it imposed on the F.D.A.'s authority to regulate nicotine and tobacco, a right upheld by a Federal court in April.

Although the agreement's broad terms conceded that authority to the F.D.A., the details, when made public, revealed numerous provisions that impose burdens on that power.

Dr. Mohammad Akhter, who represents the American Public Health Association on the committee, said a complex section of the settlement would undermine that authority.

"This is absolutely unacceptable," he said, expressing the group's consensus. "We have to be very explicit that this is one area that is not negotiable."

The stance of the Advisory Committee on Tobacco Policy and Public Health, as the group is formally known, is expected to carry great weight among those who will have to evaluate the pact, which was negotiated over many months. In addition to Congress, President Clinton would be hard-pressed to agree to any terms that the committee rejects.

Mr. Clinton has ordered his own review of the proposed settlement by Administration officials, which is expected to take at least a month. White House officials suggested that the President is almost certain to recommend changes in the proposal.

While some health experts have criticized parts of the agreement in recent days, there was some uncertainty as to how the public health community would react to the appeals of the state attorneys general that the deal provided unprecedented and early health benefits.

The agreement was hailed as a victory by Michael Moore, the attorney general of Mississippi who led in

the talks. Mr. Moore acknowledged that the deal was imperfect but said that was the price of compromise. At a meeting of state attorneys general in Grand Teton National Park today, he said he would lobby ceaselessly for its ratification by Congress and the President.

The board of directors of the Philip Morris Cos. unanimously approved the proposal today, Bloomberg News reported.

Under the plan, the tobacco companies would end billboard advertis-

**Concern that the
F.D.A.'s authority to
regulate nicotine will
be undermined.**

ing of cigarettes, as well as, store displays of tobacco products, sponsorship of sporting events, vending machine sales and giveaways of merchandise bearing cigarette brand logos.

They would also pay \$368.5 billion over the next 25 years to compensate states for the costs of treating smoking-related illness, to finance nationwide anti-smoking programs and to underwrite health care for millions of uninsured children. The tobacco industry also would admit for the first time in prominent new warning labels on every package of cigarettes that smoking is lethal and addictive. An estimated 45 million

Americans smoke cigarettes.

Dr. Kessler said that although a Federal court in Greensboro, N.C., recently upheld the F.D.A.'s authority under current law to regulate nicotine in cigarettes, the proposed settlement would impose new limits on the F.D.A.'s power.

In addition to new high standards of proof of nicotine's addictiveness, the agency would have to prove that reductions in nicotine levels would lead to measurable health improvements, a burden never before imposed on the F.D.A. The agency also would be forced to show that any means of making cigarettes safer, including reduced nicotine levels, would not lead to a huge rise in black market high-nicotine cigarettes.

Dr. Koop has complained that the penalties on the tobacco companies if they do not meet prescribed goals for reducing underage smoking would amount to only a few cents a pack.

Scott Williams, a Washington public relations consultant hired by the tobacco industry as a spokesman on this issue, said today that the proposed settlement would receive a fair, thorough and objective review by Congress.

"People should look upon the settlement as a whole package," he said. "They also should be aware of the enormous compromises made by the industry which will deliver significant progress in public health, especially in the area of reducing smoking by people who are underage."

Today's unequivocal and broad-based condemnation of the proposed deal came at the first regularly scheduled meeting of the committee of health experts since the proposal's details were announced.

The New York Times
THURSDAY, JUNE 26, 1997

Children Place Low in Adults' Esteem, a Study Finds

By PETER APPLEBOME

Adults' negative views of the nation's teen-agers and younger children are so widespread that only 37 percent believe that today's youngsters will eventually make this country a better place, according to a new national study by a public-policy research organization.

The study, "Kids These Days: What Americans Really Think About the Next Generation," finds a stunning level of antagonism not just toward teen-agers but toward young children as well.

Two-thirds of adults surveyed for the study came up with negative adjectives like "rude," "wild" and "irresponsible" when asked to describe teen-agers. Nearly half described younger children as "spoiled," and nearly a third called them "lazy."

Officials with the research organization, Public Agenda, based in New York, said that beyond the age-old and somewhat predictable divide between generations, the findings reflected a stark change from earlier surveys, both in the degree of adult alarm and in the broadening of its focus to younger children.

And, they said, the responses demonstrate a fundamental concern about youngsters' moral and ethical values that is often left out of policy discussions on children's issues.

"Adults are not confused, and they're not ambivalent," said Deborah Wadsworth, executive director of Public Agenda. "Instead, they're virtually riveted by the need to teach kids integrity, ethical behavior, respect, civility, compassion, all those

A startlingly negative view of American youth.

characteristics without which these children will never become responsible adults and our society can't function. They're focused like a laser beam on the question of character, and if the political leadership and policy initiatives don't reflect that, they're out of alignment with the concerns the public has."

Public Agenda's report, to be formally issued today, was based on telephone interviews with 2,000 adults last December. The poll, whose margin of sampling error was plus or minus two percentage points, was supplemented by interviews with 300 black and Hispanic parents, with six focus groups at sites across the country and with youngsters 12 to 17 years of age.

The issues raised in the report are particularly relevant at a time when the rise in one-parent households and two-career families has made child-rearing a far more difficult task.

What is unclear from the responses, though, is how much the public attitudes toward children reflect real behavioral problems, and how much they instead reflect media portrayals. The report comes at a time when a series of disturbing, even morally unfathomable crimes involving youngsters have attracted enormous popular attention.

The study, one of several that Public Agenda has done on issues involving children or education in recent years, found that adults across demographic lines, and including both parents and non-parents, tended to view young people with feelings of alarm or fear.

"Americans are convinced," the report concluded, "that today's adolescents face a crisis ~~not~~ not in their economic or physical well-being but in their values and morals."

More than 6 in 10 adults said there was a very serious problem in young people's failure to learn fundamental moral values. That failure is viewed as a broad-based social problem, not the province of the poor. Nine in 10 adults said the failure to learn values was widespread, while only 8 percent said it was mostly among youngsters from poor families.

Much of the blame was leveled at parents and the schools. Only one in five respondents said it was very common to find parents who are good role models for their children. And almost half said schools failed to give children a good education and provide a safe, orderly environment.

Respondents ranked school improvement, more after-school programs, flexible work schedules for parents, nightly curfews and more involvement by volunteer organizations like the Boy Scouts as the most effective ways to address the problem.

More government financing for child care and health care was only 11th of 12 such solutions, and more spending for welfare programs ranked last, a finding that ran counter to the priorities of some child advocacy groups.

Jeanne Brooks-Gunn, director of the Center for Children and Families at Teachers College of Columbia University, said that while adults' expression of concern about adolescents was hardly anything new, she was surprised by the degree of antagonism that the study found toward young children.

She said some of the remedies identified by the respondents were perceptive, especially after-school programs, which, she said, should seek to attract large numbers of youngsters and provide not only learning and recreation but also opportunities for children to interact with adults.

Richard Weissbourd, an expert on family policy at Harvard University, said the findings probably reflected both reactions to the young themselves and adults' projecting their fears about society and change onto young people.

And while he said the public's focus on values was an important message for child advocates, he also said the message did not lend itself to easy solutions.

"I think it's very important to find a way to talk about values, but that does not mean you can easily teach values or that it leads to simple solutions," he said. "I don't think it does."

Copies of the report may be obtained from Public Agenda, 6 East 39th Street, New York, N.Y. 10016, for \$12.50 each.

The New York Times

THURSDAY, JUNE 26, 1997



Tobacco settlement

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Health groups reject tobacco settlement's nicotine-control limits

WASHINGTON - Public health groups took a unanimous stand: Restrictions on government control of nicotine that cigarette makers wrote into the **tobacco** settlement are "absolutely unacceptable."

But Mississippi Attorney General Michael Moore defended the deal as the Senate Judiciary Committee opened hearings on the agreement Thursday morning. Moore called the settlement the best way to immediately fight teen-age smoking.

"Is it perfect? Of course not, there are things that all of us would like to change. But this agreement, forced on big **tobacco**, dictates changes that three or four years ago all of us would have thought impossible," Moore said.

