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Dow Jones Newswires -- August 5, 1997

Judge: Internal Documents Show Tobacco Cos Targeted Youth

AP-Dow Jones News Service

WEST PALM BEACH, Fla. -- A state appeals court Tuesday ordered the release of internal **tobacco** industry documents that the state says shows **cigarette** makers lied to the public and conspired to cover up the risks of **smoking**.

Attorney General Bob Butterworth said he hopes the documents 'tell us something about just how the industry was using lawyers to hide documents.'

In a related decision, a special master found the **Tobacco** Institute, the industry's lobbying and public relations arm, also used attorneys to hide information on smoking's dangers and industry plans to target young people.

The state wants to use the documents from the Liggett Group in its lawsuit seeking to recover the costs of treating sick smokers on Medicaid. Jury selection for the trial began Friday.

The five judges who examined the documents said they found reason to believe they were used to help **cigarette** makers perpetrate a fraud.

The **tobacco** industry could appeal, although a stay is unlikely. John Sorrells, spokesman for Philip Morris Cos., said the industry would announce Wednesday what action it will take.

State lawyer W.C. Gentry said he would ask for the documents to be released by noon Wednesday.

The documents were supposed to be released by Liggett as part of its settlement with Florida and 21 other states this spring. But other **tobacco** companies went to court and argued that the documents were protected by attorney-client privilege.

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THE WALL STREET JOURNAL INTERACTIVE EDITION
MARKETPLACE
LEGAL BEAT

August 6, 1997

Legal Beat

Florida Official Finds Evidence On Tobacco Program for Teens

By MILO GEYELIN
Staff Reporter of THE WALL STREET JOURNAL

A judicial official in Florida has found evidence that the tobacco industry's trade organization, the Tobacco Institute, used a national antismoking program for youth to conceal a hidden agenda to target more teenage smokers.

The finding came in the form of a recommendation from a special master appointed by a Florida state-court judge to review internal institute documents that the state wants to use as evidence in its Medicaid recoupment suit against the industry. The Washington, D.C.-based Tobacco Institute, the industry's main lobbying arm, had maintained that the records were protected from disclosure because they contain confidential legal communications between it and its lawyers.

Voiding a Privilege

But in a three-and-a-half-page recommendation signed last Friday, special master R. William Rutter found that in a majority of cases the institute's lawyers were working in "lobbying, public relations and general business activities," not giving legal advice. And in 28 documents among the hundreds that he reviewed, Mr. Rutter recommended voiding the privilege because he found "sufficient evidence" of crime or fraud.

The opinion isn't a finding that crimes or fraud occurred but a recommendation to the trial judge overseeing Florida's suit that the documents can be used. The documents are under court seal and will remain so until Mr. Rutter's recommendation is taken up by West Palm Beach Circuit Judge Harold J. Cohen, who is overseeing Florida's suit.

The Tobacco Institute declined to comment on the specifics of Mr. Rutter's findings. However, a spokesman said that the institute's so-called Youth Programs were reviewed by the Washington, D.C., law firm of Covington & Burling and the Kansas City law firm Shook, Hardy & Bacon.

Challenge in the Works

A lawyer at Covington & Burling said the firm plans to contest Mr. Rutter's findings before Judge Cohen next week. Shook Hardy declined to comment.

Mr. Rutter's opinion is believed to be the first to address possible fraud by the Tobacco Institute. In a statement, the Institute said that it stood behind its Youth Programs, a public-relations blitz launched in the early 1980s to deter teen smoking. The campaign involved television ads and the mass distribution of antismoking booklets and leaflets with such messages as "Helping Youth Decide" and "Helping Youths to Say No," said spokesman Walker Merryman.

But in his recommendation, Mr. Rutter pointed to evidence that the campaign was a public-relations ploy to "prevent or further delay" government regulation of the industry. Evidence also suggested that the campaign was belied by internal Institute documents emphasizing the importance of teen smoking to the future of the industry, he found. "The base of our business is the high-school student," Mr. Rutter quoted from one unidentified document.

"Today's teenager is tomorrow's potential regular customer," he quoted from another.

Jury selection in Florida's suit began Monday. The state, alleging an industrywide fraud and racketeering scheme, is seeking in excess of $1 billion in reimbursements in public-health costs it has linked to linked to smoking, as well as punitive damages.

In a recommendation last April, Mr. Rutter found evidence of crime and fraud in eight internal industry documents provided as part of a settlement between Brooke Group Ltd.'s Liggett Group and 22 states that filed similar suits. (The number of states with such suits is now 39, plus Puerto Rico.)

Judge Cohen backed that recommendation, which was upheld by a state appeals court last month but is still being contested by the tobacco industry. Judges in at least five other states also have made findings of crime or fraud involving the industry and its lawyers.

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August 6, 1997

Documents Show Lawyers Shielded Tobacco Companies

By MILO GEYELIN
Staff Reporter of THE WALL STREET JOURNAL

Internal tobacco company documents made public in Florida Wednesday paint a picture of the industry's sweeping use of lawyers to foil government regulators and mislead the public about the health risks of smoking.

The eight documents, released under a court order in the state's Medicaid suit against the tobacco industry, detail extensive involvement by lawyers in virtually every aspect of the industry's activities involving smoking and health. According to the documents, lawyers are said to have curtailed research into the safety of cigarettes, cleared the release of information about health studies and even suggested the destruction of unfavorable poll results about smoking and health.

ALSO AVAILABLE

Electronic versions of the tobacco documents at http://stic.neu.edu/Fl/Ligettdocs/Flligget.htm. Adobe Acrobat Reader, which is required to view the files, is available as a free download at http://www.adobe.com/prodindex/acrobat/readstep.html.

The documents, some of which date back more than three decades, are the latest in a string of revelations about the role lawyers have played in the $45 billion-a-year tobacco industry's efforts to suppress potentially damaging information about smoking and health because of liability fears. The documents were among thousands turned over by Brooke Group Ltd.'s Liggett Group as part of a settlement with a number of state attorneys general who sued the industry to recover public-health outlays linked to smoking. The papers disclose communications between all the major tobacco companies and their lawyers.

Ronald Motley, co-lead counsel in Florida's Medicaid recoupment suit, said the latest documents provide "overwhelming evidence of everything we thought these documents would demonstrate." As part of its case, which began with jury selection on Monday in West Palm Beach, the state is alleging an industry-wide fraud and racketeering scheme.

The tobacco industry, however, dismissed the documents as innocuous. "What these documents clearly show are the efforts of conscientious lawyers working for their clients," said a spokesman for market leader Philip Morris Cos. A spokeswoman for R.J. Reynolds Tobacco Co., a unit of RJR Nabisco Holdings Corp., described the documents "as pretty ho-hum when read in context."

Tobacco lawyers had fought since last April to keep the documents under court seal, arguing they were covered by the privilege shielding communications between lawyers and their clients. But a state appeals court two weeks ago voided that privilege, upholding a lower-court decision that the documents contained evidence of fraudulent or criminal conduct. The companies released the documents themselves after their effort to convince the full appeals court to keep them secret failed.

The Philip Morris spokesman said the industry fought so hard against disclosure to preserve "the very important right to confidential communications between individuals and their lawyers." The eight Liggett documents are the first to be made public among the hundreds for which the tobacco industry is claiming an attorney-client privilege that would bar disclosure.

Among the eight documents is an undated memo by counsel for RJR that raises questions about the company's testing of its cigarette additives. The document noted that company files included memos from its research and development people, who wanted to test cigarette ingredients. It also cites a 1984 memo to Reynolds from a Lorillard Inc. employee suggesting that a group of top in-house industry lawyers who met regularly to discuss industry matters "thwarted the industry scientists' desires to assure the safety of the product by testing ingredients adequately."

A Reynolds spokeswoman said no evidence supported the Lorillard memo's assertion and described the Reynolds document as a "think piece" that didn't reflect Reynolds's policies. Lorillard is a unit of Loews Corp.

Several of the documents are minutes of meetings of the so-called Committee of Counsel, during which lawyers from all the companies discussed using the industry's independent research arm to generate favorable science about smoking for use in litigation, as well as creating a "special projects" division to shield damaging research results from the public.

"We wanted to protect it under the lawyers. We did not want it out in the open," one lawyer from the New York law firm Jacob, Medinger & Finnegan is quoted as saying at a September 1981 meeting in reference to one study. The meeting was attended by lawyers from Shook, Hardy & Bacon, of Kansas City, Mo., which also did work for the industry. Jacob Medinger, which now represents only UST Inc., a smokeless-tobacco company, declined comment. Shook Hardy, which remains the industry's leading firm, also declined comment.

Another document, this one drafted in 1964 by Philip Morris's chief outside law firm, Arnold & Porter, of Washington, raised concerns about how industry poll results reflecting low public awareness of the health risks of smoking might be used against it by plaintiffs' lawyers, Congress or government regulators. At the time, Congress was weighing mandatory health warnings on cigarette packs.

"There is no question that some risk exists," an Arnold & Porter lawyer wrote to the general counsels of the major tobacco companies. The danger would be reduced if all copies of the results were forwarded to attorneys and kept in their files, he advised. "In any event," the lawyer added, "if the returns are unfavorable they could be destroyed and there would be no record."

Arnold & Porter's managing partner, James Sandman, said the memo merely explored a proposed survey which, in fact, was never conducted. Had it been, Mr. Sandman added, it "would have been the work product of attorneys and, under the law, not subject to disclosure."

Another document described a Jan. 20, 1964, recommendation by the "Special Lawyers Committee" to have "any new health material" distributed by the Tobacco Institute, the industry's lobbying and public-relations arm, vetted by lawyers first.

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August 6, 1997

Tobacco Industry Releases Memos

Filed at 1:29 p.m. EDT

By The Associated Press

WEST PALM BEACH, Fla. (AP) -- Tobacco industry lawyers recommended in 1964 that the industry not distribute any information on cigarettes and health without clearing it with their lawyers, a memorandum released today shows.

``The Special Lawyers Committee met and the following were discussed,'' says the confidential memorandum, referring to a Jan. 20, 1964, meeting.

``It was recommended that The Tobacco Institute not distribute any new health material without clearing first with the Special Lawyers Committee in the first instance.''

Before the documents were released, state Attorney General Robert Butterworth had said he hoped they would show ``something about just how the industry was using lawyers to hide documents.''

The documents contain no startling smoking guns, conceded plaintiffs' attorney John Coale. But he said that because tobacco lawyers were engaging in efforts to hide smoking's dangers, they will catch judges' attention.

``It's an abuse of the legal system,'' Coale said. ``It upsets the judges greatly.''

Eight documents dating back to 1964 were released after cigarette makers said they had exhausted their legal appeals to keep them secret. Industry lawyers distributed the documents before an official release set for later today.

An appeals court cleared the way for the release on Tuesday after the state argued that the documents should be considered in its lawsuit seeking to recover the costs of treating sick smokers on Medicaid.

One R.J. Reynolds Tobacco Co. document suggested that the industry deny any link to health problems. A 1978 Brown & Williamson Tobacco Co. memo urged the industry to be prepared to respond to government testing for carbon monoxide in cigarettes.

The memo discussing the lawyers committee also referred to a meeting on Jan. 17, 1964, six days after the historic surgeon general's report on smoking and health was issued.

It said participants discussed the likelihood that the government would force the companies to put warning labels on packages. It said they agreed that ``Congressional action would be preferable, particularly if it pre-empted the field and rendered unlikely the possibility of numerous state laws being enacted."

The undated Reynolds document referring to health problems said the industry's position on cigarette ingredients ``should be ... there has been no scientific proof that any ingredient as used in cigarettes poses a health hazard to humans or increases the risk if any of cigarette smoking."

``If ingredients do become a trial issue, every effort must be made to convince the jury that they are a `side show,' in that the plaintiff was aware of the risk allegations concerning cigarettes, chose to smoke, was not concerned with the source of the risk, and would have smoked even if he had known the specific flavorings and other ingredients added to the cigarettes," said the Reynolds document.

The 4th District Court of Appeal ruled Tuesday that the documents from Liggett Group showed evidence of industry fraud and should be considered in Florida's lawsuit seeking to recover the costs of treating sick smokers on Medicaid.

Butterworth, asked what the state expected to find in the Liggett documents, said: ``I have no idea, but they've been fighting really hard to keep them."

A Reynolds attorney, Bob Weber, said today the documents were nothing more than notes by lawyers discussing different potential legal scenarios.

``When you look at these you will see there is not one scientific fact in them that was not known by the scientific community," Weber said at a news conference.

The Liggett documents were supposed to be released as part of its settlement this spring with 22 states, including Florida. But other tobacco companies went to court and argued the documents were protected by attorney-client privilege.

Five judges have examined the documents and said they found reason to believe they were used to help cigarette makers perpetrate a fraud.

Billions of dollars are at stake in Florida's lawsuit, although the state has not set a specific figure. Mississippi settled a similar suit for $3.4 billion after the industry agreed to a $368 billion national settlement that would require congressional approval.

Jury selection for the trial began Friday and was expected to take a month.

In a related decision released Tuesday, a ``special master" -- a person appointed by a court to make findings on special questions -- concluded that the Tobacco Institute, the industry's lobbying and public relations arm, used attorneys to hide information on smoking's dangers and industry plans to target young people.

The special master, attorney R. William Rutter Jr. said the documents showed the Tobacco Institute ``sought to create a public perception of not wanting youth to smoke" in order to obtain a public relations benefit and ``prevent or delay further regulation of the tobacco industry."

Rutter included six brief excerpts. One internal document from a cigarette maker said ``the base of our business is the high school student." Another said: ``The smoking patterns of teen-agers are particularly important to Philip Morris."

The tobacco industry is likely to appeal Rutter's report, said Jim Goold, an attorney for the institute.

``They've taken isolated documents that do not reflect industry policy or practice," Goold said. ``The industry's policy and programs have been well-known and aggressive in trying to deal with (young smokers) for years."

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THE WALL STREET JOURNAL INTERACTIVE EDITION
FRONT SECTION
POLITICS & POLICY

August 8, 1997

Opponents of Tobacco Pact Face Big Hurdle: Clinton

By MICHAEL K. FRISBY
Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON -- At a White House meeting on tobacco, Vice President Al Gore displayed a kids' puzzle featuring the Marlboro Man. It was a toy, he told the group, but if you looked closely, cigarettes were plastered all over it.

