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U.S. Department of Justice

Office of the Associate Attorney General

Seems like a

good idea.

Elena

Washington, D.C. 20530

FACSIMILE TRANSMITTAL COVER SHEET

DATE: 8/4/97

TO: Elena Kagan

FACSIMILE NO: _____

TELEPHONE NO: 456-5584

FROM: John C. Dwyer

FACSIMILE NO: (202) 514-0238

TELEPHONE NO: (202) 514-9500

NO. OF PAGES: 4 (w/cover)

COMMENTS: FYI



U. S. Department of Justice

Environment and Natural Resources Division

Office of the Assistant Attorney General

Washington, D.C. 20530

July 31, 1997

Jonathan Z. Cannon
General Counsel
U.S. Environmental Protection
Agency
401 M Street S.W.
Washington, D.C. 20460

Re: Tobacco Settlement and Secondhand Smoke Litigation

Dear Mr. Cannon:

Associate Attorney General Dwyer has asked me to respond to Mr. Dreher's July 17, 1997 letter concerning the proposed tobacco settlement.

The Environment Division concurs that it would be desirable to include dismissal of Flue-Cured Tobacco Cooperative Stabilization Corp., et al. v. EPA, Civ. Action No. 6:93CV370 (M.D.N.C.), in which the tobacco companies have challenged EPA's risk assessment of secondhand smoke, as part of any overall settlement with the tobacco industry.

Sincerely,

A handwritten signature in dark ink, appearing to read "L. Schiffer".

Lois Schiffer
Assistant Attorney General

cc: John Dwyer
Bob Dreher



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

cc: (JA)
TS
orig to E.S.

JUL 17 1997

OFFICE OF
GENERAL COUNSEL

John C. Dwyer
Associate Attorney General
Department of Justice
10th & Constitution Ave., N.W., Rm. 5214
Washington, D.C. 20530

Re: Dismissal of tobacco industry litigation regarding EPA
report on the health effects of passive smoking as part
of overall tobacco settlement

Dear Mr. Dwyer:

As you know, the White House Domestic Policy Council is coordinating an interagency review of the proposed tobacco settlement. This letter is to call to your attention pending litigation between the tobacco industry and EPA over the health effects of passive smoking, and to ask your assistance in ensuring that dismissal of this meritless litigation be included as an element in any global tobacco settlement.

Acting under the authority of the Radon Gas and Indoor Air Quality Research Act of 1986, Pub. L. No. 99-499, 100 Stat. 1758-60 (1986), EPA issued a report on the health effects of environmental tobacco smoke, Respiratory Health Effects of Passive Smoking: Lung Cancer and Other Disorders, EPA/600/6-90/006F, in January 1993. Based on an exhaustive and peer-reviewed analysis of the large body of available data concerning the health effects of second hand smoke, EPA concluded in its report that environmental tobacco smoke causes lung cancer in adult nonsmokers and impairs the respiratory health of children.

In June 1993, EPA was sued in the U.S. District Court for the Western District of North Carolina by a number of tobacco industry parties, including Philip Morris Inc. and R.J. Reynolds Tobacco Co., over the agency's issuance of the report. Flue-Cured Tobacco Cooperative Stabilization Corp., et al. v. U.S. Environmental Protection Agency, Civ. Action No. 6:93CV370 (M.D. N.C.). The tobacco industry parties allege that EPA's issuance of the report exceeded its authority and violated the procedures required under the Radon Act, that EPA's conclusion that environmental tobacco smoke is a Class A carcinogen was arbitrary and capricious, and that EPA failed to follow its guidelines for carcinogen risk assessment. The district court denied EPA's motion to dismiss the case on the grounds that its action was not

final agency action subject to review under the Administrative Procedure Act. The parties have now briefed cross-motions for summary judgment, which are pending before the district court.

EPA believes that the tobacco industry's suit regarding its report on environmental tobacco smoke is entirely without merit, and expects to prevail on its motion for summary judgment. The industry's continued maintenance of this case, however, and particularly its challenge to EPA's finding that second-hand smoke is a human carcinogen, seems indefensible in the face of the industry's acknowledgements to the contrary in the proposed tobacco settlement. EPA asks, therefore, that the Justice Department include dismissal of this meritless litigation as a term of any overall settlement with the tobacco industry.

Please call me at 360-8040, or have your staff call Greg Foote, Assistant General Counsel, at 260-7619, if you need additional information on this matter. The case is being defended by the Environment and Natural Resources Division; the Justice Department attorney responsible for the matter is Alice L. Mattice.

Sincerely,



Robert G. Dreher
Deputy General Counsel

cc: Elena Kagan
Deputy Assistant to the President
for Domestic Policy

Lois Schiffer
Assistant Attorney General
for Environment and Natural Resources

Coalition for the Prevention of Alcohol Problems

Consumer safety -
wine labels

1875 Connecticut Avenue, NW, Suite 300
Washington, DC 20009-5728

Elizabeth
FYI.
Elev

August 6, 1997

Secretary Robert Rubin
Department of the Treasury
1500 Pennsylvania Ave. NW
Washington, D.C. 20220

Dear Secretary Rubin:

The organizations listed below strongly urge you to withhold approval of a petition by wine manufacturers to include a health statement on wine bottle labels. Research must be conducted to determine what effects this action would have on consumers.

The wine industry has only one purpose in mind: to sell more wine. The labels for which approval has been requested selectively take the words "health" and "moderate wine consumption" out of context from the U.S. Dietary Guidelines and thus present a misleading view of the overall message communicated by the Guidelines. It will also subvert the effectiveness of the message on all alcoholic beverage containers that is mandated by the federal government.

The risks and benefits of alcohol consumption vary greatly from person to person. Anyone who does not take the time and effort to request a copy of the Dietary Guidelines or consult with their physician could be misled by the proposed label and assume that "moderate" consumption (which is not defined) is good for their health. As you know, "moderate" consumption is not good for the health of alcoholics and others who suffer from alcohol-related problems, or the others who fall into the additional categories of people who should not drink under any circumstances, including pregnant women.

The Public Health Service, the National Institute on Alcohol Abuse and Alcoholism and the Federal Trade Commission also either oppose or have serious reservations about the proposed label language. The American Medical Association, at its June meeting, approved a resolution opposing beneficial health claims labeling. We hope that BATF will heed to the concerns of

Co-Chairs: George Hacker, *Center for Science in the Public Interest*, (202) 332-9110, ext. 343
Sarah Kayson, *National Council on Alcoholism and Drug Dependence*, (202) 737-8122

Steering Committee: Susan Hildebrandt, *American Academy of Family Physicians*, (202) 232-9033
Elaine Holland, *American Academy of Pediatrics*, (202) 347-8600 • Barbara Levine, *American Public Health Association*, (202) 789-5648
Bill McColl, *National Association of Alcoholism and Drug Abuse Counselors*, (703) 741-7686 • Maribeth Oakes, *National PTA*, (202) 289-6790
Jerald Scott, *United Methodist Church, General Board of Church and Society*, (202) 488-5600 • Kathy McGinley, *The ARC*, (202) 785-3388
William C. Dodson, *Southern Baptist Ethics and Religious Liberty Commission*, (202) 547-8105
Kathleen Sheehan, *National Association of State Alcohol and Drug Abuse Directors*, (202) 783-6868

Coalition for the Prevention of Alcohol Problems

Letter to Secretary Rubin

Page Two

these health and consumer professionals before taking any action on the labeling of a product that contributes to serious health and safety problems in the United States.

Please do not allow the public to be misled about the health effects of alcohol.

Thank you for your time and consideration.

Sincerely,

Alcohol Research Information Service

American Council on Alcohol Problems

American Society on Addiction Medicine

The ARC

Center for Science in the Public Interest

Consumer Federation of America

General Board of Church and Society

International Commission for the Prevention of Alcoholism and Drug Dependency

Latino Council on Alcohol and Tobacco

Manocheian Foundation

Maryland Underage Drinking Prevention Coalition

National Citizens Communications Lobby

National Council on Alcoholism and Drug Dependence

National Organization on Fetal Alcohol Syndrome

National Woman's Christian Temperance Union

The Palavra Tree, Inc.

PRIDE of St. Tammany

Public Citizen

Scott Newman Center

Southern Baptist Ethics & Religious Liberty Commission

University of Michigan Transportation Research Institute

wasn't willing to pay that. Prompted in part by subsequent drops in ITT's stock price, the new offer counters speculation that Hilton, after six months of watching ITT carry out a full-bore defense strategy, had ceded the advantage in vying for the New York hotel and casino company.

ITT's immediate public response was noncommittal. "The ITT board of directors will exercise its fiduciary responsibility and consider Hilton's revised offer in due course," a spokesman said. But ITT isn't expected to embrace the higher offer, and there aren't any signs the company is

moving to abandon its defensive position. Indeed, ITT insiders said they were encouraged by the lukewarm response to the sweetened bid by Hilton holders.

Hilton timed its move to take advantage of a nearly 10% drop in ITT's stock price in the past three weeks. After an extensive internal debate about its next step, Hilton's management concluded that its adversary was facing a moment of weakness, according to people familiar with Hilton's

through. "I think that ITT will continue to fight. They don't want this," said Keith Moore, an arbitrage investor with Brook Management in New York.

The new offer came just hours after Hilton moved in Nevada federal court to block ITT's previously announced breakup into three separate companies. ITT unveiled that plan three weeks ago at the same time it announced a 30 million share buyback at \$70 apiece. ITT's proposed breakup is seen as its ultimate weapon against the hostile takeover bid, for which

Please Turn to Page A8, Column 1

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Getting In On the Ground

Market share and selected lead offerings, by year-

- Credit Suisse First Boston (4)
- J.P. Morgan (5)
- Salomon Brothers (14)
- Hambrecht & Quist (19)

Source: Securities Data

sometimes shoot trading. But for the trades through a are difficult to obtaining a broad a low-commission s able to give its entry to the gro stocks.

"There would we've talked to a ring First Boston," left First Boston la capital-markets o added that no con and that there is proposed alliances men at the three clined to comment That hole in has allowed its age competitor, F trumpet an advanta ity ads point out tomers can buy IPC but Schwab's custo Since spring, F has been distribut derwritten by the vestment-banking That arrangement Please Turn to

Lawyers Shielded Tobacco Firms, Papers Show

By MILO GEYELIN

Staff Reporter of THE WALL STREET JOURNAL Internal tobacco company documents made public in Florida yesterday paint a picture of the industry's sweeping use of lawyers to foil government regulators and mislead the public about the health risks of smoking.

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

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

Ronald Motley, co-lead counsel in Flor-

Tobacco Tactics

'A recent memo by a Lorillard employee (Alex Spears) to Dr. Hayes at RJRT suggests that in 1984 the Committee of Counsel thwarted the industry scientists' desires to assure the safety of the product by testing ingredients adequately.'

'In any event, if the returns were unfavorable they could be destroyed and there would be no record in any office of the nature of the returns.'

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

'... we wanted to protect it under the lawyers. We did not want it out in the open.'

Source: Excerpts from internal tobacco industry documents that the state of Florida contends show that the companies conspired to hide the dangers of smoking.

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

The tobacco industry, however, dismissed the documents as innocuous. "What these documents clearly show are the efforts of conscientious lawyers working for their clients," said a spokesman for

market leader Philip Morris Cos. A spokeswoman for R.J. Reynolds Tobacco Co., a unit of RJR Nabisco Holdings Corp., described the documents "as pretty ho-hum when read in context."