Sen Orrin Hatch, R-Utah, promised a long series of hearings as Congress debates whether the settlement is truly in the best interests of America.

"As provocative as this agreement's possibilities are, the questions it immediately raises are very, very complicated," Hatch said. "What we do here will have a profound imprint on what is done in the rest of the world ... and a profound imprint on health in our country."

Skeptical senators asked whether big **tobacco** would reject the deal if Congress attempts to make changes before ratifying it. "Congress makes the laws in this country," said Meyer Koplow, who represented Philip Morris in the negotiations. "We understand this is going to go through the legislative process."

On Wednesday, former Food and Drug Administration chief David Kessler said **tobacco** companies will have to compromise on demands that would keep the FDA from quickly making cigarettes less addictive.

"Personally, I would like to see a resolution," Kessler said. But as the settlement is worded Thursday, "take-it-or-leave-it is just not going to fly. If that's the notion, this is dead."

But one negotiator warned the health groups that if they're too critical, they could lose the biggest concessions that **tobacco** companies have ever made. The deal offers strict curbs on **tobacco** ads, a huge public smoking ban and billions of dollars to fight **tobacco** use by teens and adults, said William Novelli of the Campaign for **Tobacco-Free Kids**.

"What I heard this morning makes me afraid we will drive the industry and its legislative allies away," he said. "I am asking us to all think realistically."

Congress must ratify the deal, which seeks to settle 40 state lawsuits against the industry by setting national **tobacco** policy.

Nicotine control wasn't the only concern of the nation's top public health groups, who, led by Kessler and former Surgeon General C. Everett Koop, are advising President Clinton and lawmakers on last week's proposed **tobacco** settlement.

They also declared that the deal's penalties if **tobacco** companies don't cut teen-age smoking are, in Koop's words, "woefully inadequate."

The deal "has to be fixed, it can be fixed and we will fix it," Koop said. Will the **tobacco** industry agree?

"That's not my problem," he said. "Whether Congress will go along is my problem."

While Congress got its first close look at the settlement today, **tobacco** legislation isn't expected to be considered before fall.

In a sign of how hard a congressional **tobacco** fight may be, the FDA lost a battle Wednesday for federal money to crack down on illegal **tobacco** sales to minors.

A House appropriations subcommittee approved \$15 million for the FDA to divide among the 50 states to conduct stings and take other steps against stores that sell **tobacco** to teen-agers. The FDA had requested \$34 million.

The FDA has published regulations to control nicotine like it does any other drug, and a federal judge in North Carolina upheld that authority. But the **tobacco** settlement sets restraints, including:

- ☐ FDA must prove that lowering nicotine levels would substantially aid health, be technologically feasible and not create a black market. The black market provision alone could be in court for years, said a lawyer the American Cancer Society hired to analyze the deal. Attorney Steve Lawton called it "a provision full of mischief."
- ☐ FDA could not ban nicotine until 2009.
- ☐ To ban nicotine, FDA would have to follow time-consuming rules it has not used in 15 years that require essentially a trial of the proposed move before an administrative law judge.

Also under the settlement, teen smoking would have to drop 30% in five years and 60% in 10 years or cigarette makers would be fined \$80 million per percentage point that goal was missed.

But the fine is tax deductible, so companies could still make money off teens, the health panel said. It called for stiffer fines that are not tax deductible.

And to address concerns that the settlement may foster overseas **tobacco** sales, the Koop-Kessler panel will ask Clinton to call an international summit on **tobacco** control.

☐ *By The Associated Press*

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USA TODAY NEWS • SPORTS • MONEY • LIFE • WEATHER • FEEDBACK • SEARCH • INDEX

FRIDAY, JUNE 27, 1997

USA TODAY

OPINIONLINE

What people are saying about the tobacco settlement

Why let tobacco cop a plea?

A historic settlement was reached last Friday between the tobacco industry and 40 state attorneys general. The proposal still must be approved by the president and Congress. Since the deal was announced, many have hailed it as a step in the right direction while also finding fault with some specific elements. Some views:

STANTON GLANTZ, UC San Francisco professor and anti-smoking activist, in the *Los Angeles Times*: "A jury has voted the death sentence for Timothy McVeigh because he killed 168 Americans. The tobacco industry has killed 10 million Americans since 1964. No attorney general or politician even considered letting McVeigh cop a plea; the same should be true for the tobacco industry."

THE PHILADELPHIA INQUIRER in an editorial: "Tobacco-related diseases kill more than 1,000 Americans a day. Every two months, tobacco kills more Americans than died in Vietnam. Each day, several thousand teen-agers risk deadly addiction by starting to smoke. So the key question about the new deal ... is this: How well would it reduce the body count from this lethal, but legal, product? That's what public-health experts, the Clinton administration and Congress must decide."

(N.Y.) DAILY NEWS in an editorial: The deal does seem to have plenty of appealing features, including a ban on tobacco sales from vending machines, as well as an end to the use of cartoon characters and people in cigarette ads, an end to cigarette brand sponsorship of sports events, an end to billboard advertising, company fines if youth smoking doesn't decline and bigger and starker health warnings on packaging. But those hoping for the kill shot against Big Tobacco are bound to be disappointed. The payout ... is manageable for an industry that makes \$45 billion a year. ... (And) taxpayers will be helping out because the \$368.5 billion in payments are tax deductible."

CHICAGO TRIBUNE in an editorial: "The deal raises ... concerns about the requirement that the tobacco companies surrender their First Amendment rights. The accord would ban all billboard and Internet ads and end the use of human and cartoon figures in ads — despite the constitutional protection afforded even to commercial speech. It amounts to government directing what is a proper ... message. That will surely serve as a model for restricting ads by other legal businesses. ... These restrictions are billed as a way to prevent youngsters from taking up smoking. But there is little evidence that ad bans have much effect."



AP

"The proposed provisions could make it impossible for the FDA to regulate nicotine or tobacco products."

David Kessler,
co-chairman,
Advisory Committee on Tobacco
Policy and Public Health

ANDRE FERGUSON, columnist, *Time* magazine: "In 1997, smoking sets you apart — literally. At restaurants we are seated back by the kitchen door, where we dine to the music of busboys clattering silverware into milky dishwater. At work we smoke huddled in the rain and snow, risking pneumonia for (we are told) the sake of the public health. The unintended consequence of each new restriction has been to make smoking a badge of honor, a sign of one's refusal to give in. And now, with last week's agreement — with this consensus arrived at by America's cynics and pols and buttinskies — the attractions of smoking can only grow."

THE WASHINGTON TIMES in an editorial: "The mob made tobacco companies an offer they couldn't refuse last week: \$368 billion, in unmarked bills, or else. Still, as protection rackets go, this one could work out for both sides. The tobacco industry would pay for 'protection' from major litigation and other assaults. In return, trial lawyers, states' attorneys general and other gang members would get what they really want: a piece of the action. ... What the deal will mean for public health, the nominal reason for undertaking the deal, is far less clear."

THE NEW YORK TIMES in an editorial: "The great difficulty in assessing this agreement ... is that gains and losses for the tobacco industry, for the states and for plaintiffs are much clearer than the impact on reducing smoking. Yet smoking reduction should be the primary goal in any settlement. ... This is a pivotal moment in the fight against smoking. Whatever deal is ultimately approved is apt to be the last major word from Washington for years to come. The tobacco industry was driven to the table by the combined threats of liability suits, federal regulation, public outrage and possible perjury indictments against top executives. Before these weapons are muffled in a comprehensive settlement, the public must be sure that the health gains will be real and enforceable."

King set the stage for Disney boycott

Last week's announcement of a boycott of Disney and its subsidiaries by delegates at the Southern Baptist convention created the usual stir from separation-of-church-and-state diehards and others. They assert the Baptists should stick to prayer and hymn singing and leave commerce to the capitalists. But boycotting of American business interests by religious groups on moral grounds is nothing new. Black ministers and their parishioners have used the boycott as an effective tool for the past half century.

One of the most successful boycotts in our nation's history was that of the Montgomery, Ala., bus system in 1955, led by Dr. Martin Luther King Jr., a Baptist minister. The boycott, which lasted 381 days, resulted in so much lost revenue for the bus system that its owners and the city fathers acquiesced and integrated the buses.