As President Clinton's tobacco advisers met with former Surgeon General C. Everett Koop and ex-Food and Drug Administration chief David Kessler, administration officials said, Mr. Gore sent a strong message with the toy: When you think the tobacco industry is on the run, they still find ways to market their products.

Tom Bloom

Mr. Gore said the puzzle belonged to a teenager who had quit smoking. "Whenever he played with the puzzle, he said that it made him want to smoke again," the vice president told the meeting last month.

It was a brief but important moment in the White House's review of the proposed tobacco settlement. Mr. Gore, who is skeptical of the deal, was able to outline some of his differences with the industry. The vice president, Health and Human Services Secretary Donna Shalala and First Lady Hillary Rodham Clinton have long been among the administration's strongest opponents of smoking. But in this latest fight, they face a major hurdle: The person who matters most, the president, wants to approve a deal.

Uncomfortable Positions

Clearly, this puts Mr. Gore, Ms. Shalala and their antismoking allies in uncomfortable positions. Whatever their views, it is their job to help Mr.

Clinton succeed at policy missions. Still, there are signs that they are finding ways to express their doubts about the settlement, as well as bring about changes they believe are needed.

The settlement channels $368.5 billion from the industry toward public health and imposes restrictions on tobacco advertising and marketing, while granting the industry immunity from punitive damages for past misconduct and making it harder for the FDA to regulate nicotine.

At a cabinet meeting Thursday, Ms. Shalala voiced her belief that FDA regulations must not be weakened by any settlement with the industry, and her cabinet colleagues strongly agreed. Even before that meeting, Ms. Shalala flashed her skepticism, saying in an interview that the industry has "sophisticated marketers" who no doubt already are dreaming up sales pitches for decades ahead. "Any agreement must leave the FDA nimble and flexible enough to respond to changes in the market in order to achieve our public-health goals," she said.

Mr. Gore, moreover, was instrumental in getting the White House to lay down two important requirements: that any deal couldn't limit the government's ability to regulate nicotine, and that there must be increases in the penalties to be paid by tobacco companies if they don't reduce youth smoking.

At times, though, Mr. Gore seems awkward with his dual roles. During the Kessler-Koop meeting, which Mr. Gore ran in place of the president, he repeatedly fired off objective questions to the guests. When making critical remarks, he would begin by saying, "I personally think... ." Still, he used the forum to focus attention on the penalties issue, which he later championed.

Critics Worry

Outside critics of the tobacco deal, however, worry about whether their allies in the administration are influencing the review enough. "My sense is that the president has his mind made up and that he wants a deal," says Alan Morrison, a lawyer with Public Citizen, a public interest group. In advocating changes, Mr. Morrison said antismoking groups find it more effective to funnel information through lower-level people instead of meeting with principals.

Missing in action has been Mrs. Clinton. She created a public flap by criticizing the smoking of actress Julia Roberts in the movie, "My Best Friend's Wedding." But neither the first lady nor her top advisers have attended meetings related to the settlement review, and they haven't been calling HHS looking for information. Administration officials describe Mrs. Clinton as a strong opponent of smoking, but someone who isn't yet playing a role in the settlement.

Health organizations hope that Ms. Shalala will help fill the void, but she, too, may be handicapped by the process.

On most issues involving a number of agencies, cabinet secretaries funnel their positions to Bruce Reed, who heads the White House Domestic Council. He, then, plays the honest broker and forwards to Mr. Clinton the information that will help the president shape his policy decision. In this case, Ms. Shalala has been appointed to head the task force review with Mr. Reed, giving her the added responsibilities of channeling advice to the president from her colleagues along with her own opinions. There is some concern among the antismoking people that the dual role may prevent Ms. Shalala from being as critical of the settlement as she might otherwise be.

Doing Both Jobs

Still, the HHS secretary may have found a way to do both jobs. With Mr. Reed, and sometimes alone, she has met with numerous groups that have problems with the settlement proposal. Some who have talked with her are convinced that she is gathering information that she can use to advocate major changes in the deal when she delivers her recommendations to Mr. Clinton.

After meeting with Ms. Shalala, Mohammad N. Akhter, executive director of the American Public Health Association, said, "She was very sympathetic to the concerns that I raised." Mr. Akhter, whose organization represents public-health associations, wants to make the industry apologize for its past behavior and to prevent the industry from selling more potent cigarettes overseas.

Those familiar with Ms. Shalala's view agree that she, like the vice president, is skeptical about the deal. She does, however, see it as an opportunity to get some things from the industry -- a focus on nonsmoking that goes beyond teenagers to all Americans, and substantial money for public health -- that greatly exceeds what the administration would have achieved solely with its FDA regulations.

Her big difference with Mr. Reed, however, is in their views of what the courts are likely to do with the FDA regulations. A federal court in North Carolina has upheld the FDA's jurisdiction to regulate tobacco but has struck down the agency's proposed limits on tobacco advertising. Ms. Shalala is said to believe strongly that the regulations will be upheld in the courts, while Mr. Reed is less certain the administration can win back the advertising limits. Both the government and the industry are appealing parts of the decision.

Those diverging views mean that Ms. Shalala may push for a tougher deal, since she believes the regulations are a strong fall-back if the industry refuses to give up more. Ms. Shalala is also very concerned that any package coming out of Congress may not look like what the administration recommended. Meanwhile, Mr. Reed, as well as Bruce Lindsey, another key Clinton tobacco adviser, argue that a negotiated deal is needed because they could lose in court.

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A gift to Big Tobacco

By Globe Staff, 08/08/97

The much-heralded Washington budget agreement contains a 15-cent increase in cigarette taxes designed to offset the cost of providing health insurance coverage to needy children. But late in the congressional debate somebody slipped in an amendment that allows the tobacco industry to count the estimated $5 billion in revenues raised by the tax increase as a credit against the $368 billion settlement reached with the state attorneys general in June.

President Clinton ought to use his new line-item veto power to pluck out this sugar plum for Big Tobacco. Otherwise the settlement may have to be renegotiated at a higher figure, a hazardous exercise that could unravel the whole deal.

Clinton is expected to pronounce his opinion soon on the settlement, which still must be ratified by a skeptical Congress. With a few conspicuous weaknesses - mostly concerning the Food and Drug Administration's freedom to regulate tobacco as a drug - the proposal is a ringing victory for public health, especially among children. It would ban all cigarette vending machines, Internet advertising, promotional gear, and billboards, including signs in store windows; it would require all tobacco products to be placed behind counters; it would not allow tobacco brands to sponsor sports or charitable events; and it would subject the industry to penalties if youth smoking does not decrease as a result of these changes.

But the price of cigarettes is also an important deterrent to youth smoking; this is one case when it is a good thing for an industry to pass along the costs of regulation to consumers. Chipping away at the financial burden the tobacco companies must bear undermines the settlement's goal of making smoking a more expensive habit.

A series of votes testing the clout of the tobacco lobby since the settlement was reached indicates that the industry is still getting its money's worth for the millions in campaign contributions it makes each year. Allowing the industry's friends in Congress to snooker the public out of $5 billion would be a bad start for the integrity of the settlement as it heads into congressional hearings.

This story ran on page A22 of the Boston Globe on 08/08/97.

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August 10, 1997

IN AMERICA / By BOB HERBERT

Tobacco's Secrets

Joe Camel may be gone and the Marlboro Man may be breathing his last, but those crafty ***tobacco*** company executives are as committed as ever to their life's work, which is the spread of their virulent product to as many people on the planet as possible.

So it is heartening to hear that Congress is not likely to act before next year on the proposed settlement between the ***tobacco*** companies and state attorneys general. The companies can hardly wait to have the deal approved, which tells you something.

The deal would grant the companies immunity from liability for several decades of miserable behavior even though the full extent of the misbehavior is not yet known. The Attorney General for Minnesota, Hubert H. Humphrey 3d, who opposes the settlement, is sitting on 33 million pages of internal ***tobacco*** industry documents that, by court order, have not been made public. Some of the documents are said to contain explosive information on a variety of matters, including efforts by ***tobacco*** industry officials to conceal what they knew about the dangers of ***smoking*** and to recruit underage smokers.

Mr. Humphrey has urged the Senate Judiciary Committee to subpoena the documents.

Eric Johnson, an aide to Mr. Humphrey, said that if Congress and the American public "get their hands on this information, the ***tobacco*** deal that's on the table now will be dead."

Simply stated, the interests of the public and the interests of the ***tobacco*** industry are in conflict. The ***tobacco*** companies want to sell as many ***cigarettes*** and make as much money as possible. But when the industry is doing well the inevitable result is that enormous numbers of people are succumbing to lung cancer, throat cancer, emphysema, heart disease and other terrible illnesses.

The ***tobacco*** companies have never acknowledged their role in this carnage and have never acted in good faith in their dealings with the many generations of customers they have so assiduously sought.

"The proposal that's on the table now is a sweetheart deal for an outlaw industry," said Mr. Humphrey.

His assessment was echoed by Representative Henry Waxman, a California Democrat and longtime ***tobacco*** adversary. "It's a very good deal for the industry," said Mr. Waxman. "They get virtual immunity from liability, which is remarkable for an industry that has lied to the American people for 40 years. Their corporate conduct has been abysmal. Now they want immunity. And their executives will get a windfall of hundreds of millions of dollars when their stock goes up."

The windfall comment was a reference to a recent report from the Institute for Policy Studies in Washington that said a handful of top ***tobacco*** executives will likely see a $200 million increase in the value of their stock options if the current proposal is approved. It has also become clear that the companies plan to cover their collective carcinogenic butts by passing on the allegedly enormous costs of the settlement to consumers in the form of higher ***cigarette*** prices. And ***tobacco*** lawyers and accountants are already piecing together unconscionable tax schemes designed to reduce the total liability called for in the settlement.

Tobacco companies have a heads-I-win, tails-you-lose approach to negotiating. They are great at it. And they are great at dealing with Congress, which is awash in ***tobacco*** cash. There are reasons why ***tobacco*** money has flowed for so many years into the pockets of politicians in every part of the country, including such great ***tobacco***-producing regions as Manhattan, Brooklyn and the Bronx.

The fix is almost in, but time is not on the side of the industry. What the ***tobacco*** companies fear more than anything is that their carefully concealed account of their own sins, their internal record of their deliberate and sinister corporate deeds, will somehow be dragged into the light of day.

That is exactly what needs to happen. As Congressman Waxman asserted, it makes no sense to consider immunity before that account is made known. You don't make a decision on whether to offer amnesty before you know what really happened.

Mr. Humphrey has two huge repositories of ***tobacco*** industry documents, and he will likely soon have more. If Congress is interested in the truth about ***tobacco***, it will have a look at that historic trove.

Smoking rises from ashes as tobacco figures jump

Your news selection in the Personal Times

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CONTACT US

by Edward Welsh

THE NUMBER of smokers in Britain has increased for the first time in 20 years. A study has found there are now more than 13m tobacco users, a rise of more than 340,000 in two years.

High earners and those in their late thirties and early forties have been identified as the social groups adopting a "born again" attitude to smoking.

The findings, by Mintel International, the market research group, were based on a survey of 25,000 people. They suggest that expensive campaigns to encourage people to kick the habit over the past two decades have been largely ineffective. The report will also raise doubts about the government's pledge to introduce even tougher measures against the promotion of tobacco.

Amanda Sandford, communications director of Action on Smoking and Health (Ash), described the sudden reversal in the decline in smoking since the early 1970s as unexpected. "It is very disturbing and shows the need to redouble efforts to put over the anti-smoking message," she said.

Since the 1970s, about 500,000 people have given up the habit annually as its health implications have become better known and restrictions in the workplace and public areas have increased.

Cigarette advertising has been tightly regulated - with bans on television and radio - and successive chancellors have raised millions of pounds in tobacco taxes. Court actions involving people with tobacco-related illnesses have also become common.

However, despite efforts to persuade smokers of the dangers, the research by Mintel suggests the message is not getting across. The government had hoped the number of smokers would fall to two out of 10; it now appears that figure will rise above three out of 10.

Anti-smoking campaigners were surprised at the rise in smoking by high earners, who had been viewed as the most likely to appreciate the dangers. In 1994, 16.3% of those in the highest socio-economic groups smoked. The study shows this figure rose to 18.3% in 1996.

There was also surprise at the rise in smoking by those between 35 and 44, an age when many people have traditionally given up.

Government research has suggested that young people, particularly women, are most at risk of taking up smoking. However, the report shows that while fewer people in this age group are taking up the habit, the number of those in their early middle age who smoke has risen by 1.6%.

The report offers few clues as to why. One explanation is the changing lifestyles of thirty-and fortysomethings. Traditionally they gave up smoking as they began having families. But it is also this group which is now experiencing an increasing number of divorces and separations.

The Health Education Authority (HEA) said the rise could be explained by the growing portrayal of smoking as chic, particularly cigars. It published a report last week lambasting style magazines for increasingly using pictures of models holding cigarettes.

Lesley Owen, a senior research manager at the HEA, said: "There is a new group of style leaders, who are also smokers, coming through. Smoking is increasingly seen as a way of showing assertiveness."

Dr Jonathan Foulds, of the department of addictive behaviour at St George's hospital, London, suggested government targets on the number of smokers declining to a hard core were now unlikely to be met. "Maybe it's time to move away from telling people it's bad for their health. These people need help," he said.

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News

Senators work to cut farmers in on tobacco deal

By Bill Straub, Post Washington Bureau

WASHINGTON - Sens. Wendell Ford and Mitch McConnell have joined forces to develop a plan that ensures burley farmers will get a piece of the proposed $368.5 billion tobacco settlement.

For small tobacco farmers, putting help in the settlement could mean the difference between surviving or being forced to give up their livelihood, said Rod Kuegel, president of the Burley Tobacco Growers Cooperative based in Lexington and a burley tobacco grower in Owensboro.

Ford, D-Owensboro, and McConnell, R-Louisville, have circulated one plan that sets aside $17.2 billion, primarily for economic development in the face of projected farm losses should Congress OK the settlement.

Both Ford and McConnell have been critical of the settlement reached between tobacco companies and the attorneys general from 40 states in June.

That proposal institutes marketing restrictions and establishes a pool of money to offset state health-care costs attributed to smoking-related illnesses and make awards to qualified victims. In return, cigarette makers would be protected from punitive damages in health-related lawsuits that have been filed.