Tobacco lawyers had fought since last April to keep the documents under court seal, arguing they were covered by the privilege shielding communications between lawyers and their clients. But a state appeals court two weeks ago voided that privilege, upholding a lower-court decision

Please Turn to Page A6, Column 3

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WSJ A3, A6
Documents

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Tobacco Documents Show Use of Lawyers To Foil Regulators

Continued From Page A3

that the documents contained evidence of fraudulent or criminal conduct. The companies released the documents themselves after their effort to convince the full appeals court to keep them secret failed.

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

Among the eight documents is an undated memo by counsel for RJR that raises questions about the company's testing of its cigarette additives. The document noted that company files included memos from its research and development people, who wanted to test cigarette ingredients. It

also cites a 1984 memo to Reynolds from a Lorillard Inc. employee suggesting that a group of top in-house industry lawyers who met regularly to discuss industry matters "thwarted the industry scientists' desires to assure the safety of the product by testing ingredients adequately."

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

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

"We wanted to protect it under the lawyers. We did not want it out in the open," one lawyer from the New York law firm Jacob, Medinger & Finnegan is quoted as saying at a September 1981 meeting in reference to one study. The meeting was attended by lawyers from Shook, Hardy & Bacon, of Kansas City,

Mo., which also did work for the industry. Jacob Medinger, which now represents only UST Inc., a smokeless-tobacco company, declined comment. Shook Hardy, which remains the industry's leading firm, also declined comment.

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

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

Arnold & Porter's managing partner, James Sandman, said the memo merely explored a proposed survey which, in fact, was never conducted. Had it been, Mr.

Sandman added, it "would have been the work product of attorneys and, under the law, not subject to disclosure."

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

MCCRORY CORP.

McCrory Corp., York, Pa., said a federal bankruptcy court approved the sale of the company's assets to a company controlled by McCrory's chairman and chief executive, Meshulam Riklis, for \$51 million. McCrory, a closely held operator of old-fashioned five-and-dime stores, has been operating under Chapter 11 bankruptcy-law protection since 1992. McCrory said the company controlled by Mr. Riklis, HGG Acquisition Corp., would also assume certain of McCrory's liabilities. McCrory said that the transaction is expected to be completed by the end of September, and that HGG Acquisition intends to continue McCrory's operations. McCrory said the proceeds of the sale would be distributed to administrative-expense claimants.

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POLITICS & POLICY

Opponents of Tobacco Pact Face Big Hurdle: Clinton

By MICHAEL K. FRISBY

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

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

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

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

Uncomfortable Positions

Clearly, this puts Mr. Gore, Ms. Shalala and their antismoking allies in uncomfortable positions. Whatever their views, it is their job to help Mr. Clinton succeed at policy missions. Still, there are signs that they are finding ways to express their doubts about the settlement, as well as bring about changes they believe are needed.

The settlement channels \$368.5 billion from the industry toward public health and imposes restrictions on tobacco advertising and marketing, while granting the industry immunity from punitive damages

for past misconduct and making it harder for the FDA to regulate nicotine.

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

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

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

Critics Worry

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

Missing in action has been Mrs. Clinton.

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

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

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

Doing Both Jobs

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

After meeting with Ms. Shalala, Mo-

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

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

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

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



Al Gore



Donna Shalala

Deere & Co.-Targeted Sales-Tax Boost Of \$353 Million Also Hits Ford, Chrysler

By GREG HITT

Staff Reporter of THE WALL STREET JOURNAL
WASHINGTON — A \$353 million tax increase over the next five years originally targeted at Deere & Co., the huge maker of farm equipment, will also hit Ford Motor Corp. and Chrysler Corp.

to pay taxes that have been previously deferred.

"It's not a favorable change for us, but it does have good transition rules," said Frank Maisano, a Chrysler spokesman. Chris Vineyard, a Ford spokesman, said he expects the company will have little trouble adapting to the changes. General Mo-



White House

Legis Action

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Lugar Challenges Helms on Weld Hearing

One Senate Chairman Tests Another's Refusal to Act on Nomination

By Terry M. Neal and Ceci Connolly
Washington Post Staff Writers
Saturday, August 9, 1997; Page A01
The Washington Post

With William F. Weld off fishing in the Adirondacks, his nomination as ambassador to Mexico took a new twist this week as two of the Senate's most senior chairmen locked in a grudge match that could jeopardize Senate business and the Republican Party's image.

Sen. Richard G. Lugar (Ind.), the No. 2 Republican on the Senate Foreign Relations Committee, has repeatedly criticized Jesse Helms (N.C.), the committee's chairman and his colleague of more than two decades, for refusing to hold a hearing on Weld's nomination. Lugar escalated the battle by then suggesting he would consider using his own position as chairman of the Agriculture Committee to retaliate against Helms.

The Agriculture Committee is scheduled next month to begin hearings on parts of a key proposed settlement between the tobacco industry and states attorneys general. Helms represents the largest tobacco growing state in the country.

"It is unfair if one chairman operates under one set of rules and that it's anticipated that all of the other chairmen will operate under another set of rules," Lugar said in a telephone interview yesterday. "This is something I suspect we're going to have to wrestle with as senators."

What began as one man's quixotic bid for an ambassadorship has turned into an internecine tale of long-simmering feuds, ideological tensions and Senate power politics. In a legislative arena where one vote is almighty, the prospect of two veterans going mano a mano has some on Capitol Hill shuddering.

One GOP Senate staff worker, recalling the recent botched coup against House Speaker Newt Gingrich (R-Ga.), moaned: "This runs the risk of becoming an embarrassing

specter on this side."

If Lugar follows through on his threats, Senate Majority Leader Trent Lott (R-Miss.) faces a difficult quandary: how to keep the dueling chairmen in line and prevent gridlock in the two key committees.

President Clinton nominated Weld last month and Weld resigned as governor of Massachusetts to fight for the position. The nomination fight has exposed growing divisions between moderate and conservative wings of the party.

"It affects us in the sense that if people perceive us to be [unfair] or Republicans to be intolerant by denying Governor Weld a hearing then it is a political problem," said Sen. Olympia J. Snowe (R-Maine), who is pushing for a Foreign Relations Committee hearing on the nomination.

Weld, a popular Republican who tried to beat the Senate with an outsider strategy, has now been overshadowed by two white-haired legislative giants with much more on their minds than whether the red-haired patrician has a job next month.

Lugar, who acknowledges he has been upset with Helms on other issues for some time, told reporters Thursday that he was angry at Helms and that he was considering using his Agriculture Committee chairmanship to stand up to him. Lugar is undecided about whether he supports Weld, but that, he said, is beside the point.

Earlier, Lugar threatened to go around Helms and force a nomination hearing. "A Senate chairman cannot be dictatorial, ultimately, when a majority of the committee, a majority of the Senate, a majority of the American people want action," Lugar said Sunday on ABC's "This Week."

In an interview yesterday from Ohio, where he is traveling to receive an award from an agricultural professional society, Lugar emphasized that he was making no specific threats. Helms has become increasingly bold because no one ever stands up to him, Lugar complained.

"Now someone is doing so," Lugar said. "I'm doing so now. I'm doing so explicitly. I am objecting in the most direct public manner that I can."

Helms's office said he had no further comment. But an aide, who asked not be identified, said it was highly inappropriate for Lugar to take out his personal frustrations with Helms on the "tens of thousands of North Carolina farmers." The aide portrayed the flap as a one-sided vendetta by Lugar.

"When someone lashes out at you, the best way to handle it is not to respond," the aide said yesterday.

The Senate is in recess this month and few Republicans were inclined to interrupt their vacations to step into an increasingly messy party feud.

Snowe said Lugar's comments were "uncharacteristic" but also an understandable "manifestation of his own frustration about the process not working in denying an individual nominee a right to a hearing."

She and eight other moderate Senate Republicans signed a letter last month urging Helms to call a hearing for Weld. Helms has adamantly opposed the Weld nomination because of the ex-governor's support for the medical use of marijuana, gay rights and other issues.

Snowe, home this month on vacation, said many of her constituents were complaining that Weld had been denied a hearing. And while she put most of the blame on the Clinton administration for not fighting harder for its nominee, she said the fallout was hurting the Republican Party.

The Lugar-Helms tension goes back at least a decade when, in 1986, Helms pulled rank on Lugar and positioned himself for the chairmanship of the Foreign Relations Committee. That left Lugar, a man who has long prided himself as a global expert, with the farm panel when the Senate returned to GOP control in 1994.

Since that time, Lugar has felt Helms has routinely snubbed him, refusing to appoint Lugar to key conference committees and sparring over major issues such as the Chemical Weapons Convention Treaty and the operations of the United Nations.

Sen. Thad Cochran (R-Miss.), a member of the Agriculture Committee, said Lugar's comments were likely a result of years of tension between him and Helms, but that Lugar would never "make a decision out of spite that would adversely affect anyone in America."

Cochran said he sympathized with Lugar's point about Helms's behavior, up to a point.

"In certain circumstances where the issue is one of importance and significance to the country, I think he has a good point," Cochran said. "This is not one of those issues."

One GOP leadership aide questioned Lugar's strategy: "If you want to play tit for tat, then the appropriate thing would be a nomination out of the Agriculture Committee. I don't think it's an equal tit for tat to threaten tobacco farmers in another state."

@CAPTION: Chairman Lugar suggested his Agriculture panel could retaliate.

@CAPTION: Senate Foreign Relations Chairman Helms
has offered no comment.

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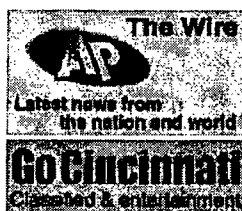
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Senators work to cut farmers in on tobacco deal

By Bill Straub, Post Washington Bureau

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

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

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

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

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

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

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

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

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

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The \$50 Billion Fiddle

Sunday, August 10, 1997; Page C06
The Washington Post

FRIENDS and foes of the tobacco industry in Congress left for the August recess in an uproar. The occasion was a series of concessions the industry had sought, and gained, during the endgame of the budget talks, concessions that raise anew the question of what should be treated as acceptable in the stitching together of an actual tobacco deal.

What mainly sparked the outcry is a provision slipped into one of the budget bills as an amendment to the cigarette tax increase, saying that the revenues from that tax will be credited against the \$368.5 billion over 25 years that the industry has pledged to pay as part of a settlement. This brazen whittling of some \$50 billion off the industry's overall liability is a reminder of how difficult it will be to make the agreement's targets stick -- others as well as the financial payment -- even if they pass as legislation.

The spectacle of an industry negotiating a once-and-for-all cap on liability and health care payment exposure on the one hand -- swearing that it will take the punishment in return for the stability -- while maneuvering with the other hand to lower that overall liability before the fact is not edifying. It reminds those boggled by the apparent generosity of the dollar figure and the sheer scale of the proposed agreement that a great deal can disappear in the fine print. That includes precisely those things that supporters of the deal see as an improvement over the status quo for the tobacco industry, should no deal pass.

The White House, getting wind of the \$50 billion fiddle, added it to a long list of provisions it considers troublesome and declared that any final dollar figure would merely have to add the \$50 billion to be deemed acceptable. But far more important -- and less amenable to simple reversal of this kind -- are the provisions being properly insisted on that would affirm Food and Drug Administration authority to regulate nicotine as a drug; disclosure requirements to offset the tendency of a global settlement to seal incriminating papers in the many pending court cases; and the array of restrictions on

advertising and marketing that alone go beyond what has already been won in court, including the industry's agreement to pay a kind of fine if smoking by young people fails to dip below certain levels.

A clever fiddle of a word or phrase in these areas could be a lot harder to reverse than this piece of financial slick dealing. It underscores the perils of the exercise -- and the sheer vastness of the field for possible mischief.

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'PRODUCTIVE' TALKS HELD ON TOBACCO DEAL

By From Tribune News Services

Web-posted Saturday, August 9, 1997; 6:04 a.m. CDT

Dateline: WASHINGTON, D.C.

