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NAMES & FACES

Compiled from staff and wire reports by Marla Harper
Monday, September 1, 1997; Page D03
The Washington Post

Clinton: Talking Tobacco

As a general rule, President Clinton is insisting that Martha's Vineyard be a work-free zone during his family's vacation on the Massachusetts island, but he squeezed in a brief exception yesterday. After church, he and Hillary Rodham Clinton ducked into Alley's General Store to buy blueberry muffins and magazines when former surgeon general C. Everett Koop happened by.

He and Clinton held an impromptu meeting about tobacco regulation. Koop, who has been urging Clinton to insist on harder terms in a proposed settlement with the cigarette industry, said afterward: "I encouraged him to stay tough on tobacco. The look in his eyes says he is going to stay tough."

Clinton also appeared before reporters to express condolences to the people of Great Britain over the death of Princess Diana.

Later in the day it was back to a holiday schedule. Clinton, whose recovery from knee surgery seems to have slowed a bit, judging by the limp in his walk, took in a round of golf. Joining him for the foursome were Sen. Chris Dodd (D-Conn.), investment banker Thomas Flexner and Washington lawyer Vernon Jordan.

Rushdie Marries in N.Y.

Salman Rushdie exchanged wedding vows with his girlfriend of three years Thursday in the Hamptons on Long Island. The twice-divorced Rushdie has lived under police guard since 1989 when the late Iranian leader Ayatollah Ruhollah Khomeini issued a death sentence against him, saying he blasphemed Islam in his novel "The Satanic Verses."

Rushdie's bride, Elizabeth, whose maid en name was being withheld to protect her safety, is a British-born publishing editor who worked with him on an anthology of modern

False Converts

Tuesday, September 2, 1997; Page A16
The Washington Post

THE TOBACCO companies are trying to create a new image of themselves as repentant and in retreat when in fact they remain on the attack. Only the packaging has changed. When they settled the lawsuit that Florida had filed against them the other day, the companies said the deal was "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." They called the settlement "another step in a process to end the climate of confrontation and litigation that has marked the national debate on tobacco-related issues."

So they're pussycats, except that:

(1) As part of the national deal they now want President Clinton to bless, they've agreed to pay $368.5 billion over 25 years. Pretty imposing. But the companies also got the Republican leadership of Congress -- no less than House Speaker Newt Gingrich and Senate Majority Leader Trent Lott -- to tuck into the budget they sent the president in July a couple of sentences forgiving them $50 billion of this before they were even required to pay it. The $50 billion was to compensate them for the tobacco tax increase Congress had just voted in part to help finance a new program of children's health insurance. No one professes to know exactly how the forgiveness made its way into the legislation -- who suggested it, for example. But part of the explanation, we are willing to guess, lies in the enormous campaign contributions the tobacco companies have made to the Republicans in recent years. (They also have given a lot, but less, to the Democrats.) That's what these folks mean when they say they are buying "access." The $368 billion figure won't endure; they'll find ways to knock it down. The durable part of the deal, if they have their way, will be the limits on future lawsuits that the $368 billion is meant to buy. Surely no one would be so crass as to suggest that Congress go back on its word on that.

(2) A second aspect of the deal has to do with the power of

the Food and Drug Administration to regulate nicotine. The companies professed to agree that it has such power, which was nice of them, since a court had already ruled so. Then they proposed that the power should be exercised only if the FDA could jump through a series of impossible and irrelevant hoops whose effect would be, as intended, to negate the power. Meanwhile, the companies continue to appeal the court ruling which confirmed that the authority exists.

(3) They agreed as well to back off ads calculated to appeal to kids, and a great show was made of the withdrawal of the Joe Camel series. But it was withdrawn only to be replaced by another aimed at pretty much the same market. The current behavior of the companies demonstrates the same thing that their past behavior so amply shows: They'll game any system that's put in place to keep them from selling cigarettes. It's a mirage to think they're preparing to go out of business. They simply want to buy at as low a price as possible a steady platform from which to continue.

Here's a rule, which the president and Congress alike should keep in mind as try in the weeks ahead to figure out what to do about the proposed master agreement: Almost by definition, any deal the tobacco companies find congenial is against the public interest. It's a real temptation to sign off on a big peace pact such as has been proposed -- a world-class photo op, and there are in fact some substantive features of the proposal that would be gains. Our own instinct is that the politicians should go carefully and slowly. Among other things, they need to see what a few more of the pending state suits, the one in Minnesota particularly, turn up by way of evidence that the companies knowingly put the many millions of people they hooked on their product at risk. Which politicians want to vote for a limit on future lawsuits and other liability in advance of that?

Back to the top

The New York Times
Breaking
NEWS FROM A.P.

September 3, 1997

Senate OKs Smoking Crackdown Funds

Filed at 7:02 p.m. EDT

By The Associated Press

WASHINGTON (AP) -- Reversing course by an unexpectedly large margin, the Senate dealt the tobacco industry a blow Wednesday by approving the Clinton administration's $34 million request for a crackdown on cigarette sales to teen-agers.

``Big tobacco fought it because they want to keep on getting these kids hooked,'' said Democratic Sen. Tom Harkin of Iowa, the main sponsor of legislation backing the administration's funding request. ``This is one step in a big battle, but it's a great step.''

A few hours later, the House showed its nonbinding but also overwhelming support of the full $34 million, which is $10 million more than House members had initially appropriated.

``It is an important victory for our children and a clear endorsement of the national effort to protect them from the dangers of tobacco,'' Vice President Al Gore said in a statement.

In July, the Senate rejected an attempt to fully fund the Food and Drug Administration program that would provide money for all 50 states to ensure stores are checking identification to prevent minors from buying tobacco products. Instead, the Senate had approved just $4.9 million, enough for perhaps 10 states.

During the August congressional recess, tobacco foes lobbied furiously to boost the amount, focusing on a provision of the just-completed balanced budget deal that permits tobacco companies to use $50 billion from a future cigarette tax increase to help pay for the proposed national settlement of health-related smoking lawsuits.

Harkin also changed the source of the $34 million for FDA from an assessment on tobacco companies to a reduction in computer money for the Agriculture Department.

``I think in many cases people have had a closer look and that they feel very comfortable with the vote,'' said Senate Minority Leader Tom Daschle, D-S.D., who switched his vote.

When the issue came to a vote Wednesday, senators joined Daschle in rejecting an attempt to kill Harkin's amendment by a surprisingly decisive 70-28 vote. Harkin's previous effort failed 52-48.

The amendment was added to the Agriculture Department spending bill for fiscal 1998, the final version of which will be produced through House-Senate negotiations.

Later Wednesday, the House voted 299-125 for a non-binding resolution instructing its negotiators to support the Senate funding level instead of the $24 million the House had approved.

Meanwhile, a Senate committee continued hearings Wednesday on the proposed $368 billion settlement of state health-related smoking lawsuits despite growing sentiment that Congress will put the issue off until next year because of its complexity and controversial nature.

``At this point, it doesn't appear as if we're prepared ... to come to any conclusion about the tobacco agreement," Daschle said. ``We want to make sure we've covered the bases."

On Tuesday, the wholesale price of cigarettes rose by 7 cents a pack, about 7.5 percent, which should translate into a 4 percent retail boost for smokers.

The rise, which follows an increase of about 5 cents a pack in March, will be used by companies to pay for smoking lawsuit settlements.

Under the FDA's crackdown on teen smoking, government money will be distributed to states that request it to help them check retail stores to determine if they are selling tobacco products illegally to youngsters under 18. The Clinton administration estimates that such sales could reach $1.2 billion annually.

Opponents complained that Harkin's use of Senate rules to block the agriculture spending bill to force a vote on his amendment was a violation of an agreement aimed at speeding appropriations measures through Congress. Nobody spoke against the funding the FDA program itself.

``We're all for doing everything possible to persuade young people, minors, not to smoke. That's not the issue here," said Sen. Thad Cochran, R-Miss., chairman of the Senate Appropriations panel on agriculture.

The tobacco industry is a prime source of campaign contributions. A watchdog group reported Tuesday that senators who had previously opposed full FDA funding received 15 times more tobacco money during the last election year than did supporters.

Until recently, the industry rarely lost a vote in Congress. But tobacco foes said they were emboldened by the Senate action, vowing that the next target would be the provision allowing the industry to use the $50 billion in cigarette tax proceeds to offset the settlement costs.

``I think we have a good chance of perhaps doing something on that one, too," Harkin said. ``The tide is changing on this issue."

Home | Sections | Contents | Search | Forums | Help

September 4, 1997

Congressional Leaders Do Not Intend to Act Quickly on Tobacco Pact

- **Related Articles**
  Additional Coverage of the Tobacco Settlement
- **Forum**
  Join a discussion on Tobacco Suits and Settlements

By JOHN M. BRODER

WASHINGTON -- Congressional leaders said on Wednesday that they had no plans to act quickly on the proposed tobacco settlement, while advocates for the proposal warned that delay could kill the deal.

In interviews and in testimony before a Senate committee, negotiators of the $368 billion tobacco accord predicted that the proposed settlement would unravel unless it was enacted this year, which congressional leaders said would not happen. The outcome of a number of pending court cases and the vagaries of the legislative process could drive participants to abandon the carefully wrought compromise unless Congress moves swiftly, they said.

It now appears unlikely that the historic settlement of four decades of war over tobacco, anticipated when the proposal was announced in June, will be achieved any time soon.

While the cigarette companies, lawyers and health advocates who produced the deal continue to push for rapid action, the agreement faces congressional scrutiny and lobbying muscle the likes of which have not been seen since President Clinton's health care plan hit Capitol Hill in 1993.

Liberals and longtime opponents of the tobacco industry object to the agreement as too generous to the industry, and Republican leaders in Congress resent the plan's intrusion on legislative prerogative. The president is prepared to endorse a modified version of the proposal -- but only with strong reservations, aides said.

"Time is running out," warned Michael Moore, the attorney general of Mississippi, who was the states' chief negotiator in the tobacco talks. "It'll be another 40 years before we have this opportunity again."

In an interview, Moore expressed frustration with the slow pace of deliberations on the tobacco proposal.

"Congress, left to its own devices, doesn't have a very strong record when it comes to tobacco," he said, citing the back-room deal that gave the industry a $50 billion deduction to cover the cost of a new cigarette tax passed as part of the balanced-budget deal this summer. "Something's wrong here, folks."

But congressional leaders of both parties insisted that legislative action on the tobacco proposal was virtually impossible this year, because the deal is too sweeping and its effects too unpredictable to permit quick action. Besides, leaders are hoping to end the current congressional session by early November, providing little time for committee scrutiny and debate.

"We're willing to look at it, but it's not a fait accompli by any means," said Sen. Don Nickles of Oklahoma, the assistant majority leader in the Senate. "There are five committees with jurisdiction. After they're through looking at it we'll decide what to do. Is all that going to happen this year? I don't think that's likely."

Barely disguising his disdain for what he views as a violation of senatorial privilege, Nickles added, "This is a very unusual process where a few attorneys general and litigants representing companies, states and interest groups came up here with a big proposal and dumped it in our laps, saying, 'Here is what we want to do, now pass it.'"

Delay is not likely to be kind to the deal. The longer a controversial proposal sits before Congress, the more vigorous a lobbying campaign can be waged against it, as the fate of the Clinton health care plan three years ago showed.

Already, opponents ranging from Ralph Nader to the American Lung Association are flooding congressional offices with studies purporting to show that the proposal is a sweetheart deal for the cigarette companies.

And a series of court decisions, favoring the states or the tobacco industry, could cause either side to rethink the value of a broad negotiated settlement as opposed to continued litigation.

If the tobacco plan is revived next year, the deal may bear little resemblance to the 68-page proposed settlement announced by state attorneys general, tobacco industry representatives and lawyers for plaintiffs suing the industry on June 20.

Clinton is preparing to announce tentative support for the deal, but with substantial changes in provisions relating to government regulatory power and a steep increase in the plan's price tag. And Congress, after months of hearings and debate, is certain to alter, amend or rewrite the plan.

The accord reached in June calls for the major cigarette manufacturers to pay roughly $15 billion a year for the next 25 years to settle suits brought by 39 states and Puerto Rico seeking compensation for smoking-related Medicaid claims. The accord provides for new industry-financed anti-smoking programs and restrictions on cigarette advertising and marketing. In return, the tobacco companies would win immunity from most lawsuits and freedom from punitive damage awards for past behavior.

Nickles is in effect the Senate's foreman on this issue, and there is little chance a bill will move without his approval. The Senate majority leader, Trent Lott of Mississippi, recused himself from deliberations on the tobaccoo accord because his brother-in-law, Richard F. Scruggs, a lawyer from Pascagoula, Miss., was one of the central players in devising the settlement plan.

Democrats are also taking a wary approach. Sen. Kent Conrad, D-N.D., who is the chairman of a tobacco task force of Senate Democrats, said he was recommending that no action be taken this year on the plan. "That is not a time line that gives our colleagues time to learn all of what is going on," Conrad said.

House action this year is equally unlikely. The House majority leader, Rep. Dick Armey of Texas, said on Tuesday that, at most, only preliminary committee work could be completed before Congress recessed. He predicted that there would be no extensive hearings on the proposal until early next year.

Supporters of the settlement plan said that several critical court cases to be decided over the next several months could scuttle the deal even before Congress takes it up.

The greatest uncertainty is posed by a three-judge panel of the 4th U.S. Circuit Court of Appeals, in Richmond, which is expected to rule this fall on the tobacco industry's challenge to the Food and Drug Administration's authority to regulate the manufacture and sale of their products.

The issues of FDA control over nicotine and over the marketing of cigarettes to teen-agers are at the heart of the controversy over the proposed settlement. If the court rules that the FDA has broad authority to regulate tobacco, the Clinton administration will be much less inclined to support legal concessions to the industry.

But if the court rules in the industry's favor, cigarette manufacturers may choose to walk away from the costly settlement and take their chances against the states in courtrooms around the country.

"The 4th Circuit will have a major impact, whichever way it rules," said D. Scott Wise of Davis Polk & Wardwell, a New York law firm, who represented R.J. Reynolds Tobacco Cos. in the settlement talks. He suggested that a ruling in favor of the tobacco companies would change the legal and financial dynamics of the industry's position.

"The balance of compromise and the balance of politics of this delicate agreement could dissipate if Congress doesn't take this opportunity now," Wise said.

In addition to the federal court case, two pivotal state tobacco cases are scheduled for trial in the coming months. Texas is to begin jury selection later this month if state officials do not settle with the tobacco companies, as Florida and Mississippi did earlier this summer.

More ominous to the industry is a Minnesota case, set for trial in January. That state's attorney general, Hubert H. Humphrey III, has amassed a trove of what he calls highly incriminating internal tobacco company documents. A judgment against the industry in that case could dwarf previous state settlements and encourage the other attorneys general to back out of the nationwide deal and go for broke in their own courtrooms.

In another tobacco development, the Senate voted on Wednesday to approve the administration's request for $34 million for the FDA's program to enforce anti-youth smoking rules. The Senate had previously approved only $4.9 million for the program.

The FDA provides money to the states to insure that stores are checking age identification to prevent minors from buying cigarettes.

THE WALL STREET JOURNAL INTERACTIVE EDITION FRONT SECTION

September 4, 1997

Tobacco Deal Gets Burned As Senate Starts Hearings

By JEFFREY TAYLOR
Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON -- The proposed tobacco settlement took a drubbing from members of yet another Senate committee, a day after House Majority Leader Richard Armey said he didn't expect congressional action on the deal this year.

Republicans and Democrats on the Senate Labor and Human Resources Committee, the third Senate panel to hold hearings on the settlement, found much in it to criticize. Opinion on the $368.5 billion agreement now appears to be polarized: One camp believes the deal, while imperfect, represents the best available step to curb youth smoking while the other sees it as a massive giveaway to the tobacco industry.

The settlement must be approved by Congress, but few on Capitol Hill foresee a vote this year. By a week from Thursday, GOP leaders expect to hear the results of the Clinton administration's two-month review of the settlement. The administration is likely to endorse it, while proposing a series of changes. Republican leaders plan to study the president's recommendations this month and decide by early October whether to bring tobacco legislation to a vote in 1997.

If Wednesday's hearing is a fair measure, the deal faces considerable congressional opposition. Sen. Edward Kennedy called it "grossly deficient" and demanded that tobacco companies help to defray federal health-care costs by paying twice as much as the settlement now requires. "It is not for the industry to dictate what controls on tobacco are acceptable," the Massachusetts Democrat said.

Republican Mike DeWine of Ohio questioned whether the penalties the settlement would impose on tobacco companies for failing to reduce youth smoking, now capped at $2 billion a year, are adequate. "We have to look hard at whether this penalty is a penalty" or a "zero-sum game" in which the tobacco industry would pass on any such costs to smokers, he said.