Commentary

By Gwen Daye Richardson

This year alone, the Rev. Jesse Jackson has called for boycotts of Mitsubishi, Texaco and Chevron for the companies' histories of racial and sexual discrimination.

The NAACP, which until recently has had religious leaders as its chief spokespersons, is boycotting Holiday Inn, Westin and Best Western because the hotels failed to hire and promote more blacks.

Boycotts by white Christian groups are a somewhat new phenomenon but have been occurring more frequently. Last year, a Right to Life chapter in Colorado organized a boycott of US West Direct Yellow Pages to protest the wording of an ad. And the Assemblies of God, a Christian denomination much smaller than the Southern Baptists, called for a boycott of Disney last August, accusing the ABC parent of "abandoning its commitment to strong moral values."

For Christians who believe that their faith compels them to take a public stand against immorality rather than simply tolerate it, many aspects of the American culture personify a clear line of demarcation between right and wrong. In their view, some companies, such as Disney, have crossed that line. The Southern Baptists want Disney, which offers health benefits to domestic partners of gay employees and allows "Gay Days" at its theme parks, to stop its "promotion of homosexuality."

Apparently Disney believes that because it produces some quality children's films, Americans should overlook practices and policies of its subsidiaries and other firms it owns.

But Disney has more to be concerned about than just the 5,000 convention delegates. A *Newsweek* poll showed that about three in 10 Americans — about 50 million adults — would join the Southern Baptists in their boycott.

Christians have every right to express their outrage at society's moral decay promulgated through entertainment vehicles. Disney and other corporate conglomerates can ignore these concerns at their own peril.

Gwen Daye Richardson is editor of *Headway* magazine in Houston, Texas.

Hong Kong to USA: Cool it; we're OK

HONG KONG — Is next Monday's midnight hand-over here a celebration or a funeral? Much of the world seems unsure. But most of Hong Kong's 6.3 million people are going to celebrate. Big time.

This will be the most intensely covered international news event of the year. About 8,000 media reps worldwide. More than 1,000 from the USA, including all the top TV personalities.

With such a media mass, you can expect anything and everything in print and on the air. From fact to fiction. In fact, fiction already has begun. Examples:



► **Fiction:** Some U.S. journalists have called this a "takeover" or a "suffocation" by China.

► **Fact:** This is indeed a legal, orderly hand-over. Negotiated in 1984 by Britain's Prime Minister Margaret Thatcher and China's late leader Deng Xiaoping.

Why now? Because a 99-year lease which followed a series of Anglo-Chinese wars, during which the Brits grabbed Hong Kong, expires next Monday.

During most of the past century, Britain ruled Hong Kong the way it did its other colonies. Dictation, not representation. Only after the hand-over deal was struck did Britain introduce a little democracy here.

Some Johnny-come-lately journalists who don't understand that would have you believe historic democratic rights now are endangered. Fiction. In fact, free and open elections in 1998 are part of the hand-over agreement.

Most here hate communism but regard China as the "Motherland." The country, not the political system. And polls show most believe that the "one country, two systems" Thatcher and Deng negotiated will work.

There will be some glitches, of course. Hong Kongers fear the Western press will blow those out of proportion and misguided political punishment may follow. More likely from Washington than Beijing.

Their message to the media and especially to the USA: Cool your criticism. We'll be OK.

FEEDBACK

Other views on Hong Kong

"Chinese used Hong Kong as the door to flee war, repression and human rights abuses. If China were a free country, there would be no need for a door, but it is not yet a free country and will not be in the foreseeable future. What doorway will the Chinese people have when pressures inside China get too great?"

— Harry Wu, Chinese dissident

"Press freedom advocates have reason to worry about the future of Hong Kong's vibrant media. In China, the kind of reporting that ensures the free flow of information necessary for a democratic society earns prison terms. Whether independent publications fall silent will be a barometer of China's good faith."

— William A. Orme Jr., exec. dir., Comm. to Protect Journalists

Al Neuharth's column appears on Fridays.

USA TODAY

FRIDAY, JUNE 27, 1997



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Addiction admission called a must

Senators pick apart tobacco settlement

06/27/97

By David LaGesse / The Dallas Morning News

WASHINGTON - Tobacco executives must admit that nicotine is addictive if they want to win congressional approval of their proposed \$368 billion litigation settlement, leading senators said Thursday.

The condition, which would amount to a self-repudiation of what tobacco executives swore to Congress just three years ago, emerged from the first congressional hearing on last week's agreement.

While applauding the agreement, many senators also leveled criticism at specific portions - including proposed tax-deductibility for much of the settlement and limits on federal tobacco regulation.

But the day's most heated exchanges centered on the question of tobacco's addictiveness, which executives denied at a pivotal 1994 hearing.

"Part of what the American public is looking for, in my view, is an acknowledgment . . . that you all are such crumbs in the way in which you've dealt with the American public," said Sen. Joseph Biden, D-Del. "It really is despicable."

An industry negotiator said he couldn't say if the industry now considers nicotine addictive, although executives agreed last week to put that message on cigarette packs. Only the executives themselves could say if they agree with the message, said Meyer G. Koplow, an attorney for Philip Morris, the nation's largest tobacco firm.

The companies will provide someone to answer the question, he said.

"I do believe we're going to have to bring in executives to admit that they now accept the fact that nicotine is addictive," said Sen. Orrin Hatch, R-Utah, chairman of the Senate Judiciary Committee.

The issue illustrated the sometimes testy hearing



Thursday, in which senators promised to make changes in the settlement reached last Friday between the tobacco industry and its enemies. That "agreement in principle," signed off on by negotiators for 40 state attorneys general, private lawyers, public health groups and tobacco executives, would settle most smoking-related lawsuits. It must be approved by Congress and the president to become law.

President Clinton plans to comment Friday morning about the administration's review process, his press secretary, Mike McCurry, said.

Mr. Clinton is leaning toward embracing last week's tobacco settlement, provided changes are made, including making sure the government can still effectively regulate nicotine, two Clinton administration aides familiar with a White House review of the accord told Bloomberg News.

Mr. Clinton hasn't endorsed the deal directly, saying he wants to make sure it delivers on his promise to protect public health and reduce teen smoking. "I'm going to do my best to see that this whole endeavor, which is massive, results in something positive for the American people. But we have to have those tests - public health, child smoking," Mr. Clinton said during a news conference last weekend.

The hearing Thursday began what senators predicted will be a long, complex process of considering the proposed settlement. The landmark agreement brought former antagonists, leaders of the anti-smoking effort and a lead attorney for the tobacco industry together to defend the deal they struck just last week.

Despite its many flaws, said Michael Moore, the Mississippi attorney general who led negotiators for states that are suing tobacco companies, the agreement deserves congressional support.

"This agreement forced on Big Tobacco dictates changes that three or four years ago all of us would have thought impossible - and it does it against a hostile, combative and determined enemy."

It's also more than the federal government has ever proposed, he noted: "We have an agreement that will begin to save lives now."

The proposed settlement would require a raft of law changes to go into effect. Attorneys for both sides are drafting legislation to reflect the 68-page memorandum signed by attorneys last Friday and have warned that changes could unravel the pact.

The quick attention from the Judiciary Committee reflected the strong political interest that will buffet the bill as it makes its way through numerous committees and

likely changes, Mr. Hatch said.

"I don't think Congress is capable of just taking what you've done," he told the panel.

In a taste of the wrangling to come, an anonymous senator invoked a little-used procedure to block the hearing. That forced Mr. Hatch, halfway through the proceeding, to declare it a "briefing," to laughter in the crowded hearing room.

The tax aspects of the deal clearly irked senators from both parties. Taxpayers could foot more than a third of the proposed \$368 billion settlement because the tobacco companies would deduct the payments as normal business expenses, said Sen. Charles Grassley, R-Iowa.

"This agreement asks the American taxpayers, both smoking and nonsmoking, to subsidize these so-called industry payments," Mr. Grassley said.

But the federal government would lose little tax revenue because the industry would be forced to raise prices to cover the settlement costs, Mr. Koplow of Philip Morris said. The agreement, however, includes \$60 billion of what anti-tobacco negotiators called punitive damages. That portion, at least, should not be tax-deductible, said Sen. Patrick Leahy, D-Vt.