But the pact, which requires congressional approval, offers no protection for farmers, who did not participate in the negotiations. Both Ford and McConnell have said the deal won't pass without help for growers in Kentucky, where burley is a $704 million crop.

"Without considering anything for farmers, the companies have pro tected their ability to make a profit while at the same time sacrificing many of Kentucky's small growers," said Kuegel.

His group supports a rural re investment program that could help finance diversification projects to help farmers explore other crops in addition to tobacco. He is talking not about replacing tobacco but about augmenting it.

The alternative to tobacco is not tomatoes or corn, he said.

"If we lose tobacco, the alternative is we lose half of our family farmers in Kentucky. If we maintain tobacco, even at a lesser level, we can retain those farmers," Kuegel said.

Legislators working on adding farm funds to the settlement are still developing their package.

"It's fair to say we're still working with the farmers on something," said Meg Conlon, a Ford spokeswoman.

Ford, the Senate minority whip, has been vocal about the lack of farm input, maintaining the settlement "simply ignored the tens of thousands of farm communities that economically depend on tobacco."

One recent proposal, made available to the Farm Bureau Federation, sets aside $12.5 billion for farmers whose tobacco income falls below 1996 levels as a result of the agreement.

The fund would last for 25 years and award no more than $500 million a year.

The proposal also sets up a $100 million fund for tobacco-industry workers who lose their jobs and a $250 million fund for economic development projects in tobacco-producing counties.

Farmers also could receive compensation if property values were reduced as a result of a drop in quotas.

The plan is to offer the farm provisions as an amendment to the settlement legislation. Money for the growers would come from the $368.5 billion pool provided in the settlement.

"There are a lot of ideas out there. But it takes funding. If we can achieve something through negotiations to enhance that (funding), we can further enhance our family farmers' chance to remain and be successful on a 150-to-200-acre farm, which is what we have in Northern Kentucky," Kuegel said.

"There's a lot out there that we're discussing, and we're working with the Kentucky farm community to see what we should put in," said McConnell spokesman Robert Steurer.

McConnell has said, Steurer added, that the package "won't pass without a grower component."

-

Post reporter Peggy Kreimer contributed to this story.

Publication date: 08-09-97

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Thursday August 14 8:52 PM EDT

Moore has White House meeting on tobacco deal

WASHINGTON, Aug 14 (Reuter) - A key tobacco negotiator met White House officials on Thursday to discuss ways of modifying the $368.5 billion tobacco settlement to increase federal regulators' control over nicotine.

The tentative agreement between the tobacco industry and state negotiators, reached in June, requires that tobacco firms pay $368.5 billion, admit that tobacco is addictive and submit to extensive new government regulation.

In return, the state attorneys general promised them immunity from any further punitive liability for past deception, fraud or conspiracy.

The administration's review of the landmark tobacco agreement is virtually complete and will be presented to President Bill Clinton next month.

The negotiator, Mississippi state Attorney General Michael Moore, met with White House deputy counsel Bruce Lindsey and domestic policy adviser Bruce Reed to discuss the status of the review.

He said one of his objectives was to make the Food and Drug Administration's jurisdiction over tobacco ``as tough as we can.''

``The complaint was that there were too many hoops that FDA would have to jump through to reduce nicotine and to eliminate nicotine from the product. We're trying to reverse that and make sure that they are not perceived as hoops, that if FDA decides it's in the public health interest to reduce nicotine levels, that they can do that,'' Moore told reporters.

Moore said he was sticking with his prediction that Congress will pass legislation approving the settlement by the end of the year.

Washington state Attorney General Christine Gregoire told Reuters in a telephone interview that the attorneys general were making ``good progress'' in revising the FDA portion of the agreement but that they were not planning a formal renegotiation of the entire settlement.

``Good, bad or indifferent we've made a commitment to the settlement so we feel duty-bound to stick by the settlement," she said. ``But we've also told the White House if we can assist them in strengthening it and meeting the concerns of the public health community and the White House we'll do everything we can."

More news for related categories and industries: food/beverages, household, insurance, leisure, tobacco, stock capsules, options.

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Did They Plan Root Beer Cigarette

Thursday, August 14, 1997; 9:17 a.m. EDT

WEST PALM BEACH, Fla. (AP) -- Attorneys for the state say they have a tobacco company memo proposing a cigarette that smelled like root beer or fruit juice, evidence the industry targeted underage smokers.

The handwritten, undated document, believed to have been written in the 1970s, will be presented as evidence at the trial, said Ron Motley, an attorney representing Florida in the lawsuit to recover the Medicaid costs of treating sick smokers.

The two-page memo -- from the files of the British American Tobacco Co., an affiliate of Brown and Williamson -- is titled Project Kestrel. It describes the creation of a cigarette brand that ```breaks the rules' to appeal to a new generation and shock their parents to make conventional brands look bland and weary," according to The Palm Beach Post and USA Today.

The unsigned document describes discussions about the taste of the cigarette, including possible ``nicotine enhancement" and packaging. No explanation was given for the name ``kestrel," a small bird of prey that feeds upon rodents and other birds.

``It shows the contemplation of doing an illegal act -- manufacturing and designing cigarettes with boosted nicotine for kids," Motley told USA Today.

David Bernick, attorney for Brown and Williamson, called the marketing idea ``silly" and said he had no idea who wrote it.

``I don't think it was proposed anywhere," Bernick said. ``I don't know if this came from somebody outside the company and just ended up in their files."

The memo said the cigarette's rebellious image ``would be encouraged if the cigarette not only tasted horrible, but also had a totally distinctive aroma.

``Two flavours which were discussed as options were Root Beer and Brazilian Fruit Juice, both of which appeal to the younger generation while being rejected by their parents," the memo said.

The cigarettes could have colored paper and perhaps black packs since ``the youth of today tend to associate with the colour black," the memo said.

The memo also said the proposed cigarette would have ``some sort of `kick' of a similar nature to the Coca-Cola `kick,' giving the cigarette a physiological effect." This would require the use of ``AMTECH technology, using ammonia to generate nicotine enhancement."

Cigarette manufacturers use ammonia in cigarettes to enhance the effect of nicotine, two attorneys for the state said in a hearing Wednesday in which they sought more tobacco industry documents about ammonia technology.

Andy Berly and W.C. Gentry, attorneys for the state, included the memo as evidence in their attempt to convince special master R. William Rutter Jr. that the other documents should be made public. Florida acquired the memo as part of a set of documents that the tobacco industry turned over during trial preparation.

Industry lawyers claimed the other papers sought by the state are protected by attorney-client privilege, are trade secrets or pertain to patents and should not be made public.

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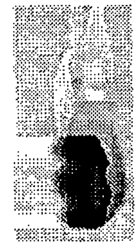

Thursday, August 14, 1997

Southside growers to brief tobacco critics

BY PETER HARDIN
Times-Dispatch Washington Correspondent

WASHINGTON -- Instead of junkets abroad or jetting to resorts while Congress is on its August break, lawmakers and aides are getting invitations to tour the tobacco fields of Southside Virginia.

Tobacco growers are sponsoring a briefing and farm tour in South Boston next Thursday and Aug. 22 to give policy-makers and other national health advocates, traditionally perceived as tobacco foes, a chance to learn more about the people who grow the leaf, and their fears.

The growers hope to spotlight their need for protection if a multibillion-dollar settlement with manufacturers is ratified by Congress; the settlement likely would increase cigarette prices and reduce consumption.

"We want to get the people who don't understand us, or know us" to come next week to the heart of Virginia's tobaccoland, explained J.T. Davis Jr. of Halifax County, a board member of the Concerned Friends for Tobacco group.

Invitations were going to such prominent tobacco critics as former Food and Drug Administration Commissioner David A. Kessler and former Surgeon General C. Everett Koop, as well as Rep. Henry A. Waxman, D-Calif., and Sen. Richard J. Durbin, D-Ill.

Davis said some growers and health advocates have been meeting regularly during the past three years, with mediation help from the Institute for Environmental Negotiation at University of Virginia, but that next week's event will have a national focus.

Coordinated with the Southern Tobacco Communities Project, sponsored in part by U.Va., the Southside events will be aimed in part at outlining how growers view the proposed $368.5 billion settlement of lawsuits against cigarette manufacturers.

Growers have complained they were left out of the talks involving state attorneys general, plaintiffs' lawyers and the tobacco companies that led to the settlement. The White House is reviewing the pact.

Last month, growers from tobacco states drafted a broad proposal for economic relief and other safeguards if the settlement were adopted.

Entire communities dependent on tobacco farming would be at risk of going under if the settlement went into law, growers say. The proposed settlement is targeted at curbing youth smoking and compensating states for Medicaid costs tied to smoking.

Representatives from other tobacco states are planning to attend the Virginia events, which will include a tour of a tobacco warehouse, a farm equipment business and a diversified farm.

One health advocate who was invited, Kurt Gregory Erickson of the American Lung Association of Northern Virginia, was keen about bringing growers and policy-makers together.

"Clearly the writing is on the wall with the current crop" and it's important to plan for the economic health of communities in tobacco-growing regions, Erickson said.

Rebecca Reeve, project director of the Southern Tobacco Communities Project, said policy-makers face "a real dilemma. For (rural) communities to survive, we need to think and act in maybe some new ways." She said health advocates can play a valuable role.

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Published Thursday, August 14, 1997

Tobacco Research Leader Stumped

Catherine Wilson / Associated Press

MIAMI (AP) -- A longtime president of the Council for **Tobacco** Research drew a blank in court Thursday when pressed to name any studies his industry-funded group did on smoking and disease -- its publicly stated mission.

Robert Gertenbach headed the council from 1984 to 1992. He was called to testify in a landmark $5 billion lawsuit by flight attendants who blame illnesses on smoky cabin air.

Stanley Rosenblatt, representing the flight attendants, maintained that the council's research was "supertechnical stuff relating to genes and cells and molecules" but having nothing to do with smoking and human health.

"I believe you would have to ask a scientist to make that connection. I as a layman cannot," said Gertenbach.

Rosenblatt asked Gertenbach what he learned from council research about whether people should stop smoking based on health risks.

"It is my lay opinion that causation is still up in the air," said Gertenbach, a lawyer.

The council's stated purpose was to study smoking-related health problems, but a council research director previously testified that he knew of no microscopic analysis of **tobacco** or studies tracking the health of smokers in his 10-year tenure.

Gertenbach testified that along with research grants awarded by a scientific advisory board, the council handled special projects sought by **tobacco** companies. He said **tobacco** company attorneys could submit and arrange these projects and that a public relations consultant attended scientific advisory board meetings.

The testimony bolstered the plaintiffs' contention that **tobacco** companies used the council to keep a lid on research that would hurt the industry, sometimes by using lawyer-client confidentiality.

Lorillard Inc. chairman and CEO Andrew Tisch testified that "studies commissioned by the council were not released to the public."

Tisch, like all but one **tobacco** executive, said it hasn't been proven that smoking or smoke causes disease.

In other testimony, Ellen Merlo, Philip Morris Inc. vice president of corporate affairs, said "there are lot of people who are in doubt" about whether cigarettes kill.

The day's testimony came from depositions because witness subpoenas in the class-action suit aren't valid out of state. Some depositions are on video, while others are read in court.

The trial and a separate lawsuit by the state of Florida seeking the recovery of Medicaid funds spent on sick smokers could prove to be the only major cigarette cases decided by juries.

A proposed $368 billion national settlement of **tobacco** litigation would eliminate 40 state suits as well as class-action suits seeking punitive damages. □(PROFILE □(CO:Philip Morris Companies Inc; TS:MO; IG:TOB;) □(CAT:Business;) □(CAT:Consumer;) □)

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News: Analysis & Commentary

THE TOBACCO DEAL: SMOKE AND MIRRORS?

If the settlement becomes law, taxpayers could be the big losers

The best place to glimpse the future of the proposed $368.5 billion tobacco settlement could be Pascagoula, Miss. That's where years of legal battles paid off for tobacco's adversaries on July 15: $170 million was deposited in Pascagoula's SouthTrust Bank, the first installment in Mississippi's $3 billion settlement with the industry.

Now the question is: What should Mississippi, the first state to settle with the tobacco industry, do with the money?

FATAL FLAW. The answer will echo around the nation, if Congress adopts the global tobacco settlement reached by 40 state attorneys general and the tobacco industry on June 20. The agreement will likely undergo extensive revision. But using the present settlement as a framework, a growing chorus of critics is starting to follow the money--and they're finding a fatal flaw. Thanks to vague wording in the settlement, much of the money could be misspent, they say, doing little to meet the deal's supposed goals: to improve public health and compensate tobacco victims. Now those critics are worrying that what first looked like a landmark public-health achievement could become a public-policy nightmare.

Already, tobacco has quietly won an extremely lucrative prize: In the balanced-budget agreement signed into law on Aug. 5, the companies got a $50 billion windfall. That's the amount new cigarette taxes will raise, and the budget agreement says tobacco can deduct that amount from what it will owe if the settlement becomes law. That provision followed a 6-month period in which tobacco companies gave nearly $2 million in unregulated "soft money" to national political parties, according to Common Cause. About $1.6 million went to Republicans. Philip Morris Cos. led the pack, giving $794,500--$673,700 of it to Republicans.

Worse, critics say as much as one-third of the money in the settlement won't come from the tobacco industry at all: Some $140 billion could come out of the pockets of U.S. taxpayers. That's because the agreement says all payments "shall be deemed ordinary and necessary business expenses"--meaning they are tax deductible. So the industry will get a tax break equal to about one-third of what it pays, or roughly $140 billion. "This settlement represents the biggest single subsidy of the tobacco industry ever," says Stanton A. Glantz, a professor in the cardiology department at the University of California at San Francisco.

The pact is being sold as a victory for the nation's health. Mississippi Attorney General Michael Moore, the prime mover behind the deal, has called it "the most historic public-health achievement in history." Moore later broke ranks to settle--but it's not clear he will achieve much for public health. "There are those who say the whole purpose of the suit was to repay the Mississippi taxpayer," says State Senator Dick Hall, chairman of the Mississippi Senate appropriations committee.

The issue is so politicized that Hall can't even move the money from Pascagoula to Jackson, the state capital. "The attorney general is from Pascagoula, and the lead attorney, Dickie Scruggs, is from Pascagoula, and I guess they just wanted it down there," he says. When the money reaches Jackson, he fears that "it will be a feeding frenzy." And as Mississippi goes, so may go the nation.