Democrat Tom Harkin of Iowa echoed calls for disclosure of industry documents sealed under attorney-client privilege before any legal immunity is granted to tobacco companies. "I will use whatever powers I have as a senator to put this off" until the industry turns over all of its documents to Congress, Sen. Harkin said.

The hearing came as both houses reversed themselves and voted to support full funding for a $34 million Food and Drug Administration initiative to curb smoking among teenagers. The Senate went first, voting 70-28 to add about $29 million to what it had budgeted for the fiscal year beginning Oct. 1. The House later voted 299-125 to endorse the higher funding. Sen. Harkin, a lead sponsor, said the outcome all but ensures the White House will get most of the money it wants for the program.

Meanwhile, an influential trial-lawyers' group began a concerted effort to kill the deal. In a letter to members of Congress, the Association of Trial Lawyers of America said the proposed settlement didn't offer adequate compensation to injured smokers and unconstitutionally limited consumers' right to bring future suits. The position suggests more trouble for the deal's proponents because the trial lawyers' group has successfully opposed limits on liability suits. Separately, tobacco lawyer J. Phil Carlton said he discussed the settlement for three hours Tuesday with Clinton adviser Bruce Lindsey, but that the session wasn't a forum for "hard-ball negotiating." Tobacco companies have been trying to persuade the White House that the settlement contains a delicate balance that is best left undisturbed. "We are simply continuing to explain how provisions came to be there with the hope that this understanding will show the administration the wisdom of the agreement," Mr. Carlton said.

--Greg Hitt, David Rogers and Richard B. Schmitt contributed to this article

THE WALL STREET JOURNAL INTERACTIVE EDITION FRONT SECTION

September 5, 1997

Companies Debate Concessions At Tobacco Accord 'Summit'

By SUEIN L. HWANG
Staff Reporter of THE WALL STREET JOURNAL

Tobacco-industry executives met in Washington to discuss possible concessions to the proposed national settlement in an effort to win crucial support from the White House.

At the summit, the cigarette companies are trying to decide whether to soften their so-far inflexible stance on amending the $368.5 billion settlement. If not, they risk killing the historic deal that would broadly shield them from liability.

Link

Tobacco-Deal Lawyer Fees May Cause Capitol Hill to Fume

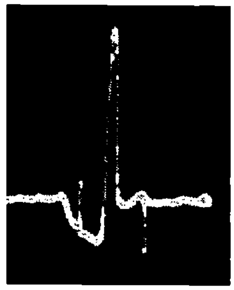
Amid a chilly congressional reception of the proposal in recent days, the executives of the major tobacco companies gathered in Washington to discuss moves that might appease White House concerns, according to people familiar with the meeting.

The Clinton administration wants the controversial proposal amended to give the Food and Drug Administration unrestricted powers to regulate nicotine, the addictive component in cigarettes. In addition, the White House wants to establish higher financial penalties if youth smoking rates don't decline by the already ambitious target levels set in the proposal.

Those provisions are the biggest sticking points. The cigarette companies have staunchly refused to go beyond the terms of the original document signed in June after weeks of delicate negotiations involving the industry, states' attorneys general and representatives of public-health organizations.

It 'Could Fall Apart'

"There's a good possibility the industry won't meet the demands," says Richard Scruggs, a plaintiffs lawyer and a key negotiator of the settlement. "The whole thing could fall apart next week."



Tobacco's Days in Court

Here's a summary of the status of tobacco-related litigation:

- Number of states that have filed lawsuits against tobacco companies for recovery of Medicaid-related costs: 40
- States that have settled their cases by separate arrangements with the industry: Mississippi and Florida
- Next state scheduled for trial: Texas
- States that have opposed the national tobacco settlement, arguing that it isn't tough enough on tobacco companies: Minnesota and Wisconsin
- Individuals have filed a series of class-action lawsuits against tobacco companies in Florida and other states: one, filed by flight attendants in Florida, is being tried currently.
- An appellate court in Richmond, Va., is expected to rule as soon as October on the FDA's jurisdiction to regulate nicotine as a drug, which was upheld by a North Carolina federal court in April.

Setting off the 11th-hour flurry of discussions is the president's imminent return to Washington. President Clinton is expected to announce his position on the settlement after returning from his summer vacation early next week.

But people on Capitol Hill dismiss dismal forecasts for the proposal as posturing by settlement proponents to preserve the deal, and its advantages for them. The settlement still offers substantial benefits for the industry that it would be loath to give up, they point out, such as the immunity from punitive damages in civil lawsuits alleging past misconduct.

Officials for the White House Thursday said the industry has known of its objections for weeks. It would be an unlikely time, they argue, for the cigarette makers to walk away from the accord before the White House has formally passed judgment or the legislative process has even begun to run its course.

Without a strong endorsement from President Clinton, the settlement proposal could fall apart. Earlier this week, Republicans and Democrats on the Senate Labor and Human Resources Committee criticized the deal, saying the tobacco industry, with $45 billion in yearly cigarette revenue alone, isn't giving up enough.

"There's trouble on the right and the left," said one person familiar with the matter. "Somebody in Congress has to claim ownership of this, and it hasn't happened yet."

White House Factions

There are even factions on the proposal within the White House. Both White House Counsel Bruce Lindsey and Domestic Policy Adviser Bruce Reed generally support the proposal but want the industry to pay more than the $368.5 billion. On the other side are Vice President Al Gore and Donna Shalala, secretary of health and human services, who believe the deal is far too lenient on the tobacco companies and are making far greater demands.

Meanwhile, the administration and the tobacco companies are awaiting a ruling by a federal appeals court in Richmond, Va., on the FDA's jurisdiction of tobacco. Depending on that finding, either side might walk away from the delicately negotiated agreement.

Under the settlement, the tobacco industry agreed to pay the $368.5 billion over the next 25 years and ban billboard advertising, vending machines, sports promotions and ads with people and cartoon characters, such as Joe Camel and the Marlboro Man. It would also yield to some FDA regulation.

And the industry has been under heavy market pressure to get the settlement nailed down. On Wall Street, the valuations of Philip Morris Cos. and RJR Nabisco Holdings Corp. shares have been rising and falling almost entirely on the prevailing sentiment as to whether the proposal will be finalized. Thursday in New York Stock Exchange composite trading, Philip Morris stock fell 87.5 cents to $44.6875, while RJR shares dropped $1.1875 to $34.625.

--Jeffrey Taylor contributed to this article.

Tobacco Deal in Serious Trouble

Ira Millstein

Separate cmte to the board of independent directors
2 picked from panel selected by Admin (Congress?)

Must have clear steps
The industry should not encourage smoking directly or indirectly except by selling its product:

By Lauran Neergaard
Associated Press Writer
Saturday, September 6, 1997; 12:36 p.m. EDT

WASHINGTON (AP) -- The tobacco deal, lauded as an historic truce just two months ago, now appears to be in serious trouble. Supporters say President Clinton can save it but only if he acts within weeks.

Clinton returns from vacation this week to finalize his decision, and Congress has made it clear that the controversial deal is unlikely to pass this year unless he jumpstarts it quickly.

But Clinton, whose own aides still are fighting over the deal, is under growing pressure to let the deadline pass from critics who say Congress could make a serious mistake by acting in haste.

``My advice would be for Congress to take its time to get this job done right rather than get it done right now," said Sen. Kent Conrad, D-N.D., chosen to lead Senate Democrats on the issue.

``This has lots of implications for health in this country, it sets precedents for other industries and for the rights of people who've been injured," Conrad said in an interview.

The rising threat of delay poses a quandary for cigarette makers: how to handle their next big lawsuit, set to go to trial in Texas on Sept. 29.

A Texas judge has ordered top tobacco executives into court Monday to answer whether they intend to settle or go to trial, a decision the companies privately say is tough.

They just settled similar lawsuits in Mississippi and Florida, paying those states the billions of dollars they would get anyway if Congress ever passes a national tobacco deal.

But with the federal truce stalled, Wall Street experts expect the companies to gamble on winning in Texas.

``There have been some very, very preliminary contacts there" about settling, is all the industry's chief negotiator, J. Phil Carlton, will say.

But if Congress doesn't act on the federal settlement this year, it could unravel, Carlton warned.

``I think the president of the United States wants to do this thing," said Carlton, who held eleventh-hour meetings with top White House aides last week to press his point.

The proposed national tobacco deal, if ratified by Congress, would settle 40 state tobacco lawsuits by setting new federal policy. Tobacco companies would pay $368.5 billion over 25 years, strictly curb advertising and pay up to $2 billion a year in fines if youth smoking doesn't drop. In return, they won legal protections and limits on how much the government could regulate nicotine.

But critics say Big Tobacco won too much, and the price tag is emerging as a particular concern: Sources say at least two Republican committee chairmen have joined Democrats in discussing whether cigarette prices should be forced to rise by over $1 a pack to slash teen smoking, instead of the 62-cent increase the deal is expected to cause.

The Clinton administration already has said it will add $50 billion to the deal to compensate for a rebate the tobacco companies won when Congress voted to let them deduct the new 15-cent cigarette tax from any settlement. Clinton also will demand stricter nicotine control and higher youth smoking fines.

But congressional leaders said this week they have no desire to tackle such a complex issue in the two months left in this year's session, and will try only if Clinton quickly provides a clear outline of a deal that he would sign.

Tobacco companies say if they are forced to wait until next year, the deal will collapse. Why? Minnesota's lawsuit begins in January, and it is the one the industry most fears.

Industry attorneys are holding daily conference calls to discuss concessions that would persuade Clinton to jumpstart the deal, but say they'll make no final decisions until the White House tips the industry to the president's final demands.

``There has been absolutely no agreement to change anything," Carlton said.

The wait-and-see game is proving tough for the nation's largest public health organizations who want the deal stiffened but also fear delay could prove a lost opportunity.

``There is a real sense of urgency ... and there is concern that if it's not accomplished this year, it could slip through our fingers," said Matt Myers of the Campaign for Tobacco-Free Kids.

Back to the top

Tobacco Keeps Fighting

By Joseph A. Califano Jr.

Sunday, September 7, 1997; Page C07
The Washington Post

As Big Tobacco tries to buy Congress with record political contributions and each state gets what it can for its citizens, President Clinton has the best shot to make a silk purse out of the sow's ear of the proposed tobacco settlement.

Tobacco stocks keep rising with Wall Street betting that the White House will continue to chase a deal favorable to the companies. The smart money understands that such a settlement will have little or no impact on teen smoking, the feeder for Big Tobacco's market among addicted adults. A poll released a week ago shows that most Americans see it the same way.

Wall Street is right about the settlement's negligible impact (if any) on teen smoking, but I hope it's wrong about the president. Mr. Clinton should hang tough on this one. The industry rush to settle as each state trial nears is evidence of how strong the president's hand is. Embarrassed and desperate tobacco executives are telling their lawyers to pay up in order to avoid testifying under oath, where they will be forced to admit how much they knew about the hundreds of thousands of deaths and maiming diseases that cigarettes have caused and how little they cared so long as the money kept rolling in. Corporate lawyers are no doubt also reminding these executives that what they say in court could be used not only by other plaintiffs but also by the Securities and Exchange Commission and state regulatory agencies to question the accuracy of their proxy statements and other filings.

As the individual state settlements, the documents and depositions that will continue to be made public as part of them, and the delay in congressional action, bolster the president's negotiating posture, he should take the time to shape a deal that will significantly reduce teen smoking and keep the slippery tobacco executives honest.

The White House has signaled that it will not agree to curb Food and Drug Administration authority to regulate nicotine as a drug. But the ultimate resolution of that issue is likely to get tangled in Republican congressional efforts to put the agency on a short leash. Mr. Clinton must exact Big Tobacco's promise to accept such power now, concede it in court and actively lobby against any attempt to trim it.

The proposed settlement would ban future class-action lawsuits and punitive damages. As the American Trial Lawyers Association (which opposes the deal) points out, such a ban is a grant of full immunity, because no individual plaintiff or attorney could afford to battle the well-financed, obstructionist tobacco lawyers for compensatory damages only. Even more important, the continuing possibility of lawsuits from aggressive plaintiffs' lawyers is a critical means of policing an industry that has deceived the public for half a century. Such private policing is cost-free to taxpayers. It is also independent of Big Tobacco's political money, which for years has persuaded a pliant Congress to tie up public bureaucracies and deny them funds to take actions adverse to the industry.

Tobacco's agreement to limit advertising to words, with no glamorous or cartoon figures, and ban most vending machines and billboards is unlikely to do much about teen smoking. For years England has limited cigarette advertising to words only, and teen smoking remains high in the United Kingdom. R. J. Reynolds (the guys who gave us Joe Camel) is showing us what clever hucksters can do with words only in a new campaign touting its Winston cigarettes as delivering "only tobacco and pure filtered water" with "zero percent additives," a thinly disguised hint to teens and adult smokers that Winston is the healthy cigarette.

As to the vending machine ban, fewer than 5 percent of teens get their cigarettes through such machines. Most buy them in stores and get them from older brothers, sisters and friends.

Does the industry's agreement to pay $368 billion indicate that it has turned over a new tobacco leaf? Hardly. Over 25 years that payment discounts to a present value of less than $250 billion, pennies on the dollar for the $100 billion a year in health costs Big Tobacco has laid on our nation and about a quarter of what taxpayers will pay just to cover

Medicare's cost of treating tobacco-related diseases over that period.

The president should watch what tobacco companies do, not what they say. In the first six months of 1997, Big Tobacco shoveled more money -- $1.9 million dollars -- into federal political pots than in any comparable period, most of it to line pockets of congressional Republicans. And its investment has paid off handsomely. So far this year, tobacco's pals on Capitol Hill tried to gut the president's request for funds to educate children about the dangers of smoking, preserved the tobacco farm subsidy and persuaded Senate Majority Leader Trent Lott and House Speaker Newt Gingrich to insist, as a nonnegotiable condition of any budget deal, that the $50 billion cigarette tax be credited against any settlement amount Big Tobacco pays. Making more than $50 billion on an investment of less than $2 million sure beats earning an honest living.

What should a president committed to curbing teen smoking do? Most important, he should insist that the tobacco companies agree to a big tax increase -- say, $2 a pack. The National Bureau of Economic Research estimates that such a tax would reduce teen smoking by 70 percent. Anything short of a sharp increase in price holds hollow promise of cutting teen smoking. The industry opposes such a tax because it is the surest way to reduce teen smoking.

The president also should reject any ban on future class actions and punitive damages, require that all fees for plaintiffs' lawyers be made public and paid by the tobacco companies (not deducted from the settlement amount) and recoup the outrageous $50 billion tax credit.

With Big Tobacco's power on Capitol Hill, Clinton may be the last chance (short of a Senate filibuster) to turn this settlement into something that truly will reduce teen smoking and protect the public health. The public interest is better served by a tough and tenacious presidential position (if necessary, over several months) than by a late summer White House ceremony with rhetorical flourishes to gussy up a bad deal for our children and taxpayers.

The writer is president of the National Center on Addiction and Substance Abuse at Columbia University; he was secretary of Health, Education and Welfare from 1977 to 1979.

The New York Times

September 8, 1997

White House's Bottom Line Is Reported in Tobacco Deal

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  Coverage of the Tobacco Settlement

By BARRY MEIER

Two cigarette industry representatives say the White House told them last week that three crucial concessions must be made to the proposed $368.5 billion tobacco settlement to win President Clinton's approval.

The representatives, speaking on the condition of anonymity, said administration officials told them that the deal must be amended to give federal officials a freer hand in regulating nicotine levels in cigarettes.

The officials also insisted that heavier fines be imposed if the industry did not meet targets for reducing youth smoking over the next decade, the representatives said.

They reported that administration officials also said they wanted to eliminate or restrict a provision in the new federal budget that allows the industry to deduct $50 billion raised from new tobacco excise taxes over the next 25 years.

The administration does not want the deduction to reduce the settlement's original cost, agreed to in June after three months of negotiation between the industry, state attorneys general and public health advocates.

Sunday, Bruce Reed, Clinton's top domestic policy adviser, declined to comment on details of the latest talks between the White House and industry representatives.

"The president has not made any decision on the proposal," Reed said. "But we have made no secret of the fact that he is going to be tough on the industry and tough on youth smoking."

An administration official, speaking on the condition of anonymity, characterized the three demands as deal breakers if they were not met. The official also said the administration would probably seek to strengthen provisions under which industry documents would be disclosed.

Clinton administration officials have said settlement provisions on nicotine regulation and penalties on youth smoking need to be revised and expressed concern about the $50 billion credit. It is now increasingly clear that the three issues will constitute the major battle lines in talks between industry and the White House before Clinton make his decision on the proposed settlement.