"Somebody should not get a tax break for payments that are seen as punishment for outrageous conduct - the basic definition of punitive damages," he said.

But the agreement signed last week would allow the industry to consider all the payments as normal business expenses, if approved by Congress.

The tobacco industry also continues to lobby against a Senate proposal to raise cigarette taxes by 20 cents to fund insurance premiums for children's health insurance. The stance belies the "change in corporate America" that tobacco companies say is reflected in last week's agreement, said Sen. Ted Kennedy, D-Mass.

Several senators also criticized a portion of the agreement that would define how nicotine can be regulated by the Food and Drug Administration. Those provisions have drawn sharp criticism from many health officials, including former FDA chief David Kessler and former U.S. Surgeon General C. Everett Koop.

The tobacco industry for the first time would accept that nicotine can be regulated by the federal government. The industry also demanded, however, that the FDA be barred from banning nicotine for at least 12 years. And before reducing nicotine, the FDA would have to prove the change would not create a black market for cigarettes sought by addicted smokers.

"That's a hurdle that I don't see how the FDA could ever jump," Mr. Kennedy said. "Even if you're going to have black marketing, isn't it still, in terms of the public health interest, important that they're going to be able to regulate it?"

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LEVEL 1 - 1 OF 4 STORIES

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July 01, 1997, Tuesday 21:28 Eastern Time

SECTION: Domestic, non-Washington, general news item

LENGTH: 654 words

HEADLINE: IN **TOBACCO** TALKS, NORTH CAROLINA HEAVYWEIGHTS CAME TO AIDE OF
HOMESTATE EDs: With **TOBACCO-CARLTON**. By CHRIS BURRITT

BODY:

c.1997 Cox News Service

When the **tobacco** industry found itself shut out of settlement talks last fall, it turned to four prominent North Carolinians to win a place at the bargaining table.

The pivotal players were North Carolina Gov. Jim Hunt, North Carolina Attorney General Michael Easley, former state Supreme Court Justice Phil **Carlton** of Pinetops, and White House Chief of Staff Erskine Bowles of Charlotte.

Here's how it came together, according to **Carlton** and Easley.

Cigarette companies were shocked when they learned that public health groups, states' attorneys general suing the **tobacco** industry, and lawyers for sick smokers were pulling together national legislation to regulate the industry.

Easley said the **tobacco** industry was plotting its own legislation to protect itself from mounting legal attacks. The opposing sides, Easley said, wanted to ''steamroll'' each other, but he feared a brutal, unproductive fight in Congress.

''I knew that plan would never work, so I had to get them together,'' Easley said.

In October, Steven Goldstone, chief executive of RJR Nabisco, R.J. Reynolds **Tobacco** Co.'s parent, told Easley the company wanted to resolve mounting litigation by sick smokers.

Goldstone also asked Hunt, a Democrat and friend of President Clinton, to alert the president that the industry wanted to join negotiations. The governor relayed the message in a visit with Clinton in the president's helicopter at Camp Lejeune, N.C., on Dec. 23. Also present was Bowles, the president's new chief of staff whose family has strong ties to Democratic politics in North Carolina.

Goldstone was looking for the right person to negotiate on behalf of RJR. Hunt recommended **Carlton**, a close political ally and former law partner. Both had done legal work for Reynolds over the years.



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Cox News Service, July 01, 1997

Goldstone hired **Carlton**, who was later retained by other cigarette makers as their point man in negotiations. First, though, **Carlton** had to secure a seat at the bargaining table.

In January, Bowles arranged for **Carlton** to meet with Bruce Lindsey, a deputy White House counsel assigned to the **tobacco** talks. Lindsey spread the word among negotiators that **Carlton** wanted in.

Easley began fielding calls from fellow attorneys general asking about **Carlton**. Easley vouched for him and said **Carlton's** involvement meant that the **tobacco** industry was serious about settling decades of litigation.

Easley persuaded Mississippi Attorney General Michael Moore, leading the states' attorneys generals, to meet **Carlton**. On April 3, **Carlton** delivered RJR's Goldstone and Philip Morris chief Geoffrey Bible to a Washington-area hotel to kick off historic talks between the industry and its rivals.

(Chris Burritt writes for the Atlanta Journal-Constitution, Atlanta, Ga.)

For clients of the New York Times News Service

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LEVEL 1 - 2 OF 4 STORIES

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July 01, 1997, Tuesday 21:29 Eastern Time

SECTION: Domestic, non-Washington, general news item

LENGTH: 987 words

HEADLINE: NICOTINE OFF THE TABLE FOR CIGARETTE MAKERS, CHIEF NEGOTIATOR SAYS
EDs: With **TOBACCO-CARLTON**. By CHRIS BURRITT

BODY:

c.1997 Cox News Service

ATLANTA A top **tobacco** negotiator, North Carolina lawyer Phil **Carlton**, said cigarette makers would abandon settlement talks if the White House, Congress and health groups insist on greater federal regulation of nicotine.

Critics of the landmark settlement said that Big **Tobacco** outflanked anti-**tobacco** negotiators by requiring that the U.S. Food and Drug Administration jump high legal hurdles to control nicotine.

But **Carlton** said the four biggest cigarette producers, which last month agreed to pay \$ 368.5 billion over 25 years, fear that government regulation of the habit-forming substance would be a prelude to federal efforts to ban cigarettes.

'We can't sign off to pay \$ 368 billion and, at the same time, agree to have our product banned the next day,' said **Carlton**, representing Philip Morris, R.J. Reynolds, Brown and Williamson and Lorillard.

'If we are going to be shot and killed, then OK. We will all get our wills written,' **Carlton** said. 'But we can't commit suicide.'

The \$ 45 billion industry has long used the threat of a **tobacco** prohibition to argue against federal control. **Carlton's** remarks are the industry's first public reaction to last week's declaration by public health groups that proposed restrictions on FDA's authority to control nicotine are 'absolutely unacceptable.' Former FDA chief David Kessler warned that the regulations, if not strengthened will be 'a deal-killer.'

The landmark deal has sparked fierce debate in Washington, where it faces White House and congressional approval before it can become law.

The strongest attacks have come from health advocates emboldened after a stunning court victory in April in the heart of **tobacco** country. U.S. District Judge William Osteen in Greensboro, N.C., ruled that the FDA could regulate cigarettes as a drug, based on the addictiveness of nicotine.

Cigarette companies appealed the ruling. But, **Carlton** said, **tobacco** opponents 'believe that Judge Osteen gave them that authority....They do not want to give



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up an inch from that.'

The proposed settlement severely weakens that authority, critics said.

If the FDA wants to reduce nicotine in cigarettes over the next 12 years, it must pass several legal tests which Kessler, former Surgeon General C. Everett Koop and others said are more stringent than restrictions normally faced by the FDA.

According to the proposed settlement, the FDA must show 'substantial evidence' that reducing nicotine would result in a significant decline of the health risks associated with smokers, and be feasible technologically.

Those are high hurdles that the **tobacco** industry could challenge for years in court, much as the industry has done with health-related lawsuits.

The deal 'has to be fixed, it can be fixed, and we will fix it,' Koop said.

But the **tobacco** industry fears that the FDA would use greater authority to order nicotine to such low levels that manufacturers could not legally produce cigarettes. The settlement would guard against that, as written over three months of hard-fought negotiations by **tobacco** lawyers, states' attorneys general suing the industry, and public health representatives.

William Novelli, of the Campaign for **Tobacco**-Free Kids, which participated in settlement talks, warned that, if Kessler, Koop and others don't compromise, **tobacco** companies could withdraw the concessions such as advertising bans that anti-**tobacco** groups had sought for years.

'There cannot be any major changes, or the thing will unravel,' said **Carlton**, explaining he would advise **tobacco** companies to try to negotiate settlements with individual states if national legislation falters.

'If Dr. Kessler and President Clinton are true to their word both have said they do not want to ban the product they are going to find out that there aren't but so many other ways you can do it,' **Carlton** said. 'Now maybe they will have a brilliant idea that is smarter and better than ours. If so, fine. But it has got to be something that everybody can live with.'