Tobacco isn't winning every battle. On Aug. 6, a Florida court ordered the release of key industry documents. But the industry's losses are few and far between. Even the deal's defenders are concerned tobacco is winning too much. "A lot of issues still haven't been settled. This is all very murky," says William D. Novelli, president of the National Center for Tobacco-Free Kids, who helped negotiate the deal. He believes the deal's problems will ultimately be solved.

State officials even disagree about whether their share should be used for public health. Some, such as New York Attorney General Dennis Vacco, argue that states should be able to use their awards on anything they like. Others, such as Minnesota Attorney General Hubert H. Humphrey III, a critic, believe the money must be "used for the public health and not fixing potholes," says his spokeswoman, Holly Ziemer.

There are other controversies. The settlement allocates about $1 billion, for example, to antismoking efforts. But the funding may not be effective, critics say. According to one proposal, much of it "would go to pharmaceutical companies and the medical industry" for free chest X-rays and free nicotine patches for smokers who want to quit, says William Godshall, executive director of SmokeFree Pennsylvania.

The agreement provides for $500 million for an antismoking ad campaign and additional money for other tobacco-control programs. But Robin Hobart, co-director of Americans for Nonsmokers' Rights in Berkeley, Calif., says it's not enough. "The $200 million we now spend for tobacco control is just a drop in the bucket."

The ads contemplated in the settlement may also be vulnerable to an industry attack. In Massachusetts, which has an ad program like California's, the industry has lobbied to cut funds for the ads and has even threatened to sue the state for defamation, says Gregory Connolly, who oversees the Massachusetts Tobacco Control Program. "If you think the industry is going to sit back and let opponents run aggressive antismoking ads without fighting back, you're crazy."

MAJOR PROBLEM. The settlement does have its defenders, of course. One is attorney John P. Coale, who represents smokers in 26 state class actions. He notes that the deal could overwhelm the U.S. tort system. Tort payouts now total about $3 billion annually, he says. The settlement could dump $5 billion into the system--dwarfing all other cases. Coale, a lead negotiator in the agreement, doesn't know how the money will be divvied up. But he's confident it will go to "the things that everyone agrees on...in the end the country gets helped."

But not everyone agrees. A major problem with the agreement is that Congress has control over how much the tobacco industry should pay. And Congress has proved remarkably ineffective at taking any punitive action against the industry. Besides, congressional paralysis was precisely what the agreement was supposed to surmount. That's why the state attorneys general took matters into their own hands. Now that their deal has moved to Congress, tobacco has already won a $50 billion prize in the congressional halls and cloakrooms it knows so well. That little victory is a warning sign that, settlement or no, the tobacco industry won't fade quietly away.

By Paul Raeburn in New York, with John Carey and Susan Garland in Washington, Amy Barrett in Philadelphia, and Mike France in New York

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2nd group backs tobacco proposal

Burley co-op favors income-protection plan

By Bill Estep
Herald-Leader Staff Writer

A second influential farmers' group has endorsed the idea of setting aside billions from the landmark tobacco settlement to pay farmers for lost income.

Directors of the Burley Tobacco Growers Cooperative Association tentatively reached consensus on the concepts in the proposal yesterday, although they want changes in some of the language, said President Rod Kuegel.

"We're over the hurdles," Kuegel said.

The Kentucky Farm Bureau Federation's tobacco advisory committee endorsed the concepts in the proposal Tuesday.

The proposal, circulated for comment by U.S. Sens. Wendell Ford and Mitch McConnell, would create a fund of up to $17.2 billion to pay farmers and displaced industry workers and set up economic-development programs in tobacco communities.

An equally important part of the proposal for producers, however, is getting a contract with cigarette companies to guarantee minimum purchase levels, Kuegel said.

Minimum buying levels would ease farmers' losses, reducing the need for supplemental payments.

But if the settlement is approved without such guarantees, companies would be free to import more foreign tobacco, further eroding domestic production, Kuegel said.

A minimum purchase level of 500 million pounds for 25 years has been suggested, with the companies penalized if they buy less than 90 percent of that.

Congress could give farmers a chunk of the $368.5 billion tobacco settlement by law, but guaranteed buying levels could be accomplished only by contracts between farmers and companies.

Kuegel said farmers' groups will seek help from state attorneys general and lawmakers in getting tobacco companies to sign such contracts.

There are still many devils to be worked out in the details of the proposal.

One question, for instance, is who would be eligible for supplemental payments. The proposal mentions "active producers," but that term hasn't been defined.

Co-op directors discussed yesterday whether people who own federal allotments to grow tobacco, called "quotas," should share in the money even if they don't grow it themselves. Directors decided everyone -- tenants, growers, and quota owners -- should share the money if it's approved, Kuegel said.

Those supplemental payments represent the biggest chunk of the proposal.

The draft calls for payments based on the average price per pound in 1996 multiplied by the amount of pounds that the quota drops from the 1996 level. Total payments would be capped at $500 million any year.

On another front, the proposal calls for having the federal government pay farmers for lost land value if the government phases out nicotine and if land value and income drop to 60 percent of 1996 levels.

The co-op supports paying farmers if the government outlaws their livelihood, but does not want the provision tied to the 60 percent level, Kuegel said.

Co-op leaders also voiced concerns about part of the proposal that would allow farmer referendums on changing the tobacco program. John Berry Jr., general counsel, cautioned that the provision could cause division among farmers.

Kuegel said he thinks burley and flue-cured tobacco groups will work out a united plan soon.

"We're real close to a consensus," he said.

* * *

Herald-Leader staff writer Gail Gibson contributed to this article.

Larger Tobacco Settlement Sought

Friday, August 15, 1997; 5:16 p.m. EDT

WASHINGTON (AP) -- Critics of a proposed tobacco deal urged President Clinton on Friday to double the cost of the estimated $368 billion settlement, and said cigarette prices should be increased by $1 to $2 a pack to raise the additional funds as well as cut smoking.

Under the proposed settlement, tobacco companies would pay $8 billion to $15 billion a year to settle 40 state lawsuits and fight teen-age smoking. They would raise the money by boosting cigarette prices an estimated 50 cents a pack, and in return would get protection against smokers' lawsuits and against full government nicotine control.

``That is an inadequate amount of money," Peter Angelos, the attorney in charge of Maryland's lawsuit against tobacco companies, said Friday after meeting with top Clinton aides.

The Clinton administration is finalizing its review of the proposed settlement.

Angelos and Minnesota Attorney General Hubert Humphrey III, critics of the proposed settlement, said cigarette prices should be raised $1 to $2 a pack. That would raise $30 billion a year -- still below the $50 billion a year in medical bills the nation accumulates from sick smokers, Angelos said.

``We're not talking about putting these companies in bankruptcy," Humphrey said.

But the higher cigarette price would cause a significant reduction in smoking, particularly among price-conscious teen-agers, he said.

In addition, Angelos said it is unfair for cigarette companies to put the entire cost of the settlement onto their customers. He called instead for part of the tab to come out of each company's yearly profits.

``They are dreaming. They are hallucinating," tobacco industry chief negotiator J. Phil Carlton said in dismissing that call.

Under the deal, which must be approved by Clinton and Congress, tobacco companies would pay an initial $10 billion out of their profits, but the remaining $358 billion, in payments spread over 25 years, would come from increased tobacco costs.

Clinton is expected to call for changes to the deal, including stricter government nicotine control, when he returns from vacation in early September. But the White House has not signaled whether increasing the settlement's tab is a high priority.

``We'll consider all those views as we evaluate the proposed settlement," White House spokesman Mike McCurry said Friday.

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Clinton wants tobacco deal as his legacy, analysts say

The San Diego Union-Tribune
Sun, Aug 24 1997

The fate of the proposed **tobacco** settlement has become a tug-of-war over President Clinton's desire to leave a legacy, analysts say.

Although White House aides say Clinton, who started a three-week vacation last Sunday, has made no final decision on what changes he wants in the agreement and will not state his terms until mid-September, insiders insist Clinton would dearly love to sign off on the $368.5 billion deal. The real issue Clinton is weighing, analysts say, is whether he will be viewed as selling out to Big **Tobacco** or pushing through the biggest health initiative of the 20th century.

Both sides of the debate have put forth a full-scale lobbying effort to win over Clinton.

Proponents of the agreement between the cigarette makers and their adversaries say the deal will drastically reduce teen-age smoking, give the federal government nearly complete regulatory control over **tobacco** products, nearly eliminate all forms of cigarette advertising and require the industry to shell out unprecedented sums of money for eternity. A new Treasury Department report bolstered their position, predicting nearly 11 million fewer people would be smoking in five years if the settlement is approved. They warn that demanding too much more might risk losing Clinton a chance at historical change.

Public health advocates counter the deal's penalties and fines are too soft and would allow the **tobacco** companies to continue earning huge profits, a contention supported by that same Treasury study. Signing off on such a deal would forever tarnish Clinton's presidency, they say. "Clinton would like to do something huge on the issue and be remembered for it, and this is his road to that," said Clifford Douglas, an attorney with contacts on all sides of the debate.

Douglas said White House intervention revived negotiations after they all but died in January. Far from being forced on Clinton, he said, the deal was to some extent created by him.

Other political observers, such as former White House adviser Dick Morris, who has acted as a facilitator in the **tobacco** negotiations, say the president is in the position of setting the terms of the agreement to his liking.

Morris said Clinton must determine whether the settlement agreement is the best deal he can achieve under the current legal and political circumstances and, if it is, how to best sell it to public health advocates and the public.

"If the president wants this thing to happen, it will happen," Morris said. "And I know he really wants to make it happen, but he has some specific concerns, and those are being addressed."

Administration negotiators have narrowed their list of concerns to three areas of the 68-page settlement agreement, according to Mississippi Attorney General Mike Moore, who negotiated the $368.5 billion deal with the industry and has become its most outspoken supporter. Concerns over settlement

The first issue is the requirement that the industry disclose incriminating internal documents and reports detailing what and when the firms knew about the dangers of smoking and how they tried to cover it up. Moore and others said they have developed a process that would make the relevant records public.

Clinton's second demand is that proposed restrictions on the U.S. Food and Drug Administration's ability to regulate **tobacco** products be removed. Negotiators say that is being done and hope to have the final language worked out shortly.

"We're going to get that done to everyone's satisfaction," Moore said. The third area is White House concern that the penalties and fines to be paid by the industry if it doesn't meet targets for teen-age smoking are too small. Under the settlement, the cigarette companies would have to work to reduce teen smoking 30 percent in five years, 50 percent in seven years and 60 percent in 10 years. If the goals are not met, the industry would be required to pay $80 million for each percentage point the target is missed. However, the deal caps the payout at $2 billion per year.

The Dallas Morning News has learned the updated proposal being considered by the White House would eliminate the cap, more than doubling the industry's potential liability.

Moore said he is confident the changes in the three categories are the only issues under discussion with the White House. He predicted they would satisfy Clinton and most public health organizations.

Administration officials distanced themselves from Moore's comments. "We haven't even finished our report yet," said Victor Zonana, a spokesman for Health and Human Services Secretary Donna Shalala.

Some public health groups agreed with Moore's analysis. Others said only far deeper changes would end their complaints about the deal.

"We don't even think it's a settlement. We think it's a bailout" of the industry, said John Garrison, chief executive officer of the American Lung Association. "It will be interesting to see whether President Clinton's legacy, which so far has been as a president who stood up to the **tobacco** industry, whether that holds. Because if the **tobacco** industry gets a bailout here, there will be a backlash."

Some members of Congress say majority Republicans will probably not risk their political lives by embracing a settlement Clinton does not endorse and that Democrats could brand a sweetheart deal.

The industry drew large, unfavorable headlines last week for its recent donations to the GOP.

It gave $1.9 million in corporate funds over the last six months, five-sixths of it to the Republican Party. That is almost five times the industry's donations during the same period after the 1992 presidential elections.

Is settlement adequate?

Clinton's aides are finishing a memo laying out their findings. They reportedly planned to omit recommendations from the document, lest a leak limit Clinton's flexibility.

Officials said a team led by domestic policy adviser Bruce Reed and Shalala would advise Clinton.

Outside the White House, debate focused on whether the deal negotiated by Moore and a consortium of state and private attorneys is adequate and whether society would be better off without a settlement. In terms of adequacy, money has become the chief debating point.

The deal calls for **tobacco** firms to pay $368.5 billion over the next 25 years and then more than $15 billion a year, increasing at the rate of inflation for an indefinite period of time, to fund a range of public health and regulatory efforts.

After adjusting for inflation and for tax breaks, however, some experts put the deal's true value at less than $200 billion. The U.S. Treasury report estimated the deal would add about 62 cents per pack to the price of cigarettes. The price hike, combined with the proposed 15-cent cigarette sales tax, should whittle the number of smokers from 50 million to 39 million by 2002, the study predicts. And teen-age smoking would decline by 28 percent, the report says.

Many public health groups say the price hike is not nearly enough to deter smoking. One blue-ribbon panel, led by former Surgeon General C. Everett Koop and former FDA chief David Kessler, wants payments that would force a $2 per pack price hike. The American Medical Association wants a $1 price hike. They say that would further decrease teen smoking. Even if the cigarette makers paid $800 billion, "they would still retain all of that profitability that they now have," Minnesota Attorney General Hubert Humphrey, who is opposed to the agreement, said Friday. Anti-smoking advocates such as Humphrey have pounded on the $2 billion penalty cap as not being enough incentive for the industry to reach targets for reducing teen smoking.

Industry spokesmen say it is at least one-fourth of the **tobacco** companies' current domestic profits. Youth smoking depends partly on things beyond the industry's control, they add, such as cultural norms and retail sales practices.

A high-ranking **tobacco** official told The News the industry remains fully committed to finalizing an agreement to present to Congress. The official, who spoke on the condition he not be identified, said the firms were willing to concede regulatory control to the FDA and make it easier and quicker to release still-secret industry documents. However, the **tobacco** official said additional financial demands of any significance could kill the deal. He said reports showing the industry could withstand penalties double the $368.5 billion agreement are referring only to Philip Morris, the nation's leading cigarette maker. "Because of R.J. Reynolds' current debt, the company simply cannot absorb any more penalties than have been agreed upon," the official said. Whatever its faults, Moore said, the deal is better than anything Clinton is likely to get otherwise.