Major tobacco producers have agreed to pay $368.5 billion over 25 years to settle lawsuits by states and smokers, restrict cigarette advertising and pay penalties if youth smoking fails to decline. The industry would be protected from certain types of lawsuits and punitive damages under the settlement, which also requires congressional approval because it undercuts some traditional legal rights of individuals.

Clinton has indicated his general approval for the proposal but has criticized parts of it. He was initially expected to decide on the settlement this week, after returning from vacation. But his decision may not come until next week, White House officials said.

Industry officials spent much of last week huddled in Washington discussing the terms of the compromises they planned to offer the White House, the two cigarette company representatives said. One said company officials were "absolutely certain" that Clinton would approve the deal if the White House's three basic demands were met.

But another industry representative said that while the industry would very likely compromise on regulatory issues, it would fight to keep the $50 billion deduction. The representative said the industry would also seek a compromise on the penalties involving youth smoking to limit their financial impact on cigarette producers.

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THE WALL STREET JOURNAL INTERACTIVE EDITION FRONT SECTION

September 8, 1997

Tobacco Firms Want Backing From Clinton on Settlement

By SUEIN L. HWANG
Staff Reporter of THE WALL STREET JOURNAL

Despite a round of discussions over the weekend, cigarette makers have yet to gain the administration backing they believe is needed to secure passage of the proposed national tobacco settlement.

On Friday, White House Counsel Bruce Lindsey and Domestic Policy Adviser Bruce Reed maintained to industry representatives in Washington that the tobacco companies -- which previously agreed to boost prices 50 cents a pack under the deal -- must raise prices even higher to discourage underage smoking. They also reiterated earlier contentions that the settlement proposal must be revised to stiffen the "look-back" provisions, which levy penalties on the tobacco companies if youth-smoking rates don't decline by ambitious targets.

Under the proposed settlement -- which was negotiated between the industry, state attorneys general and public-health representatives -- the industry would pay $368.5 billion over 25 years, accept some Food and Drug Administration regulation of tobacco and adopt a host of marketing and advertising restrictions. In exchange, the industry would win broad liability protections.

The White House earlier said it wants to make sure the youth-smoking penalty payments aren't tax deductible and to scuttle a provision that could give the tobacco companies a partial refund under certain circumstances.

For its part, the industry argued that it shouldn't be blamed if teen smoking rates don't decline, and maintained that the White House's requirements are unrealistic. "The industry is probably going to go a little further, but not do a huge leapfrog," said one tobacco industry executive. "The money isn't there." White House officials have dismissed such talk as posturing.

So far, no compromise between the industry and the White House has appeared. "Nobody has had a magic formula," said one person in the tobacco camp familiar with the matter.

While President Clinton is widely expected to publicly back the plan, he is also expected to recommend a number of changes as well. And both the White House and the industry are trying to resolve in advance what kinds of recommended changes to the sweeping, complex settlement the cigarette makers would be willing to live with. People close to the situation said the slow progress of the discussions is likely to postpone any announcement by President Clinton until the end of this week at the earliest.

Given the rich $368.5 billion to be generated by the settlement, the industry's desire for liability protection and the Clinton administration's desire to resolve the tobacco issue, few expect the settlement to be killed outright. But each week that passes makes congressional approval of the deal harder to achieve. Both Republican and Democratic leaders have openly criticized aspects of the settlement, making a strong, swift endorsement by President Clinton crucial.

"Every day it gets increasingly difficult," said one person familiar with the matter in the tobacco camp. "The longer it's out there, the more it gets picked apart."

Return to top of page

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Legal Affairs

WHAT MAY STUB OUT THE TOBACCO SETTLEMENT

Any pact awaits a gamut of constitutional challenges

The odd coalition of cigarette companies, trial lawyers, state attorneys general, and scattered health officials that is lobbying for the landmark tobacco settlement is facing challenges from all sides. Ever since the deal was announced on June 20, it has been under fire--for limiting federal regulation of nicotine, letting the companies off for too little money, and shielding internal documents from the public, among other things.

But even if these issues are resolved and Congress approves the pact next year, it still faces another enormous hurdle: the U.S. Constitution. Almost as soon as it becomes law, an array of private attorneys and special interest groups--such as Action on Smoking & Health, a Washington-based antismoking group--is planning to challenge it in court. They are likely to charge that the deal illegally limits the rights of smokers to sue, of companies to advertise, and of states to establish commercial regulations. Their objections threaten to invalidate key portions of the settlement--and perhaps even the entire deal. "This thing is a constitutional minefield," says Richard D. Hailey, president of the Association of Trial Lawyers of America (ATLA).

Of all the controversial aspects of the pact, perhaps the most troublesome to legal experts are the proposed restrictions on the right of smokers to sue and recover damages from manufacturers. Only rarely has Congress granted a single industry the kind of immunity from lawsuits allowed in the settlement. And in those few cases, the rights of individuals were not shackled as they are in the current accord.

Under the pact, Congress would ban future filing of all class actions against tobacco makers. It also would force the settlement of 20 pending class actions; current claimants would be eligible for smoking-cessation programs but not for cash payments. Additionally, individual litigants would be barred from seeking punitive damages for past industry conduct. The deal would set a $5 billion limit on the amount of damages litigants could collect in any single year.

HEADED OFF? Some legal experts believe such restrictions violate constitutional guarantees to due process of the law and the right to a jury trial. "The cumulative effect of foreclosing class actions, rejecting punitive damages, and capping compensatory damages could so exhaust an attorney's incentive to litigate that claimants with legitimate grievances are denied their day in court," says Robert A. Levy, senior fellow in constitutional studies at the libertarian Cato Institute.

True, some of the federal restrictions in the bill go far. But Laurence H. Tribe, a constitutional law professor at Harvard Law School, believes that such restrictions will survive because claimants are still able to receive some form of compensation. Tribe points out that the Supreme Court has held that there is no constitutional right to recover punitive damages or file a class action. He also believes the pact doesn't interfere with the right to a jury trial since there is no limit on the amount of compensatory damages a jury can award, just a restriction on the timing of their payout. And he notes that the courts already have upheld congressionally crafted damage caps for the coal, vaccine, and nuclear power industries.

Still, counter opponents, Congress has limited an industry's legal exposure only when there's a pressing social or economic reason to protect the industry, a dimension missing in tobacco's case. In 1986, for example, Congress created the National Vaccine Injury Compensation Program, a no-fault compensation system for children injured by vaccinations. But under that law, vaccine claimants who are unhappy with their awards under the no-fault arbitration process are free to go to trial to seek unlimited damages.

Even if the deal does pass constitutional muster, critics warn it may nonetheless establish a dangerous precedent. The problem: Other industries facing a barrage of litigation could be tempted to come knocking on Congress' door. Kyle Logue, assistant professor at the University of Michigan law school, says that "industries whose products are potentially dangerous will look at this closely. The message is, if you are politically savvy, you can get a settlement agreement that would save a lot of litigation costs."

Perhaps just as nettlesome is the issue of states' rights, protected by the Tenth Amendment. It's a red flag for many Republicans in Congress elected on platforms opposing federal meddling in state activities. They're likely to question the provisions that call for federally-mandated changes in state court systems, such as nixing their punitive damages laws. And Stephan E.

Lawton, an attorney for the American Cancer Society, thinks that the Supreme Court, which recently upheld the states' position in several states' rights cases, may not take kindly to Congress "directly requiring the states to conduct its own judicial proceedings in a certain way." Lawton says one way to get around the consitutional quagmire would be if Congress rewrites the deal so that states are coaxed to make the changes voluntarily, perhaps by offering them money from the tobacco settlement.

Minnesota is particularly peeved because the pact would override the state's tougher laws on the licensing of retailers of tobacco and on laws requiring the industry to disclose documents. And it would force Minnesota to settle its pending Medicaid case, even though it wants to proceed. Says Scott Strand, deputy counsel to Minnesota Attorney General Hubert H. Humphrey III: "You have serious Tenth Amendment issues when you have Congress commandeering state court systems for federal purposes."

"ALARMING CONCEPT." Scholars are also examining the settlement's potential for running afoul of the First Amendment. As proposed, it would ban tobacco advertising on billboards, in stadiums, and on merchandise. Yet recent Supreme Court decisions have granted commercial speech broad protection. Last year, for example, the court unanimously ruled that a Rhode Island ban on advertising liquor prices was unconstitutional. Earlier decisions found that the government could restrict commercial speech only under special circumstances, for instance when the restriction has a direct effect on advancing a specific interest and when it's not more extensive than necessary.

Of course, it's unlikely that the cigarette makers at the negotiating table would ever claim a violation of their First Amendment rights; as part of the deal, these companies have agreed to waive such rights. But what about a smaller company, perhaps a foreign one, that is not willing to accept the restrictions in the pact? The negotiators hoped to get around the free-speech issue by setting up a separate regime for non-participating manufacturers. These companies would be free to advertise, but they would be required to make substantial payments to a kitty earmarked for liability payments. Forcing nonparticipating companies to pay up to advertise is "an alarming concept because it puts a price tag on your right to speak," warns Douglas J. Wood, a New York attorney who specializes in advertising law.

The tobacco deal is now in the hands of the White House and Congress, which expects a vote by mid-1998. But lawmakers are veering into unknown territory, and it could be years before the courts resolve many of the pact's troubling constitutional issues. Every potential claimant--from individual litigants to advertisers to industries beleaguered by product-liability suits--will be awaiting the outcome.

By Susan B. Garland in Washington

THE WALL STREET JOURNAL INTERACTIVE EDITION FRONT SECTION

September 12, 1997

Tobacco Firms Face Pressure To Take Stiffer Teen Penalties

By JEFFREY TAYLOR
Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON -- Public-health officials and state attorneys general closed ranks in an effort to pressure the tobacco industry to agree to harsher penalties in the proposed tobacco settlement if the industry fails to reduce smoking among teenagers.

The effort to increase the penalties that tobacco companies would pay if they fail to meet the settlement's ambitious goals for reducing such smoking comes as the White House is preparing to respond to the deal, perhaps as soon as next week.

Link

Price Hikes Will Insulate Firms From Impact of Tobacco Deal

Critics contend the $368.5 billion settlement would restrict the Food and Drug Administration's powers to regulate the nicotine content in cigarettes and wouldn't fine the industry enough if it fails to curb smoking by youths. In addition, critics say it would give the industry legal immunity without forcing it to disclose documents that show whether it manipulated nicotine levels to make cigarettes addictive.

A Joint Effort

Former FDA Commissioner David Kessler and Mississippi Attorney General Michael Moore met Wednesday and agreed to jointly prod the industry to increase the youth-smoking penalties, the most important obstacle to a White House endorsement of the settlement. "It's up to the industry, in major part, whether it wants to go the distance to make this deal," Dr. Kessler said. "If it doesn't give ground, this deal is dead."

Various experts, including health-care economist Jeffrey Harris of the Massachusetts Institute of Technology, have estimated that the industry's payout over 25 years would raise cigarette prices about 62 cents a pack -- not enough, they say, to achieve the settlement's goals of reducing youth-smoking by 30% in five years, 50% in seven years and 60% in 10 years. The $2 billion maximum annual penalty for failing to meet the targets isn't enough to adequately motivate the industry to work for reductions, they add.

But J. Phil Carlton, an industry attorney and negotiator, said his employers are convinced the penalties are more than adequate. He said he was "available to talk" to White House aides, but doubted the industry would agree to increase the penalties. "I'm not budging," Mr. Carlton told reporters outside a hearing of the Senate Agriculture Committee. If the White House does nothing more than wait for the industry to make additional concessions, "then we've got a problem."

Clinton Wants Changes

White House officials have indicated that President Clinton would like to enthusiastically endorse a reworked version of the deal -- if the industry agrees to tougher youth-smoking penalties and certain other changes. If not, these officials have suggested he might endorse the concept of a settlement but declare the current proposal flawed and ask Congress to toughen it. If that's the case, the settlement has little chance of approval, according to senators in both parties.

Mr. Clinton's aides acknowledge that White House inaction also could kill the deal. Although the administration doesn't want to shoulder the blame -- especially if the president is seen as failing to lead on a potentially historic settlement -- some administration officials said Thursday that Mr. Clinton mightn't be ready to respond next week.

Dr. Kessler, for his part, told members of the Agriculture Committee Thursday that the industry payout under any settlement approved by Congress should raise cigarette prices at least $1.50 a pack and that the penalty for failing to meet teen-smoking-reduction targets should be an additional 50-cent increase. Mr. Carlton dismissed these figures as unrealistic. "If we agree to raise prices by $2, pretty soon $2 would become $3," he said. "You would have a drastic volume reduction [in cigarette sales], such that you would then have a massive contraband market."

Tax-Credit Issue

The maneuvering comes as the tobacco industry has run into a series of setbacks in Congress. The Senate voted 95-3 Wednesday to repeal a recently enacted credit allowing tobacco companies to count the cost of new, higher cigarette taxes against their obligations under the industry liability settlement. Thursday, House resistance to the repeal was collapsing. A spokesman for House Ways and Means Committee Chairman Bill Archer (R., Texas) said Mr. Archer supported repeal, and House Majority Leader Dick Armey's office signaled that Mr. Armey would follow his fellow Texan's lead.

Mr. Carlton wouldn't say whether he believed the $50 billion tax credit, inserted into a July tax bill, had damaged prospects for approval of the proposed settlement. "I don't know how the credit got through," Mr. Carlton said. "I don't know anything about that."

In his testimony, Mr. Carlton told committee members that the settlement, as drafted, is a "fragile" agreement that contains "historic" concessions from the industry, the significance of which has been lost in a storm of criticism. "Many of these criticisms, ironically, have been expressed by individuals who, until now, had enthusiastically advocated the very approaches to tobacco control that are reflected in the agreement," he said.

Separately, in Minnesota, an official charged with reviewing industry documents in the state's pending lawsuit against tobacco companies recommended that the companies be forced to make public 834 internal documents they had sought to keep secret under attorney-client privilege.

Democratic senators, such as Tom Harkin of Iowa, Kent Conrad of North Dakota and Patrick Leahy of Vermont, have called for disclosure of any incriminating documents before the industry is granted immunity from liability for punitive damages in civil lawsuits alleging past misconduct, as the settlement would do. The Clinton administration is also seeking to strengthen the document-disclosure provisions of the settlement before deciding whether to endorse it.

In addition, Florida Gov. Lawton Chiles wrote to President Clinton on behalf of Liggett Group Inc., a small cigarette manufacturer that negotiated a separate settlement with state attorneys general before the global settlement was negotiated. Mr. Chiles said documents made public by Liggett had added momentum to both Florida's recent $11.3 billion settlement with tobacco companies and the drive for a national settlement. He asked that "the proposed tobacco resolution be modified to provide Liggett with financial terms no more onerous than those contained" in Liggett's own, earlier agreements with the states.

--Jackie Calmes contributed to this article.

September 14, 1997

Tobacco Accord, Once Almost Sure, Seems to Crumble

Related Articles
- Coverage of the Tobacco Settlement

By JOHN M. BRODER with BARRY MEIER

WASHINGTON -- Just three months ago, state attorneys general and tobacco industry executives announced a dramatic $368.5 billion legislative proposal that was to mark a turning point in the nation's decades-old conflict over smoking and health. But today, the proposed tobacco settlement is all but dead. And what, if anything, will rise in its place remains the subject of intense debate.

Though White House officials helped shaped the proposed tobacco accord, the administration has steadily backed away from it. Advisers to the president urged him this week to offer only a general outline of what a national tobacco policy should contain, rather than a detailed legislative proposal.

The president is to deliver his verdict on the plan as early as this week.

Initial expectations that Congress would enact a tobacco bill this year have been deflated. And with each passing week, the plan's momentum has slipped.

In part, the proposal's uncertain fate reflects a clash of historic adversaries, including fierce opposition from anti-smoking forces and others who have characterized the deal as a bailout for a renegade industry. But interviews in recent days with administration officials, lawmakers, public health advocates and tobacco industry representatives also suggest that backers of the settlement package made a series of crucial missteps and miscalculations.

For example, the strategy adopted by tobacco companies and state attorneys general -- to present a prepackaged proposal to Congress that involved public health, regulatory and liability issues -- backfired as lawmakers balked at being told how to do their jobs.

The industry's immense financial offer and its trumpeted concessions on marketing did not mollify opponents, but rather loosed a torrent of popular anger that cigarette makers found they could not control. If the companies were willing to pay that much, critics contended, they must be able to afford more.

And in what proved to be a political blunder, tobacco lobbyists managed to slip a $50 billion tax credit into balanced budget legislation passed in July to lower the overall cost of the settlement. Embarrassed senators voted 95-3 Sept. 10 to repeal the provision.

"There was institutional reluctance -- resentment, even -- that a handful of attorneys general and plaintiffs' lawyers would come to us with such a detailed agreement, even divvying up the spoils," said Sen. John McCain, R-Ariz., chairman of the powerful Commerce Committee. "Who do these people think they are? That's a legislative and executive branch prerogative."