(Chris Burritt writes for the Atlanta Journal-Constitution, Atlanta, Ga.)

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July 01, 1997, Tuesday 21:30 Eastern Time

SECTION: Domestic, non-Washington, general news item

LENGTH: 1507 words

HEADLINE: N.C. LAWYER AT CENTER OF TOBACCO TALKS, CALLS THEM 'MIND-BOGGLING'
EDs: With TOBACCO-NICOTINE; TOBACCO-NCAROLINA. By CHRIS BURRITT

BODY:

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PINETOPS, N.C. Life isn't so easy anymore for Phil **Carlton**, rich enough as a boy to escape working his daddy's **tobacco** in eastern North Carolina's blazing sun. A half-century later, though, he's at the center of the firestorm over cigarettes.

The 59-year-old lawyer had hoped to be basking in the glow of a historic cease-fire in the brutal, half-century public health war over smoking. But less than two weeks after the truce was called, **Carlton** is more war weary than ever, fighting what he calls a ''mind-boggling'' array of battles to keep the landmark accord from going up in smoke.

''There are days when I don't think anything good is going to happen to it because it just gets beat up on so bad,'' said **Carlton**, drinking Diet Pepsi and eating Nabs in his Pinetops law office on a recent Saturday, a rare day he wasn't in Washington. ''You turn around and run into yourself on all of these things.''

Carlton, a former North Carolina state Supreme Court chief justice and prominent Democrat, is earning handsome pay from the big cigarette makers, Philip Morris, R.J. Reynolds, Brown and Williamson, and Lorillard. But his hectic schedule he slept in his clothes in the final two days of negotiations illustrates from a personal level how wrenching a task America faces trying to kick the **tobacco** habit.

The industry, for decades glamorized by Hollywood and scorned by health officials, remains vital to dozens of Southern communities such as Pinetops (population 1,546), a tired, two-stoplight town where **Carlton's** father advised him 40 years ago to steer clear of **tobacco**. His father, **Carlton** said, had a gut feeling that the industry was headed for trouble.

Carlton, who quit smoking a decade ago, waited until last year to stop growing the crop, selling his 200 acres of **tobacco** allotment to his brother-in-law. But **Carlton** knows first-hand what a heap of trouble **tobacco** is in.

On June 20, a historic day in the **tobacco** wars, the industry agreed to pay \$ 368.5 billion over 25 years for protection from lawsuits brought by hundreds of individual smokers and the attorneys general of 40 states seeking to be

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But as **tobacco** opponents read the settlement's fine print, they're raising questions about just how much the industry is giving up, considering that companies are expected to hike cigarette prices to help pay for the settlement.

Carlton concedes how difficult a job he and others face translating the proposed settlement into national legislation that can survive a skeptical White House and Congress which, like much of America, is divided over whether Big **Tobacco** can be trusted after decades of deceit over the dangers of smoking.

Carlton felt the heat during a Senate hearing last week, when Philip Morris lawyer Meyer Koplow refused to acknowledge that cigarettes are deadly and addictive, even though the industry conceded as much in the proposed settlement.

Senators howled, recalling three years ago when **tobacco** executives, one after another, swore to Congress that cigarettes were not dangerous.

Last week, Sen. Joseph Biden, D-Del., warned that if the companies' new executives stick to the same story, 'I think you're going to make the case for this settlement going down the tubes.'

Carlton, who sat behind Koplow at the hearing, said in the interview that he expects **tobacco** chieftains to be called to testify.

'I think it is crystal clear that the companies are going to have to make their position on the health effects of smoking known before this legislation will get very far,' **Carlton** said. 'That is a real challenge for them, and they are working on it.'

He explained, 'These companies are still in the middle of lawsuits, 600 individual lawsuits. We sitting up in Washington negotiating this thing cannot say something that is going to become the pivotal point in some trial going on in Alabama or somewhere.'

The industry's immediate problem is settling a ground-breaking lawsuit by Mississippi, the first of 40 states to seek reimbursement for the health-related costs of treating sick smokers. The threat of billion-dollar judgments from those trials forced Big **Tobacco** to the bargaining table, and Mississippi's attorney general, Michael Moore, led the hard-fought negotiations for the states' attorneys general.

Now that the settlement has been reached, the **tobacco** industry is counting on the attorneys general to help on the legislative front. So it's crucial, **Carlton** said, for the two sides to settle Mississippi's suit before the trial starts Monday.



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'It goes without saying for the industry to be in battle in a courtroom in Pascagoula, Miss., at the same time we are trying to get a bill passed in Congress that makes peace between these different forces is just very counter-productive,' said **Carlton**, also seeking to reach a settlement on Florida and Texas lawsuits. 'We need to be making peace with each other, not sitting in a courtroom calling one another names.'

Another of **Carlton's** tasks is convincing the White House to endorse the settlement, undergoing a 30-day review ordered by President Clinton.

'They have just got to (endorse it), or it won't happen,' **Carlton** said. 'A Republican Congress is not going to do this without political cover from a Democratic White House.'

'The biggest financial contributors to the Republicans in the last congressional elections was **tobacco**,' he said. 'So they are not inclined to listen to the villains on the other side, at least the majority are not.'

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That could prove to be a pipe dream for the bill that **Carlton**, for working purposes, calls the National **Tobacco** Control Act.

For **tobacco** opponents 'to try to milk a little more out of the companies, I understand that,' **Carlton** said. 'But what they need to do is understand that we have been at it 90 days and nights around the clock. These companies have been milked. There ain't much left.'

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July 2, 1997, Wednesday, ALL EDITIONS

SECTION: NATIONAL NEWS; Pg. 08A

LENGTH: 1106 words

HEADLINE: Focus on **TOBACCO** Close, but no cigar: Although the **tobacco** industry is willing to make concessions on warnings and advertising, it won't 'commit suicide' by signing off on a deal that could ban cigarettes. Meanwhile, health officials fear the FDA will face too tough a task in being forced to show that new rules will significantly reduce smoking.;
War weary: Negotiator fighting for deal

BYLINE: Chris **Burritt**; STAFF WRITER

DATELINE: Pinetops, N.C.

BODY:

Life isn't so easy anymore for Phil Carlton, rich enough as a boy to escape working his daddy's **tobacco** in eastern North Carolina's blazing sun. A half-century later, though, he's at the center of the firestorm over cigarettes.

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Mississippi pivotal

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GRAPHIC: Lawyer Phil Carlton works the phone in his Pinetops, N.C., office. /
CHRIS BURRITT / Staff

LOAD-DATE: July 3, 1997



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Holes in the Tobacco Settlement

Now that the full text of the tobacco deal is circulating, its most glaring defects look even worse than they first appeared. That does not mean the proposed settlement is not a historic achievement. The state attorneys general have pushed the tobacco industry into accepting severe restrictions on marketing and advertising and have won sizable reparations to finance antismoking campaigns and regulatory oversight. No previous litigation or political or regulatory action has wrung so much from the industry.

But all the restrictions and educational campaigns will be fruitless if smoking rates do not fall. Thus it is distressing that the two main weapons that are supposed to reduce smoking deaths — stiff penalties on the industry if it fails to reduce youth smoking and enhanced authority for the Food and Drug Administration to control the nicotine and carcinogens in cigarettes — look far too weak to succeed. The supposed penalties may not even fully eliminate the profit from addicting young smokers, and the provisions governing the F.D.A. would actually weaken the agency's ability to control the contents of cigarettes.

Indeed, at least one aspect of the deal may have been oversold. The agreement was initially portrayed as a breakthrough in bringing a previously unregulated industry under strict supervision for the first time. But that ignored the fact that the F.D.A. recently won a major court decision affirming its regulatory jurisdiction over nicotine and the tobacco products that deliver it. True, that was the opinion of one judge. But given that it was issued by a conservative judge from the heart of North Carolina's tobacco country who once represented tobacco growers, a betting man could assume that the F.D.A.'s authority over tobacco products would be upheld.

The agreement does provide some benefits to the F.D.A. A big chunk of the industry money, some \$300 million a year, would finance the F.D.A.'s regulatory oversight of tobacco. That is not small change, given Congress's unwillingness to finance F.D.A. forays against companies that are among the biggest contributors to Congressional campaigns. The industry has also agreed to abandon its challenge of the North Carolina decision and will voluntarily accept curbs on advertising and promotion that the F.D.A. was expressly denied authority by the courts to impose.