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THE WALL STREET JOURNAL INTERACTIVE EDITION FRONT SECTION

August 25, 1997

U.S., Tobacco Negotiators Try to Calm White House

By MILO GEYELIN and BRUCE INGERSOLL
Staff Reporters of THE WALL STREET JOURNAL

Government and tobacco-company negotiators are trying to revise a controversial provision in the proposed $368.5 billion tobacco settlement to address White House criticism that it would undercut the Food and Drug Administration's power to regulate tobacco.

How much headway they are making was in some dispute Sunday. One key negotiator, Mississippi Attorney General Michael Moore, contended they were close to agreeing on new language that would remove "all the artificial hoops that the FDA would have to jump through" to require, for example, a gradual reduction in the nicotine levels of cigarettes. On the other hand, the industry's chief negotiator, Phil Carlton, asserted the five cigarette companies still haven't agreed to change "one syllable" in the tobacco pact.

Both men confirmed, however, that they have been discussing ways to allay President Clinton's deep misgivings about terms in the proposed deal requiring the FDA to prove that low-nicotine cigarettes wouldn't create a huge black market in "contraband" cigarettes.

The industry, Mr. Moore said in an interview, is amenable to shifting the burden of proof, with tobacco companies -- rather than the FDA -- having to demonstrate reduced nicotine levels would spawn black-market demand for more potent cigarettes. As for Mr. Carlton, he said Mr. Moore overstated the industry's readiness to accept such a drastic change in language.

That such talks are under way is significant, nonetheless, reflecting renewed flexibility in the industry's settlement posture. Similarly, top tobacco executives have been adopting a strikingly conciliatory tone in sworn interviews with plaintiffs lawyers in Florida.

Tobacco officials were providing depositions for a Florida lawsuit seeking to recover Medicaid money spent on sick smokers. Late Sunday, Florida and the tobacco industry reached a settlement in the case.

Link

Florida Reaches Settlement In Tobacco Medicaid Suit

In depositions last week, RJR Nabisco Holdings Co.'s chairman, Stephen Goldstone, and Philip Morris Cos." chairman, Geoffrey Bible, came closer than any executives at their companies have to publicly conceding smoking causes cancer.

Mr. Goldstone was particularly forceful in his attempt to distance Reynolds from past industry practices. "Rightly or wrongly," he said Friday, "I have always believed that smoking plays a part in causing lung cancer. What the role is, I don't know, but I do believe it." He also suggested the industry has an obligation to provide more complete disclosure of smoking's risks. Mr. Bible said in his deposition Thursday that cigarette smoking "might have" killed 100,000 Americans.

Previously, both companies have resolutely denied any proven link between smoking and lung cancer. Only Bennett LeBow, the maverick chairman of tiny Liggett Group, a unit of Brooke Group Ltd., has acknowledged that nicotine is addictive and smoking causes cancer.

The comments by Messrs. Goldstone and Bible signaled to some a new willingness by the industry to settle both the Florida Medicaid reimbursement suit and to work more cooperatively with the White House and Congress in fashioning a national settlement based on the proposed pact reached in June.

Hubert Humphrey III, the attorney general of Minnesota and a critic of the tobacco settlement plan, asserted the new testimony indicates that "all of a sudden the tobacco industry is changing its tune." In an appearance on ABC-TV's "This Week," he attributed the change to pressure on the industry coming from the disclosure of new documents in litigation. That, he argued, shows tobacco foes should keep up legal pressure on the industry rather than accept the settlement.

In tone and content, both Messrs. Bible and Goldstone projected a considerably more accommodating public image than they have in the past during the depositions for the Floriday case.

Under questioning by Ronald L. Motley, co-lead counsel for Florida, Mr. Bible last week said he would advise pregnant women not to smoke even if the industry wasn't required to do so by the federal government. And Mr. Goldstone emphasized his eagerness to put the industry's past behind him. "For me, it's going forward in the future, how we conduct ourselves in the future," he said.

--Gerald F. Seib contributed to this article.

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A Tobacco Tax Deal Is Hatching in Senate / Utah Republican pushes to insure children

By Elaine S. Povich. WASHINGTON BUREAU

Washington - As Congress prepares to consider the historic tobacco settlement next month, one senator's role will stand out as brightly as the colorful ties he favors.

Sen. Orrin Hatch (R-Utah) has become the man in the middle of tobacco. Generally a full-blooded anti-tax, smaller-government conservative, he worked earlier this year with an unlikely ally, liberal Sen. Edward Kennedy (D-Mass.), to convert a 15-cent-a-pack increase in the tobacco tax to create a health-care fund for uninsured children. The deal miffed some of his conservative allies and won him some cautious friends among liberals.

He brings a disciplined, buttoned-down demeanor to his chairmanship of the Senate Judiciary Committee, which will have a lead role in determining the fate of the $368.5-billion tobacco settlement of liability lawsuits.

At least half a dozen Senate committees, and possibly an equal number in the House, are angling for jurisdiction over the tobacco agreement, parts of which require congressional action to implement, including giving the Food and Drug Administration regulatory power over tobacco.

Senate Majority Leader Trent Lott (R-Miss.) has assured Hatch that he will play a pivotal role. Hatch has put tobacco company officials on edge with his criticism of a $50-billion tax break for the tobacco industry included in the latest budget law. He said the proviso would not stand.

"He is going to be a key player in the tobacco deal, and we really appreciate his efforts on the tobacco tax and the comments he's made on the tax break," said Anne Ford, director of federal relations for the Campaign for Tobacco-Free Kids.

Sporting a 100 percent rating last year from the anti-tax American Conservative Union, Hatch nonetheless pushed hard to raise tobacco taxes to fund children's health insurance.

Has Hatch - champion of Supreme Court Justice Clarence Thomas, opponent of the Equal Rights Amendment, abortion and gun control, and a fighter for the balanced-budget constitutional amendment - gone liberal? Nonsense, says Hatch, but he acknowledges his archconservative allies are nervous about the tobacco tax increase and some of the other more moderate positions he has taken lately.

"This is very irritating to some of the conservatives because they don't trust the government," he said. "They are afraid if you get the government involved, it is another step towards socialized medicine. The fact is, the government already is involved.

"But," he continued, "I do sometimes feel like I'm in the eye of the storm."

His feeling appears to be right. The conservative National Review published a tough piece about Hatch in March titled "Latter Day Liberal?" making a play on his membership in the Church of Jesus Christ of Latter-Day Saints. It cited his compromise on several issues including funding for the National Endowment for the Arts last year, when conservatives wanted to kill it outright, and his friendship with the liberals' poster boy, Kennedy.

Kennedy and Hatch sponsored an increase in the cigarette tax by 43 cents a pack to fund health insurance for some 5 million poor children whose families do not qualify for Medicaid, but whose working parents cannot afford health insurance. The Senate defeated the proposal in April, but when the Senate Finance Committee began discussing a tobacco tax in late May, Hatch secured a major portion of his initial proposal for children's health.

Bradley Keena, spokesman for the archconservative activist group the Free Congress Foundation, sees Kennedy's mesmerizing hand in Hatch's actions. "Kennedy is one of the smartest senators," Keena said. "He wants socialized medicine, and he's working with Hatch on a first step. This is not the old Hatch."

The "old" Hatch, first elected to the Senate in 1976, ran on an anti-Washington platform. He has been best known for attacking Anita Hill at Thomas' Supreme Court confirmation hearings in 1991, when she charged Thomas with sexual harassment, for pressing hard for a balanced budget and for working against gun-control legislation and for tough crime-control measures. Those conservative credentials mirror his upbringing in the Mormon church he serves as a lay minister.

Hatch, 63, who neither smokes nor drinks, said he hesitated about attacking tobacco for many years "because I didn't want people thinking I was down on tobacco because of my religious beliefs."

But mixed in with his conservative streak are a few positions - in addition to the recent tobacco tax stand - that reflect his concern for children in a more "liberal" way. He supported child-care legislation last year and the Americans with Disabilities Act in 1993 - another team-up with Kennedy.

Does Kennedy think he's making headway in getting Hatch to change his stripes? Not really.

"Orrin Hatch has conservative stars emblazoned on his uniform as he does battle for the conservative cause day in and day out," Kennedy said last week. "And I think the fact that he has, over the time of his career, responded to particular needs of children . . . will ultimately stand historically to his advantage over the sniping and extremists of the right-wing snippets who try to diminish his desire for a healthy start for children."

Conservative senators on the Finance Committee, where the tobacco tax-children's health insurance deal was struck, feel betrayed by Hatch.

"The margin is so close in the Senate," said Sen. Phil Gramm (R-Texas), referring to the 55-45 split between Republicans and Democrats. "When you lose the vote of someone who would normally be against force-feeding programs that are already fat - it's hard."

Gramm, a longtime tax foe, maintained that children's health insurance had enough money without the tax increase. Gramm received $19,000 in campaign contributions from tobacco interests last year, while Hatch received nothing.

Hatch sees a need for more health insurance - based partly on his own less-than-affluent upbringing. Hatch says that as a child he never knew he needed glasses until his basketball coach asked him to describe the rim on the hoop, and he didn't know there was a rim. Hatch said his parents never thought of getting him glasses before that, and then they struggled to find the money to pay for them.

The publicly reserved Hatch also has a romantic and musical streak, manifested by songwriting. One of his songs, "Freedom's Light," was performed by a children's chorus at the Capitol early this year. Hatch wrote the lyrics, and composer Janice Kapp Perry wrote the music for an album of inspirational music coming out later this year titled "My God Is Love."

During discussions of the tobacco tax earlier this summer, Hatch and Kennedy had a falling-out because Hatch agreed with other members of the Senate Finance Committee to lower their original tax-hike request, while Kennedy was for sticking with the higher number. Harsh words were exchanged.

But the next morning, Kennedy visited Hatch's office to apologize. Apology accepted, Hatch did him one better, revealing an original composition he wrote for Kennedy and his wife, Vicki Reggie, for their fifth anniversary. Called "Souls Along the Way," it includes the lines: "You promised me no lies, That you'd never patronize, Forever and a day, We are souls along the way." Hatch said it brought Kennedy to tears.

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THE WALL STREET JOURNAL INTERACTIVE EDITION
FROM THE ARCHIVES

The Wall Street Journal Interactive Edition -- August 26, 1997

Florida Becomes Second State To Settle Tobacco Industry Suit

Companies Agree to Pay $11.3 Billion, Drop Billboards, Ban Vending Machines

By MILO GEYELIN and SUEIN L. HWANG
Staff Reporters of THE WALL STREET JOURNAL

Florida reached a sweeping settlement of its lawsuit against the **tobacco** industry, with the companies agreeing to pay $11.3 billion, eliminate billboard advertising and support a ban on cigarette vending machines accessible to youths.

The pact was the second to be sealed by an individual state as the White House and Congress consider whether to approve a proposed $368.5 billion national settlement. It also seemed intended to persuade people who oppose the national agreement, which was reached in June after weeks of delicate negotiations, to reconsider.

Links

Tobacco's Accord in Florida Lights Up Antismoking Ads

U.S., **Tobacco** Negotiators Try to Calm White House

The Florida deal "is a recognition by both sides ... that this is a way to increase the appetite of the other states to get this national settlement done," said Mississippi Attorney General Michael Moore, a leader among the attorneys general who negotiated the national pact. "You have 48 states out there who don't have the money and don't have the billboard restrictions and don't have the [antismoking] campaigns. They will be clamoring very loudly to get those things, and the only way to get them is the national settlement."

The major **tobacco** companies quickly hailed the Florida deal as "a concrete demonstration that the industry is prepared to cooperate with government and the public-health authorities to emphasize that it doesn't want kids to smoke." In a joint statement, the companies added: "This is another step in a process to end the climate of confrontation and litigation that has marked the national debate on tobacco-related issues."

Terms of the Deal

- Florida gets $11.3 billion over 25 years
- Includes funding for antismoking program aimed at kids
- Companies take down all billboards and advertising on mass transit and in stadiums
- Companies support legislation banning cigarette vending machines where children have access to them

Florida's attorney general, Bob Butterworth, said he also expected Congress to take note of the industry's more conciliatory posture.

Both sides were well aware that allowing the Florida case to go to a verdict could have derailed the national pact, according to J. Philip Carlton, a lead negotiator for the industry in the national talks. The national pact "by definition is fragile, and as time goes on, people's views will harden as [legal] developments take place," he said. "Certainly, having [courtroom] skirmishes isn't conducive to general talks about the national resolution."

The Florida pact was approved Monday by a state court judge in West Palm Beach, Fla., as the state was preparing for opening arguments next week in its trial to recover the public-health costs linked to smoking.

Advertising Restrictions

To settle with Florida, the **tobacco** companies agreed not just to a huge monetary settlement, but to put into effect some of the advertising and marketing restrictions contained in the national proposal. The restrictions also will go into effect in Mississippi, which agreed last month to settle its case for $3.6 billion.

Although the major **tobacco** companies have won the vast majority of courtroom battles, executives believed that Florida's suit -- buttressed by a state law that essentially barred the industry from using its best defenses -- could have easily resulted in a massive judgment. Florida was considered to have the strongest case among the 39 states that have sued the industry. "This was singularly the nightmare suit of all them," said one **tobacco** executive. The executive added that the industry is hoping the national settlement will be adopted by Congress before Minnesota takes its case to trial in January.

Minnesota has vigorously opposed the national settlement. A top aide to Minnesota Attorney General Hubert Humphrey III said the state is preparing for trial and hasn't held any settlement talks. To settle, Minnesota would demand that the industry fully disclose documents concerning its targeting of youth, its knowledge of the health risks of smoking and its efforts to play them down, said the aide, Eric Johnson.

In Texas, where jury selection in the state's Medicaid-recoupment suit is set to begin Sept. 29 in federal court in Texarkana, a spokesman for Attorney General Dan Morales said there have been "no concrete talks." He said the state would "certainly listen" to any industry overtures.

The White House said it didn't think the Florida agreement would have any effect on its review of the national settlement. "We're going to continue our review process of the proposed settlement and we'll probably have more to say about it in September," Deputy Press Secretary Barry Toiv told reporters.

Educational Program

Under the Florida agreement, the industry will pay $550 million by Sept. 15 and an additional $200 million to underwrite an educational program aimed at reducing teen smoking. The companies will continue paying the state for 25 years; each company's payment will be based on its market share. The companies agreed to take steps to make sure that Florida gets whatever it would be entitled to under any possible national deal.