The plan's staunchest supporters still maintain that President Clinton, while demanding substantial changes to the plan, will soon give it the blessing it needs to win favor in Congress.

"I fully expect that the president is coming out in support of the national settlement next week," said Michael Moore, the Mississippi attorney general who was a chief craftsman of the deal and its leading public advocate. "I have been in the midst of negotiating the changes."

But within the White House, deep divisions remain over how to proceed.

Top administration officials briefed the president on Friday on their review of the proposal, two months after the 30-day study was to have been completed. The consensus, after weeks of sharp internal debate, was that the president should sketch his tobacco policy in broad strokes without endorsing the plan negotiated by the state officials and tobacco lawyers, or any version of it.

Clinton is expected to insist on unfettered Food and Drug Administration jurisdiction over nicotine and a steep increase in the cost to the industry of settling its legal problems.

The president's bottom line, advisers said, is a significant reduction in smoking by teen-agers. Administration officials conducting the review, led by Health and Human Services Secretary Donna Shalala and Bruce Reed, the president's principal domestic policy adviser, concluded that the only sure way to cut under-age tobacco use is by raising the price of cigarettes by $1 a pack or more.

Under the proposed accord reached on June 20 between five major tobacco companies, state attorneys general, some public health advocates and class-action lawyers, the industry agreed to pay $368.5 billion principally to settle smoking-related lawsuits by states and smokers.

The five companies are the Philip Morris Cos.; RJR Nabisco Holdings Corp., the parent company of R.J. Reynolds Tobacco; BAT Industries PLC, the British parent of the Brown & Williamson Tobacco Corp.; Loews Corp., the parent of Lorillard Tobacco Co.; and UST Inc., a producer of smokeless tobacco.

In addition to the payments, the industry agreed to restrict marketing, do away with advertising figures like Joe Camel and the Marlboro Man, finance anti-smoking campaigns, pay fines if youth smoking did not fall to specified levels and submit to the jurisdiction of the Food and Drug Administration.

In return, the agreement proposed giving cigarette makers protection against class-action lawsuits and immunity from punitive damage awards for past misconduct.

That provision, while controversial, was crucial for the industry even though it had compiled a near-perfect courtroom record to date. With the state lawsuits settled and a legislative resolution secured, company officials believed cigarette stocks would soar as much as 40 percent, one company official said.

If a national deal to resolve tobacco litigation is reached, it will supersede multibillion dollar settlements announced in recent weeks by Mississippi and Florida and will render moot anti-tobacco lawsuits pending in three dozen other states. All states will receive a share of the proceeds of a national settlement based on their population and estimates of state Medicaid costs of treating ill smokers.

The state attorneys general and public health advocates involved in the talks had their own motives, ranging from ending the nation's nicotine addiction to advancing their own political careers. But this unlikely mix of participants soon settled on a strategy to promote the accord that many of those involved now acknowledge produced more setbacks than progress.

In negotiating the settlement, a small group of participants, who included plaintiffs' lawyers representing smokers and their survivors, had excluded lawmakers and others, believing too many voices would doom their effort. In this hothouse atmosphere, some soon began to believe that their proposal would be quickly embraced by Congress and the public health community, said some of those involved.

"My colleagues, both the tobacco industry and the attorneys general, had unrealistic expectations of timing," said Matthew Myers, a lawyer for the Campaign for Tobacco-Free Kids, who participated in the settlement talks. "They thought the White House would take a position in the summer and it would be teed up for serious discussion in Congress during the fall."

They soon found out differently. Hours after the plan's announcement, both Dr. David Kessler, the former commissioner of food and drugs, and Dr. C. Everett Koop, the former surgeon general, rushed to condemn it as "deeply flawed." They and others maintained that the plan undercut, rather than strengthened, the federal government's authority to regulate nicotine, and argued that it would do little to reduce youth smoking, the proposal's primary public health goal.

"I think we've been snookered," the respected Koop said less than 48 hours after the proposal was unveiled.

Moore, the Mississippi official, also got a quick lesson in Washington politics. Initially expecting his plan to be warmly received, he found himself instead under intense and skeptical questioning from Republican and Democratic lawmakers in the first Senate hearing on the settlement plan, a week after it was announced.

He was accused in particularly harsh language of cutting a deal that was too favorable to cigarette makers and to plaintiffs' lawyers who stood to win billions of dollars in fees.

The bruising process, while not diminishing Moore's enthusiasm for his goal, has apparently left him somewhat embittered. "I've learned so much more about the way things work, not how they ought to work, and I'm being careful about what I say," he remarked in a recent interview.

Strategies adopted by industry officials created other problems for the plan, some cigarette company officials said. Because their advocacy would raise public suspicions, they relied on officials like Moore to champion the proposal. But in doing so, they acknowledged, they created a void that allowed the most strident anti-smoking advocates to seize the political debate.

Editorial writers and lawmakers across the political scale assailed the plan, describing it either as a cave-in to the cigarette makers or a boondoggle for trial lawyers.

"It was like opening Pandora's box," said one R.J. Reynolds executive.

Tobacco producers also suffered a self-inflicted wound in late July, when their lobbyists managed to win congressional approval for a plan under which some $50 billion raised over the next 25 years through higher tobacco excise taxes could be used to help pay the companies' settlement obligations.

Industry officials say privately that the move was made simply to protect their interests if Congress chose to increase the settlement's price. But critics derided the effort as a back-room maneuver, one more sign that an industry that claimed to be repentant could not be trusted.

"These unconscionable activities of the tobacco companies have created a completely different climate today," said Sen. Edward M. Kennedy, D-Mass., a longtime tobacco foe and sponsor of the higher cigarette excise taxes.

"They bring us a plan that involves a collective violation of antitrust laws and sends most of the money to the states and exempts the companies from liability," said Sen. Don Nickles, R-Okla., the No. 2 official in the Republican Senate leadership. "Nobody's signed off on that. It's got a long ways to go before it becomes law."

Still, there are many on both sides who believe that the proposal has served a valuable purpose, advancing the public health debate far more than litigation ever could. Last week, even plan opponents like Dr. Kessler said they are in favor of a tough and enforceable settlement with the industry that truly reduces smoking by minors.

"This has already accomplished a tremendous amount by creating a first-of-its-kind debate in Congress and Washington as to who can be toughest on the tobacco industry," said Thomas Green, an assistant attorney general in Massachusetts who participated in the settlement talks.

But how that debate will be resolved remains to be seen. As the president ponders his options, the industry is also weighing its possibilities, knowing that the price of peace after years of battles will probably be higher than it is today.

Others like Myers, the anti-smoking crusader, believe that the proposal, rather than dying, is going through the painful process of rebirth.

"The tobacco industry holds the key to this," Myers said. "They will have to make the concessions necessary to gain widespread support for a plan. If they don't, they will only have themselves to blame."

THE WALL STREET JOURNAL INTERACTIVE EDITION
FRONT SECTION

September 15, 1997

Clinton Will Seek Big Changes In Tobacco Deal, Delaying Law

By JACKIE CALMES and YUMIKO ONO
Staff Reporters of THE WALL STREET JOURNAL

WASHINGTON -- President Clinton won't propose specifics to rewrite the massive tobacco settlement but, instead, will call in general for big changes, thus ruling out any chance of the negotiated accord becoming law this year -- and perhaps diminishing its chances for later.

The president is likely by midweek to pronounce his qualified verdict on the nearly three-month-old settlement reached by the tobacco industry, states and public-health advocates, before leaving Thursday for California to take daughter Chelsea to college, administration officials say. Mr. Clinton met Friday with his top advisers on the issue. Despite their differences on the settlement's particulars, they agreed that, because Republican leaders have made clear that Congress won't act this year, anyway, the president shouldn't spell out his stance in the detail that had been expected.

Some proponents of the proposed $368.5 billion accord had hoped Mr. Clinton could prod Congress to act by sending a bill to Capitol Hill. But while Mr. Clinton wants to claim a potentially historic tobacco deal as part of his political legacy, he has faced increasing pressure from within his administration and his party in Congress to seek greater concessions from the tobacco industry -- especially on penalties for failing to curb youth smoking, federal regulation, aid for tobacco farmers and industry liability.

Tactical Considerations Cited

The White House decision to avoid specifics is based partly on tactical political considerations. A detailed presidential announcement now, White House officials said, would merely give opponents of any deal a convenient target to shoot at while waiting for Congress to act.

"The president wants Congress to pass sweeping tobacco legislation, and we hope Congress will make it a priority next year," said Bruce Reed, his domestic-policy adviser. Mr. Reed and Secretary Donna Shalala of the Department of Health and Human Services are heading up the administration's review of the tobacco settlement.

Kicking the issue into next year -- a congressional election year -- clouds the fragile settlement's fate. Supporters of an accord, including White House officials, argue that antitobacco political pressures will force the GOP-led Congress to act, and in a way that is tougher on the industry than its settlement with state attorneys general and antismoking groups. But industry opponents, especially Democrats, would rather keep the issue alive politically, and they will have more leverage to block action by painting the settlement's supporters as pro-tobacco.

Further strengthening their hands, opponents expect in coming months to gain access to anti-industry testimony and documents, thanks to pending court cases in Minnesota and other states among the 40 that have filed lawsuits against the industry to recoup health-insurance costs. While the industry so far has a good trial record, it agreed to the proposed national tobacco settlement in large part to win some protection against such costly lawsuits from states and smokers.

The wild card of new courtroom disclosures about the industry's past practices and knowledge of tobacco's addictive traits also underlies the administration's and the Congress's reluctance to embrace the tobacco settlement. Democratic Sen. Kent Conrad of North Dakota -- who along with Senate Minority Leader Thomas Daschle met last Thursday with the administration's Mr. Reed and Ms. Shalala -- said: "My advice to them was, let's make sure we have all the information we need to make a decision that stands the test of time."

'Better to Do It Right'

Among his colleagues, Sen. Conrad said: "The consensus is, it's better to do it right than to do it right now."

The tobacco industry isn't planning to offer any last-minute concessions before Mr. Clinton's announcement, an industry spokesman said. "We are committed to the June 20th agreement," said Scott Williams, a spokesman for the industry at the public relations firm Bozell Sawyer Miller Group. He emphasized that the industry is already making compromises that "until now have never been achieved through the legislative process, judiciary or regulatory means."

Within the tobacco ranks, the feeling has emerged that any concessions offered up now, given dismal prospects for the current proposal, would only weaken the industry's position should terms be debated anew.

Analysts said they expect the delay to have little effect on stock prices for the giant tobacco companies. "The market has largely assumed that there will be no legislation this year," said Martin Feldman, a tobacco analyst at Smith Barney. Should Mr. Clinton's remarks suggest the settlement won't be completed even next year, he said, "expect to see some softness in the prices, but nothing significant."

In the meantime, tobacco stocks, whose valuations have been tied closely to news of the settlement, will revert increasingly to the likelihood of winning or losing individual liability suits. "While there is no [tobacco proposal] settlement, the market would lurch from case to case," Mr. Feldman said.

Some cases are expected to advance soon. The tobacco industry indicated last week that it no longer planned to settle multibillion-dollar lawsuits brought by states to recover their public health-care costs linked to smoking, and will instead go to trial.

In Texas, jury selection in the state's suit against the tobacco industry over Medicaid costs is expected to begin Sept. 29 in the federal court in Texarkana. The federal appeals court in Richmond, Va., is expected to rule on the FDA's jurisdiction of tobacco. And a suit brought by the state of Minnesota and Blue Cross & Blue Shield of Minnesota to recoup the health costs of smoking is set for trial in St. Paul next January.

Ads Would Be Banned

The proposed national tobacco settlement, in addition to the $368.5 billion payment, would ban billboard advertising, vending machines, sports promotions and ads with people and cartoon characters, such as the Marlboro Man. In exchange, the proposal would simultaneously settle suits by 40 states that claim the industry should pay for tobacco-related Medicaid costs, and would provide broad liability protection against future lawsuits.

Meanwhile, House Speaker Newt Gingrich said Sunday on ABC-TV's "This Week" that the House would go along with the Senate in repealing a provision in the new balanced-budget law that could have reduced the industry's $368.5 billion in settlement payments over the next 25 years by roughly $50 billion in new cigarette taxes in the law.

House Republicans had resisted repeal, until the Senate voted 95-3 last week for the move. But the Georgia Republican reiterated that the provision was added to the budget law with White House acquiescence.

Return to top of page

HELP | NEW FEATURES | SPECIAL REPORTS | GLOSSARY | PERSONAL FINANCE CENTER | CONTACT US | YOUR ACCOUNT | ADVERTISERS

THE WALL STREET JOURNAL INTERACTIVE EDITION FRONT SECTION

September 16, 1997

Clinton Mulls Tougher Stance On Pact With Tobacco Industry

By JEFFREY TAYLOR and JACKIE CALMES
Staff Reporters of THE WALL STREET JOURNAL

WASHINGTON -- President Clinton is considering calling for a combination of tobacco industry payments and penalties that could increase the price of cigarettes by as much as $1.50 a pack over 10 years.

As part of his long-awaited verdict on the industry's proposed settlement with the states and anti-smoking advocates, the president is expected, probably Wednesday, to offer his own comprehensive plan to reduce smoking, particularly among children under 18 years old. But he won't endorse the proposed $368.5 billion tobacco settlement.

This ends what little chance remained that Congress would act on the nationwide settlement this year. Both Congress and the White House are expected to revisit the issue next year, when the White House hopes looming congressional elections will make the climate even less friendly to tobacco companies. Pressure on President Clinton to propose a bill faded when Congress's Republican leaders made plain they had no plans to take up the complex, politically charged issue this year.

Important Element

The president's plan would take the form of a general statement of principles in fighting teen smoking, with an important exception: the $1.50-per-pack maximum price increase, which would only reach that level if the industry failed to meet targets for reducing underage smoking over 10 years. This is more than double what the industry would have to pay under the proposed settlement.

In addition, the president will call for advertising curbs on the industry, counter-advertising programs to discourage smoking, and tougher restrictions on youth access to cigarettes, administration officials said. As expected, he will also reaffirm the Food and Drug Administration's authority to regulate nicotine content in cigarettes and will call for more comprehensive disclosure of secret industry documents than what the settlement would require.

"He's going to put forward a plan with stiff penalties that, in combination with the industry's annual payments, could drive the price of a pack of cigarettes up a buck and a half" if the targets for reducing youth smoking aren't met, an administration official said.

The administration's expected stance comes as a final indignity for negotiators of the settlement-tobacco-industry lawyers, state attorneys general and public-health officials -- who believed they had crafted a historic resolution of smoking-related health and legal problems. Instead, their settlement antagonized Congress, where members jealously protect their law-writing prerogatives, and many public-health advocates who weren't parties to the deal.

Legal Relief

The agreement would have settled legal claims from 40 states that sued to recover Medicaid-related health costs of caring for ill smokers. The money paid out under Mr. Clinton's plan would defray state costs and offset federal health-care costs as well. The deal also would have given tobacco companies immunity from class-action smoker lawsuits and from punitive damages in civil lawsuits alleging the industry's past misconduct, legal benefits that some regard as critical to the industry's survival. The administration has said it doesn't object to granting the industry some legal relief if the settlement produces reliable public-health benefits.

The deal would have raised cigarette prices by about 62 cents a pack and provided for penalties of an additional 10 cents per pack -- not enough, the critics contended, to make a serious dent in underage smoking. Still, $1.50 a pack is far higher than what most critics thought the White House would recommend.

Administration officials have long been concerned that the penalties contained in the settlement proposal, which are capped at $2 billion a year, wouldn't sufficiently prod tobacco companies to work hard to curb youth smoking. Therefore, the president will propose a progressive scale of penalties that grows over 10 years if youth-smoking targets aren't reached, to provide a mounting incentive for tobacco companies to work for such reductions. The administration doesn't quibble with the underage-smoking reduction targets that were contained in the settlement: 30% in five years, 50% in seven years, and 60% in 10 years.

Looking Ahead

The tobacco industry has consistently said that it isn't prepared to agree to higher payments or penalties than those included in the proposed settlement. An industry lawyer said Monday that while tobacco companies may be willing to negotiate in the future, they believe any concessions offered now would be subjected to the same intense criticism as the rest of the deal.

Public-health officials are likely to be cheered by the president's stance. "A price increase of that magnitude is what the data suggests will work" to reduce youth smoking, former FDA Commissioner David Kessler said Monday. "The president has always had as his goal substantially reducing the number of young people who smoke. It makes an enormous amount of sense to put in place a number that we know will work."