Representatives of 11 public health advocacy groups gathered at the American Medical Association offices Friday to craft a response to the proposed \$368.5 billion tobacco settlement.

The four-hour session was "very productive," an AMA spokeswoman said, adding that the coalition hopes to deliver a statement to President Clinton by the end of next week.

The groups met at the behest of the AMA, the American Heart Association, the American Cancer Society and the Campaign for Tobacco-Free Kids.

The AMA has promised full lobbying support for the proposed settlement if unfettered Food and Drug Administration authority over tobacco regulations is ensured and penalties are toughened for tobacco companies that don't meet targets for cutting youth smoking.

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THE NEWS-OBSERVER
Saturday
 August 9, 1997

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 STORY**

LeBow pushes Liggett changes

'The bondholders are in the driver's seat'

By JOEL B. OBERMAYER, Staff Writer

Bennett LeBow, chief executive officer of Durham's Liggett Group, is pushing hard to restructure the company's debt by the end of this month, though his tactics earlier in the negotiations may have hurt his cause.

Discussions have been ongoing, with a conference call Thursday among the bondholders to consider LeBow's latest proposal.

Liggett missed a \$10 million debt payment at the end of last month and has until Sept. 1 to make good on the payment, secure an agreement with its bondholders or file for bankruptcy court protection.

Liggett, heavily weakened by its eroding market share, may be able to raise enough cash to make the payment, analysts said. But the company is likely to be crushed by a series of balloon payments, starting with \$38 million due in February, if LeBow is not able to work out a deal to restructure the debt.

"The bondholders are in the driver's seat," said Joel Luton, an analyst with APS Financial Corp. in Austin, Texas. "I think LeBow has a strong incentive to avert bankruptcy. ... Bankruptcy really ties his hands on a couple of fronts, including the global tobacco settlement."

LeBow has been lobbying Congress and the White House to exempt Liggett from the proposed tobacco settlement, in which U.S. tobacco companies would curb advertising and pay more than \$368 billion over 25 years in return for settling a series of lawsuits brought against the industry. LeBow has said the settlement would force Liggett into bankruptcy because it can not afford to make the payments required by the current deal.

He argues that an exception should be made because Liggett made the settlement possible last March by becoming the first major U.S. cigarette company to admit that cigarettes are addictive and cause cancer. Liggett also turned over internal industry documents to state attorneys general.

Eight of those documents were unsealed in a Florida court Wednesday. In the papers, tobacco company lawyers discuss destroying documents and thwarting scientific research on the dangers of smoking.

But a bankruptcy filing would derail LeBow's lobbying campaign.

"If he falls into bankruptcy now, he can't very well argue that this settlement is going to hurt him," Luton said.

Bankruptcy also could allow bondholders to take over Liggett's prized asset -- a stake in a fast-growing Russian cigarette manufacturer called Liggett-Ducat. By Liggett's calculations, Liggett-Ducat is worth \$90 million, and Liggett's stake could be worth more than \$228 million in a few years, after Liggett-Ducat completes a modern cigarette factory that will more than double its production capacity.

In June, LeBow's first proposal to bondholders was that Liggett

would miss its next two debt payments, a total of \$20 million, issue more bonds to bondholders and conserve the cash to invest in its Russian venture. LeBow also proposed that the balloon payments be pushed back by extending the maturity of Liggett's bonds to 2004.

Bondholders, mostly "vulture" investors who bought Liggett's bonds at 40 cents for each \$1 of debt, balked at the proposal.

"Let's just say it didn't go over particularly well. People were pretty angry," said one analyst, who asked not to be named. "The bondholders think they deserve some cash now. I don't think [LeBow] helped his position by floating a plan like that."

LeBow eventually came back with a proposal that bondholders have been considering.

Luton said it may include a cash payment in September, but would hold off on some payments later on.

Liggett employs about 400 workers in Durham.

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News: Analysis & Commentary

THE TOBACCO DEAL: SMOKE AND MIRRORS?

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

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

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

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

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

Worse, critics say as much as one-third of the money in the settlement won't

come from the tobacco industry at all: Some \$140 billion could come out of the pockets of U.S. taxpayers. That's because the agreement says all payments "shall be deemed ordinary and necessary business expenses"--meaning they are tax deductible. So the industry will get a tax break equal to about one-third of what it pays, or roughly \$140 billion. "This settlement represents the biggest single subsidy of the tobacco industry ever," says Stanton A. Glantz, a professor in the cardiology department at the University of California at San Francisco.

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

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

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

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

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

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

The ads contemplated in the settlement may also be vulnerable to an industry attack. In Massachusetts, which has an ad program like California's, the industry has lobbied to cut funds for the ads and has even threatened to sue the state for defamation, says Gregory Connolly, who oversees the Massachusetts Tobacco Control Program. "If you think the industry is going to sit back and let opponents run aggressive antismoking

ads without fighting back, you're crazy."

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

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

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

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BusinessWeek

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

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

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

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

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

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

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

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

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

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

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

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

-

Post reporter Peggy Kreimer contributed to this story.

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August 3, 1997

No Clear *Lessons* From *Tobacco Settlement*By **BARNABY J. FEDER**

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For the *tobacco* industry, how good is last month's deal to settle most of the legal and regulatory conflicts that have long depressed its stocks?

Health advocates, lobbying in Washington for the inclusion of more restrictions and bigger payments, are certain that the proposed *settlement* is far too sweet. From Wall Street's perspective, though, there are still so many unknowns that it would be foolish for investors in the industry to light up victory cigars.

Indeed, after *tobacco* stocks rose repeatedly on reports that a *settlement* was being negotiated, they fell after the deal, and, despite a modest recent rebound, have not regained their earlier levels.

Some of the decline undoubtedly resulted from investors locking in their profits from the stocks' rise earlier this year. Some also came from growing fears that the industry, in order to get a final deal, will have to take a much deeper hit than it initially negotiated. Even without those factors, though, investors face plenty of unknowns that make them cautious about the *settlement*.

Here are some of the key uncertainties:

Prices

The tax picture began to clear up last week, when Congress and the president agreed to a 10-cent-a-pack increase in 2000, and an additional 5-cent increase in 2002. But analysts are still uncertain how much *tobacco* companies will raise prices to help recoup the \$368 billion they would pay over a 25-year period under the agreement. Projected increases in the first year alone range from 36 to 50 cents a pack.

"I expect them to go after their compensation costs plus a little bit more," said Emanuel Goldman, an analyst at Paine Webber, who predicts wholesalers and retailers will add a couple of cents to the per-pack price.

Some analysts see additional price increases of 30 cents a pack or more in the next few years as the industry's annual compensation payments grow, for a cumulative increase of at least 35 percent. In general, each penny the industry adds to the price of a pack of cigarettes without losing sales generates an additional \$230 million in profits.

Smokers' Behavior

The rule of thumb has been that there is a 4 percent decline in the number of cigarettes sold for every 10 percent increase in price. Many analysts apply this formula to their projected price increases in the first year, but opinions vary on what could happen later.

Roy D. Burry, an analyst at Oppenheimer, argues that the people who don't quit after the first increases will be hard-core smokers -- and thus more likely to keep smoking when prices go up again.

Other analysts expect different attrition rates at different companies. Goldman figures that the popularity of Philip Morris's Marlboro brand will allow the company to hold the volume decline to 8 percent in the first year and 2 percent annually in later years, while the brands of R.J. Reynolds could decline 10 percent in the first year and 3 percent annually thereafter.

What about the broad marketing restrictions in the *settlement*, and the sharp increase in spending for stop-smoking programs? Most analysts doubt that these provisions will have any measurable effect on smoking rates. But they also say they could be wrong.

"We just can't estimate an impact for these things," Burry said. "It's going to a place we've never been."

And how much will the changes in the smoking rate affect the industry's performance? Retail *tobacco* sales are close to \$45 billion a year in the United States, and, assuming a price increase of 36 cents a pack, each 1 percent decline in unit sales would cost about \$540 million in retail revenue next year. About \$200 million of that would have gone to the manufacturers.

Savings

Some analysts say the *settlement* will lead to virtually no savings in legal and marketing expenses. However, Gary Black of Sanford C. Bernstein & Co. disagrees, saying the big spenders' savings could approach 20 percent. He estimated that Philip Morris alone could shave \$570 million from its marketing budget and \$50 million from its annual legal bills.

Overseas Business

Most analysts expect that, for the largest companies, the *settlement's* impact will be cushioned by growing overseas earnings. But Mark Duffy of SBC Warburg

in London, who follows BAT Industries, the British parent of the Brown & Williamson *Tobacco* Corp., warned that the *settlement* would stimulate litigation and regulation in other countries, driving down the value of the foreign operations of BAT, Philip Morris and R.J. Reynolds. Indeed, Duffy said he was tracking *tobacco* lawsuits in Australia, Brazil, Britain, Canada, France, Israel, Italy and Japan.

Earnings Multiples

Many *tobacco* companies have other businesses -- Philip Morris owns Kraft Foods and Miller Brewing, for example -- that can greatly affect their stocks. But the *settlement's* uncertainties are one big reason that *tobacco* companies have been trading at price-earnings ratios in the low to mid-teens, compared with an average multiple of nearly 24 for the Standard & Poor's 500-stock index.

Many analysts say the *settlement* will bring the earnings multiples closer to the market average. The translation: sharply higher stock prices. Some see the stock of Philip Morris climbing 30 percent or more over the next year, and the optimists are even more bullish about RJR Nabisco Holdings, the parent of R.J. Reynolds. But there are skeptics.

"The deal, if it goes through, is the worst thing that could ever happen to the industry because it would fall completely under government control," said John C. Maxwell, of Davenport & Co. in Richmond. "The multiple could actually fall."

The *settlement* could have other effects, but analysts call them too unclear to factor into their thinking. For example, brands that are losing money or are only marginally profitable may be killed quickly because *settlement* payments in coming years would be based on each company's share of overall sales, not on profitability.

In addition, entire companies could disappear or be drastically reshaped. The Liggett Group, the struggling *tobacco* unit of the Brooke Group, is likely to be acquired by a larger competitor, and some analysts expect the Loews Corp. to sell Lorillard, its *tobacco* subsidiary, or expand it through acquisitions or overseas alliances.

RJR Nabisco has promised to split off its Nabisco food subsidiary from its *tobacco* operations when the legal dust has settled.

But don't expect the *tobacco* companies to help investors sort out these and other uncertainties. They have been resolutely silent on the issue.

"Any indication we are planning to stay in business works against us," said a senior executive at one company on the eve of the announcement of the deal. These days, they just say "no comment."



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Letter From

TOBACCO COUNTRY FACES LIFE AFTER TOBACCO

The breeze that blows in from the stand of loblolly pines is hot, so there's no relief from the blazing Carolina sun. Steve Griffin bends over one of the chest-high tobacco plants stretching in straight rows in his dry field. He looks at the flowering top, touches a silky green leaf. "Nah," he says, "too early. Maybe next week, if we get some rain."

It's a critical time for Griffin's 100-acre tobacco crop. Spring was cool and wet on his 1,025-acre family farm in this Big Swamp community six miles north of the small town of Washington, on the eastern edge of North Carolina's tobacco belt. Then suddenly, summer's heat steamed in. Tobacco is a hardy plant that can take climatic extremes. But these days, it's the political winds that threaten North Carolina's tobacco crop. Growers have battled antismoking forces for decades, but now, with the proposed \$368 billion settlement between state attorneys general and cigarette makers, they're asking themselves if this is the end for them.