The industry also agreed to eliminate cigarette billboards and advertising on mass transit and in stadiums. But the industry reserved the right to put signs outside stores and at special sporting or other events. The companies also agreed to help identify billboards located near schools so the state can mount its own antismoking messages.

The industry also agreed to support legislative initiatives in Florida to ban the sales of cigarettes in vending machines accessible to youths and to beef up penalties for selling cigarettes to those under 18.

Warning Labels

Florida had initially demanded that cigarette packs sold in the state carry bold black and white labels warning that smoking is addictive and kills. But the state gave in on that demand because "you really can't change warning labels state by state," Mr. Butterworth, the state's attorney general, said.

Florida also had demanded full disclosure of all the industry's internal documents, including those that the companies maintain contain confidential communications with their lawyers. But under terms of the deal, the industry reserved the right to fight over whether those documents should be disclosed. Mr. Butterworth said the industry agreed to expedite the process and said he hoped the documents will be available so Congress and the White House can view them.

The Florida deal falls short of what both the **tobacco** industry and its antitobacco foes have agreed to in the national settlement. The industry still wants very much to cap its annual liability and to ban punitive damages for its past conduct. And the antitobacco forces still want the industry to toughen warning labels on cigarette packs, pay stiff penalties if teen smoking rates don't decline by specific amounts and agree to be regulated by the Food and Drug Administration, among other things.

Litigation Expenses

The Florida agreement says attorney fee requests will be submitted to an independent arbitrator. The industry did, however, agree to pay Florida $10 million for its costs and expenses in the litigation and to pay a team of outside lawyers for the state $12 million for their costs.

Florida, which had held talks with the industry about a possible settlement last month, began negotiating in earnest again last week. Mr. Butterworth said the talks gained momentum when the chairmen of RJR Nabisco Holdings Co. and Philip Morris Cos. both made conciliatory remarks about the risks of smoking during pretrial questioning by lawyers for the state.

Talks continued through the weekend at Mr. Butterworth's office in West Palm Beach, with Gov. Lawton Chiles participating. Mr. Butterworth said representatives of both sides worked through the night on details of the deal, which was announced yesterday.

Some analysts believe that the industry's willingness to ban billboards in Florida indicates its confidence that the national settlement will be adopted by Congress. "The reason the industry's prepared to enter into this agreement is because there's a strong feeling now that a settlement will be implemented," said Martin Feldman, an analyst at Smith Barney. "The global settlement is looking more and more likely."

In composite trading on the New York Stock Exchange, **tobacco** stocks rose. Market leader Philip Morris was up 62.5 cents to close at $44.9375 and RJR

Nabisco increased 43.75 cents to close at $35.75.

Separately, a federal judge in Philadelphia granted class-action status to a suit seeking industry payment for medical monitoring for all of Pennsylvania's allegedly addicted smokers. The judge had previously refused to grant class-action status, saying the case was too unwieldy to proceed as a single suit. The lawyers narrowed their claim, seeking only medical monitoring instead of damages for the smokers" addiction. In certifying the new class, the judge said he reserved the right to change his mind about allowing the case to go forward as a class action.

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THE WALL STREET JOURNAL INTERACTIVE EDITION MARKETPLACE

August 26, 1997

Tobacco's Accord in Florida Lights Up Antismoking Ads

By SALLY GOLL BEATTY
Staff Reporter of THE WALL STREET JOURNAL

The tobacco industry's historic accord with Florida to voluntarily restrict cigarette advertising would seem likely to provoke handwringing on Madison Avenue, because one state is finally doing what so many have vowed or sued or planned to do.

But there is even some applause from ad agencies who envision a possible revenue boost from antitobacco campaigns. Billboard stock prices were mixed Monday, despite the state's move to abolish all outdoor cigarette ads within six months.

Link

Florida Settles Suit With Tobacco Firms

"I'm delighted, obviously," says Sharon Scott MaHarry, president and creative director of Paradigm Communications, an ad agency based in Tampa, Fla. "Now the focus is going to shift to public education. It's an excellent opportunity for the advertising industry to right some wrongs. We've spent all these years convincing people to smoke -- and now we have the opportunity to do just the opposite."

The Florida accord means that, even if the sweeping tobacco national-settlement plan never takes effect, people in Florida won't see a cigarette billboard within 1,000 feet of a school. It also means no mass-transit ads. No ads in sports arenas. And no vending machines near children.

But Madison Avenue has already been taking steps to reduce its dependence on cigarette-ad billings. And the Florida development clears the way for some of the much-ballyhooed antitobacco advertising to begin.

Last year, for example the Paradigm agency created the largely pro-bono "Tobacco Free Florida" ad campaign, sponsored by the American Cancer Society. But because the ads' creators relied mostly on donated air time, the campaign didn't get as much

exposure as it could have, Ms. MaHarry says. Now, she says, "finally we're going to have the money to really see some results from this."

Outdoor ad firms, among the hardest to be hit by the ad ban, said the accord had been expected, and that many firms have already placed their own restrictions on cigarette advertising. On the Nasdaq Stock Market, Outdoor Systems Inc., the nation's largest billboard operator, rose 75 cents, or 3.1%, to $25.25, near its 52-week high of $27.875. Lamar Advertising Co. fell 6.25 cents to $25.4375. Universal Outdoor Holdings slid $1.375 to $32.375 in slightly above-normal volume.

The Orlando Arena, home of the Orlando Magic, stopped accepting tobacco ads three years ago when a contract for Winston cigarettes expired, says Lisa Fehr, who works in corporate sales for the stadium. "We're very much a family organization" and the company didn't feel the ads were providing "a family atmosphere," says Ms. Fehr. She said the stadium's biggest sponsors currently are Anheuser-Busch, PepsiCo and Dodge.

Kraig Conn, the executive director of the Florida state chapter of the Outdoor Advertising Association in Tallahassee, Fla., said he believes that every one of his 31 members carry some tobacco advertising, and that between 5% and 10% of their billboards are taken up by tobacco ads.

"The industry obviously knew what was going on and what to plan for," he said. "As far as making up the difference, the markets here are very strong."

Outdoor Systems recently increased its presence in Florida by acquiring the outdoor advertising operations of Minnesota Mining & Manufacturing. Nevertheless, Tom Wisz, a spokesman for Outdoor Systems, said the company has "little exposure" to tobacco ads in Florida. Out of the 3,300 billboards it acquired from 3M's National Advertising company, Mr. Wisz said, only 43 carry tobacco ads. Overall, he noted, tobacco ads represented only about 5% of 3M's outdoor-ad revenue last year, and even before the transaction 3M had been "phasing out" its tobacco ads.

Ad agencies with tobacco business referred calls to their clients. Among them: WestWayne, based in Tampa, Fla., one of the top five ad agencies in Florida, according to a spokeswoman, with billings of about $273 million.

Advertiser groups that are fighting tobacco-ad restrictions in federal court said they would continue their battle. "Those actions taken by the companies voluntarily are their own and are their right and their responsibility. It's when the government imposes restrictions that the First Amendment applies," says Dan Jaffe, an executive vice president with the American Association of Advertising Agencies.

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Los Angeles Times

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Tobacco Firms to Pay $11.3 Billion to Florida

■ Health: In settlement of cigarette lawsuit, state will get money over 25 years. The deal includes punitive damages as well as compensation for treating sick smokers.

By HENRY WEINSTEIN
TIMES LEGAL AFFAIRS WRITER

The nation's cigarette companies on Monday agreed to pay Florida $11.3 billion over 25 years to settle the state's massive suit against the industry—one of the largest court-approved settlements in U.S. history.

The industry also agreed to several public health concessions that Florida Gov. Lawton Chiles insisted be part of any deal to resolve the suit, which was about to go to trial. The settlement is compensation for money Florida spent treating sick smokers and punitive damages for the industry's allegedly fraudulent conduct.

The companies pledged to remove all their billboards near schools and playgrounds within 45 days and all billboards in the state within five months. The industry also must remove cigarette-vending machines from any place accessible to children and remove tobacco advertising in sports arenas and on public buses and trains.

Moreover, the companies agreed, in writing, to assist Florida in enacting new laws designed to keep children from smoking.

The Florida settlement came in the fourth week of jury selection in the case, and less than a week after the chief executives of tobacco giants Philip Morris and R.J. Reynolds made key concessions about the possible hazards of their products.

The deal was announced just seven weeks after Mississippi settled its suit against the industry for $3.3 billion. Both state agreements would be superseded if Congress enacts a $368.5-billion national settlement the industry reached with 39 state attorneys general in June.

But with the nationwide agreement under attack in Congress, the separate settlements with Florida and Mississippi ensure that both states will receive hoards of cash and other benefits, even if the 39-state agreement unravels in Washington.

The Florida deal is similar to the nationwide agreement, but not as sweeping. Most important, the settlement doesn't address overall regulation of the industry because the state has no legal authority to do that.

Public health advocates like Linda Crawford of the American Cancer Society and tobacco analysts such as Martin Feldman of Smith Barney said they think the Florida settlement enhanced the prospects that Congress and the White House ultimately would approve a national deal.

The industry, meanwhile, avoided the massive negative publicity generated by a trial that would have opened up 40 years of damaging internal documents to a jury in a case that was set to be televised live while Congress and the White House were considering the national deal.

Philip Morris, R.J. Reynolds, Brown & Williamson, Lorillard and United States Tobacco Co. are to pay Florida the first $750 million by Sept. 15, with $200 million of that sum specifically earmarked for a two-year pilot program to reduce smoking by minors.

"The people have won on the three important battlegrounds from which we waged this war: protecting Florida's children, making tobacco pay for the damage it has cost our taxpayers, and forcing cigarette makers to finally tell the truth," Chiles said in West Palm Beach after a judge approved the deal.

□

"Florida's victory has broken tobacco's chokehold on the health of our people and the wallets of our taxpayers," said Florida Atty. Gen. Robert A. Butterworth.

Meanwhile, tobacco forces suffered another big setback in Philadelphia when a federal judge recognized Pennsylvania's 2 million smokers as a valid class of litigants and said they could present claims against the industry for the costs of monitoring the smokers for disease—a program that could cost the industry $2.5 billion if the plaintiffs prevail in a trial scheduled to start Oct. 14.

Florida's case was considered one of the biggest threats against the industry because the state had enacted a special statute that made it easier for the state to win a suit against tobacco. The law took away from the industry what has been its strongest defense in suits brought by individual smokers—the argument that smokers made an individual choice to use cigarettes and assumed whatever health risks were associated with smoking.

The rationale for the statute was that the state had incurred expenses treating sick smokers and that it would have been inappropriate for the industry to be able to use such a defense against a government entity, which had never smoked a cigarette.

Analyst Feldman said that statements in pretrial depositions last week by leading cigarette industry executives were a sign that the industry would settle in Florida and reflected the executives' hopes that a more conciliatory tone would help secure passage of the national settlement, which protects the industry from certain future lawsuits.

On Thursday, Philip Morris Chairman Geoffrey Bible said, under questioning from plaintiffs' attorney Ronald L. Motley, that cigarettes "might have killed" 100,000 Americans—the first such acknowledgment by an executive with the nation's largest cigarette maker. A day later, Steven F. Goldstone, RJR's chairman and a former smoker, acknowledged to Motley, "I have always believed that smoking plays a part in causing lung cancer."

Some anti-smoking advocates said that Florida's settlement showed that the industry is on the run and could be forced to cough up billions more dollars and make other concessions without gaining some of the benefits that it would realize from the national deal—in particular a bar on any class-action suits against the industry and a prohibition on punitive damages in any future suits lodged by individuals against the cigarette companies.

"The Florida deal shows that the states can get billions of dollars in damages, disclosure of tobacco company secrets, and industry reforms like advertising and billboard restrictions without the proposed national settlement that compromises public health," said Minnesota Atty. Gen. Hubert H. Humphrey III, whose suit against the industry is scheduled to go to trial in mid-January.

□

Critics of the proposed national settlement maintain that the deal would make it more difficult for the federal Food and Drug Administration to regulate the industry and specifically to reduce the nicotine content of cigarettes. In addition, the critics, including former Surgeon General C. Everett Koop and former FDA Commissioner David A. Kessler, assert that the provisions penalizing the industry if youth smoking is not sharply reduced within five years are woefully inadequate.

President Clinton has made it clear that he finds the restrictions on the FDA unacceptable. Administration officials also have said that the youth-smoking penalties have to be stiffened if the deal is to pass muster at the White House. Some Clinton aides have said the total settlement pot will have to be enhanced—perhaps by as much as $50 billion.

A formal White House review of the deal is continuing, and an administration task force is expected to formally report to Clinton by mid-September. Congressional hearings on the proposal, which began in July, are scheduled to resume on Sept. 3 in Washington.

Most analysts think that the deal will not be enacted before year's end. Mississippi Atty. Gen. Mike Moore, who was the lead negotiator for the 39 states that settled with the tobacco industry in June, expressed concern Monday that if the settlement is not enacted this year, it could fall by the wayside as Washington gets bogged down in election-year politicking in 1998.

Moore said by phone that during meetings this summer, the industry and the states have "made good progress" on revising settlement language dealing with the FDA's jurisdiction over the industry. He also said discussions have been held on the penalties if youth smoking is not reduced, but that no accord has been reached. Moore pleaded for swift action by Clinton.

"We need the president of the United States to step in and do these last couple of pieces," Moore said. "If he wants stronger language regarding the FDA, he can do it by his involvement. If he wants higher penalties, he can pull it off. If we don't get presidential involvement by the first or second week of September, it's highly unlikely we'll get the settlement done this year."

In recent weeks, tobacco representatives have said they are adamantly opposed to any increase in the youth penalties provision, which would require the industry to pay up to $2 billion annually if smoking by minors is not reduced by 30% within five years and by 60% within a decade.

On Monday, a statement was issued on behalf of the five companies that settled with Florida stressing that the Florida settlement cannot affect "the comprehensive array of public health provisions contained in the proposed national settlement," including the regulation and sale of tobacco products. . . . While today's settlement is important, we remain committed to the passage of the comprehensive settlement we agreed to on June 20, 1997."

Despite the settlement reached in Florida, the state will continue its efforts to obtain 300 additional industry documents it believes deal with the industry targeting youth, said W.C. Gentry, one of Florida's attorneys. Earlier, several judges had ruled that Florida was entitled to other secret industry documents after concluding the industry had used attorneys to suppress information about the health hazards of smoking. All these documents are potential ammunition against the tobacco companies in other lawsuits.