Return to top of page

HELP | NEW FEATURES | SPECIAL REPORTS | GLOSSARY | PERSONAL FINANCE CENTER | CONTACT US | YOUR ACCOUNT | ADVERTISERS

home news analysis in-depth contents search

congressional quarterly

Clinton May Break His Silence With A Few Revisions To Tobacco Deal

By Jonathan Weisman, CQ Staff Writer

While President Clinton has carefully held his tongue on the proposed $368.5 billion tobacco settlement, his staff has been quietly negotiating changes that would stiffen its provisions and penalties.

The president is scheduled to break his silence the week of Sept. 15. However, protracted dickering with the tobacco companies and the state attorneys that sued them could lead to further postponement in hopes that Clinton will announce a revision to quiet the anti-smoking groups that have criticized the deal.

Here are some of the sticking points that Clinton is being pressed to address:

■ **Food and Drug Administration (FDA).** Clinton has already said he cannot accept provisions ostensibly granting the FDA the authority to regulate tobacco and nicotine, but with restrictions. Under the settlement, the FDA could exercise its authority only after jumping over hurdles that critics say are impossibly high.

One problem is that the agency would be required to prove that reduction of an ingredient would produce significant health benefits. But reducing or eliminating nicotine may not in itself be beneficial to smokers' health, since many scientists say nicotine is not carcinogenic. While it produces addiction, other elements such as tar are the primary agents of damage.

Under the existing settlement, the FDA would also have to prove that its regulations would be technologically feasible, meaning the FDA could not simply set a standard and require the companies to find a way to meet it. The FDA would have to go through a formal and arduous rule-making process before implementing a regulation. And most troubling to critics, the agency would have to show that its actions would not increase the sale of high-nicotine "contraband."

Mississippi Attorney General Michael Moore says negotiators for the cigarette-makers are close to an accord on stiffening the regulatory provisions.

CONGRESSIONAL QUARTERLY

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- Gore's Calls Prove Costly
- House Ethics Cases Pending
- New Horizons For Departing Members
- Cosmetics Pact Paves Way For FDA Overhaul
- GOP Fights For Small Victories

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■ **"Look-back" provisions.** Donna E. Shalala, the secretary of Health and Human Services, said the penalties in the settlement for cigarette-makers who fail to bring down youth smoking rates should be tougher. Under the deal, the FDA could levy a fine of $80 million for each percentage point by which the goal was missed, with a cap of $2 billion a year.

Critics contend that the total would equal less than a dime a pack, hardly a deterrent. Also, they say, the penalties would be paid by the industry as a whole. They would like to apply penalties to individual brands, to increase the incentive for companies to meet their targets.

Industry attorneys say if they do what the settlement stipulates to bring down youth smoking rates, they should not be penalized at all if smoking rates do not fall. They have bridled at any additional costs.

■ **Document disclosure.** Moore believes fuller disclosure of secret industry documents will be the third, and perhaps final, change demanded by the administration. Currently, the settlement requires the industry to establish a public document depository in Washington to store documents related to smoking and health, addiction, safer cigarettes and alleged efforts to market cigarettes to minors. Documents deemed "privileged" or "trade secrets" would be exempt.

Critics want those exemptions lifted, and they want the documents to include those shielded by attorney-client privilege. Additionally, they want the documents produced before Congress enacts a settlement, so members can judge the industry's behavior before possibly protecting it from many types of legal actions.

Sen. Orrin G. Hatch, R-Utah, said the industry is understandably resisting. If damaging documents are divulged before the settlement is reached, they could bolster some industry opponents' efforts to kill the deal. And once the deal was dead, lawyers would have a treasure trove of evidence to spark new legal action against the companies.

■ **Agriculture.** Tobacco farmers were not at the table when deal was negotiated. Consequently, there are no provisions addressing the future of their livelihood, and observers on all sides of the issue agree that should change. Former FDA Director David A. Kessler enraged trial lawyers by suggesting that farmer compensation come out of attorneys' fees.

Richard G. Lugar, R-Ind., chairman of the Senate Agriculture Committee, has proposed a one-time, industry-funded buyout of tobacco farm quotas to reduce the amount of tobacco land in cultivation and provide funds for farmers looking for new lines of work. For tobacco farmers who lease their production quotas from agribusinesses or other farmers, the industry would provide temporary transition payments similar to those in the 1996 farm law (PL 104-127). Lugar also suggested help be extended to communities dependent on tobacco farming.

While Lugar did not suggest a dollar figure for the programs, North Carolina Attorney General Michael Easley, the original proponent of the plan, has suggested the industry put up $5 billion a year. That much would be needed only if tobacco farmers rushed to sell off their businesses, an event not likely to happen since demand for their crop would still be fueled by overseas markets.

Tobacco-state members say the industry should at the very least be required to pay for the full cost of existing federal tobacco support programs. That way, those programs would no longer face an annual assault during the appropriations process.

■ **The bottom line.** Tobacco foes such as Sen. Edward M. Kennedy, D-Mass., and Kessler say the $368.5 billion total should be at least doubled. That would ensure that the settlement significantly increases the price of a pack of cigarettes and covers the costs of treating tobacco-related illnesses for the federal government as well as the states. Kessler says the White House should demand that the cost of a cigarette pack should rise by $1.50 to $2 to deter youth smoking. The current settlement would increase it by an estimated 62 cents.

The industry has said it would never accept such a dramatic increase in costs. Indeed, industry lawyers say they will not increase the bottom line by a penny.

■ **Tax deductibility.** Under the current terms, the costs of the settlement would be deemed ordinary business expenses and thus would be tax deductible. That would mean that as much as one-third of the cost of the settlement would be borne by the taxpayers. Sens. Connie Mack, R-Fla., and Tom Harkin, D-Iowa, say that is unacceptable.

According to the U.S. tax code, compensatory damage claims are deductible for any industry, and tobacco companies say they should be no different. But Mack and Harkin say the deal, if enacted, would no longer be a legal settlement but would be congressional legislation. Therefore, tax laws might not apply. If the tax code must be changed to eliminate tax deductibility, it should be, Mack said. And besides, Congress need only interpret the penalties as punitive and they would no longer be tax deductible. But the attorneys general involved say that adding one- third more to the cost of the settlement would be enough to drive the tobacco companies away.

■ **Class-action lawsuits.** Sen. Kent Conrad of North Dakota, who is heading a Democratic task force examining the settlement, said the president should scuttle a prohibition on future class-action lawsuits. The current settlement would permit individuals to sue the tobacco companies in the future, but they could not band together to take on the industry. Critics say that an individual cannot afford the legal help to beat the manufacturers, and they say that a settlement is supposed to settle ongoing litigation, not forbid future legal action.

But for the tobacco companies, restrictions on future class-action suits and punitive damage claims are the heart of the matter. Without them, there is little incentive to accept restrictions on marketing, penalties of hundreds of billions of dollars, and new restrictions on indoor smoking and new anti-tobacco education programs.

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home | news | in-depth | analysis | what's new | bulletin boards | contents | search

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THE WALL STREET JOURNAL INTERACTIVE EDITION FROM THE ARCHIVES

The Wall Street Journal Interactive Edition -- September 17, 1997

Big Cigarette Price Increase Gains Support With Senators

By JEFFREY TAYLOR
Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON -- Support appears to be growing among senators of both parties for a cigarette-price increase much higher than that envisioned by the proposed national **tobacco** settlement, possibly as much as $1.50 to $2 a pack, as the best way to deter underage smoking.

On the day before President Clinton is expected to propose a combination of payments and penalties that could raise the price as much as $1.50 a pack over 10 years, antitobacco Democrats and at least one prominent Republican in the Senate said they agreed with this basic approach and planned to push for increases at least that big and possibly bigger.

A spokesman for Senate Agriculture Committee Chairman Richard Lugar, for instance, said Tuesday that the Indiana Republican "supports the idea of a $1.50-to-$2 a pack increase" and believes many of his fellow GOP committee chairmen feel the same. "The critical thing that's happening in the Senate," said the spokesman, Andy Fisher, "is that many of the relevant committee chairmen are lining up behind these figures."

Tobacco foes on the other side of the aisle, including Democrat Frank Lautenberg of New Jersey, plan to follow up the president's expected proposal Wednesday by announcing legislation that would raise federal excise taxes on cigarettes by at least $1 a pack, plus as much as $1 more in penalties if youth smoking doesn't decline.

White House spokesman Mike McCurry confirmed a report in The Wall Street Journal Tuesday that the president plans to propose a package of tobacco-industry payments and penalties that would total $1.50 a pack over 10 years if ambitious targets for reducing youth smoking aren't met. "One of the things the president has suggested ... is that we need to take a better look at the question of penalties on the companies if they fail to meet the public-health targets," Mr. McCurry said. "If those penalties were to kick in over time, it's reasonable to assume that the figure that's in the Journal might be roughly accurate."

Effect on Industry

Payments and penalties of this magnitude could more than double what the **tobacco** industry would have to pay under the proposed $368.5 billion settlement. People in the industry were hoping the White House would endorse the rough outlines of what is in the settlement **tobacco** companies negotiated with state attorneys general and public-health advocates, but in recent days, it has become clear that the president will be sharply critical of much that is in the deal.

"Nobody's pulling out of town," said tobacco-industry lawyer J. Phil Carlton. "We're just going to wait and see what he says." Of the prospect of a price increase of $1.50 or more per pack, Mr. Carlton said: "The numbers the industry thinks are appropriate are the numbers in the June 20 [settlement] document," which would raise cigarette prices by about 62 cents a pack.

The proposed settlement also calls for penalties of as much as $2 billion a year if the industry fails to meet smoking-reduction targets for youths. But **tobacco** companies could deduct such payment from their taxes and petition to get 75% of their money back if they prove they pursued all "reasonably available measures" to reduce youth smoking.

Ruling Out 1997 Action

Senate Minority Leader Tom Daschle of South Dakota Tuesday ruled out the possibility of congressional action on any tobacco-related legislation this year, but said he expects Congress to revisit the issue next year.

Many on Capitol Hill say the industry's cause was hurt by its insertion into a July tax bill of a $50 billion tax credit to offset its payments under the proposed settlement. The Senate voted to repeal the credit last week, and GOP Rep. Marge Roukema of New Jersey and Democratic Rep. Nita Lowey of New York will co-sponsor a similar repeal measure this week in the House.

As for stocks of cigarette makers, Philip Morris Cos. stock rose 93.75 cents to $42.125, while RJR Nabisco Holdings Corp. shares closed unchanged at $32.875, both in New York Stock Exchange composite trading Tuesday.

Clinton Proposes Change To Tobacco Pact

WASHINGTON (AllPolitics, Sept. 17) -- President Bill Clinton today announced provisions he wants Congress to include in legislation that builds on the proposed $368.5 billion tobacco settlement. **(416K wav sound)**

The measures outlined by the president are designed to reduce the numbers of young people who start smoking. "Today I want to challenge Congress to build on this historic opportunity by passing sweeping tobacco legislation that has one goal in mind: the dramatic reduction of teen smoking," Clinton said.

"Reducing teen smoking has always been America's bottom line. It must be the industry's bottom line," he said.

Specifically, Clinton wants to give the Food and Drug Administration clear authority to regulate tobacco, eliminate a $50 billion tax break to tobacco companies, and institute a hefty hike in cigarette prices if goals on the reduction of teen smoking are not met.

Clinton's move comes after a three-month review of the settlement, which the White House sees as flawed, and which the president has indicated he will not endorse in its present form. **(384K wav sound)**

A proposal to allow the FDA to regulate tobacco as a drug was previously offered by the president. That move has always been fought by the tobacco industry.

FRONT ROW: Fmr. F.D.A. Commissioner Kessler, Fmr. Surgeon General Koop, Gore, Clinton, HUD Secretary Shalala, Secretary of Agriculture Glickman and Chairman of the Domestic Policy Council Reed

The adminstration also wants Congress to stiffen the penalties now laid out in the deal if teen smoking is not reduced.

Clinton's plan sets specific targets, with the onus on the industry to meet the numbers: reductions of 30 percent in five years, 50 percent in seven years and 60 percent in 10

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years. If triggered, those penalties could add up to a per-pack price increase of $1.50 over a 10-year period.

"It is not about how much money we can extract from the tobacco industry. It's about fulfilling our duties as parents and responsible adults to protect our children," Clinton said.

Clinton called on the House of Representatives to follow the Senate's example and repeal of a $50 billion tobacco industry tax break included in the balanced-budget deal. Many feared the tax break would help the industry pay its penalties.

The president's proposals also set tougher restrictions on advertising and access to cigarettes by teens than the settlement by the attorneys general.

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Wednesday Sept. 17, 1997

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- Clinton Proposes Change To Tobacco Pact
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SMOKE STRATEGIES

SEPTEMBER 17, 1997

TRANSCRIPT

President Clinton has endorsed the big tobacco settlement, but he has proposed changes, including: an increase in the cost of cigarettes, and stiff penalties on the industry if it fails to reduce teen smoking. First, an interview with the Secretary of Health and Human Services, Donna Shalala, and then Jim Lehrer talks to individuals embroiled in the tobacco debate.

MARGARET WARNER: With us now is Health & Human Services Secretary Donna Shalala. Madam Secretary, what is the President most trying to accomplish with this, with these changes he wants?

"This is all about young people."

DONNA SHALALA, Secretary, Health & Human Services: A single goal: to reduce the number of young people who start smoking in the first place. This is all about young people and all about public health. And the President has been committed to that since he first announced the FDA regulations.

MARGARET WARNER: And he doesn't feel that the attorneys general settlement goes far enough to do that?

SEC. DONNA SHALALA: The President would like something stronger. He would like to hold the industry accountable with very strong penalties, so that economic incentives will change their behavior. And second, he would like economic incentives to change young people's behavior by raising the price of tobacco.

The President outlines several conditions.

MARGARET WARNER: All right. Let's go into that one area, which was the No. 1 condition he set, which is a sliding scale of penalties and price increases to try to force the tobacco companies to reduce teen smoking. How would it work?

SEC. DONNA SHALALA: Well, we actually have left the details to our work with Congress. Some mix of strong penalties and an increase in the price of tobacco we think is what will do the job, but the details, how much of which, we've left to our negotiations with Congress.

MARGARET WARNER: But essentially, as I understand it, tobacco companies will be held to a certain standard and have to go down a certain percent each year.

A RealAudio version of this segment is available.

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Jim Lehrer leads a discussion with individuals embroiled in the tobacco debate.

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Oregon launches a campaign to halt teenage smoking.

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A panel discussion on the tobacco agreement.

May 20, 1997:
Research strongly suggests that second-hand smoke is a possible cause of heart disease.

April 18, 1997:
Experts debate the future of the tobacco industry.

April 18, 1997:
A background report on the tobacco industry's decision to settle.

March 20, 1997:

SEC. DONNA SHALALA: That's right. And that's, of course, what the discussion will be about. The point is the President wants us to cut in half the number of young people who are smoking in this country over the next seven years. We want to hold the tobacco companies accountable. And if they don't, we want heavy financial penalties.

MARGARET WARNER: Now, how sure are you, or what makes the administration so sure that there's a direct correlation between the price of cigarettes and teen smoking? I mean, it sounds obvious, but in Europe, for instance, I think cigarettes cost more and more teens smoke.

SEC. DONNA SHALALA: Well, actually, we do have some evidence. And there has been some analytical work both done in this country, as well as abroad. But most experts believe the single thing that we could do that would have an effect on young people is the price of cigarettes; that young people are very sensitive to the price. But we're not leaving this proposal to that alone. The President believes that counter-advertising and education programs are also critical. But, look, the tobacco companies know a lot about the behavior of people and why they smoke. That's the reason we want to hold them accountable and want them to do what they can to reduce tobacco smoking by young people.

The Liggett Group admits that smoking cigarettes is addictive and can cause cancer.

February 28, 1997:
A report about selling cigarettes to teens and new government rules to prevent under-age smoking.

February 10, 1997:
FDA Commissioner David Kessler discusses his contentious term as commissioner of the Food and Drug Administration.

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MARGARET WARNER: On the theory that they perhaps, better than anyone, knows exactly what it would take.

SEC. DONNA SHALALA: Well, they certainly have had a lot of information in this area, and they must very much be part of whatever legislation goes forward in Congress .

MARGARET WARNER: All right. Now, what about the danger that some of the tobacco companies have been raising over the past few months, that if the price gets too high, you are going to create a black market in cigarettes?

Greater authority for the FDA.

SEC. DONNA SHALALA: Well, I think this is all about kids and all about smoking and all about public health. And the tobacco companies are sophisticated in this country. We think a straightforward piece of legislation that holds them accountable, that gets the price high enough, and that has the public education campaign and the kind of flexibility we want for the FDA will get the job done. But if it doesn't, then the flexibility we want for the FDA, letting them regulate the industry, we've asserted that they have that authority, we'd like to turn into legislation. A nimble FDA will also help us change tactics if that's what we need to do.

MARGARET WARNER: All right. Let's turn to that because that's the other big component of this. Greater authority for the FDA, how is the President's proposal different from what the attorneys general negotiated with the company?