What's at stake for Griffin, 44, is two-thirds of his \$750,000 annual gross income. In a good year, his 100-acre tobacco quota brings in \$500,000, more than all his other products combined--cotton, peanuts, oats, corn, soybeans, timber, and wheat. "The deal may change, but in any event, it's bad for us. The question is just how bad," he says.

Cigarette manufacturers have a cushion in robust demand overseas, notably in Europe and Southeast Asia, which counters flat domestic consumption. And promising new markets are opening up in Russia, China, and Vietnam as smokers switch from heavy-tasting local brands to America's milder cigarettes. So tobacco companies are churning out more cigarettes than ever before.

But that's little comfort for growers such as Griffin. They face strong competition from farmers in Brazil, Zimbabwe, and China. Griffin fumes that if the tobacco deal kills U.S. demand by making cigarettes too expensive, U.S. cigarette makers, left with only overseas smokers, will shift wholesale to buying foreign tobaccos. It won't matter that foreign growers can't match the quality of the bright leaf grown in North Carolina or the rich burley from the Virginia and Kentucky foothills, he says.

There's also concern about what the agreement will do to the complex price-support system that keeps auction prices high. Under one of two surviving New Deal-era agriculture-support programs (the other is for peanuts), farmers are allotted a certain number of acres, usually 50, for tobacco. The allotments, which are enforced by the federal government, can be rented. The program started in 1938, when tobacco was a penny a pound, partly to squelch any attempts by cigarette makers to snatch up foreclosed farms and monopolize tobacco growing. Last year, tobacco was \$1.92 per pound. "The tobacco program tends to preserve small farms," says Blake Brown, a professor of agricultural economics at North Carolina State University in Raleigh.

But if the support program becomes a victim of political fights expected over the proposed tobacco deal, prices could drop by as much as 50 cents, driving many of those small farmers out of business. As a large farmer, Griffin probably could hang on, though his income would drop.

HOG WASTE. Griffin's greatest uncertainty, however, is what would happen if the settlement becomes a first step in banning tobacco outright. The Tobacco Belt's sandy, loamy soil, along with the hot humid climate, is perfect for growing tobacco. But it can't grow much else. There's cotton, but North Carolina farmers who have switched find that their quality can't compete with cotton from Texas, the country's biggest grower. And while Griffin plants 100 acres of cotton--the same acreage as tobacco--he makes only a fraction as much from it. Another possibility is livestock, especially hogs. Since 1990, hog farms have made their mark on the North Carolina landscape. But hog waste has begun spilling into the state's endangered estuaries. So there's a year-long moratorium on new hog farms.

As we walk along the rows of tobacco, Griffin stops at a plant to pinch off a shoot. A farmer needs to know the precise steps to take to boost nicotine and tar levels in the plants' leaves. Higher levels bring higher prices, he says. In a few days, he'll start "suckering," or pulling new leaf growths, from the tobacco plants and "topping," or lopping off the flowers. That will drive more nicotine and tar into leaves that will later be harvested, or "primed."

It's curious that so much rides on Griffin's ability to coax more nicotine and tar into his plants. Those chemicals, of course, are part of what has caused tobacco's problems. They help give smokers their addictive hit and sense of satisfaction--and they are part of the sooty mix of chemicals that kills 400,000 smokers each year. Companies pay top dollar for leaves high in tar and nicotine--the cause of lawsuits and antismoking restrictions--and later go to great lengths to reduce the content.

The irony doesn't escape the nonsmoking Griffin. His grandfather smoked with no problems, he says, but his father, a smoker and a tobacco farmer, died in 1978 at age 65 of lung cancer.

For generations, tobacco growing has been good to both North Carolina and Griffin, a North Carolina State math major who dropped out in the 1970s to farm. He nets about \$80,000 a year and recently put an addition on his house. He also has a new pickup. The tobacco crop is worth some \$22 million to 200 growers in Beaufort County, and \$1 billion to North Carolina, the leading tobacco state. When added to cigarette production, tobacco is worth \$12 billion, or 8% of North Carolina's economy.

BY-THE-DRINK. Such big bucks underscore some cultural peculiarities of the rural South. Beaufort County, for example, may have worshipped the

weed for decades, but it didn't allow liquor-by-the-drink until nine years ago.

Tobacco's economic clout was driven home to me in 1974, when I began my journalism career on the Washington Daily News in nearby Washington, N.C., population 10,000. My job included putting together a special edition celebrating the August opening of the local tobacco market. When Washington's four outlets came alive, money flowed. There'd be enough ads for 50 extra newspaper pages, and that kept me up well into the night writing feature stories to fill the space. Since then, as owners retired or died, the warehouses have closed. Today, there's no longer a tobacco edition of the paper.

As we finish our walk, Griffin and I seek the shade. He is pensive. In the proposed settlement, Griffin and some 134,000 other tobacco growers undoubtedly will get squeezed. And if the settlement leads to an outright ban on tobacco--an unlikely outcome that many of North Carolina's growers fear--Griffith says: "I can't make it farming."

By PETER GALUSZKA
EDITED BY SANDRA DALLAS

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Friday August 8 3:30 PM EDT

Judge throws out settlement against Liggett Group

CHARLESTON, W.Va., Aug 8 (Reuter) - A federal judge threw out a preliminary class-action settlement against tobacco company Liggett Group Inc, a unit of Brooke Group Ltd (BGL), court officials said Friday.

The settlement would have affected claims by millions of people who have smoking-related illnesses.

A clerk in U.S. District Judge Charles Haden's office told Reuters that Haden this week withdrew his decision to expand a lawsuit by Putnam County resident Earl Walker Jr., who is suing Liggett Group, based in Durham, North Carolina.

Walker smoked Liggett-brand cigarettes for many years and has lung cancer. Liggett Group manufactures Chesterfield, Lark, and L&M cigarettes.

Haden said in his ruling that a class-action case would have exposed Liggett Group to an excessive number of claims.

Haden had granted preliminary approval to the class-action settlement last May.

The settlement would have prevented smokers, victims of secondhand smoke, states that pay Medicaid bills for smoking diseases and others nationwide from suing Liggett Group for 25 years.

The company, in turn, would have paid 25 percent of its net pre-tax profits for the next 25 years to people suffering from smoking-related illnesses.

Attorneys for Walker and Liggett Group were unavailable for comment.

Separately, Haden scheduled a hearing on August 26 for Walker's lawsuit against the tobacco company.

More news for referenced ticker symbols: BGL, and related categories and industries: food/beverages, household, insurance, leisure, tobacco, stock capsules, international.

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Mintel.

August 10 1997

BRITAIN



Smoking rises from ashes as tobacco figures jump

by Edward Welsh

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Next page: Heroin history of shot boy's family

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Smoking Outlawed in Fed. Buildings

By Sandra Sobieraj

Associated Press Writer

Saturday, August 9, 1997; 11:00 a.m. EDT

WASHINGTON (AP) -- President Clinton outlawed smoking in all federal buildings today, but his executive order didn't banish smokers from government-owned doorways and courtyards.

"Our federal workers and the thousands of people who visit federal facilities will now be protected from the risk of secondhand smoke," the president said in his weekly radio broadcast from the Oval Office.

"Americans who've made the choice not to use tobacco products should not be put at risk by those who choose to smoke. With this step we're taking today, millions of Americans will be able to breathe just a little easier."

He gave agencies a year to comply. More than 15 federal agencies already ban indoor smoking.

An early draft of the executive order would have banned smoking within 50 feet of government buildings, but the final version had that aspect deleted. Administration officials suggested earlier this week that an outdoor ban would be included, but Clinton's order gives agency heads discretion to "evaluate the need" for such restrictions and impose them if necessary.

"After a lengthy review by the interagency process, we concluded it was better that that decision be left to the director of the agency," Rahm Emanuel, senior adviser to the president, said today.

Outdoor smoking will be prohibited only in front of building air-intake valves. Indoor smoking will be permitted in enclosed, separately ventilated areas.

"Secondhand smoke isn't just unpleasant. It is a risk to the public health," said Vice President Al Gore, who joined Clinton for the radio broadcast. "We've got to do more to protect people from secondhand smoke in our public places and clean up the air that all of us share."

Clinton's order would not affect offices outside the executive branch -- federal court buildings and congressional offices.

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Friday August 8 4:46 PM EDT

RJR Nabisco says 448 suits pending vs unit

NEW YORK, Aug 8 (Reuter) - RJR Nabisco Holdings Corp said Friday there were 448 active tobacco-related cases pending as of August 7 against its unit R.J. Reynold Tobbaco Co or its affiliates.

The figure compares with 203 cases pending in July 1996 and 68 in July 1995, RJR Nabisco said in a 10-Q filing with the Securities and Exchange Commission.

The cases include claims that lung cancer and other diseases as well as addiction have resulted from the use of or exposure to the unit's tobacco products, it said.

During the second quarter of 1997, 124 new suits were filed or served against the unit or its affiliates, compared with 44 in the second quarter of 1996, it said.

Of the number filed in the second quarter of 1997, 57 suits were dismissed or resolved in favor of the unit or affiliates without trial, it said.

Since the close of the second quarter, an additional 117 suits have been filed or served and 14 dismissed, it said.

Of the cases pending as of August 7, it said 443 are in the U.S., one in Canada, three in Puerto Rico and one in Guam. The U.S. cases are filed in 44 states, of which 179, the biggest number, are in Florida, it said.

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

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Friday, August 8, 1997

TOBACCO

Tobacco Ad Spending Rose in '95, FTC Says

(Bloomberg News)

Tobacco companies spent \$62 million more to advertise and promote cigarettes in 1995 than they did the previous year, but U.S. sales of the product fell. In its annual report to Congress, the Federal Trade Commission said tobacco companies spent \$4.9 billion in 1995, up 1.2% from 1994. The bulk of that money was for promotional expenditures, which totaled \$1.87 billion. Companies sold 482.2 billion cigarettes to U.S. wholesalers and retailers in 1995, down 1.6% from 1994--the only year since 1985 when sales showed an increase. The FTC uses industry data to track tobacco ad expenditures as part of its mandate to restrict unfair advertising practices.

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Tuesday, August 5, 1997

U.S. suspects rules violations in tobacco deals

Inquiry involves support program

BY GREG EDWARDS
Times-Dispatch Staff Writer

The U.S. Farm Service Agency has launched a preliminary inquiry of Virginia tobacco dealers and warehouse operators suspected of violating federal price-support rules for flue-cured tobacco.

Don Davis, director of the U.S. Department of Agriculture's Richmond FSA office, said letters should go out toward the end of the week to those who appear to have broken the rules. The suspected individuals, he said, will be asked to attend a hearing and explain how their actions do not amount to rules violations.

Nelson Link, the agency's state tobacco specialist, said the inquiry involves the apparent purchase of tobacco from farmers at some warehouses at levels above government quotas without the required marketing penalties being collected. The three marketing years the agency is looking at are 1990-1992.

When farmers sell more than 103 percent of their quotas in a given year, warehouses are required to deduct a penalty from the purchase price amounting to 75 percent of the established support price. The penalties from the years being looked at range from \$1.25 to \$1.29 per pound of tobacco.

Davis said his agency is not ready to release information on the number of warehouses involved or the amount of money involved, but he said it was a "substantial" sum. "We've had some dealer problems before, but nothing of this magnitude," he said.

If the preliminary indications of violations prove true, they pose a threat to the integrity of the tobacco support program, Davis said. Asked whether farmers or others might be involved in the apparent violations, Davis said most of the problems appear to have originated with the dealers.

Virginia currently has 23 active flue-cured tobacco warehouses, but not all are involved in the suspected activity, Davis said. Coincidentally, the 1997 flue-cured tobacco marketing season kicks off today in Danville, with the first day of warehouse sales.