The industry still faces a bevy of other litigation. At the head of the list is Texas' $8 billion fraud and medical expenditure recovery suit, which is set to start Sept. 29. Among the other large cases is the Pennsylvania class action.

Philadelphia attorney Stephen A. Sheller, one of the lead lawyers in that case, said Monday's decision certifying it as a class-action lawsuit was "a major public health victory." If the plaintiffs win, he said, the industry would have to pay for testing of all the state's smokers to detect whether they have current or latent diseases.

"This will be the litmus test of whether the cigarette companies really intend to do something about public health," Sheller said, expressing the hope that the industry would agree to start a monitoring program without going through a major trial. "We'll know if the leopard has changed its spots by what they do here," Sheller said.

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FAX page #3

Big Tobacco Threatened by New Disclosures

By HENRY WEINSTEIN
TIMES LEGAL AFFAIRS WRITER

WASHINGTON—The nation's major cigarette companies are waging a ferocious rear-guard action in courts around the country to keep yet another wave of potentially damning internal documents from coming to light while Congress and the White House are considering the proposed $368.5-billion tobacco settlement.

Judges in five states have called for the release of industry documents, with jurists in three states saying the papers show evidence of crime or fraud by tobacco companies and their use of attorneys in a 40-year effort to suppress information about the hazards of smoking.

If the industry fails in what has become an all-out effort to reverse these rulings, the disclosure of documents described by one official as "smoking howitzers" could damage the industry's prospects in tobacco litigation in all 50 states and lead to stiffer terms against the industry in the pending nationwide settlement.

"If truly outrageous documents come out, it will make the price of the settlement higher—in dollars and in other ways," said professor Richard Daynard, director of the Tobacco Products Liability Project at Northeastern University in Boston.

Daynard predicted that recent rulings in Florida, Kansas, Minnesota, Mississippi and New York will pave the way for significant revelations about the role played by some company lawyers in the industry's decades-long legal battles.

That issue is a matter of concern to federal grand juries in Washington and New York that are investigating possible criminal charges against cigarette companies. Helmut Wakeham, the former research director of Philip Morris Inc., said in a brief interview that he was questioned extensively about the relationship of industry lawyers to scientists when he testified before the New York grand jury last year.

Several judges who have reviewed some of the internal documents in chambers have said they show evidence of serious misdeeds. Four of the five decisions involve what have come to be known as "the Liggett documents"—material that was turned over to judges in 20 states after the cigarette-maker Liggett Group reached a settlement with those states in March.

□

The cases all involve allegations that the industry in 1954 hatched a conspiracy to deceive the public about the hazards of smoking and, as a key element of this effort, created a nonprofit research arm, the Council for Tobacco Research, that served as a "front" group.

A 160-page log of the Liggett documents, obtained by The Times, shows that it includes letters, memos and notes made by Liggett attorneys during meetings of the Committee of Counsel, a lawyers' group that played a key role in formulating legal strategy for the industry.

The recent rulings being fought by tobacco forces:

* Five judges in Florida have issued three separate rulings in recent months that eight industry documents should be made public because they contain evidence that the tobacco companies "utilized attorneys in carrying out and planning fraudulent activities and undertook to misuse the attorney-client relationship to keep secret research . . . related to the true dangers of smoking." Those rulings came in Florida's suit seeking $2.7 billion to compensate the state for expenses incurred in treating sick smokers.

* A federal judge in Uniondale, N.Y., ruled earlier this year that 305 previously withheld documents dealing with "special projects" of the Council for Tobacco Research—scientific studies conducted under the supervision of lawyers "solely to further the economic interests of the industry," in the judge's words—have to be made public. That decision came in a personal-injury case filed by former Lucky Strike model Janet Sackman, who developed throat cancer.

* In St. Paul, the judge in Minnesota's massive suit against the industry has made several rulings that the state has shown sufficient probable cause that industry documents contain evidence of a crime or fraud and should be turned over to the plaintiffs. The judge said the cigarette companies should not be allowed to conceal scientific research that they have touted in advertising campaigns but now want to keep secret.

* In Laurel, Miss., a judge said 10 of the Liggett documents he reviewed showed signs of fraudulent activity. In that suit, the widow of a barber who did not smoke is claiming that her husband's 1994 death from lung cancer was caused by exposure to smoke from his customers' cigarettes.

* In a suit in Kansas City, Kan., by David Burton, who suffers from vascular disease, a federal magistrate in February ordered R.J. Reynolds Tobacco Co. to turn over 32 "special projects" documents. Company lawyers contended that all the documents are privileged because they contain confidential attorney-client communications. But the judge ruled that none of the documents was entitled to such protection, and he noted that three of them "may contain evidence that RJR knew during the relevant time period that nicotine was addictive."

Every ruling is being appealed by the industry, virtually all on grounds that judges have incorrectly interpreted prior cases on the protections accorded by the attorney-client privilege, or related doctrines that normally confer confidentiality on materials revealing an attorney's thought process or documents dealing with strategy among joint defendants.

"There have been indications in tobacco cases" that those well-rooted privileges are being eroded, "which has not occurred in other types of litigation," said Daniel W. Donahue, R.J. Reynolds' senior vice president and deputy general counsel. "It is a matter that ought to be of significant concern to the legal community as a whole because we have this erosion occurring in the context of litigation that has a lot of political and social overtones."

□

But plaintiffs' lawyers who have engaged in protracted legal battles to get the documents unearthed see it differently.

Usually, said Roberta Walburn, a Minnesota special counsel, the plaintiffs learn of the existence of the documents from sketchy "privilege logs." These lists of material that the companies want to keep confidential are generally produced in response to a court order during the pretrial discovery process. Such logs normally provide a bare-bones description of the subject of the document, as well as its date, author and recipient.

Kenneth B. McClain, an Independence, Mo., attorney who got the favorable ruling in New York after an 18-month battle, said the documents in his case "are at the heart of the whole issue as to whether the Council for Tobacco Research was set up to be a 'front organization' " to protect the industry's interests rather than do independent scientific research.

□

"These documents should have been produced a long time ago," McClain said.

Judges in several other states, including California, Connecticut, Illinois and Texas, will be asked to rule on the Liggett documents in coming months.

Though numerous sensational documents showing the tobacco industry's awareness of the hazards of smoking have already come to light, some plaintiffs' lawyers believe that they are nowhere near the bottom of the iceberg.

For example, Minnesota already has obtained 33 million pages of industry documents in its case, but the vast majority have not become public because of judicial protective orders.

Minnesota Atty. Gen. Hubert H. Humphrey III, a vocal critic of the proposed nationwide settlement, says some of these documents are "smoking howitzers" and has urged members of Congress and the White House not to make a final decision on the settlement without reviewing at least some of them. Humphrey has urged two Senate committees to subpoena the key Minnesota documents—about 500,000 pages—and has told the senators that his attorneys could provide a road map to the key documents.

In response, Senate Judiciary Committee Chairman Orrin G. Hatch (R-Utah) said it is common knowledge that the tobacco industry has withheld damaging information and that it was infeasible for the committee to review 33 million pages of documents. He is considering Humphrey's proposal.

Several Democratic senators, while acknowledging that they could not plow through millions of pages, have embraced the thrust of Humphrey's position.

"Right now, we don't have nearly enough knowledge" to diligently evaluate the settlement, said Sen. Patrick J. Leahy of Vermont. "To the extent the tobacco companies are unwilling to share information, my suspicions are aroused."

It's not just the industry that is concerned about Humphrey's proposal. The state attorneys general and private lawyers who are advocates of the $368.5-billion settlement are worried that if Congress gets bogged down in reviewing documents, it could further delay legislative approval of the accord.

Mississippi Atty. Gen. Michael Moore has told a score of senators that they will not find anything more disturbing in still-secret documents than they already know. Moore noted that the settlement would create a panel of judges to review future industry claims of confidentiality. Such a procedure, says Charleston, S.C., attorney Ronald L. Motley, a veteran of many document battles with the industry, would provide "a means to quickly and freely gain access to tobacco industry documents."

To buttress this point, the Castano group of 65 plaintiffs' lawyers—who also favor quick approval of the settlement—have assembled for members of Congress a thick dossier of key internal industry documents meant to illustrate that enough negative evidence about the industry is already available.

But those documents contain such previously undisclosed items as a 1956 memo by Alan Rodgman, an R.J. Reynolds chemist, which indicates recognition that smoking causes cancer—something the companies continue to deny in court.

"Since it is now well-established that cigarette smoke does contain several polycyclic aromatic hydrocarbons and, considering the potential and actual carcinogenic activity of a number of these compounds, a method of either complete removal or almost complete removal of these compounds from cigarette smoke is required," Rodgman wrote 41 years ago.

"We keep being surprised as we go along . . . so we keep digging," said Philadelphia attorney Stephen A. Sheller, one of the plaintiffs' lawyers who recently conducted a deposition of Rodgman.

The recent adverse rulings against the industry are the latest stage of a process that began a decade ago when lawyer Marc Edell, representing the heirs of dead smoker Rose Cipollone, made the first significant breakthroughs by a plaintiff's lawyer in obtaining industry documents.

Since that time, reams of damaging internal documents have been unearthed. But more than 1,000 of the potentially most incriminating ones have not seen the light of day.

In 1992, after reviewing in chambers a selected sample of 1,500 confidential memos of the Council for Tobacco Research, U.S. District Judge H. Lee Sarokin in New Jersey said the documents show that in marketing cigarettes the companies chose "sales over safety, money over morality," leading him to conclude that the tobacco industry "may be the king of concealment and disinformation."

He ordered the documents surrendered. But later that year, a federal appeals court reversed his order, saying that Sarokin's harsh language was a sign that he had failed to act impartially. Nonetheless, the appeals court said another judge should review the material, and now, nearly five years later, the once-dormant case has been reopened and that document review is about to begin in Newark, N.J.

Some of the same documents that Sarokin reviewed are at issue in Florida's lawsuit against the industry, which hopes that the state Supreme Court will reverse an appeals court decision and keep the documents from public view.

W.C. Gentry, a Jacksonville attorney who is one of Florida's special counsels in its suit against the industry, said the fact that the cigarette companies are having to defend so many document challenges at once makes it possible that "the floodgates are about to open."

As a sign of how fiercely the industry is resisting, lawyers for Florida have had to file 75 separate motions to compel

the production of documents after its initial requests were rebuffed by industry attorneys.

It had been anticipated that the industry would reach a separate settlement with Florida, as it did with Mississippi, to avoid possible negative publicity while the national settlement is pending in Congress. But both sides said last week that they were far apart, and Florida Atty. Gen. Robert Butterworth said he would not settle the case unless the cigarette companies turn over the eight documents addressed by the five Florida judges.

Jury selection in the case began Friday and opening statements are scheduled for September.

Descriptors

TOBACCO INDUSTRY;
CONFIDENTIALTY;
DISCLOSURE OF INFORMATION;
HEALTH HAZARDS;
CIGARETTES;
SMOKING;
FRAUD;
LIGGETT GROUP INC;
COURT RULINGS

Tuesday, August 26, 1997

Napping on the Cigarette Issue

- Congress cannot rightfully shift settlement responsibility to states

PREV STORY

NEXT STORY

Florida officials are justifiably satisfied with the tobacco settlement they reached over the weekend. The agreement, under which cigarette companies will compensate the state $11.3 billion to settle a suit over smoking-related health care costs, follows the pattern of a settlement in Mississippi earlier this summer and could be replicated soon in Texas and possibly Minnesota, where trials in similar cases are pending. However, these agreements, while of major importance, will not substitute for the more comprehensive federal regulation of cigarettes that only Congress can put in place.

Lawsuits like that brought by Florida's attorney general and similar ones in 39 other states pushed the industry, which had never paid a penny to tobacco claimants, to the bargaining table last spring. The resulting proposal for a $368.5-billion national settlement of all the state claims, while it has serious weaknesses, would supersede the state deals and produce major public health gains. Yet congressional inactivity undermines that likelihood. No legislation has yet been introduced to make the June accord national law.

At first glance, settlements by individual states appear to erode the chances for such national legislation. In addition to compensation for the costs of treating sick smokers, Florida was able to extract important concessions from the industry, including agreement to end all outdoor advertising, the release of 400 confidential documents and an admission by the head of Philip Morris that smoking might have caused as many as 100,000 deaths. The states next in line at the courthouse door will surely try to build on Florida's gains, perhaps deflecting attention from the national agreement, possibly even derailing it. That shouldn't be allowed to happen.

The Florida deal, significant though it is, is no substitute for strong federal control of nicotine, the addictive substance in cigarettes. Congress has the power to give that control to the U.S. Food and Drug Administration, ending the special treatment that exempted cigarettes from FDA authority and allowed Big Tobacco to prosper. And only when nicotine is controlled will smokers have an easier time quitting and young people be less likely to get hooked. In this direction lie the most meaningful public health gains for individual states.

The deal approved in June by the 40 attorneys general and the tobacco industry does not go nearly far enough toward such regulation. This failing and others have led to the perception that the national agreement is more favorable to the industry than to consumers. But nothing prevents Congress from acting, and each multibillion-dollar state settlement should embolden the lawmakers to do what's right for the nation as a whole.

PREV STORY

NEXT STORY

GO GO

News: Analysis & Commentary

Hurdles for the Tobacco Pact

BIGGER BUCKS: The proposed settlement calls for an industry payout of $368 billion. Minnesota Attorney General Hubert H. Humphrey III wants at least $600 billion.

FDA FREEDOM: Under the existing pact, the FDA has to jump through a variety of legal hoops to regulate nicotine. Humphrey and many health advocates oppose any limits on the agency's power.

DOCUMENT DISCLOSURE: Deal critics seek complete disclosure of all of the industry's internal memoranda. The tobacco accord preserves attorney- client privilege in some cases.

PENALTY PROVISIONS: Humphrey and other opponents want to increase the penalties against tobacco makers if teen smoking doesn't decrease sufficiently.

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BusinessWeek

Updated Aug. 28, 1997 by bwwebmaster

USA TODAY Tobacco settlement

08/29/97 - 03:54 PM ET - Click reload often for latest version

Tobacco wrote its own deal in budget law

WASHINGTON - Tobacco industry representatives wrote the provision of the balanced budget law that allows cigarette makers to reduce their future liability in smoking-related lawsuits, Congress's chief tax writer told USA TODAY.