SEC. DONNA SHALALA: Well, we're not actually asking for greater authority. We've asserted the FDA's authority in the regulations that the President announced sometime ago. And we simply suggested an authority--

MARGARET WARNER: It was authority to regulate it as a drug.

SEC. DONNA SHALALA: --to regulate tobacco as a drug. We want the same authority for tobacco that we have on all other drugs, as well as medical devices for the FDA. We asserted that authority. We think that we have legal authority, but at the time we asked for legislation, we want that turned into legislation. The settlement, of course, put constraints on that.

MARGARET WARNER: Such as--

SEC. DONNA SHALALA: We want no constraints, no hoops, no delaying of the FDA's authority on nicotine, for example. Even though we have no plans on nicotine we want the FDA to have unfettered authority to regulate cigarettes in the same way that they now regulate other drugs.

MARGARET WARNER: Including requiring a reduction in the amount of nicotine, if that's what it takes?

SEC. DONNA SHALALA: If that's what it comes to, but we have no plans for that. And no one should draw us into a nicotine scare. What we're after is reducing the number of young people that start smoking in the first place.

Will the tobacco companies maintain their immunity?

MARGARET WARNER: All right. Now, what does the President think the tobacco companies should get out of this?

SEC. DONNA SHALALA: Well, we've put on the table what we would like to have. We have not put their proposals on the table. They will have proposals. They want some protection. The President said after he gets what he thinks will make a difference for young people in this country, then he's willing to consider what they want, which is, of course, protection from lawsuits and other kinds of provisions.

MARGARET WARNER: All right. But the agreement with the attorneys general was fairly specific about those protections. It was protection from all future class-action lawsuits, and it was also protection from any kind of punitive damages for past behavior. Is the President accepting those?

SEC. DONNA SHALALA: He is not, and he is not even considering those proposals until after he sees that he gets the proposals that involve a comprehensive effort to reduce teen smoking, as well as unfettered FDA authority, as well as what we'd like for the tobacco farmers. This is very important. The President sees that as an integral part of any piece of legislation that's acceptable to him.

MARGARET WARNER: There has been some confusion in the commentary today since the press conference about exactly what the President's saying. Is he endorsing the attorneys general agreement with changes, or is he, as other commentators have suggested, essentially saying, look, he's putting that in limbo and saying he's got to start over at the drawing board?

SEC. DONNA SHALALA: The President isn't endorsing any piece of legislation or any proposal now. What he is saying is that he's building on hearings Congress has had, his own FDA regulations. After all, no one has done more than this President on the issue of tobacco and kids, on years of public health groups fighting on these issues, and on the settlement that was negotiated by the attorneys general. He sees himself as building on the other proposals that have come forward and he congratulated the attorney general. He did not criticize them. He said that he was building on what they had proposed.

MARGARET WARNER: But he is not essentially embracing it with just five changes?

SEC. DONNA SHALALA: In fact, what the President is doing is laying out his own strategy for the legislation, very strong requirement on the industry, very strong requirements on young people, and an insistence that this be about young people and about public health.

MARGARET WARNER: All right. So if the legislation that emerges, if something emerges, doesn't essentially reflect these five major principles, as he called them, what then?

SEC. DONNA SHALALA: Well, we'll continue to do what we have been doing, and that is strengthening the federal government's role and the state's role, and denying access to young people to purchasing tobacco in making certain that the industry behaves in a legal way, and in making certain that we do everything on the public health side that we need to do to reduce teenage smoking. We'll do public education campaigns. We'll fight through the courts for our jurisdiction on advertising. We'll continue to do everything we can, and Congress, itself, clearly wants to consider an increase in tobacco prices. There will be activity, but we're not looking for that right now. Right now, the President wants legislation. He wants sweeping legislation. He wants to build on the efforts of the public health community of the attorneys general.

MARGARET WARNER: But is he essentially saying, no deal is better than a deal that doesn't include these because you do have these other avenues, you can go back to the courts, there are all these other things going on?

Will anything happen this year?

SEC. DONNA SHALALA: The President set a very high bar today. He said he wanted a comprehensive effort to reduce teenage smoking. If all the parties involved are not prepared to reach that bar, the President clearly is going to fight for it. But he set the bar, and he's not going to back off.

MARGARET WARNER: Trent Lott, the Senate Majority Leader, and other Republican leaders have said they don't see getting to this this year, and this is even before the President put his proposals on the table. Do you have expectations that are different from that? What are your expectations?

SEC. DONNA SHALALA: Well, I think, to be fair to the Congress, they do intend to adjourn before they could probably pass a comprehensive effort, but that doesn't mean that we shouldn't do the kind of analytical work that Congress will need, that we can't have public hearings, that we can't sort out the issues, and see where everyone is. There's a lot of work we can do between now and when Congress comes back in the spring. There also is a huge public education campaign. The President has asked the Vice President, who, after all, has been an extraordinary leader on this issue, to move around the country, to build public support for major legislation, and the Vice President will be doing that during the interim. So we have a lot of work to do.

MARGARET WARNER: All right. Well, Madam Secretary, thanks very much.

SEC. DONNA SHALALA: You're welcome.

Jim Lehrer leads a discussion with lawyers on both sides and a member of Congress.

JIM LEHRER: Reaction now from two key negotiators of the original tobacco deal. Mississippi Attorney General Mike Moore and tobacco industry lawyer Phil Carlton, joined by congressional view, that of Senator Connie Mack of Florida, a member of the Republican leadership. Mr. Moore, can you stay attorneys general, accept the President's proposed changes?

MICHAEL MOORE, Mississippi Attorney General: Well, we were real happy today, Jim, that we've been working 90 days to get the President on board with this; we're glad to have him on our team now. We need him and, of course, we need Congress to get some action going. We worked on this thing for a real long time. I've been in it for four years, and frankly, our main theme is to reduce teenage smoking too. And we think we have a comprehensive plan here to do so. All those things I just heard Sec. Shalala ask for we already have them in the plan, so I was elated today to hear the President to say we like the plan, we want to tweak it a little bit, and make it a little bit tougher. And if he can do that, that's wonderful.

JIM LEHRER: So that's how you interpret this. He's adopting your plan. He just wants to tweak it a little bit?

MICHAEL MOORE: It's not how I see it. I've been at the White House every single day for the last year working with Bruce Lindsey and Bruce Reid in this administration I know exactly what we've been doing and we were working up until this very day, so I know what the penalties are. I know what the President expects. And we've been trying to get these guys to do some of those things. And we're going to get there. There's no question in my mind we're going to get there, and I think with the President's help we will.

The tobacco industry is willing to work with the Administration.

JIM LEHRER: Mr. Carlton, do you see this as building on the agreement, or a scuttling of the agreement by the President?

J. PHIL CARLTON, Tobacco Industry Attorney: Well, I surely do. I heard the President say today that he wanted to embrace the June 20 agreement and to go forward from there. We are pleased to hear him say that. We agree with him that the whole goal and purpose here is to reduce the use of tobacco products by underage people. And we agree with him that it's not all about money, as some people would like for it to be. We don't agree with all the changes he has proposed, but we are ready now to work with the administration, with the attorneys general, and with the Congress to see a comprehensive national tobacco plan enacted into law.

JIM LEHRER: What about the basic point that Sec. Shalala just made that what the President wants is your industry held accountable for reducing teen smoking, can you accept that as a premise?

J. PHIL CARLTON: We have accepted that in the agreement of June 20. We have agreed--irrational as it is--unfair as it is--to pay a penalty of $80 million per percentage point that we fall short of reducing underage tobacco products, $80 million per point. Whether it's our fault or not, if we have done everything we've promised to do, as we will, and teenage use still doesn't come down, we are held accountable for that. I think that this industry has stepped up to the plate and accepted responsibility here way beyond the bounds that anybody ever imagined that they would.

JIM LEHRER: Well, Mr. Moore, what then is the President asking in addition, if that's already in your agreement, how do you--you've been there, you said. Interpret for us what he wants.

MICHAEL MOORE: Well, I think what the President is talking about today really is talking about getting the price up for a buck and a half, and I agree with Sec. Shalala. If the price goes up, you'll have some drop in teenage smoking because kids can't afford to pay as much for cigarettes. If the tobacco companies don't meet the goals of 30 percent and 50 percent and 60 percent, we asked them to pay a percentage point, $80 million per percentage point. We had a $2 billion cap. What the President wants to do is increase that. Maybe he wants to change that 80 to 160--maybe he wants to make it not tax deductible; maybe he wants to make it more of a penalty on them than it is now. And that's how the price goes up. So they're paying $15 billion a year. We're going to add another $2 billion in our agreement. And maybe what the President is saying, let's make the $2 billion $4 billion. They have not agreed to do that yet, but we're still working on them. And with the President and the Congress I think we're going to get to an agreement before it's all said and done.

JIM LEHRER: Going to get to you?

J. PHIL CARLTON: We believe that the June 20 agreement braces all that the President stated today in terms of his goal for a national tobacco plan. And we look forward to work with him to get it enacted.

JIM LEHRER: Do you buy the basic concept that if you raise the price, you reduce teen smoking?

Strategies for reducing teen smoking.

J. PHIL CARLTON: That is just one factor out of many. The FDA last year, when it announced the new rules that it wanted to put in progress, said that its plan would reduce teenage smoking by 50 percent in seven years. And it did not have one penny increase in the price of a pack of cigarettes in it. So the FDA didn't think then that that was the only thing or any part of the proposal.

MICHAEL MOORE: Phil makes a good point, though, Jim. I hate to interrupt. But this is a point that nobody seems to get. That is true. And what we did in our agreement is we saw what FDA and the President proposed, a 50 percent reduction in seven years, with just a few restrictions on advertising and marketing. We took all the advertising and marketing away from them, then added a $500 million a year counter-marketing campaign, a national licensing program, and a cessation program, amongst many other things, that ought to do even more than what was earlier proposed. And then we put $80 million penalties on these guys. And I guess our mistake was we said eighty and everybody else wants one sixty, three twenty, or whatever it might be.

Congress reacts.

JIM LEHRER: All right. Well, let's bring Sen. Mack into this. Senator, you heard what Sec. Shalala has said. You now what heard what the state attorney generals have said and what the industry has said. Is Congress going to buy this?

SEN. CONNIE MACK, Republican Conference Chairman: Well, I think that Congress is going to respond and act on the initiatives that both the administration, the attorneys general, and the tobacco industry has been engaged in. But let me give you a slightly different perspective here. I've heard everyone, in essence, embrace and support the President for having apparently endorsed the plan, which from my perspective he has not endorsed, and let me begin by saying I want to extend credit to the administration for bringing an issue to the American people that should be discussed and should be debated--the importance of reducing tobacco use among our children must be done.

But I think that there are several areas where the administration is falling short. Specifically, I think the President should have come out with a more specific plan. After all, they said they were going to review this for 30 days. They ended up taking 90, and I don't really fault that. It's a very complicated issue. But I would have expected that the administration would have come forward and put a plan on the table. I mean, sure the Congress is going to make suggestions about how that should be changed, but because this is such a complicated issue, with all the different interests that are involved here, for the administration to kind of expect the Congress to act without some leadership on the part of the President I think is a big mistake. And the second point that I would make is I think that this needs to be looked at a little bit more comprehensively. I mean, people are properly focused on the problem of addiction, but what about the millions of Americans that are already addicted to tobacco, what about millions of people who are going to end up with diseases as a result of tobacco use, whether that's cancer, whether that's lung disease, whether that's heart disease, where is there hope for them in this agreement? Why isn't there a greater commitment? Why isn't there more specific commitment from the administration with respect to money going into medical research, and so those two areas I find troubling, and--

JIM LEHRER: No, go ahead. I'm sorry.

"We ought to be putting money into research."

SEN. CONNIE MACK: Well, I find those troubling, and it seems to me that we ought to be putting money into research to see if we can't find some better treatment for the various diseases, if we can't find some way to reduce the pain and suffering that people go through as a result of the addiction as a result of tobacco use.

JIM LEHRER: And you believe that should be part of any final solution, in addition to trying to reduce teen smoking, et cetera?

SEN. CONNIE MACK: I believe it should, and I believe it can. As you probably know, Jim, Sen. Harkin and I introduced legislation or we proposed legislation last week, which we hope to introduce tomorrow, that would, in essence, deny deductibility of the payment under this agreement and that those funds should, in essence, be put into a trust fund and used by the National Institutes of Health to do exactly what I said a moment ago. We ought to be focusing on trying to find a cure. After all, I think everybody would agree there will be millions of more Americans in the future who are going to be hooked on tobacco use, and we ought to be trying to find better ways to treat the diseases caused by tobacco use.

MICHAEL MOORE: Sen. Mack makes a terrific point, and the point is that we need some money for research in the attorneys general agreement. We have $25 billion set aside at the request of the White House presidential trust fund just for that.

JIM LEHRER: Where's the money come from?

MICHAEL MOORE: It comes from the tobacco companies. It's in the agreement now. And I agree also with what he's saying; what the attorneys general are concerned about is 90 days did go by from the time that we gave the agreement to the President, and now that he's announced it, we're proud that he's there, but during that period of time, that's 3,000 kids a day, 270,000 kids have started smoking, since we gave this agreement, 90,000 people are going to die horrible deaths because we haven't done anything about the problem. Let me just finish. My point is that we've got to do something. I mean, everybody's talking and posturing and trying to one up the next guy. Kids' lives are at stake here. People's grandmas and grandpas are dying right now--let's do something--let's get together and do something.

JIM LEHRER: Senator.

SEN. CONNIE MACK: My only point to Mike was going to be--and again, I have complimented this administration, I compliment the attorney generals--the attorneys general--but the President is in the best position to bring the Congress together. As you know, there are all kinds of diverse interests up here. And if we just allow those to just kind of play off each other for the next several months, we're not going to get anywhere.

JIM LEHRER: What about Mr. Moore's point, that why can't the Congress just move on this, why does it have to wait till next year, what is the reason, the lack of presidential leadership is the only reason that Congress can't act?

When will the American public see changes?

SEN. CONNIE MACK: I think that clearly if the President had put a legislative proposal on the table, we would have been under a tremendous amount of pressure to get that done this year. As you know, Jim, we're still engaged with our own hearings here in the Congress and plus, as I said a moment ago, when you look at the House of Representatives, there's a wide range of interests that are talked about, that are presented in the Congress. We need something that forms a catalyst, and I believe that the best place to do that is with the administration.

JIM LEHRER: Mr. Carlton, what's your view, the industry's view of this as to--are you anxious to get this thing over with, move, get it done?

J. PHIL CARLTON: Anytime you have a proposed resolution that is as lengthy and complex and delicate as this one is negotiated by parties with variant interests it is by definition fragile. And when it is fragile, it runs the risk of unraveling with the passage of time. People's views harden when a new court decision comes down, or Mike makes a statement that upsets me or I make one that upsets him, and faces turn red. So the sooner we get--

JIM LEHRER: He's nodding with you.

J. PHIL CARLTON: The sooner we can get it done, the better.

JIM LEHRER: What do you say, Mr. Moore--I'm going to ask each of you this--what is the alternative to doing it this way? What is the alternative to this deal that you all have had?

MICHAEL MOORE: I appreciate what Sen. Mack and the President and everybody says about the attorneys general in saying we wouldn't be here without 'em. The truth is we wouldn't be here. If we hadn't filed these cases and brought the tobacco industry to justice frankly, we wouldn't be here. What I'm worried about now is we've brought this tremendous settlement, the greatest public health achievement in this century, to the Congress and to the President. I'm worried that so much time is going to pass that it will unravel and we'll miss this opportunity. If it needs to be strengthened, if it needs to be improved, gosh, we always thought Congress and the President, this powerful group of folks, could help us improve it and strengthen it, but let's don't let the opportunity pass.

JIM LEHRER: Senator, are you worried that this opportunity could be lost?

SEN. CONNIE MACK: Yes, I do sense that. And again my concern--and I want to get focused back on it--my concern is that this is an opportunity to see that money is focused in the area of research. Mike referred to a minute ago that there was 25 billion dollars. But that's over a 25 year period. We invest $13 billion a year now in the National Institutes of Health. Our goal is to double that investment over the next five years. Under the proposal that I have we could add about another four or five billion.

JIM LEHRER: But the bottom line, Senator, is, if I understand correctly, is nothing is going to happen on this in Congress until the new year, is that right?

SEN. CONNIE MACK: I think it is fair to draw that conclusion, that there is no legislation that has been put together and--

JIM LEHRER: Anybody working on it, anybody in Congress working on legislation?

SEN. CONNIE MACK: There are committees that are holding hearings that have jurisdiction that eventually will--I believe--would write legislation, but that's not going to happen overnight, and again, the way to kick start that is exactly what the administration did today on fast track. They didn't say you know Congress this is a difficult issue, you guys put it together; they came up here with a specific legislative bill to produce fast track authority for the President. He could have done exactly the same thing with the tobacco legislation.