The Farm Service Agency has similar inquiries under way in the Carolinas and Georgia, Davis said. Letters began going out to North Carolina warehouse operators yesterday.

Harry Lea, operator of the Piedmont Warehouse in Danville and president of the Virginia Flue-cured Warehouseman's Association, said he was unaware of any federal inquiry into rules violations in Virginia. "I would assume they would have notified the operators of any violations," he said.

An investigation in North Carolina and Virginia three years ago netted 18 people who pleaded guilty to selling more than 26.4 million pounds of excess tobacco, according to government investigators.

That scheme involved farmers, warehousemen and dealers. Farmers who had excess tobacco, because its sale was illegal, offered it to warehouses below market value. Dealers, who bought the tobacco, sold it at market prices, making a substantial profit. Farmers and dealers were found not to have reported the income to the Internal Revenue Service.

[Tobacco: Up in smoke?](#) | [Metro Business](#) | [Business](#)

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Tax Deal Reasserts Tobacco Industry's Clout

Amendment Would Ease Sting of Per-Pack Cost Increase by Funneling Funds to Pay Settlement

By Sandra Torrey

Washington Post Staff Writer

Monday, August 4, 1997; Page A06

The Washington Post

The amendment slipped into the Taxpayer Relief Act of 1997 was only a few scant lines, but it spoke volumes about Big Tobacco's clout in Congress.

Over the past few weeks, what began in the Senate as a 20-cent increase in cigarette taxes was whittled down to 10 cents per pack, rising to 15 cents in 2002 -- even though the House had wanted no tax at all. Then came the amendment meant to take even more sting out of the tax hike.

The plan would allow the tobacco industry to use revenues raised by the tax as a credit against the proposed \$368 billion national tobacco settlement, which still must be approved by Congress. The amendment was inserted so quietly that sponsors of the tax increase were taken by surprise, and when it was discovered, no one in Congress was willing to claim authorship.

Late Thursday, as the tax bill sailed through the Senate, Sen. Edward M. Kennedy (D-Mass.), who co-sponsored the cigarette tax, denounced the amendment as the "Joe Camel tobacco loophole," and Sen. Richard J. Durbin (D-Ill.) complained that the tobacco industry had "pulled a fast one" by effectively reducing its commitment to pay for smoking-related illnesses.

House Minority Leader Richard A. Gephardt (D-Mo.) called the amendment "an absolute outrage" and charged it was put in the bill "by the Republican leadership in the dead of night." Appearing on NBC's "Meet the Press," he said President Clinton should excise it with a line-item veto. The White House said Friday the provision may not be subject to the line-item veto law and that any settlement with the tobacco industry may need to be increased to

offset the tax-bill provision.

Sen. Orrin G. Hatch (R-Utah), co-sponsor with Kennedy of the tax hike, called the amendment "stupid" and said it would not result in any credit in the settlement. "I am sure that is what they were trying to do," he said. "But they did a very poor job."

Still, the episode marked the third time in recent days that tobacco interests had flexed their muscles in Congress. First, legislators from tobacco farming states preserved a federal crop insurance program against assaults in the House and Senate. Then, they beat back measures in both chambers to provide \$34 million to the Food and Drug Administration to enforce under-age smoking bans.

While the industry denied any role in the crop and FDA issues and bridled at the notion that it had worked magic on what one industry source called a "burdensome" tax hike, others acknowledged it was not a bad run for a lobby that is supposed to be on the ropes. "When you consider how politically incorrect it is to defend the industry and how everybody is after it," said Rep. Wayne Edward Whitfield (R-Ky.), "we did extremely well."

Some people saw tobacco's success as a preview of what could happen as Congress takes up the proposed national tobacco settlement when it returns next month. From Wall Street to Washington, observers echoed a single theme.

"Big Tobacco still swings a heavy club around here," said Sen. Tom Harkin (D-Iowa). Industry analyst Gary Black marveled that the outcome of the tax hike spoke "loudly that the industry still has plenty of friends on Capitol Hill."

It needs them.

The intricate, multi-faceted tobacco settlement is unlike anything the tobacco industry or anyone else has ever tried to push through Congress. It is the product of three months of intense negotiations among the industry, many state attorneys general who had sued the companies and a coalition of trial lawyers. The 68-page settlement has yet to be crafted into legislation, and, according to a source who was involved in the talks, the task has turned out to be a nightmare.

If and when a bill is introduced, it may have to pass muster with as many as six committees in the Senate and an undetermined number in the House. Every stop on the way to a vote creates danger for the deal's proponents, said a lobbyist who is working against the settlement. "There are all these opportunities for obstructionists in the committees, for a filibuster in the Senate or scores of other ways to mess it up."

While the White House continues its review of the settlement, in which tobacco companies agreed to pay

\$368.5 billion and to submit to federal control over the way they make and market cigarettes, the companies are girding for battle.

In addition to its veterans, the industry has brought on fresh lobbying forces in an effort to improve its grim image. The tobacco companies hired the Washington law firm of Verner, Liipfert, Bernhard, McPherson and Hand, putting former Senate majority leader George J. Mitchell (D-Maine) and former Texas governor Ann Richards (D) on their team. Meyer Koplow and Arthur Golden, lawyers more accustomed to Wall Street than Pennsylvania Avenue, have been signed up as Washington persuaders, too.

The team already is hitting the pressure points. Last week, for instance, at the National Governors' Conference in Las Vegas, former Republican Party chairman Haley Barbour, now a Washington lobbyist, was talking up the settlement, and Richards was at the conference, as well.

"It hasn't been heavy lobbying, but there have been talks," said Wisconsin Gov. Tommy Thompson (R), who is asking the governors to form a panel to study the proposed deal.

At the same time, the industry has kept up the flow of campaign contributions that reached \$9.9 million during the 1995-96 election cycle, according to a study by Common Cause. In the first five months this year, the nation's major tobacco companies pumped more than \$550,000 into Democratic and Republican party organizations, with the bulk going to the GOP, according to the latest Federal Election Commission reports.

Political action committees (PACs) associated with the companies raised \$740,000 from employees and contributed more than \$400,000 to candidates and political organizations this year, according to the FEC.

"They have a built-in constituency," said Durbin. "Plenty of members would like to say, 'Sure, I took their money, but when I had the chance, I voted for the public health.'"

It is too early to predict the outcome of what is sure to be a monumental battle over the deal. Many legislators are waiting for completion of the White House review and for Clinton to announce his position. He already has called proposed restrictions on the government's authority to regulate nicotine "totally unreasonable."

Many questions remain unanswered. If the White House proposal greatly strengthens that authority, will the companies still favor the deal? If the White House does not, will support from public health groups evaporate? Will a way be found to satisfy members of Congress from tobacco states, who are crucial to passage of any settlement but are angry over being ignored in the deal?

"It is totally up in the air, chaotic and confused," said Kentucky's Whitfield of the settlement's future in the House. Sen. Wendell H. Ford (D-Ky.), who would play a major role in steering any deal through Congress, was more optimistic. "I have gotten the message that they [the White House] want to be helpful to the farmer," Ford said. If the farm issue is resolved and if senators "don't try to load up [the deal] so much that it falls of its own weight, I believe it can be passed, but it will be tight."

Even Durbin, no friend of tobacco, said he fears the settlement has attained such weight and notoriety that "this is almost a too-big-to-fail situation now."

But some staunch tobacco foes have other ideas, and they have potent allies. The Association of Trial Lawyers of America, a major contributor to Clinton and the Democratic Party, opposes the deal because it gives the industry unprecedented protections against lawsuits. The lawyers maintain it violates the rights of victims and sets a dangerous precedent.

Despite tobacco's legendary skills on Capitol Hill, the industry also has a weakness: Tobacco has been successful at killing legislation, said House and Senate aides, but it has never tried to get anything passed.

Tobacco supporters who pushed the tax bill amendment last week may have erred. The move has reinvigorated an underlying distrust of the industry and soured potential allies.

"It was a stupid thing for the companies to try to do, but they won't get away with it," Clinton's domestic policy adviser Bruce Reed said.

Massachusetts Attorney General Scott Harshbarger, a settlement supporter, said the amendment gave him pause. "This latest stunt should serve as a wake-up call to those who are trusting Congress to strengthen the agreement . . . that the attorneys general negotiated," he said. "It's a good thing the attorneys general are still pursuing their lawsuits. Maybe that's our only realistic hope for protecting children, improving the public health and repaying the taxpayers."

Staff writers Peter Baker, Ceci Connolly, Susan Schmidt and John Schwartz and researcher Nathan Abse contributed to this report.

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White House Comments



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Monday August 4 10:31 AM EDT

Clinton seen acting on tobacco deal in September

WASHINGTON, Aug 4 (Reuter) - President Clinton is not expected to make a decision on whether to approve the \$368.5 billion tobacco settlement until he returns from his vacation in early September, the White House said Monday.

"If the review is complete before he leaves on his vacation, he may get it," White House spokesman Mike McCurry told reporters. "I don't anticipate him actually acting on the proposed recommendations by his review group until he returns in September."

Clinton is expected to leave for vacation on the resort island of Martha's Vineyard off the coast of Massachusetts in the middle of this month and return about September 7.

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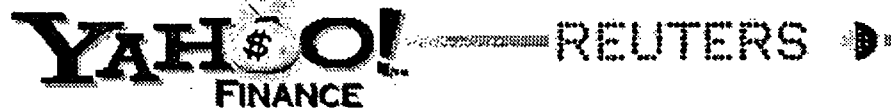
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Monday August 4 8:14 AM EDT

White House says tobacco deal not tough enough

WASHINGTON, Aug 4 (Reuter) - An adviser to President Bill Clinton said on Monday the \$368.5 billion tobacco deal between states and the tobacco industry needs to be toughened to include stiffer penalties against tobacco companies.

The White House also wants greater power given to the Food and Drug Administration to regulate tobacco as a drug, said Bruce Reed, domestic policy adviser to the president.

"It needs to be strengthened in some key ways," he told NBC's "Today" program. "We need to make sure that we give the FDA the full authority it needs to do its job."

Giving the FDA that power, Reed said, was "central to our ability to reduce smoking and reduce nicotine addiction over time."

He said one problem the White House had with the current proposal, which calls for the tobacco companies to pay states more than \$368.5 billion over 25 years, was that it did not go far enough in penalizing tobacco companies if they fail to reduce the number of teens who smoke.

"The agreement calls for financial penalties if the company comes up short in reducing teen smoking," Reed said.

"We think they need to be strengthened. There's some question as to whether those penalties should be tax deductible as they are in the proposed settlement but we think we can come up with a very tough agreement."

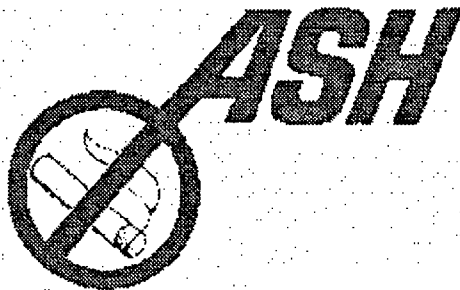
He told NBC the White House was currently talking to public health experts to make recommendations to the president. He said Clinton would then review the proposal and make a statement on it within "the next month or so."

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A National Legal-Action Antismoking Organization

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FREE-BASING OF NICOTINE[8.4.1]

New Study Confirms Need for FDA Jurisdiction

A new study confirming that ammonia can substantially boost the impact of nicotine in cigarettes has just been released. It reinforces previous findings of the FDA and, even more importantly, shows the critical need for the FDA to retain its full authority to regulate tobacco products. "The chemical process used to treat nicotine with ammonia, known as free-basing, is similar to that used to produce the powerful, highly addictive form of cocaine known as crack," researcher James F. Pankow reportedly told the Washington Post. Excerpts from that report follow: A new study provides new evidence that ammonia can dramatically boost the impact of nicotine in cigarettes.