"The industry wrote it and submitted it, and we just used their language," Kenneth Kies, staff director of the Joint Committee on Taxation.

Kies declined to identify the lobbyist who presented the provision or the company the lobbyist represented.

But his statement is the first public acknowledgement that the controversial provision, which could save cigarette manufacturers an estimated $50 billion over 20 years, originated with the industry itself.

The proposal became law after House Speaker Newt Gingrich and Senate Majority Leader Trent Lott insisted on its inclusion in the balanced budget act. The White House agreed, and President Clinton signed the measure Aug. 5.

J. Phil Carlton, an industry liaison with the White House, said he had no knowledge of the origin of the language.

One provision in a deal announced June 20 requires the tobacco industry to pay $368.5 billion to settle claims by 39 states and Puerto Rico for tobacco-related health costs.

Clinton and Congress have not yet OK'd that deal.

Congress was also debating $50 billion over 20 years in new cigarette taxes.

Faced with those obligations, the tobacco industry successfully lobbied to have part of the costs defrayed in the then-pending budget bill.

So the provision, defended by Gingrich and Lott as non-negotiable, allows the companies to reduce their liability to the states by $50 billion.

Kies said the White House agreed to the provision once chief of staff Erskine Bowles and Treasury Secretary Robert Rubin understood that it had no tax consequences.

"It is meaningless unless and until there is legislation," Kies said. "Whenever there's settlement legislation, we can address it at that time."

By Jessica Lee, USA TODAY

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The New York Times
Politics

August 28, 1997

Florida Settlement Spurs Debate on National Tobacco Accord

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  Join a discussion on Tobacco Suits and Settlements

By JOHN M. BRODER

WASHINGTON -- The abrupt $11.3 billion settlement of Florida's case against cigarette makers this week has stirred a sharp debate over whether to adopt the proposed nationwide tobacco accord or to continue the state-by-state lawsuits that have been humbling the tobacco industry.

President Clinton and members of Congress are now debating the merits of the proposed $368.5 billion national tobacco agreement that would end most of the litigation against the industry in exchange for sweeping new cigarette regulations.

Backers of the nationwide settlement proposal said the Florida deal proved the industry's willingness to compromise and paved the way for enactment of sweeping public health advances.

These advocates contended that the Florida case -- which featured startling admissions by tobacco executives and new cigarette marketing restrictions -- had undermined the bargaining position of the tobacco producers. They argue that the White House and Congress should move quickly to seal the broader deal with a weakened industry.

But foes painted the Florida settlement -- and Mississippi's earlier $3.3 billion payoff -- as merely tactical moves by an industry seeking to escape the potentially crippling state lawsuits by winning the broad legal immunity promised by the proposed nationwide package.

In the agreement announced on Monday, major cigarette companies promised to pay Florida $11.3 billion to settle a suit seeking recompense for the state's

Medicaid expenses for smoking-related illnesses. The companies agreed to eliminate advertising billboards near schools, to pay for antismoking campaigns, to remove vending machines from places accessible to children and to stop advertising on buses and trains.

Opponents of the larger nationwide accord said that the two states' settlements demonstrated that major strides -- and huge awards -- could be achieved in state-by-state litigation. Now is not the time, they added, to short-circuit the legal process with a flawed nationwide compromise rushed through a Congress tainted by millions of dollars in contributions from the tobacco industry.

If the national accord is adopted, lawsuits pending in 37 states and Puerto Rico will disappear and the states will share the 25-year, $368.5 ississippi and Florida and in any subsequent states that agree to settle their suits against the industry.

Ralph Nader, the consumer advocate who has long opposed cutting a deal with the industry, asserted that the state attorneys general had been snookered by tobacco companies pursuing a devious, and so far successful, long-term strategy to win release from their crushing legal liabilities.

"The companies have been doing nothing but winning since the announcement of the deal with the attorneys general and the plaintiffs' lawyers," Nader said, referring to the June 20 nationwide settlement proposal. "They've won an agreement for immunity, for open season on foreign markets, for deductibility of their payments, for elimination of punitive damages and freedom from class actions."

Florida was just their latest victory, Nader contended, a low-cost reprieve from further embarrassing disclosures, a potentially ruinous jury verdict and treble damages under the state's racketeering laws.

"They got all their goals in the global settlement and now they are winning their subgoals by neutralizing one attorney general after another," Nader said. "They are turning tigers into papier-mache pussycats."

That assertion drew heated denials from attorneys general who negotiated the tobacco accord and who are now preparing their states' cases against the industry.

Grant Woods, the attorney general of Arizona, said the Florida case proved that the states' strategy has been effective in wresting concessions from the industry. But he added that not all the remaining cases were as strong as Florida's and that the national settlement proposal contained provisions that could not be won or enforced at the state level.

"You could win all 40 of the lawsuits and still not come close to achieving for public health what is achieved in the settlement," Woods said.

While states can gain billions of dollars and, like Florida, some restrictions on advertising and vending machine sales, they cannot impose national regulations on labeling, cigarette additives or other health-related provisions.

The national settlement, for example, requires dire health warnings on all cigarette packs sold in the United States and empowers the federal Food and Drug Administration to regulate nicotine content.

Woods encouraged Washington to move swiftly to build on the momentum of the Florida decision to secure the benefits of the broad accord.

"If the president and Congress cannot come together on this pretty quickly, it's clear that each state will have to fend for itself and we will have missed a tremendous opportunity to change the nation's health for the better and protect the lives of thousands of children," Woods said.

Scott Harshbarger, the attorney general of Massachusetts, acknowledged that an individual state lacked the regulatory power of the federal government, but he said that his state had no intention of letting cigarette makers off the hook. "Until Congress acts, we're going to make them fight on every front," Harshbarger said.

For its part, the tobacco industry is hoping it can avoid dozens of skirmishes from coast to coast, with their attendant costs and bad publicity. It moved to pre-empt Mississippi and Florida because those trials would have overlapped with the impending debate in Washington on the global settlement package and because those states had laws that were unusually favorable to plaintiffs.

Texas, whose tobacco trial is set to begin in late September, also poses significant dangers to the industry. Tobacco companies are likely to offer to settle the case before jury selection begins, industry officials said.

J. Phil Carlton, a North Carolina lawyer who represents the nation's largest cigarette maker, Philip Morris Cos., said the cigarette producers hoped to make all state lawsuits and two dozen pending class-action suits go away with their $368.5 billion settlement proposal.

"The industry prefers the national settlement because that is the way to resolve all these controversies in one fell swoop," said Carlton, a former justice of the North Carolina Supreme Court.

"You can't accomplish the public health goals -- and that includes the commitment to reduce under-age smoking -- on a state-by-state basis. You could wind up with a patchwork quilt of different requirements that wouldn't make a lot of sense."

Hubert Humphrey III, the Minnesota attorney general, said the problem with the Florida deal and the national settlement plan was that they blinded public officials with gigantic sums of money and robbed the public of the opportunity to learn the full scope of the industry's misdeeds.

He said the industry's strategy had been to settle the early suits quickly and rush

McCullough
UMN
Jay Epstein

Poll: Public Warry of Tobacco Deal

By Lauran Neergaard
Associated Press Writer
Friday, August 29, 1997; 2:12 a.m. EDT

WASHINGTON (AP) -- Most Americans believe the proposed tobacco deal won't raise cigarette prices nearly enough to meet its prime objective -- cutting teen-age smoking, according to an Associated Press poll.

Two-thirds of those surveyed expect tobacco companies to sell as many cigarettes as ever. More than half say the deal is not worth giving up the key concession that cigarette makers demand -- banning class-action lawsuits.

And 70 percent said cigarette prices must rise more than $1 a pack to deter young people from smoking. That includes 61 percent of the smokers whose wallets would be hit.

Those concerns mirror the calculations of leading tobacco economists and help set the stage for more contention as Congress and President Clinton return next month to begin determining the deal's fate.

``The poll appears to be in accordance with the best evidence," said Massachusetts Institute of Technology economist Jeffrey Harris, who provided the White House with calculations showing only price increases of $1.15 to $1.50 a pack could cut teen smoking by the deal's target of 30 percent. Currently, the cost of a pack averages $1.74.

But Harris cautioned that public perceptions are a little too cynical. Every 10 percent increase in price would lower the number of cigarettes sold by 4 percent, his calculations indicate. Half of that drop comes from people who kick the habit, the rest from people who just smoke less.

In other words, raising prices by 62 cents -- the deal's expected increase -- would lower U.S. cigarette consumption from 24 billion packs a year to about 20.8

billion packs. The overall number of smokers would fall by as many as 4 million, Harris said.

The American Medical Association, a chief lobbying force behind the deal, has called for a $1 a pack increase, but cautions even that much would be a struggle.

``Our Congress is not tax-inclined," said the AMA's Dr. Randolph Smoak. ``That may be a sticky issue."

The poll presents a dilemma for deal supporters: how to toughen some provisions without scaring away tobacco companies and without the public distrust playing into opponents' hands.

``This reflects a huge amount of cynicism and skepticism about tobacco," said Massachusetts Attorney General Scott Harshbarger. ``If it is left to the current, polarizing debate ... this is going to be a major problem. We will miss an opportunity that may not come again, and tobacco wins."

Critics seized on the skepticism.

``The American people have it right: They're not against a settlement, they're against a bad settlement," Sen. Frank Lautenberg, D-N.J., said in a statement. ``It's exactly this kind of public opposition to the deal that's going to force Congress to make significant changes."

The tobacco industry called the poll a snapshot consistent with a time when critics have overshadowed the deal's health benefits. ``That will change in September" with the congressional debate, predicted spokesman Scott Williams.

The proposed deal would settle state lawsuits against tobacco companies by setting a new national policy. Companies would pay $368.5 billion over 25 years, curb advertising and marketing and pay fines if teen smoking doesn't fall significantly. In return, they won the class-action ban and other legal protections, plus restrictions on pending government control over nicotine.

Clinton has said he will stiffen the deal, including a demand for full government nicotine regulation. The AP's telephone poll of 1,003 adults, conducted Aug. 20-24, found 58 percent of Americans support such regulation, including 54 percent of smokers.

Although 54 percent also said a deal isn't worth the class-action ban, the smokers who would be involved in such lawsuits were split evenly: 39.5 percent said a deal was worth that concession vs. 41 percent who said it wasn't.

The poll was done by ICR Survey Research Group of Media, Pa. The margin of error is plus or minus 3 percentage points.

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Tobacco Lobbyist Ready for Congress

By Jim Drinkard
Associated Press Writer
Monday, September 1, 1997; 2:01 a.m. EDT

WASHINGTON (AP) -- Combatants in the tobacco wars spent the summer building lobbying arsenals for an intense fall legislative campaign that begins this week with Congress' return.

Senate Republican Whip Don Nickles of Oklahoma has already put together legislation to implement the proposed $368 billion tobacco settlement. He has held an initial meeting with administration officials to talk about it.

Nickles, the No. 2 Republican in the Senate, received $12,000 in campaign money from tobacco companies in the first six months of 1997, more than any other nontobacco-state member of Congress.

And now lobbyists have focused their firepower in recent weeks on the White House, which they hope will come out in support of the deal by mid-September.

The timing of any announcement by President Clinton is crucial. Congress is expected to leave town for the year by the end of October, compressing the time for consideration of the settlement.

``The only way (to pass the bill this year) is if the president comes on real strong," said Mississippi Attorney General Michael Moore, lead negotiator of the settlement. ``That's what we're all waiting on."

The settlement would force tobacco companies to pay $368 billion over 25 years, curb their advertising and pay fines if teenage smoking does not drop significantly.

In return, they would receive protections against smokers' lawsuits and limits on how much the government can regulate nicotine. Congress must approve the package because it calls for changes in federal law.

Forces arrayed for and against the settlement have been spending money and hiring dozens of lobbyists, each side hoping to assemble a dream team with easy access to key policy makers.

The list includes prominent former lawmakers and less well-known but equally well-connected former Capitol Hill aides.

An industry alliance has hired former GOP Chairman Haley Barbour, former Senate Majority Leader George Mitchell and former Texas Gov. Ann Richards. Charles Black, a longtime GOP strategist, is laying plans for dealing with Republican lawmakers, while veteran Bill Oldaker handles strategy for Democrats.

North Carolina lawyer J. Phil Carlton, a friend of White House chief of staff Erskine Bowles, has been the industry's conduit in talks with White House officials. R.J. Reynolds has hired Kevin McGuiness, a former aide to Sen. Orrin Hatch, R-Utah, a likely pivotal figure in negotiations.

And ex-Rep. Charles Rose, a North Carolina Democrat who can't yet lobby his former House colleagues because of revolving-door restrictions, is acting as industry go-between with tobacco farmers.

The task for settlement proponents is first to win President Clinton's public support, then to give a majority in Congress a feeling of ownership of the massive settlement package negotiated solely by tobacco companies and state attorneys general.

That means months of intensive, old-fashioned back-room lobbying, several key participants say. In fact, it is unlikely that a deal can be struck this year, one strategist said.

Proponents' best hope is to smooth the way this fall for action early in 1998, before election-year politics complicates the environment in Washington.

It also means placating constituencies that were not part of the original settlement, including public health groups and tobacco farmers. Such provisions could drive up the settlement's price tag.

Additionally, it means portraying the deal as a children's health initiative to divert the focus from benefits it provides the demonized tobacco industry. If health groups like the American Medical Association and American Cancer Society endorse the deal, they would bring grass-roots muscle to the lobbying effort.

At the center of the campaign is cigarette maker Philip Morris. With half the domestic market, it has the most at stake in any new regime to regulate making and marketing cigarettes. The company also is known as the industry's most aggressive political player.

Lobbying disclosure reports show Philip Morris spent $5.9

million in the first half of this year on its lobbying operations -- which include not only tobacco but also beer and food interests. That was the lion's share of more than $7.3 million in spending the industry reported.

Working separately for passage of the agreement are lobbyists hired by plaintiffs' law firms around the country on behalf of the state attorneys general who negotiated the original agreement.

Mississippi Attorney General Moore is coordinating the effort. His state's settlement with tobacco companies in July obligates the cigarette industry to pay his pro-agreement lobbying expenses in Washington.

Moore said the payment does not mean he is working for the tobacco companies. ``It's a way for the states who've led the fight to have a bonus," he said. ``I'm working for the most money possible for my state."

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