There are real gains, but the

would also weaken the F.D.A.'s authority in ways that many health leaders consider "absolutely unacceptable." It would prohibit a ban on nicotine or tobacco products for 12 years. It would shift the burden of proof so that the F.D.A. would have to justify why it wanted to eliminate a substance instead of forcing the industry to justify why the substance should remain, and would require the F.D.A. to meet a higher standard of proof for its actions than is now necessary.

The deal would replace standard regulatory procedures with trial-like proceedings in which the industry could tie up the agency for years. It would force the F.D.A., before controlling nicotine, to prove that such action would not create a significant demand for contraband cigarettes, an almost impossible task. It would also circumscribe the deference that courts give to F.D.A. decisions outside its areas of expertise, which might mean that whatever the agency concludes about a potential black market gets ignored. No wonder one industry C.E.O. told the press that the contraband loophole alone would let the industry wriggle out from F.D.A. regulation of nicotine.

The second big hammer to achieve results is a set of performance standards that require the industry to bring about a 30 percent drop in youth smoking within five years, rising to a 60 percent reduction in ten years. If the targets are missed, the industry would be assessed what were described as "harsh penalties" — \$30 million for each percentage point by which the target is missed. But it turns out that the penalties are simply designed to eliminate the profit the industry would gain over the lifetimes of those young smokers, removing the incentive to addict young smokers but not penalizing the companies for doing so. The most the industry would have to pay for a very large miss of the target is \$2 billion a year. That could be paid for by raising the price of a pack of cigarettes 8 cents, hardly enough to constitute a serious deterrent. Moreover, the industry can apply for a rebate of up to 75 percent of the penalty if it can show it has taken all reasonably available steps to cut youth smoking. If this agreement is to be meaningful, the penalty bar will have to be raised much higher.

There is much to admire in the deal. But the nation should not relinquish the threat of state and class-action litigation without insuring that strong regulatory powers remain.

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July 9, 1997

White House Says Tobacco Proposal Would Limit FDA

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By JOHN M. BRODER

WASHINGTON -- Clinton administration officials reviewing the proposed tobacco settlement said Tuesday that it would impose unacceptable limits on the federal regulation of tobacco products.

In the administration's first extensive public comments on the proposal, officials said that the \$368.5 billion deal negotiated by state attorneys general, plaintiffs' lawyers and cigarette makers would dilute the Food and Drug Administration's authority to regulate nicotine and place impossible new burdens on the agency.

Three senior administration officials involved in the internal review of the settlement proposal, speaking on condition that they not be identified, said President Clinton would not support any deal with tobacco companies unless the FDA's power to regulate tobacco was affirmed and strengthened.

"We fought too hard as an administration on the area of FDA jurisdiction to see that weakened," one senior official said. "Certain things in this agreement are good, but we don't want to see one step forward, one step sideways and one step backward. The FDA portion needs to be done in a way in which we're only going forward."

The ongoing administration review, which is being conducted jointly by the White House and the Department of Health and Human Services, is less than a week old. But Tuesday's negative comments on a critical section of the proposal appear to indicate that the proposed settlement, reached on June 20, will not survive in its current form.

Officials spoke on the eve of a White House meeting scheduled for Wednesday

with Dr. C. Everett Koop, the former surgeon general, and Dr. David Kessler, the former commissioner of food and drugs, leaders of a public health panel set up to advise Congress on the tobacco proposal.

Vice President Al Gore will convene the meeting with Koop and Kessler, who have said they find the settlement plan "deeply flawed" and worse than the status quo in some ways. Also attending will be Health and Human Services Secretary Donna Shalala and Bruce Reed, Clinton's chief domestic policy adviser, who are overseeing the administration's review of the proposal.

Wednesday's session marks the beginning of what is expected to be a lengthy and divisive debate among the White House, Congress, public health advocates, cigarette makers and the negotiators of the agreement on how to approach the nation's tobacco problem.

The administration and the Koop-Kessler panel, which includes representatives of 23 leading public health groups, appear to be in close agreement on the question of FDA authority. Both believe that the FDA's power to regulate nicotine, affirmed in April in a U.S. District Court decision in Greensboro, N.C., should not be compromised in a negotiated deal with the tobacco industry.

The proposed deal would weaken that authority by preventing the FDA from outlawing nicotine for at least 12 years. It would also mean that before the FDA could require lower-nicotine cigarettes, it would have to go through a cumbersome process that would include proving that a large black market in high-nicotine cigarettes would not result.

In addition, the settlement plan would require the agency to meet a higher legal standard to support its nicotine control efforts than it currently would have to meet if it was challenged in court. Tuesday, the FDA would have to demonstrate only that its tobacco-control actions were not arbitrary and capricious; under the terms of the agreement, it would have to present "substantial evidence" to justify a new rule.

"We don't have all the answers -- we don't even have all the questions," one of the administration officials said. "But based on what we know now, these areas are problematic. The FDA would have to surmount some new obstacles in order to regulate nicotine and the other harmful elements of cigarettes."

Bruce Lindsey, the White House deputy counsel, closely followed the tobacco negotiations during the 12 weeks of negotiations. But the White House sought to insulate itself from the day-to-day talks, saying only that it would review the terms of the deal once a settlement was reached.

The public health panel shares the administration's concerns about diluting the FDA's authority. But the panel is raising additional objections to the legal and financial terms of the settlement that administration officials may not share. An aide to the health panel, speaking on condition of anonymity, said the group unanimously believed that litigation against cigarette manufacturers had produced considerable benefits -- like public awareness of tobacco's dangers and

the forced release of millions of pages of internal industry documents -- that could be lost under the terms of the settlement plan.

The proposal would settle lawsuits filed by 39 states and 17 class-action claims against the industry in exchange for billions of dollars in payments in the next 25 years. The industry would win immunity from future class actions and from punitive damage payments for past actions.

Some members of the health panel believe that immunity from most future claims would be too high a price to pay for the changes in tobacco industry behavior that the settlement would require. But others, like Koop, think that a broad settlement with large payments for public health programs and strict limits on cigarette advertising and promotion could outweigh the costs of limiting the industry's legal liability.

"I don't believe we've gotten that much from litigation," Koop said Tuesday in an interview. "I'm keeping a very open mind. If we can get things by settlement that we can't get by litigation or legislation, then I could support it."

The Koop-Kessler group is also urging tougher financial penalties against the tobacco industry if it does not meet specific targets for reductions in the number of underage smokers. The settlement plan would impose penalties on cigarette makers if the number of teen-age smokers did not decline by 30 percent after five years, 50 percent after seven years and 60 percent after 10 years.

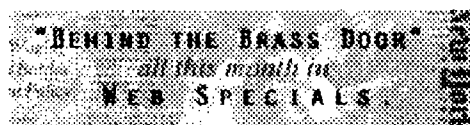
The plan would cap the penalties at \$2 billion a year and allow the industry to seek penalty rebates of as much as 75 percent if the industry showed that it had made a good-faith effort to cut underage smoking.

But the public health panel wants a 65 percent reduction in the number of teen-age smokers and penalties that would begin two years after a plan was enacted. It also wants no limit on the size of fines.

And the group is urging a large increase -- perhaps as much as \$2 a pack -- in the federal excise tax on cigarettes, which is now 24 cents a pack, because it has concluded that hefty price increases would do more to discourage smoking by teen-agers than any other single measure.

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Tobacco Deal in Trouble at White House

By Peter Baker and John Schwartz
Washington Post Staff Writers
Wednesday, July 9, 1997; Page A04

The White House has decided to reject a critical element of the proposed \$368.5 billion settlement with the tobacco industry because it would impose broad new restrictions on federal authority to regulate nicotine in cigarettes, senior officials said yesterday.

In their first direct involvement in the effort to craft a settlement, advisers to President Clinton plan to rewrite the proposal themselves after concluding it surrenders too much of the Food and Drug Administration's ability to control the addictiveness of cigarettes. Such limits, they determined, would roll back their arduous campaign to assert jurisdiction over tobacco.