The research provides confirmation of assertions made by the Food and Drug Administration, both in 1994 congressional testimony and in its landmark tobacco regulation. The FDA cited widespread use of ammonia compounds in cigarette manufacturing as evidence that the industry manipulated nicotine delivery in tobacco products. The agency relied in part on that finding when it asserted jurisdiction over cigarettes.

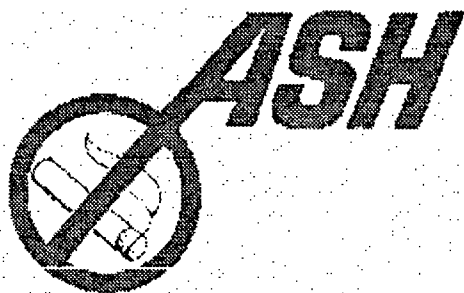
"It [the new study] confirms what we had heard before -- that ammonia is added solely for the purpose of enhancing the nicotine," said Rep. Henry A. Waxman (D-Calif.), who held the 1994 hearings. It underscores the fact that the FDA's got to be able to regulate nicotine as a drug" in tobacco products, a key point of contention in the settlement proposal now being debated in Congress.

The new research, by James F. Pankow of the Oregon Graduate Institute of Science and Technology, is being published in *Environmental Science and Technology*, a journal of the American Chemical Society. Pankow conducted a series of laboratory studies to explore how ammonia compounds affect the chemical properties of nicotine.

The chemical process used to treat nicotine with ammonia, known as free-basing, is similar to that used to produce the powerful, highly addictive form of cocaine known as crack, Pankow said.

When Kessler testified about ammonia, and about a secret Brown & Williamson Tobacco Co. program to develop a high-nicotine tobacco plant, Kessler said the findings "lay to rest any notion that there is no manipulation and control of nicotine."

"We were relying on basic laws of chemistry and the industry's own documents." Still, Kessler said, "it's important to have the science confirm what we said."



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MORE COMPANIES FOLLOW ASH'S LEAD AND CHARGE SMOKERS MORE FOR HEALTH INSURANCE[08.04.2]

ASH has long advocated for differential insurance premiums for smokers and nonsmokers. In 1984, ASH even helped persuade the National Association of Health Commissioners (NAHC) to call for higher health insurance premiums for smokers, a move which is now being called visionary.

Today employers are increasingly charging smokers more as noted in the following excerpts from **USA Today**:

Companies increasingly are charging tobacco users more than their nonsmoking co-workers for health insurance, a new survey finds.

Nearly 25% of large companies charge smokers higher premiums, up from less than 10% in 1992, the survey by Hewitt Associates shows.

U-Haul and Texas Instruments tack on an extra \$ 10 to \$ 50 a month. But a handful of aggressive companies are charging double, says Camille Haltom of Hewitt.

10-year-old data suggest that insurance claims for smokers average 18% more.

Texas Instruments charges \$ 10 more a month per smoker, which doesn't come close to covering the additional costs, says Marsha McCabe, health promotion director. "If you look at absenteeism, it's just incredible," she says.

"At the outset, it was revolutionary," says spokeswoman Janet Cooper of U-Haul, one of the first companies to differentiate seven years ago. "Now it's seen as visionary."

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Posted: Tuesday, August 5, 1997 at
2:56 AM

Tobacco jury pool shows bias

By SCOTT GOLD Staff Writer

Questionnaires filled out by the first 120 of 334 prospective jurors in the state's billion dollar lawsuit against Big Tobacco show that for the most part, they think cigarettes are downright foul.

Jury selection, a process that is expected to take nearly a month, is 3 days old, but has revealed some harsh opinions about cigarettes and the \$45 billion industry that manufactures them.

So few of the potential jurors smoke, and so many despise smoking, that the leader of Florida's trial team questioned on Monday whether tobacco could get a fair trial.

So many could be dismissed for their biases, said West Palm Beach attorney Bob Montgomery, that a pool of 334 might not be enough.

"I'm very concerned . . . about the prejudice these jurors have vs. tobacco," said Montgomery, who will choose the jury and play a critical role in the trial. "If there is any doubt that they are fair and impartial they cannot serve. We're going to have a very difficult time getting a fair and impartial jury."

Of 28 potential jurors screened by Monday, 12 remain eligible for the six-person jury. The state is seeking to recover \$1 billion in Medicaid funds spent treating poor people who contracted diseases linked with smoking, such as emphysema and lung cancer.

On Monday, some potential jurors were dismissed because the trial, which could last until the end of the year, would spell financial disaster for them. One was excused because he is starting his junior year at the University of Florida this fall.

Others, however, were dismissed because they said they could not sidestep personal prejudice and weigh the case sheerly on the evidence.

"I'm pretty much entrenched against tobacco companies," Stephen Thurrott, 62, a potential juror, told Palm Beach County Circuit Judge Harold J. Cohen.

In her 11-page questionnaire, Theresa Mangines, 46, said that she has never smoked -- "and resents the effects my father's smoking has had on my health."

According to 120 questionnaires released on Friday, when the trial started:

- * Seventy people, or nearly 60 percent, say smoking brought health problems for themselves, a family member or a close friend.

- * Nineteen people, or 16 percent, described themselves as daily or even occasional smokers. According to the U.S. Centers for Disease Control, 25 percent of adults smoke.

- * Of those 19, eight say it has damaged their health. Seven want to quit.

- * More than three quarters, or 76.6 percent, say they avoid smokers while they eat, and 62 percent said they avoid smokers "in general."

"It was just amazing to me," Montgomery said. "It was very revealing."

Although the questionnaires showed some hostile reactions toward smoking, a large number of people said they had quit smoking. That could hurt the state's case.

According to the questionnaires, 48 of 120 potential jurors have kicked the habit. That's 40 percent, far more than the 16 percent of Americans who describe themselves as former smokers.

In general, tobacco companies seek former smokers on juries, because their ability to quit undercuts charges that cigarettes are too addictive to quit.

In Florida's case, tobacco has been barred from arguing that smokers are aware of the risks of cigarettes.

But tobacco attorneys still might attempt to raise the issue during the trial.

Justus Reid, an industry attorney from West Palm Beach, said on Monday that biases should not stand in the way of picking a fair jury.

"We think people are too smart to fall for that sort of thing," Reid said.

"Everyone has opinions on everything. You have to set those opinions aside."

Retail

August 5, 1997

Tough Climate May Be Kind to Smoke Shops

By BARNABY J. FEDER

CHICAGO -- When Mildred Lockhart ran out of Salems, she used to pay \$3.10 for a new pack at a newsstand in the Loop skyscraper where she works as an accountant. These days, though, Ms. Lockhart walks half a block in this city's central business district to the new Cigarettes Cheaper shop, where her Salems cost just \$2.39.

"It's even less than at the convenience store near my home on the South Side," she said. "It would be great if there were more places like this."

Chances are good there will be. Even though the nation is preparing to restrict cigarette retailing, shops that sell little but cigarettes at discount prices -- once found mainly just over the borders of cities and states with high tobacco taxes -- have been rapidly colonizing urban storefronts and suburban strip malls. Tobacco is anything but a growth industry in America, but the cigarette stores are betting that the harsher climate will stoke demand for specialized retailing, just as "category killer" vendors have emerged for things like toys and books.

Cigarette shops serve one goal of tobacco foes by diverting sales of cigarettes from stores frequented by children. But health authorities fret that they also give smokers a way to dodge the impact of the price increases envisioned in the tentative \$368 billion settlement with tobacco manufacturers.

In 1992, there were only about 400 such stores, handling a little more than 1 percent of cigarettes sold. By last year that had jumped to around 4,500 outlets, accounting for 11 percent of sales, according to R.J. Reynolds Tobacco Co., the nation's second-largest tobacco company, after Philip Morris Cos.

"This is the way cigarettes should be sold everywhere," said Ned Roscoe, vice president of the family-owned Premium Tobacco Stores Inc., which owns the three-year-old Cigarettes Cheaper chain. The company, based in Benicia, Calif., has 390 stores in eight states in the West and Midwest.

Although such specialty stores have for the most part shied away from states like New York that have high state cigarette taxes, Roscoe says he plans to be in the top 20 metropolitan markets, including the New York area, in the next year and a half.

But Roscoe and other industry insiders say new cigarette stores are opening at a slower pace this year, amid the uncertainty about tobacco regulation. Cigarettes Cheaper, which has expanded most aggressively, has been unable to agree with potential investors on terms for financing more growth. And some supermarkets and convenience stores are providing tougher competition by building "stores within stores" featuring tobacco.

The future of the \$45 billion domestic tobacco industry, however, clearly includes tougher restrictions on marketing and higher prices. And both trends could give the cigarette stores a new leg up on less focused competitors like grocers -- and even on convenience stores, which have doubled their share of tobacco sales to nearly half the market since 1984.

"The cigarette stores are on the launching pad," said Kenneth Harris, a consultant who follows tobacco retailing for Cannondale Associates of Evanston, Ill. One of their main advantages, he said, is that they are typically adult-only enterprises with better-than-average track records on avoiding sales to minors.

"It may ultimately make licensing and preventing youth access easier," said Dr. David Burns, a researcher at the University of California at San Diego, who has been an adviser to plaintiffs' lawyers in tobacco litigation.

But there is concern about the health impact of the cigarette stores' low prices. Analysts figure the tobacco pact would drive average prices up anywhere from 20 percent to 40 percent as the industry passes along the settlement costs. Some smokers would respond by switching to cheaper brands, but health officials hope millions of others will smoke less or quit, as they did after past price increases.

They worry that the proliferation of cigarette stores promoting bargain prices on premium brands like Marlboro and Camel may offer many smokers a deadly alternative -- avoiding some or all of any price increase by switching where they shop.

Tobacco manufacturers will not comment on any possible impact of the settlement, including this one.

But other vendors will have a lot to say about whether cigarette stores continue to grow rapidly, said Brian Stockdale, vice president for wholesale and retail trade marketing at R.J. Reynolds in Winston-Salem, N.C., a unit of RJR Nabisco Holdings.

"Most of the outlets are in the same shopping strips and malls as grocery stores because grocers aren't pushing the category," Stockdale said.

Indeed, many grocers have pulled the plug on tobacco promotions to avoid offending nonsmokers. They have also kept prices up to maintain traditional tobacco profit margins of more than 20 percent and have cut back on easy customer access to tobacco to control theft and sales to minors.

Cigarette stores say that any restrictions on marketing will be easier for them to adapt to because nothing they sell is meant for minors; if they successfully keep minors out, for instance, they will not have to take down signs and other tobacco-company promotional materials that other stores will no longer be able to display.

The grocery share of tobacco sales fell from 36 percent in 1988 to 18 percent last year as first convenience stores and then the new tobacco shops stole business. Unlike convenience stores, which usually sell a pack at a time, cigarette stores appeal more directly to grocery store customers, who tend to purchase cigarettes by the carton.

Many drugstores have become even more reluctant than grocers to push tobacco, in part because they have frequently been attacked as hypocrites for selling such a deadly product along with medicine.

At the Walgreen drugstore just half a block from Cigarettes Cheaper's Madison Street outlet here, Marlboros cost \$2.85 a pack, compared with \$2.15 at the tobacco shop.

Tobacco sales at that Walgreen are off noticeably since Cigarettes Cheaper moved in, said Michael Polzin, a spokesman for Walgreen Co. But Walgreen, the nation's largest drug chain, is sticking with its premium pricing, limited display racks, ban on tobacco advertising and promotion and a standard layout that allows only cashiers to reach the cigarettes.