JIM LEHRER: All right. We have to leave it there. Gentlemen, thank you all three very much.

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News Conference with Senator Richard J. Durbin (D-IL), Senator Tom Harkin (D-IA) Senator Edward M. Kennedy (D-MA), Senator Frank R. Lautenberg (D-NJ) Senator Paul Wellstone (D-MN) Senator Ron Wyden (D-OR) Subject: Reaction to President's Recommendations to Improve Proposed Comprehensive Tobacco Agreement Senate Radio and Television Gallery Capitol Hill 1:29 P.M. Edt Wednesday, September 17, 1997

Federal News Service - Congressional Hearing Testimonies
Wed, Sep 17 1997

TRANSCRIPT BY: FEDERAL NEWS SERVICE

620 NATIONAL PRESS BUILDING

WASHINGTON, DC 20045

THIS IS A RUSH TRANSCRIPT.

SEN. LAUTENBERG: Good afternoon everybody.

I am pleased to have an opportunity to discuss the president's recommendation and the consequences of it. It's a welcome improvement certainly over the industry's proposal. The president laid down for us what he thinks ought to be included in comprehensive **tobacco** legislation. He put the focus on the legislation, where it belongs; on reducing teen smoking. He's absolutely right. This isn't just about money; it's about reducing addiction and illness in the American people.

Today, whether the **tobacco** companies know it or not, the obituary for their proposal is practically written. The industry's wish list is turning to ashes, and frankly, Joe Camel's last puff was today.

The Congress does not need the **tobacco** industry's permission to legislate on the scourge of teen smoking. We don't need the industry's approval to enact far-reaching anti-smoking educational and cessation programs. Regardless of the fate of the industry's proposed settlement, the goal of global **tobacco** legislation is very much alive in the Congress. It's our responsibility to the American people to move ahead with comprehensive public-health legislation to end big **tobacco**'s death grip on our kids.

In fact, many pieces of such legislation have been introduced as individual bills by myself and by my colleagues who are here with me today. The president, Doctors Kessler and Koop, and virtually all public health leaders agree that the best way to reduce teen smoking is to make smoking cost-prohibitive. They have all endorsed a price increase in the neighborhood of $1.50 a pack. And Congress ought to do it, and do it as soon as possible.

The most efficient way to increase the price and to ensure that the revenue raise is spent in the right places is to increase the excise tax on the price of cigarettes. Excise tax. Through this tax, we can raise enough money to significantly reduce teen smoking, to fund appropriate public health programs, to reimburse states and federal government for health costs, and to ensure that **tobacco** farmers are not hit with a financial disaster.

We should ensure that every penny of this price increase will go to save the lives of Americans. And I intend to introduce legislation before Congress adjourns this year that embodies these principles. Congress should approach **tobacco** legislation standing up to the industry and not on bended knee. The American people are tired of begging and pleading with big **tobacco** to do the right thing. And I hope that my colleagues will join me in this effort.

And I am pleased to be joined here by senators who have had a long history of fighting against **tobacco**'s influence over our society, none more diligent nor more successful than Senator Ted Kennedy.

SEN. KENNEDY: Thank you very much, Senator Lautenberg, who has been our leader in the Senate on this issue.

I join in commending President Clinton for his impressive leadership on the **tobacco** settlement and youth smoking. Today will go down in history as the day President Bill Clinton made the Marlboro Man blink and the health of the nation's children prevailed over the profits of the **tobacco** industry.

The proposed **tobacco** settlement was grossly inadequate to protect children and reach other vital public health goals. Three thousand children begin smoking every day. A third of them will die prematurely from smoke-related illnesses. And I intend to do all I can to see that Congress enacts effective legislation to achieve the goal of reducing teenage smoking and that we achieve the reduction as soon as possible.

The large additional revenues from the higher settlement will enable Congress, the administration and the states to do far more than we can today to achieve our priority goals. In my view, these funds should be earmarked to help children, especially in the critical early years from zero to three. And I look forward to working closely with Congress and the administration to see that they are.

SEN. LAUTENBERG: Thanks, Ted.

Tom Harkin? Are you ready, or --

SEN. HARKIN: Yeah, I am. I'm pleased who's gone before me. (Chuckles.)

SEN. LAUTENBERG: All right.

SEN. DURBIN: Is there any doubt?

SEN. HARKIN: (Chuckles.)

Well, first of all, I want to thank Senator Lautenberg for calling this press conference and for his great leadership in this effort.

Let me just say at the outset that the president's announcement today, I think, puts us on a stronger starting point here in the Congress. It is not the end, but it does put us at a stronger starting point.

I also believe the president's action will help galvanize public opinion behind any possible legislation that truly cuts back on youth smoking.

On that note, let me just make this announcement: I'm pleased to report that in the next few hours, I expect the Agricultural Appropriations Conference Committee to give final approval to my amendment, which fully funds the FDA efforts to stop illegal **tobacco** sales to teens. I think that's a big victory.

This isn't about what's best for big **tobacco**; it's what's best for young kids, and about protecting young people from getting hooked and trapped and killed by **tobacco**.

So again, I say, we don't need to rush into this. Let's wait for the smoke to clear. Let's take the time, and let's do it right. There are many ideas on how to improve this so-called settlement.

Senator Mack and I, as you know, have proposed that we do away with this big tax deduction that they have proposed and that we take that money and put it into research at the National Institute of Health. There is a provision, as you know, in the settlement that says the industry can write off about 35 percent of the entire settlement, as well as any future payments or fines. That means that the American people and not big **tobacco** will have to pay close to $130 billion of the **tobacco** settlement.

And so there are many ways, I think, that we can find to improve this settlement. It makes sense that we start here and not end here.

One last point: I said before that big **tobacco** has spent over $8 million -- probably approaching $10 million this year alone -- to pressure Congress into accepting their first offer, this first settlement, which means they must want it very, very badly. That's why I say we have time.

Every time we have turned around, we found that the **tobacco** companies have come up with a new reason, a new dodge, a new diversion. But the big **tobacco** companies have a long history of trying to diddle and dupe and deceive. To put it kindly, they bungee jump with the truth. And we have to wait for that bungee jumping to just stop a while before we move ahead.

So this, I think, puts them on notice. This debate over a proposed settlement will happen in the sunlight and not in the shadows. And the **tobacco** industry should prepare themselves to argue their case on the facts -- and just the facts.

SEN. LAUTENBERG: Thank you. Senator Wellstone?

SEN. WELLSTONE: Thank you.

Picking up on what Senator Harkin said, I've actually -- and since we're, I think, in a very short period of time going to be focusing on reform and trying to get some of this big money out of politics, I've been very worried about this obscene amount of money that's been poured into the Congress by the **tobacco** industry. And I think people in the country have become very skeptical about the political process here on a range of issues, and certainly about any kind of **tobacco** settlement -- real worried that the **tobacco** industry was going to be able to buy itself a good agreement for the industry, but a bad deal for people in the country, especially when you think about public health and you think about all of our children and all of our grandchildren.

I would like to thank the president for his very strong leadership today. I think that he has enunciated some principles that are extremely important in making sure that as a matter of fact we don't have some **tobacco** deal legislation passed here, but instead a good deal, legislation that will be a good deal for people in our country.

I have some questions yet still in my mind. I agree with Senator Harkin; let's not rush. I think the more scrutiny there is, the more people in the country become engaged in this, the better the final -- the final -- package will be.

I am concerned that in the focus on children, that we remember that a child, regardless of whether a child in our country or in a developing country, we should have the same moral claim on that child's health. I don't want to see this industry basically develop a strategy and just sort of peddle the **tobacco** and do all of its marketing with children in other countries. I want to see how -- I want us to be tough on that.

And second of all and last of all, it's no secret to anybody here that I come from a state, Minnesota, that is going after the **tobacco** industry with a two-by-four. And we've got a very important court case coming up this January. There's massive disclosure of information, working with some 36 million documents.

And I do think also that when the president said there ought to be maximum disclosure of information, I want to make sure that happens. I think we have to insist that that happens and that the companies not abuse their attorney-client privilege so that they do not disclose the information that all of us need as decision-makers, but even more importantly, that people in this country need before there is a final agreement.

I'm convinced today was a very important day. I think the president has done the right thing. And I think all of us are very committed to being very strong advocates for public health.

SEN. LAUTENBERG: Thank you.

Senator Wyden?

SEN. WYDEN: Thank you, Senator Lautenberg, and for all the work that you have done.

The **tobacco** industry is cynically creative. And what the president's announcement does is make it very clear that he is not going to set by and let the **tobacco** industry write the rules so that they can figure out a way to get around them. If we're going to demobilize the army of 3,000 young people who start smoking every day, we need presidential leadership. We need presidential leadership to have an effective blockade against the **tobacco** lobbies that try to target our youngsters. I think we got that effective leadership today.

I do want to make it clear that I am going to push hard as part of any final settlement to strengthen what the president has offered with respect to the international arena. I want to protect kids in Bend, Oregon and Bandon, Oregon, but I don't think the president's proposal goes far enough to protect kids in Bangkok and Bangladesh. What this industry wants to do is use the profits from the Third World to cover their losses here in our country. And we do have to go further. We have to push the U.S. trade representative away from the negotiating table for all time in terms of opening up these markets in the Third World.

But the president has teed up the ball in a very impressive way this morning. He's given those of us who have been involved in the **tobacco** control effort on Capitol Hill a great opportunity to pick up on his suggestions. And we're going to follow them.

But make no bones about the challenge. It was only a couple of years ago when this industry came to Capitol Hill in response to questions I asked told us that nicotine wasn't addictive. So they are going to do everything they can to try to get around these new rules. And we want them to know we're going to be there every step of the way to follow up on what the president has said today and stop them.

SEN. LAUTENBERG: Senator Durbin.

SEN. DURBIN: I want to thank Senator Lautenberg and my colleagues for giving us this opportunity to share our thoughts with you. And I want to start by thanking the state attorneys general. Make no mistake about it: we wouldn't be standing here today, the president would not have made his announcement, were it not for their initiative and their political courage. And I also want to salute in particular Matt Myers, who took a lot of grief and heat as a representative of the public health community who sat in the earliest negotiations. He has been an unwavering voice for public health throughout this process. And without his contribution I don't believe we would have such a solid starting point.

But I'd like to comment specifically on the president's announcement this morning. The **tobacco** giants were reminded today of an important constitutional reality: there is only one person in our nation who has the power to sign or sink any settlement -- that person is the president of the United States.

These same **tobacco** giants should have learned as well, with the passage of Tom Harkin's amendment a couple of weeks ago, and the passage of my amendment with Senator Collins last week, that at least figuratively, the "no-smoking" signs are up on Capitol Hill. Both houses of Congress are sick and tired of the back-door deals that have characterized **tobacco**'s relationship with Congress.

The last and most important lesson **tobacco** may have learned is if they truly want a settlement, they must get real. We will not protect **tobacco** products or profits if they continue to prey on our children. **Tobacco** will pay the price to stay in business, and the price is clear: fewer kids lighting up, chewing and spitting their deadly product.

Now, the obvious question: Will the **tobacco** companies abandon the settlement effort now that the president has raised the stakes? I think you're going to hear a lot of grumbling and grousing from the **tobacco** company executives how tough it's going to be to get back to the negotiating table now that President Clinton has made this announcement. But in my estimate, there's too much money on the table for them to leave.

Number one, a settlement, any settlement, will dramatically pump up their stock prices. Number two, golden parachutes and stock incentives will blossom across the **tobacco** patch with a settlement. Number three, the lawsuits will never stop. And number four, as more damaging evidence emerges, the **tobacco** industry's record in court cases will be put at risk.

Finally, the hammer lock **tobacco** has had on Capitol Hill is starting to break. It's my understanding that just an hour or so ago, the House of Representatives adopted, by a voice vote, the Durbin- Collins Amendment. Think about it. A few weeks ago, this industry muscled its way into a tax bill with a $50 billion break. On a record vote last week, they lost 95 to 3, and they wouldn't even take a record vote on the issue in the House before they abandoned this same amendment. I think the message is clear.

SEN. LAUTENBERG: Congratulations, Dick.

All right, we're here to answer --

Q Do all of you think that $1.50 over 10 years is a sufficient price increase to stop or greatly reduce youth smoking?

SEN. LAUTENBERG: Well, sufficiency is kind of hard to pin down right now. But it's my view that with $1.50 and the attendant statistic that says it will produce a 45-percent reduction in teen smoking; 10,000 kids a week will not start the smoking habit.

So I think it's a good start, whether it's precisely a dollar and a half or $1.35 or $2; it's going to take some time to figure out. But that's the general target area, and that's the area recommended by the president.

Anybody else?

Q (Inaudible) -- 10 years?

SEN. LAUTENBERG: I am sorry?

Q (Inaudible.)

SEN. LAUTENBERG: No, I don't think so. We want to get it in place as soon as possible, but there has to be some sense of what the marketplace is like. We don't have to sympathize with the **tobacco** companies, but we do have to recognize that there are addicts. There are young kids who are already addicted. And I think some forewarning is probably appropriate. But we want to get started as quickly as we can.

I don't know -- Senator Kennedy do you want to comment?

SEN. KENNEDY: Well, I think first of all, we ought to look to where we came from. We were talking about 62 cents a pack just three weeks ago; now we're $1.50 a pack. And what the president has indicated is that it'd be a balance between upfront increases and penalties. There may be some differences in that proportion. But the idea that we're at $1.50 a pack, effectively doubling the amount that was in that **tobacco** -- is a monumental alteration and change in the various proposal. And I think that what I respect most about the president's press conference is he underlined the point that it wasn't really the money; it was trying to do an effective job in reaching the children and getting them to halt their starting off on the smoking.

You have Dr. Koop and Kessler that have talked about $1.50 as being what they recommended. So in effect, the president has accepted what the public-health community has recommended. There'll be maybe some difference about how much is in the first part and how much is in the second; whether it's collected as taxes or how that matter is reached. But you can't get away from the fact that this is a double of what was out there just four or five days ago, and that is a monumental change and alteration; and done for the right reason, and that is to stop children from smoking. So I think (he ?) deserves very considerable credit.

SEN. HARKIN: Well, I just want to point out again, you have to discount it for inflation over 10 years -- whatever that inflation rate's going to be over 10 years, and figure out what that's going to be.

But secondly, I have agreed with Dr. Koop and Kessler in the past that $1.50 ought to be where we peg at least the price of a pack of cigarettes, not discounted 10 years in the future and not based upon a mix of penalties and increased taxes, because we don't know what those penalties will be or what they won't be. And we don't know how they're going to construct the sample that they're going to use to determine whether of not teenage has been cut back. That's going to be kind of a floating target, and so I worry a little bit about that. I think -- and I may be a minority of one here -- but I believe the $1.50 ought to be a target for a price of a pack of cigarettes; forget about whatever penalties might ensue beyond that.

Q Senators, Senator Nickles was in here about an hour or so

ago responding to this. Obviously, he was not as enthused with the president's statement. But he indicated fairly strongly that not only will nothing happen this year, but he doesn't necessarily think that anything will or needs to happen in 1998. If the Republican leadership position remains that, what can you as Democrats do to move this on your own?

SEN. LAUTENBERG: Well, first of all, that's Senator Nickles' opinion, and there are varying views. But I think it is agreed here that it need not, should not be done, if I may say, I think as Senator Wellstone said, done this year, despite the terrible price that's going to be paid because there will be the 3,000 kids a day who pick up smoking in this interim period. But it is a very complicated piece of legislation, and I think that in order for us to get done what the president's recommended that we do and what our conscience tells us we must do, it's going to take some time. I don't see it finally happening this year, but I do believe that the momentum is there to carry it off next year.

And Senator Kennedy has seen it in his association with some of the Republicans. Senator Durbin had a Republican co-partner here, a co-sponsor. The fact is that this is becoming much more a consensus bipartisan view. And I don't think that Senator Nickles speaks for the entire Republican Party or for the entire Senate.

SEN. WYDEN: Just quickly, with just a smile, good-natured smile, I mean, it sort of, it must -- it has to be telling. On the one hand, you have some senators who not too long ago were so anxious to get a bill through here, get a deal. Now the public has become more and more involved, more and more information comes to light, the president has come out today with a very strong statement, now some of the same senators say there may never be any kind of legislation passed. It just goes to show how far we've traveled in just a few short weeks.

And I will tell you, when it comes to the politics of **tobacco**, look at the Harkin victory, look at Senator Durbin's victory, Senator Collins' victory. The earth has moved. And the public is going to become more and more engaged in this, and people are going to say, "This, Senators, Democrats and Republicans, this is all about our children and our grandchildren, and we want to know whether you've got a system of democracy for the few there in the Congress, the **tobacco** companies, or for the many, for us."