"After taking a serious look at it, they're unacceptable," said an administration official who asked not to be named. "The way it's written, it actually slides back on what we've already won."

That conclusion did not come as a complete surprise, given the public reservations Clinton had expressed about the FDA limits since the plan was unveiled last month. But it reflects a calculated gamble by Clinton that the political momentum is running his way and he can afford to risk reopening the delicately balanced deal because the industry has little room to maneuver. According to aides, Clinton is willing to walk away from the settlement entirely if he cannot amend it to his satisfaction.

The proposed settlement would resolve scores of lawsuits against the tobacco industry by state governments and individual smokers seeking reimbursement for medical expenses caused by smoking.

It was reached after months of difficult negotiations between industry representatives and a group of state attorneys general and trial lawyers, but any deal ultimately will require the approve of Clinton and Congress, which will have to translate it into legislation.

In addition to reimbursing the states for health costs, tobacco companies agreed to fund anti-smoking campaigns, accept a virtual

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companies agreed to fund anti-smoking campaigns, accept a virtual ban on most cigarette advertising and promise to reduce underage smoking by certain goals.

In exchange, they demanded that the FDA meet certain standards before being allowed to reduce nicotine in cigarettes, including complying with a requirement that it prove such a move would not create a black market in stronger cigarettes.

Whether Clinton can pressure tobacco companies to accept further compromise is unclear. At a White House meeting with a top presidential adviser last week, tobacco lawyers exhibited little appetite for more concessions, but they did not rule them out either.

One of the leading critics of the deal praised the administration's decision last night. "It's a very important step on the part of the White House," said former FDA commissioner David A. Kessler, who led the administration's anti-tobacco fight before leaving his post earlier this year.

Tobacco representatives declined to assess the development, but some of their counterparts on the other "The way it's written, it actually slides back on what we've already won."

—,administration official

side of the bargaining table suggested it was somewhat dicey because it could drive some companies away.

"The attorneys general are all for strengthening that language," said Mississippi Attorney General Michael Moore, who led the states that sued the industry.

But, he said, "we have to be a little bit cautious. Whatever goes into that language has to pass Congress." Too much tinkering, he said, "runs a great chance of running the industry off."

John P. Coale, a Washington attorney who represented trial lawyers in the talks, said he has the impression from industry leaders that "there is room to deal on the FDA" provisions. "But I don't know how much room," he added. "If the industry is pushed too hard, they may go back into the bunkers."

For some companies, allowing any FDA regulation of nicotine was a bitter pill to swallow because they fear it could amount to an outright ban on cigarettes. British-American Tobacco, the parent company of America's third-largest tobacco company, Brown & Williamson Tobacco Co., was especially adamant in demanding FDA limits and some negotiators believe it might walk without them.

The FDA limits, however, may not be the only section the administration tries to rewrite. Clinton has appointed a series of working groups to review different parts of the agreement and they are at the early stages of their work.

Another provision that has drawn their concern involves the penalties that would be assessed on tobacco companies if they fail to meet the settlement's goals of reducing teenage smoking by certain amounts.

As part of the review, officials are consulting widely this week. Vice President Gore, Health and Human Services Secretary Donna E. Shalala and Bruce Reed, Clinton's domestic policy adviser, plan to meet at the White House today with Kessler and former surgeon general C. Everett Koop.

Moore and Attorney General Christine Gregoire of Washington state have been invited in tomorrow and leaders of public health groups are coming Friday.

Administration officials said they have not decided how they will rewrite the FDA rules, though the one involving black markets is certain to be revised. One option that has been suggested would simply require the FDA to consider the likelihood that it might create such an underground, rather than to definitively prove it would not.

Either way, officials said that after months of waiting they believe it is now up to them to craft legislation to send Congress. "We're not going to send the attorneys generals and the tobacco industry back to the bargaining table," said one official.

Besides meeting at the White House, Koop and Kessler will release the final report of a commission they lead that proposes full FDA regulatory authority and advertising restrictions; an excise tax of up to \$2 per pack; and new limits on smoking in workplaces, schools and even outdoor areas such as sports stadiums.

They also suggest the crackdown on tobacco should extend beyond U.S. borders, hitting the industry in the international market that has helped sustain it in recent years. Among other things, the report said tobacco should be removed from the list of export items boosted by U.S. officials in trade talks.

The 70-page document "is neither incremental nor utopian," the report says. "The plans outlined are ambitious, but they can be achieved within a short time."

Staff writers Ann Devroy and Sandra Torrey contributed to this

report.

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Task Force Report Advocates Penalties for Tobacco Firms

By **JEFFREY TAYLOR**

Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON -- A task force led by antismoking proponents David Kessler and C. Everett Koop wants to ensure that monetary penalties for failing to reduce smoking among youths come out of tobacco companies' bottom lines, rather than smokers' pockets.

Stiffer penalties for the tobacco industry are among new government restraints the task force recommends in its final report. The document also calls for an explicit ban on pre-empting the Food and Drug Administration's authority to regulate nicotine in cigarettes. The task force, which represents 20 health groups, had previously criticized the proposed \$368.5 billion settlement reached by tobacco companies and state attorneys general on grounds that it would weaken the FDA's ability to regulate nicotine.

The report, which is expected to be released Wednesday, amounts to a blueprint for a much more restrictive system of curtailing tobacco marketing and youth smoking than was proposed in the settlement between tobacco companies and the 40 states, which had sued to recover the cost of caring for ill smokers.

Among its other recommendations are dramatically increasing excise taxes on tobacco products and indexing them to inflation. Also, it urged elimination of the proposed settlement's provision that would let tobacco companies claim a tax deduction for any fines paid for failing to curb youth smoking. It calls for a new nonprofit company to support smoking-prevention efforts, which it says should be financed by the industry, excise taxes and any fines for smoking-reduction failures.



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The Koop-Kessler report will become the model for legislation that two Democrats -- Sen. Frank Lautenberg of New Jersey and Rep. Henry Waxman of California -- are writing as an alternative to the settlement.

Influencing the White House

On another level, the report is an effort by Dr. Kessler, a former Food and Drug Administration commissioner, and Dr. Koop, a former surgeon general, to influence the Clinton administration's review of the settlement. The two are scheduled to meet Wednesday with Health and Human Services Secretary Donna Shalala and senior White House adviser Bruce Reed. Without the White House's blessing, the settlement isn't likely to win necessary approval from Congress.

The task force urged that tobacco companies be required to reduce youth smoking by 30% within five years and 65% within 10 years. Penalties should be structured "so that failure to meet the targets directly reduces total revenue and affects total shareholder value" of cigarette makers, the task force concluded. Moreover, it said, any penalties should be assessed on a company-by-company basis. The task force recommended that manufacturers of snuff and chewing tobacco, which have been gaining popularity among young people, should be similarly penalized.

In contrast, the proposed settlement would let tobacco companies raise the price of cigarettes to cover the cost of penalties if smoking among young people isn't cut.

"For this industry, money is the most easily recoverable asset," Sen. Lautenberg said. "They can grow money faster than they can grow tobacco. This report closes the door on the possibility of exchanging FDA jurisdiction [over nicotine] for money."

Helping Smokers Quit

To help smokers kick the habit, the task force recommended requiring the industry to contribute enough money so that smoking-cessation programs are available to everyone, regardless of income.

Previously, task-force members questioned whether the \$1 billion annual contribution under the proposed settlement would be enough to take care of all smokers.

Sen. Lautenberg and Democratic Sen. Ron Wyden of Oregon have criticized the settlement for failing to extend protections to smokers overseas, particularly those in developing countries. Addressing that omission, the task force called on the Clinton administration to encourage other nations to adopt marketing and advertising restrictions at least as strict as those contained in the proposed tobacco settlement. In the U.S., the settlement would eliminate advertising icons such as Joe Camel and the Marlboro Man and force companies to print blunt warnings -- such as "smoking can kill you" -- on cigarette packages.

The task force also had advice for educators. It called for a "zero-tolerance policy" at schools and sporting events for youngsters, including banning any clothes or other promotional items that carry tobacco logos and icons.