"We carry cigarettes strictly as a convenience for our customers," Polzin said.

Convenience stores are expected to fight much harder to retain their share of the market. "It's 25 percent to 30 percent of their merchandise revenue," said Hugh Houghton, director of the National Advisory Group, a Florida trade group for independent convenience stores. "They can't afford to let that go."

Many convenience stores will simply cut prices to the bone to hang on to customers, but other convenience stores, like some grocers, are building "stores-within-a-store" to attract smokers and keep minors away. "At the end of this reshuffling, I think convenience stores will gain market share," said Gus Olympidis, president of Family Express Corp., a chain of 26 convenience stores based in Valparaiso, Ind., that, in a test, is building glass-enclosed tobacco shops in two of its stores.

Cigarette stores typically sell cigars, chewing and pipe tobacco and tobacco-related books and magazines as well as cigarettes; most also carry a limited selection of gum, candy and drinks. But the business is driven by the nicotine cravings of the nation's 46 million cigarette smokers.

Stores like Cigarettes Cheaper keep prices low in part by selling an average of about 1,000 cartons a week, more than five times the volume of the average convenience store. Many keep operating costs to a minimum by relying on a single employee working a 10- or 11-hour day to run an entire store. And they

"We have a philosophy of being very courteous and giving smokers the dignity

they deserve," said David Bershof, a Denver entrepreneur, who has organized a consortium of nine tobacco distributors called Smoker Friendly International that operates 125 outlets from California to Pennsylvania.

The Cigarette Store, a 25-store California chain based in Modesto, advertises its friendliness by doling out dog biscuits to customers who show up with a canine companion.

Cigarettes Cheaper is the industry's brash enfant terrible. The Roscoe family, operators of a discount grocery business, opened its first cigarette store in October 1994. John Roscoe, the family patriarch and an outspoken libertarian, has used the stores as a platform to rail against Government interference with the rights of adults to pursue private vices. That has not stopped the company from also publicizing a "model ordinance" that would restrict tobacco sales to shops like Cigarettes Cheaper as a way of regulating sales to minors.

What grabbed attention in the industry, though, is not such public relations high jinks but Cigarettes Cheaper's decision to go for rapid expansion based on exclusive marketing agreements with Philip Morris. That move defrayed some initial development costs and now assures the chain unbeatable prices on Marlboro, by far the nation's best-selling cigarette, and other Philip Morris brands.

All the cigarette signs in its stores and on its fixtures feature Philip Morris brands, even those on racks carrying rival brands, like the Salems favored by Ms. Lockhart, which are made by R.J. Reynolds. In the Loop store visited by Ms. Lockhart, Marlboro gear and Virginia Slims clothing provide both decoration and prizes for drawings.

Philip Morris, with more than half the market, says that the same arrangements have been offered to any retailer that wants to emphasize its brands. Most balk, though, because such deals require them to forgo some promotional support from the other manufacturers.

"If we participate in all the Philip Morris promotions outside the exclusivity, we can match Cigarettes Cheaper on Marlboro about eight months of the year and be cheaper on everything else," said James Reed, president and owner of Patton Vending Machines Inc., which owns the Cigarette Store chain in California. (An unrelated, larger chain based in Boulder, Colo., operates under the same name in other areas, including the Midwest and the Rocky Mountain states.)

The rapid expansion of Cigarettes Cheaper has had its drawbacks. It has led to

missteps that have already forced it to close more than 20 stores.

Ned Roscoe conceded that some problems exist, like the fact that pay, which includes a share of operating profits above certain levels, is low at new stores. But managers in stores open two years or more in California earn as much as \$45,000, he said. He readily agreed with the criticism that the growth rate had outpaced the company's management skills. Growth has slowed sharply, though, following the failure to work out financing for an expansion to 500 stores by the end of last year.

Roscoe and other entrepreneurs in the field agree that future rapid expansion is far from a given. "The low-margin, high-volume tobacco business is much more difficult than it appears," said Roscoe. "It's extremely competitive."

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[Click here](#)**FEATURE - Marlboro Cowboy rides on...in Africa**

09:53 p.m Aug 03, 1997 Eastern

REUTERS **By Matthew Bunce**

ABIDJAN, Aug 4 (Reuters) - The Marlboro Cowboy may be riding into the sunset in rich countries with anti-smoking campaigners snapping at his heels.

But in Africa, with its vast horizon and its young and rapidly expanding population, there is no sign that anyone is looking to run him out of town any time soon.

"Africa is one of the areas now being targeted by multi-nationals," says World Health Organisation (WHO) smoking analyst Barbara Zolty. "It's already started."

Cigarette companies are scrambling to Africa's emerging markets from South Africa to Ivory Coast.

"The market is growing hugely. **Tobacco** companies have nowhere to go with legislation in their own backyard," said one expatriate advertising man arriving in West Africa -- once dubbed the white man's grave after fever and other tropical horrors that killed early explorers, traders and missionaries.

Brands are fighting for a share of markets like Nigeria, black Africa's most populous country with 100 million people.

New kiosks and umbrella stalls selling cigarettes and sweets seem to appear each day by the roadside in Ivory Coast's commercial capital Abidjan.

Youngsters outside colleges or on street corners draw on their cigarettes with studied disdain. Struggling taxi drivers increasingly ask: "Do you mind if I smoke?"

TIGHT U.S. CONTROLS

In the United States, the Marlboro Cowboy and Joe Camel, a cartoon animal promoting cigarettes, are endangered species.

The U.S. **tobacco** industry, after a long-running legal wrangle in June bowed to tighter federal legislation on advertising and agreed to pay \$368.5 billion in damages for smoking illnesses and prevention.

"Marlboro Man will be riding into the sunset on Joe Camel," Florida's Attorney-General Robert Butterworth commented wryly.

Not in Africa. Marlboro's square-jawed cowboys on billboards or as part of in-store promotions encourage Africans to smoke.

~~Jeps emblazoned with Marlboro and the P&G brand names~~ turn up deep in tropical forests, where even Coca-Cola Co (KO.N) is rare.

The U.N. Children's agency UNICEF wants first-world safeguards in ~~other world markets, with bans on ads targeting burgeoning youth~~

third-world markets, with bans on ads targeting burgeoning youth populations.

~~populations.~~

Most African countries have few real safeguards. In some, **tobacco** growing is a major part of the local economy. Many state **tobacco** monopolies deal directly with global **tobacco** firms.

“They need partners like us to bring truly international brands to the party,” one regional manager told Reuters.

AFRICA HAS MORE PRESSING HEALTH CONCERNS

WHO data on smoking exists for only seven of 51 African states, or one-third of the region's population.

An estimated 33 percent of African men and 10 percent of women smoke daily, compared to world averages of 47 and 12.

Industry research suggests African smokers light up 10 times a day on average, against 22 in rich countries. Algerians smoke the most. Nigeria has the largest sales volume but industry eyes are also on South Africa and emerging markets like Ivory Coast.

At present, Africa has more immediate health problems to tackle -- malaria, AIDS, yellow fever, cholera and tuberculosis.

“If people live longer we will start to see cardiovascular problems, diabetes and cancer,” says Ivory Coast's WHO representative Dr Emmanuel Eben Moussi. “At present, these are masked by high mortality from first category diseases.”

The WHO expects 70 percent of all smoking deaths to be in developing countries by the mid-2020s, from one-third now.

Francophone African markets, with populations totalling about 62 million

people, shrank by around 30 percent in late 1980s and early 1990s. Many devalued their CFA franc common currency in 1994 as part of efforts to revive their economies.

Sales managers say most countries have yet to turn around. One said sales had grown by up to six percent a year, but added: "We are certainly not back to the levels in the mid-1980's."

Smokers in Africa tend to buy cigarettes one, two or three at a time, depending on income, against two to three packs a day for Europeans and booming carton sales in Asia.

"Market growth can look big but you are starting from a tiny base," says one sales manager. "About 96 out of 100 people want single sticks (cigarettes)."

AFRICAN CRACKDOWN IN THE MAKING ?

Last October South Africa threatened to ban all **tobacco** advertising unless cigarette warning laws were respected. WHO's Zolty points to South Africa as a role model.

Brand managers say laws are tightening -- from packet warnings about nicotine or tar to bans on smoking in public -- but policing is slack. "It is as if it did not exist," one said.

Low-tar brands have captured few hearts. "Anti-smoking adverts just don't penetrate," Eben-Moussi said.

But brand managers expect more legislation. "It's going to happen in the next two years," one sales manager predicted.

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Monday August 4 12:15 PM EDT

Mexico's two richest men cut back on cigarettes

By David Luhnnow

MEXICO CITY, Aug 4 (Reuter) - Mexico's two richest men both built their empires in part from tobacco, but recently sold off big stakes in their cash-cow cigarette businesses to global tobacco firms within weeks of each other.

So do Carlos Slim and Alfonso Romo, together worth \$8.6 billion according to Forbes magazine, know something that the buyers, tobacco giants [Philip Morris Cos Inc \(MO\)](#) and B.A.T Industries Plc (BATS.L), do not?

Not necessarily, say analysts. Slim and Romo simply want to make money faster than the slow-growing cigarette business will let them and to hedge against the troublesome tobacco industry.

"They both got a good deal....and can put the money to good use in other areas," concluded Alexander Ryshawy, an analyst at Paribas in New York.

In early July, Slim's Cigatam SA, part of his conglomerate Grupo Carso (CARA1.MX), got \$400 million in exchange for allowing U.S.-based Phillip Morris to raise its stake in the firm from 29 to 50 percent.

Three weeks later, Philip Morris' rival B.A.T said it would dole out \$1.7 billion to buy Romo's Cigarera La Moderna (CLM), part of his conglomerate [Empresas La Moderna \(MDAA.MX\)](#) (ELM).

Philip Morris and B.A.T were keen to get back into Mexico, where they once competed before being sidelined by government restrictions on foreign investment in the 1970s.

They now want to cash in on a growing market that is largely unaffected by the industry's legal woes in the U.S. and Europe. Both companies may also use Mexico as a platform for exports to other Latin American nations, analysts say.

Slim and Romo struck similar deals. Carso sold its share for about 13-14 times yearly cash flow but kept a voice in the joint venture's management, while Moderna sold for about 15-16 times but relinquished control of the business.

The most obvious difference between the deals is that Romo appears to be exiting the cigarette business altogether while Slim has only reduced his exposure.

But both deals made good business sense.

In the case of Romo, an agronomist by training, the tobacco business allowed him to diversify La Moderna and build an agrobiotechnology empire that he believes will pay handsome future dividends.

"Clearly, La Moderna's exit from the cigarette business is due to Romo's leadership. He sees an opportunity in agrobiotech and wants to focus his efforts there," Francisco Chavez of Smith Barney in New York said.

The B.A.T deal gives La Moderna, already the world's largest producer of vegetable seeds, a war chest for new agrobiotechnology purchases, analysts say.

Not to be outdone, Slim locked in a partnership with Philip Morris and the right to distribute its market-leading Marlboro brand to 2020.

Cigatam's rights to Marlboro had been due to expire in two years, and some analysts had wondered aloud whether Philip Morris might dump Carso and go it alone in Mexico.

Carso will use the money in part to pay down debt from recent acquisitions, including Sears, Roebuck and Co's (S) Mexico division, but it will keep a stake in the cigarette business to help fund new ventures.

"Carso is always getting into something new. They buy it cheap and turn it around and everyone else wonders why they didn't do it first," Chavez said.