We'll pass a piece of legislation. And it'll be a strong piece of legislation for public health, for people in this country. It'll be a good deal for the American people. Not a good deal for the **tobacco** companies, but a good deal for the American people. I think Senator Nickles is wrong.

SEN. DURBIN: There's only one group that doesn't want to see legislation enacted this year or next year at this point: it's the **tobacco** industry. And that's what it boils down to. And if the Republican leadership in the House and the Senate want to duck and cover and try to avoid this responsibility, make no mistake, it'll be a major issue in the 1998 election. They were elected to lead. Leadership at this point has been clearly mapped out for them with the agreement from the state attorneys general, with the statement by the president. It's now time to fill in the blanks, call in their committee chairmen, assign jurisdiction, and set them on a time table to get to work. If they fail to do it, they can rest assured that a lot of us will be raising this as a major issue in the '98 election.

Q Senator Harkin, I think you referred to this as a loophole

in the settlement, that a lot of it is deducted. It's not exactly a loophole, it's more like the standard business deduction for litigation expense. If that's the case -- that's my understanding of the tax code -- are you just going to ask them to voluntarily not take this tax deduction, or are you going to change the tax code, or -- how are you going to approach this?

SEN. HARKIN: Well, we're going to have to work into whatever if the settlement goes through is to work in a provision that does not allow them to deduct as an ordinary and necessary business expense the payments they are going to make for the **tobacco** settlement. These are really in lieu of -- these are like penalties. This is a payment that they're making for 60, 70 years or more of deceit, of covering up, of knowing that they were hooking people, of knowing how addictive was, knowing that it caused death, and yet they covered it up all those years. I don't think that cover-up ought to be tax deductible.

SEN. LAUTENBERG: I would also say that if it's collected as an excise tax there is nothing to discuss about tax deductibility. They're going to simply collect it and pass it on to the government. And that's one of the things that attracted me about using an excise tax: we don't have to depend on the **tobacco** companies to thwart our intent to find ways of not passing on the money. It's pretty obvious that we don't trust them and that we're going to make sure that we avoid having to ask them to tell the truth.

SEN. WYDEN: The real difference today is that we are prepared for the scores of attempts that they're going to make to try to avoid these new rules. I mean, the history of the **tobacco** industry is every time the United States Congress moves to shut off an avenue to harm patients and harm consumers in our country, they take it. That's why they got around the Synar Amendment on youth smoking. It's what they're going to try to do again.

We saw in yesterday's hearing on advertising, for example, that even right now, as this proposal comes up, they're trying to get around these rules with Camel Clubs, and the like, to try to target young people in coffee houses.

But I think the question for 1998 is I think the American people are expecting the Congress to deliver on this. I think that they're saying right now, "We are losing as taxpayers, whether it's Medicaid costs or Medicare costs" -- as Tom has pointed out -- "and we are not going to sit by and let the hemorrhage of taxpayer dollars continue. We are not going to sit by and let the **tobacco** companies find yet another array of dodges around this." And I don't think they're going to let the Congress duck this issue in '98.

Q Senator Durbin, Attorney General Moore said something

interesting after the president spoke today. He said he applauded everything the president said, but he said, I'm going to tell you what's going to happen. We're going to come out at the end of this game exactly where we are today. Why do you think the industry will swallow now what they didn't want to swallow at the bargaining table before Clinton spoke today?

SEN. DURBIN: I think the political realities are there. The president has to sign any agreement. It is one thing to reach an agreement with attorneys general, it's another thing to have the agreement of the president, who must sign the bill if it's going to be enacted into law.

And secondly, the political climate is just changing up here. You can sense it. We have votes to back it up; 95 to 3 on my amendment. Tom, your amendment, 78-22 -- or what was the final vote? It was a strong vote on behalf of his amendment. And I think that these political tests ought to indicate to the **tobacco** industry that what they put on the table for the attorneys general is not enough. The president has, I think, identified where the American people are, and they have to arrive at the same point.

SEN. KENNEDY: Can I add one other point? I think what you're going to see is that within the next two weeks, the Federal Trade Commission is going to come out and make a judgment about -- including the capability of the **tobacco** industry to make the payments on this. And I think you're going to find the economic -- the Council of Economic Advisers and Treasury put forward the information to show -- demonstrate that this is -- what is being identified here by the president is liveable for the **tobacco** companies. I believe that it is, and I think you'll see the justification for it.

Number one, the report of the Federal Trade Commission I think will be an important factor to indicate that the **tobacco** companies can't walk away. I think the documents that are going to be under discovery, which are going to find greater kind of culpability by the **tobacco** companies will indicate that they better even sign-on to this particular deal.

And just in response to an earlier question, punitive damages have never been deductible. And basically, any of the agreement is the willingness of the **tobacco** companies to indicate that this is -- part of this settlement is a result of their activities in the past. And for them to try and come in and make it deductible in those provisions would violate both the spirit and the letter of the IRS at the time now, and be asking for special privilege, and that's completely -- would be completely unacceptable.

SEN. HARKIN: The only thing I want to add -- I don't know what Mr. Moore said, but if I understand you correctly, he said that when it's all said and done --

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    Q      Back to where we started from.
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SEN. HARKIN: -- we'll be right back where we are right now. If that's the case, it will never pass. The settlement that is out there right now that they've been talking about and touting, with these big tax deductions in it, will not pass. It could not pass. So it's going to have to be something better than what they have out on the table right now.

SEN. LAUTENBERG: Thanks everybody. ####

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Cigarette Makers Say President's Tobacco Policy Is Unacceptable

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By JOHN M. BRODER

WASHINGTON -- The nation's cigarette makers reacted bitterly to President Clinton's new tobacco policy, saying that it demands concessions that go far beyond a costly and ground-breaking plan they reluctantly agreed to in June.

Four major tobacco companies, in a joint statement issued in Washington, said the president has ripped up the June accord and offered the companies little incentive to support his new proposal.

Clinton laid down his principles for a national tobacco policy in an Oval Office ceremony on Wednesday, demanding tough penalties on cigarette makers if smoking by teen-agers did not decline dramatically over the next decade. He also said he would not accept any dilution in Food and Drug Administration authority to regulate nicotine as a dangerous drug.

But while the president called on Congress to move swiftly to enact his tobacco control wish list, he gave no indication of what, if anything, he was willing to cede to the industry and pro-industry lawmakers in return for accepting his demands.

Clinton proposed on Wednesday that unless underage smoking declines by 60 percent in 10 years, the price of a pack of cigarettes should rise by as much as $1.50 through the imposition of stiff penalties on manufacturers. Clinton said the penalties should not be capped and the companies should not be able to deduct their cost from business taxes, significant changes from the June accord.

The president's plan could ultimately double the industry's cost of settling its legal problems, bringing the total bill to as much as $700 billion over 25 years.

But the cigarette makers responded that they should not be held solely responsible for the allure smoking has for teen-agers. An estimated 4.5 million children between the ages of 12 and 17 now regularly use tobacco products, according to government statistics.

"We agree that there ought to be a concerted national effort to lower the use of tobacco products by minors," the cigarette companies said in the statement. "We do not agree that the industry should be held solely accountable for social behavior that neither it, nor the government, can control."

They said that they had offered historic changes in the way they do business to reach the June accord with state attorneys general, health groups and plaintiffs' lawyers. Under terms of that plan, the industry agreed to pay $368.5 billion over 25 years to settle dozens of lawsuits in exchange for virtual legal immunity in the future.

The companies would also pay for anti-smoking media campaigns, submit to strict federal oversight and accept unprecedented new restrictions on marketing and advertising.

They said that Clinton was now demanding unacceptable changes to that plan.

But the June proposal is now dead, and a new plan, far harsher on the cigarette makers, is emerging in its place. The debate now moves to Capitol Hill, where the tobacco industry's legendary clout and deep pockets will be tested as never before.

While antitobacco Democrats reacted favorably to the president's announcement on Wednesday, Republicans who have in the past been friendly to the industry responded warily.

The Senate majority leader Trent Lott, R-Miss., said Clinton's proposal lacked specifics to guide congressional deliberations. "It's late, and it's paltry." Lott said.

Rep, Thomas Bliley III, R-Va., who is chairman of the House Commerce Committee, said he would hold hearings on tobacco after Congress recessed for the year in late October or early November. But he said that Clinton's failure to present a detailed legislative proposal "eliminated what little chance we had of getting an agreement enacted this year, and makes it far more difficult for us to do so at all."

Clinton paid tribute to the parties who had brought the tobacco companies to the bargaining table through a combination of legal pressure and public exhortation.

"They extracted concessions that would have been literally unthinkable just a short time ago," Clinton said. "Now we have this unprecedented opportunity to enact comprehensive tobacco legislation."

In addition to the penalties and FDA proposals, Clinton's plan calls for rapid disclosure of documents detailing tobacco industry behavior over the past four decades, limits on exposure to second-hand smoke, efforts to stem the global spread of smoking and protection for tobacco growers whose income would decline as tobacco consumption dropped.

In its response, the tobacco industry said that it, too, sought "to end decades of confrontation and uncertainty." But the four companies -- the Philip Morris Cos., the R.J. Reynolds unit of RJR Nabisco, the Lorillard Tobacco unit of the Loews Corp. and the United States Tobacco Co. -- indicated that they would work in Congress to restore some milder provisions in the June accord that Clinton wanted to threw out.

The Brown & Williamson Tobacco Corp., the nation's third-largest cigarette maker, issued a separate statement that took an even harder line than that of the other four companies.

A senior tobacco company executive, who insisted on anonymity, said that he was glad that the tobacco debate had moved to Capitol Hill, where the industry has far more influence than it does in the Clinton administration.

"Now you've finally got all the players on the field," the executive said. In a related development, the House, on a voice vote, rescinded a $50 billion tax credit granted the tobacco industry in the July balanced budget accord. The Senate repealed the measure last week on a 95-to-3 vote.

Clinton had urged Congress to repeal the tax break, which was stealthily inserted in the budget bill at the urging of the tobacco companies.

Tobacco Dispute Enters a New Phase

President's Objections Prod Parties Toward Renegotiating Deal

By John F. Harris and John Mintz
Washington Post Staff Writers
Thursday, September 18, 1997; Page A01
The Washington Post

President Clinton opened a new phase yesterday in efforts to reach a historic settlement with the tobacco companies, as he pronounced an earlier pact to be inadequate and threw the issue open for renegotiation in Congress.

As soon as Clinton laid out his stance in the Oval Office, all the major constituencies necessary for a deal -- from the tobacco industry to anti-smoking advocates -- took tentative first steps toward forging an agreement more likely to pass into law.

Clinton as expected called for tougher provisions for cutting youth smoking, including a $1.50 per pack price increase if youth smoking is not reduced enough over the next decade, and guarantees of Food and Drug Administration authority to regulate nicotine. But he declined to put forth a specific plan of his own.

Clinton's approach means that an enormous cast of legislators and interest groups will have a chance to rewrite the deal. What the tobacco industry and 40 state attorneys general presented three months ago as a nearly finished product is now merely a rough draft, said lawmakers, administration officials and tobacco representatives.

The tobacco industry expressed opposition to Clinton's call for increasing the per-pack cost of cigarettes but vowed to continue efforts to reach an accord with public health advocates. Privately, some cigarette executives said they were confident a deal that meets their terms will eventually be struck, although most likely not until at least next spring.

Reaction on Capitol Hill to Clinton's counterproposal was decidedly partisan. Democrats said he shrewdly avoided laying down a bottom line prematurely. Republicans denounced the president for not being more specific in his statement. But legislative leaders on both sides said they were prepared to sponsor legislation that could provide the vehicle for a new agreement.

On Capitol Hill, some were predicting a bipartisan bill would emerge next year. Sen. Edward M. Kennedy (D-Mass.), who has successfully sponsored anti-tobacco legislation with Republicans in the past, is hoping to duplicate that formula this time, he said yesterday.

But Oklahoma Sen. Don Nickles (Okla.), the GOP point person on tobacco in the Senate, said he is not yet convinced Congress should -- or can -- act next year, given the complexity of the issue and the number of committees involved. "To make this happen it would take a full-court press for many months" by Clinton and Congress. "We could decide to do nothing; we could decide to do pieces of it."

Public health advocates -- many of whom had denounced the June 20 pact -- were nearly uniform in saying they could back a deal if it includes the price increases Clinton called for. After months of internal debate over how tough to be on the tobacco industry, White House officials said Vice President Gore convinced Clinton that a settlement would never gain public support unless he called for a possible $1.50 price increase.

But Clinton left unresolved how this increase would be achieved. Under the original deal, the per-pack price is estimated to rise by 62 cents. Within the administration, officials said, Deputy Treasury Secretary Lawrence Summers had urged that Clinton raise the $15 billion annual payments the tobacco industry is already pledged to make by enough to guarantee that prices rise by $1.50 per pack. This would more than double the cost of the original settlement. Domestic policy adviser Bruce Reed opposed that as too severe, arguing that a system of penalties -- which would go into effect only if certain targets for youth smoking are not met -- provided a better incentive for the tobacco industry to change its ways.

Clinton passed the question off, urging Congress to decide the right balance of payments and penalties. But he made plain his view that the tobacco industry wants a deal so badly that it will not walk away despite tougher terms. "I think they know that they have to have federal legislation," Clinton said, adding that if cigarette companies want protection from massive legal costs, "they need to come and meet with us."

The industry said it would do just that. "Now that the White House has completed its review, Congress can and should move forward," the nation's four leading tobacco companies said in a joint statement. "We believe the June 20 plan still represents the most achievable balance, and we will work constructively with the Congress and the president to build upon the historic accomplishments of that agreement."

"We disagree with some of the proposed changes offered today, and with suggestions that the terms of the June 20 agreement undergo significant change," the statement added.

The June 20 agreement between the industry and the state attorneys general would require the companies to pay $368.5 billion over 25 years and accept restrictions on advertising and marketing in exchange for protection against some lawsuits.

"It would certainly be unacceptable to try to raise the financial terms of this agreement," J. Phil Carlton, an industry lawyer, said in a telephone interview yesterday.

Some tobacco executives privately were more sanguine. By giving health activists what they wanted, Clinton has brought a larger portion of the anti-tobacco community on board, they said. "You've got all the players on the same playing field," a tobacco executive said, "which we did not have 24 hours ago."

While the administration has estimated the June 20 deal would cause the per-pack price to rise 62 cents, industry officials contend it would prompt the price to jump by almost $1.50 when inflation and wholesalers' costs are added. So industry officials are expected to argue before Congress that the agreement already meets Clinton's price-per-pack proposal of yesterday. White House officials said they would fight this interpretation.

One Clinton proposal that galls the cigarette companies is that penalties they pay for any failure to reduce youth smoking in the future be deemed not tax-deductible. That provision could cost the industry tens of billions of dollars, industry analysts said.

Company officials have demanded that all its payments be deductible from corporate income taxes, based on long-standing tax law that "ordinary business expenses" -- including corporate payments ordered by a judge or government agency or agreed to in private litigation -- can be deducted from taxable income.

But Clinton said yesterday the purpose of increasing penalties is to give a much stronger incentive to the tobacco industry to meet targets calling for youth smoking to drop by 30 percent in five years and 60 percent in 10 years. "Reducing teen smoking has always been America's bottom line," he said. "It must also be industry's bottom line."

Wall Street analysts concluded that despite Clinton's rhetoric criticizing cigarette firms, he helped their financial prospects by advancing the cause of winning a final deal.

"We view President Clinton's tobacco settlement speech as fairly bullish," said Gary Black, an analyst with Sanford C. Bernstein & Co. "We expect the industry to embrace the president's position," he said.

One tobacco industry official said that the Clinton announcement was good news for the industry because it kick-starts a process that had all but stalled. "You had to get past this hurdle," the executive said. "The administration had to complete a review and give a signal either up down or indifferent for this thing to move anywhere. If that had not happened, everybody would still be waiting."

One of the biggest unanswered questions is the status of the industry's demand for immunity from punitive damages for past acts, and protection from class-action and other group lawsuits. Clinton did not endorse these provisions yesterday, although they were the key concessions the tobacco companies received in the June pact.

A tobacco industry attorney confirmed that the White House had not talked with the companies about changing that element of the original agreement. "They have not raised that with us," the attorney said. "My understanding is that it is where it was."

In his Oval Office appearance, Clinton also called for unspecified measures to prevent tobacco farmers and rural communities from being "crippled and broken" as demand for their crop subsides. And he said he wants more spent on public education and anti-smoking ad campaigns.

A settlement, Clinton said, "is not about how much money we can extract from the tobacco industry. . . . This is about changing the behavior of the United States, both the behavior of the tobacco companies, the behavior of the American people, the future behavior of our children."

Staff writers Ceci Connolly and John Schwartz contributed to this report.

Back to the top