For all its fault-finding, the task force acknowledged that the proposed settlement has created "an extraordinary opportunity for change." It urged Congress and the White House to push ahead with legislation to "ensure complete ability for the FDA to regulate nicotine and tobacco products, to prevent our children from starting to smoke, to treat those already addicted to tobacco, and to protect nonsmokers from involuntary exposure to smoke."

--Bruce Ingersoll contributed to this article.

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July 10, 1997

Clinton Officially Rejects Limits on FDA in Tobacco Plan

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By **BARRY MEIER**

WASHINGTON -- President Clinton on Wednesday rejected a central provision of a landmark tobacco settlement as "totally unreasonable," declaring that it would undercut federal authority to regulate nicotine.

But despite the president's opposition to a major element of the proposal, cigarette companies were not expected to immediately abandon efforts to fashion an accord that would protect them from a range of litigation even as it sharply limited industry marketing.

Speaking at a news conference in Madrid, Spain, where he is attending a meeting of the North Atlantic Treaty Organization, Clinton criticized a provision of the proposed pact that would require the Food and Drug Administration to go through a cumbersome process before requiring lower levels of nicotine in cigarettes. The agency would have to prove that reducing nicotine levels would not create a black market in high-nicotine cigarettes.

"What is a black market, after all?" Clinton asked. "A 1 percent penetration of the market, a 3 percent penetration of the market? Would we deny the FDA the right to protect 100 percent of our children because there might be a few black market cigarettes around? I think that is unreasonable."

Referring to other aspects of the proposed settlement that was announced last month, Clinton said: "I have reached no final judgment about anything else. But I believe that is a change that ought to be made, and I cannot believe that the tobacco companies or others would bring down the entire settlement over that."

Clinton's comments marked the beginning of a political dance over the tobacco agreement that is likely to continue for many months as the proposed accord undergoes scrutiny by the White House and Congress.

Both state attorneys general and industry officials, who spent three months

negotiating the pact, rushed to defend it Wednesday while anti-smoking groups argued that parts of the plan not mentioned by the president also needed to be overhauled.

Christine Gregoire, the Washington state attorney general who helped negotiate the settlement's provisions regarding FDA authority, said she was "absolutely surprised" by the criticism because she believed the accord also provided the agency more money and ammunition to fight cigarette smoking.

"In the end, we have to exercise leadership now," Ms. Gregoire said. "We have seen a lot of people talk tough politically but we have not seen any action."

In a joint statement, five tobacco companies said they looked "forward to the opportunity to make the case for keeping intact the provisions of the proposed resolution as negotiated."

A source familiar with the industry's thinking said cigarette companies were likely to await a full White House review of the proposed settlement before reacting in any detail to criticism of individual provisions.

"Until you get a real snapshot of the overall changes that they will propose," the source said, "I don't think you will get any reaction on an individual component."

In the settlement proposal, the industry recognized the FDA's authority to regulate tobacco products and agreed to a number of advertising and marketing restrictions, such as dropping the use of figures like Joe Camel and the Marlboro Man.

But the proposal quickly came under attack by some public health advocates like David Kessler, the former FDA commissioner, who said that legal hurdles like the black-market provision were inserted into the agreement by industry lawyers in an effort to scale back federal powers.

"A first-year law student would have known that these were put in there to tie the agency's hands," Kessler said.

Matthew Myers, a lawyer with the Campaign for Tobacco-Free Kids who played a major role in negotiating the proposal, said that the agency segment was the most difficult part of the agreement to complete.

"We knew that any change affecting the FDA would be contentious," Myers said.

He described the proposal presented to the White House as a good-faith effort by all of those involved in the negotiations, including the tobacco industry.

Still, Secretary of Health and Human Services Donna Shalala added to the administration's criticism of the plan regarding the regulatory agency. "They were negotiating something that they didn't have the authority to negotiate," Shalala said in an interview Wednesday. "Only Congress and the federal courts have that authority, and they have spoken."

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THE WALL STREET JOURNAL

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Clinton Encourages Changes To Fortify Tobacco Settlement

By HILARY STOUT and LAURIE MCGINLEY

Staff Reporters of THE WALL STREET JOURNAL

WASHINGTON -- Despite grave concerns about elements of a proposed tobacco settlement, President Clinton believes he has an opportunity to strike a historic deal with tobacco makers that would reduce smoking in the U.S.

Mr. Clinton will insist on changes to the tobacco accord, aides say. But in the end, his goal is to strengthen the settlement, not kill it. He believes an agreement could potentially do more to reduce smoking, and could be implemented more quickly, than his own new Food and Drug Administration regulations.

Speaking at a news conference in Madrid Wednesday, the president sharpened his criticism of a part of the plan that would sharply curtail the FDA's ability to regulate cigarettes, saying that it was "totally unreasonable" and would have to be changed. But he carefully limited the sweep of his criticisms, and said he hasn't reached conclusions on any other part of the \$368.5 billion deal struck last month between major tobacco companies -- Philip Morris Cos., B.A.T Industries PLC and RJR Nabisco Holdings Corp. -- and 39 states attorneys general. The tobacco industry already has indicated it would show some flexibility in dealing with the language of the FDA provisions.

White House officials say that Mr. Clinton is unlikely to bless a tobacco deal that most public-health experts oppose. Consequently, the White House is exploring ways to change the agreement to mollify the public health community, especially on the hot-button issue of FDA authority. Bruce Reed, the president's top domestic policy adviser and co-chairman of the administration's review of the tobacco plan, told reporters that Mr. Clinton "sees this whole effort as an extraordinary opportunity to advance the cause of reducing youth smoking" and to continue the administration's progress on the issue. But he added, "it's way too early to make an overall assessment on the settlement."

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Even Vice President Gore, perhaps the White House's most outspoken tobacco opponent, views the proposed settlement as providing an opening "to do something good for public health" that shouldn't be wasted, a senior official said.

'Very, Very Skeptical'

Still, the aide described Mr. Gore as "very, very skeptical" about the deal and unsure that the agreement could be rewritten to his satisfaction. Similarly, another top administration official said, "I don't think the president actually knows yet" if the settlement can be sufficiently improved. Mr. Gore, Mr. Reed and Donna Shalala, the secretary of Health and Human Services, met Wednesday with David Kessler, a former FDA commissioner and C. Everett Koop, a former surgeon general, to discuss the settlement and their views on a national tobacco policy.

After the meeting, Dr. Kessler told reporters that his problems with the settlement extended beyond the provision on FDA's authority, which had been the focus of much of his criticism so far. He said he was troubled that certain gains for public health in the settlement appear to be undercut elsewhere in the agreement.

Even if the president endorses a modified settlement, Congress would have to approve it. But Senate Minority Leader Thomas Daschle, a Democrat from South Dakota, said Wednesday that it's "almost an impossibility" for Congress to consider any plan this year.

Top Priority

The administration's top priority is finding a way to overhaul the FDA provision. Last week, Bruce Lindsey, the White House official who monitored the tobacco talks, told cigarette-company representatives in a White House meeting that the FDA part of the agreement would have to be changed to meet administration concerns.

One big concern is a part of the agreement that would require the FDA to prove that any efforts to lower or eliminate nicotine in cigarettes wouldn't lead to a black market in traditional cigarettes. "What is a black market, after all?" President Clinton asked Wednesday in Madrid. "A 1% penetration of the market, a 3% penetration of the market? Would we deny the FDA the right to protect 100% of our children because there might be a few black-market cigarettes around?" He added, "I cannot believe that the tobacco companies or others

would bring down the entire settlement over that."

In return for dropping the black-market provision, the administration might be willing to support legislation that would bar the FDA from banning nicotine for a specified number of years, officials said. Such a provision probably wouldn't be a burden for the agency because it has no current plans to try to lower or ban nicotine; indeed, it doesn't know how such a scheme would work.

In a statement, five big tobacco companies said, "The risk of creating a substantial black market in tobacco products should be a legitimate concern to all Americans for a variety of reasons," and that the proposed settlement best addresses that problem.

Another controversial issue during the negotiations was a measure to bar smokers from filing lawsuits seeking punitive damages from tobacco companies for past behavior. But while Mr. Clinton in the past has opposed limits on punitive damages, a senior White House official said Wednesday that the measure "is not a deal-breaker for us" in the tobacco settlement.

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