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Sunday, August 3, 1997

Big Tobacco Threatened by New Disclosures

By HENRY WEINSTEIN, Times Legal Affairs Writer

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

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

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

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

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

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

Several judges who have reviewed some of the internal documents in chambers have said they show evidence of serious misdeeds. Four of the five decisions involve what have come to

be known as "the Liggett documents"--material that was turned over to judges in 20 states after the cigarette-maker Liggett Group reached a settlement with those states in March.

* * *

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

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

The recent rulings being fought by tobacco forces:

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

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

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

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

* In a suit in Kansas City, Kan., by David Burton, who suffers from vascular disease, a federal magistrate in February ordered R.J. Reynolds Tobacco Co. to turn over 32 "special projects" documents. Company lawyers contended that all the documents are privileged because they contain confidential attorney-client communications. But the judge ruled that none

of the documents was entitled to such protection, and he noted that three of them "may contain evidence that RJR knew during the relevant time period that nicotine was addictive."

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

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

* * *

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

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

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

* * *

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

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

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

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

Minnesota Atty. Gen. Hubert H. Humphrey III, a vocal critic of the proposed nationwide settlement, says some of these documents are "smoking howitzers" and has urged members of

Congress and the White House not to make a final decision on the settlement without reviewing at least some of them. Humphrey has urged two Senate committees to subpoena the key Minnesota documents--about 500,000 pages--and has told the senators that his attorneys could provide a road map to the key documents.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

As a sign of how fiercely the industry is resisting, lawyers for Florida have had to file 75 separate motions to compel the production of documents after its initial requests were rebuffed by industry attorneys.

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

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

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Will Tax Rise Curb Teen Smoking

By Laura Meckler

Associated Press Writer

Sunday, August 3, 1997; 11:58 a.m. EDT

WASHINGTON (AP) -- Congress is raising the tobacco tax this year, in part to keep teens from lighting up. But 15-year-old Suzanne Kane, hanging out with friends on a summer evening, laughs it off.

"Whether you're smoking to be cool or you're chain smoking, 15 cents is not going to make a difference," says the Washington teen-ager, reflecting skepticism not only among her peers but among lawmakers who wanted a higher tax but were forced to compromise.

The balanced budget plan President Clinton will sign Tuesday increases cigarette taxes by 10 cents in the year 2000 and another nickel in 2002 -- much less than the 43 cents backers originally sought.

The money will help pay for a new children's health program. But the effort's twin goal -- to reduce teen-age smoking by raising prices -- may not fare as well.

"Part of the goal was to increase the tobacco tax so significantly that kids would stop buying cigarettes, and we didn't get that this year," said Rep. Nancy Johnson, R-Conn., who sponsored the tax in the House.

But Johnson argues that getting any cigarette tax increase through Congress was an important first step nevertheless.

"We've broken through a barrier on this issue," she said. "When we need more money, that's where we're going."

Teen smoking has edged up in recent years after falling during the 1980s. Now, one in five teen-agers smokes and 3,000 teens pick up the habit each day. About nine in 10 adult smokers began smoking as teen-agers.

Health economists estimate that for every 10 percent increase in price, the number of teen smokers will drop by about 7 percent, and teens who keep smoking will smoke 6 percent less.

That means a 15-cent tax translates to barely perceptible 5 percent fewer teen smokers.

"You would need a very sensitive seismograph to pick up any ripples from this," said Richard Daynard, a Boston Northeastern University School of Law professor who studies tobacco.

Teen smoking will not drop significantly unless price increases are paired with tougher rules and other changes, says Health and Human Services Secretary Donna Shalala.

Looking for models, many point to California and Massachusetts, where smoking rates dropped after tax hikes combined with big anti-smoking efforts. Both states saw overall smoking rates drop, and teen rates stayed even as they climbed nationally.

In California, a 35-cent-a-pack tax increase was combined with a media campaign, restrictions on vending machines and laws prohibiting smoking in public places. One TV ad shows a woman smoking through a hole in her neck. Billboards parody the Marlboro cowboy, with one rancher telling the other: "Bob, I've got emphysema."

Cigarette prices vary widely because of differing state taxes, which range from 2.5 cents a pack in Virginia to \$1 in Alaska come this fall.

Nationally, prices may soon spike up by 50 cents to 75 cents if a proposed tobacco settlement is approved by Congress. Backers hope the increased prices -- combined with restrictions on sales and ads -- would help cut teen smoking by 60 percent in 10 years.

But teen-agers interviewed over the last week said they smoke because older friends and siblings do, and because it makes them feel sophisticated.

"Teen-agers are teen-agers. They're going to do what they're going to do," said Jupiter Dockery, 19, who tucks a cigarette behind his ear as he tosses a hacky-sack ball around with friends.

Like most smokers, Jupiter began smoking young, when he

was 12 years old.

"Smoking's a big bonding thing," said one teen-ager who didn't want her name used. Munching pizza with friends on a restaurant patio, she mentions actress Julia Roberts, who smoked through the recent hit "My Best Friend's Wedding." The actress, she said, looked "really good" with a cigarette.

Her friend, Marina, proudly displays an antique silver cigarette case and said she hopes to acquire a fancy cigarette holder so she might look like Audrey Hepburn.

"You get an element of sophistication," said Marina, 14. She smokes, she added, even though she has asthma and has seen friends and family suffer from smoking-related diseases.

Neither girl wants her parents to know she smokes. But neither seems concerned about becoming hooked, or future bad health.

"If I don't stop by 25, that's a problem," said a 15-year-old. "The ads don't make a difference. The money doesn't make a difference.

"If you paid kids not to smoke," she added, "that would make a difference."

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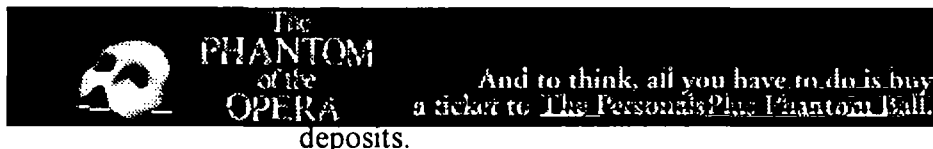
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All the stories inside the "A" Section of this morning's Washington Post.

Top Regulatory Posts Remain Unfilled

Dozens of Federal Jobs Are Vacant as Politics Bog Down Appointment Process

By Cindy Skrzycki

Washington Post Staff Writer

Saturday, August 2, 1997; Page A01

The Washington Post

William B. Gould IV, chairman of the National Labor Relations Board, may soon find it very lonely at the top: By the end of the year, he could well be the only member left on the five-seat board, which resolves disputes between organized labor and management.

That's because two members of the board are on abbreviated "recess" appointments that end when Congress shuts down for the year, probably in late fall. A third seat has been vacant since February and another has been open since August 1996.

The NLRB is an extreme example of how the process of making presidential appointments to some of the independent regulatory agencies has become bogged down in politics, posturing and gamesmanship between the Democratic White House and the Republican-controlled Senate.

Seven months into President Clinton's second term, there are almost four dozen unfilled jobs at the top levels of the independent federal regulatory agencies that are responsible for the day-to-day work of government, such as making policy decisions and issuing rules on a wide variety of health, safety, environmental, workplace, telecommunications and business issues.

According to a White House tally, there are 109 positions on boards and commissions at independent regulatory agencies that require Senate confirmation. Sixty-three of

those positions are filled; for the other 46, 15 nominees are awaiting Senate confirmation, and the White House has not nominated candidates for 31 slots that are open or are expected to come open soon. A few positions have been open for years.

Rep. Christopher Shays (R-Conn.) said at a recent oversight hearing of the NLRB, it's "a pretty pathetic situation." Rep. Tom Lantos (D-Calif.) chimed in: It's "an appalling state of affairs."

The White House said it is lining up nominees all the time and that the work of the agencies is getting done. But, on average, it now takes nine months to get a candidate off the president's short list of recommendations to nomination and Senate confirmation.

"It's important to Democrats, Republicans and the general public that nominations by the president get acted on so individuals can serve or get on with their lives if they don't get confirmed," said Robert J. Nash, assistant to the president and director of presidential personnel. "This process is tough and complicated but, by and large, the system works."

Some of the agencies operating at less than full power include:

The Federal Communications Commission, which on July 9 deadlocked in a 2-to-2 vote on whether to open an inquiry into advertising by liquor companies on television, because the fifth commission seat is vacant. The position, reserved for a Democrat, has been open for more than two years. The Democratic chairman of the FCC, Reed E. Hundt, has been outmaneuvered for months because he lacks a Democratic majority.

The Food and Drug Administration, which is facing the most controversial regulatory challenge in its history -- the effort to regulate tobacco -- and has been without a commissioner since David A. Kessler departed the post in February. In the meantime, the agency is being run by a management troika with Michael A. Friedman designated as lead deputy commissioner.

At the Office of Thrift Supervision, which regulates the nation's savings and loans, Nicolas P. Retsinas has been doing triple duty since last October as interim head of the OTS and as assistant secretary of the Department of Housing and Urban Development and a Federal Housing

Administration commissioner. As director of the OTS, he also serves as a board member of the Federal Deposit Insurance Corp., which oversees the safety of bank deposits.

The five-member Securities and Exchange Commission, which regulates the nation's stock exchanges, has one vacancy and one outgoing commissioner, Democrat Steven M. H. Wallman, who is expected to leave around Labor Day. His term officially expired in June. The vacant seat has been open since November 1994.

The decisions made by these and other independent agencies affect everyday issues. For example, the rates Americans pay for cable television and telephone service are influenced by the FCC. The prices consumers pay for office supplies will be affected by the the Federal Trade Commission's recent vote to block the combination of Staples Inc. and Office Depot Inc.

The numbers and political persuasions of board members make a difference to business. In the case of the FCC, two commissioners who are serving as "holdovers," Republican Rachelle B. Chong and Democrat James H. Quello, have been able to impede action on issues that the Clinton administration has been pushing such as increasing children's programming on TV networks and investigating TV liquor advertising.

At the FDA, a lobbyist for the medical devices industry bemoaned the loss of Kessler, saying "a vacuum has been created" and the current management structure isn't as interested in pushing for independent testing of some new medical devices.

"These appointments to boards and commissions are important because they are the guts of government, doing the work of the government," said G. Calvin Mackenzie, professor of American government at Colby College and an authority on the presidential appointment process. Over the years, Mackenzie said, these spots have become more important as the issues that the agencies consider have become highly technical with broad impacts on the economy.

Unlike Cabinet-level posts where appointees serve at the pleasure of the president, appointees to boards and commissions are drawn from both parties and serve for set terms with staggered expiration dates. Having seats not filled with the president's nominees can result in deadlocks

on votes, postponement of action on important issues, or members of opposite parties voting together just to keep the board functioning. Under the individual laws that created each of the agencies, there are provisions for how the appointment process works and how the seats are divided between the parties.

The same factors that have plagued the appointment process for jobs in the judiciary and Cabinet-level departments have slowed the selection of nominees for independent agencies.

The administration continues to be concerned with picking nominees with diverse racial and cultural backgrounds. After embarrassing first-term missteps in picking appointees who had legal or ethical problems, the White House said it is doubly careful about checking potential nominees' backgrounds for professional and personal liabilities.

Finally, there is a tendency, experts in the appointment process said, to "package" several nominations for an agency, rather than send names to the Senate individually. This means there are lengthy negotiations between the White House and Senate Republicans to come up with a group of nominations that can win confirmation.

For the five-member FCC, for example, two nominations were sent to the Senate in May. The administration decided last week to nominate William E. Kennard, the agency's current general counsel who is African American, as chairman, and later send along the nomination of Gloria Tristani, a Hispanic, for two Democratic spots.

Sen. John McCain (R-Ariz.), chairman of the Commerce Committee, supported Michael Powell, son of retired Gen. Colin L. Powell, for a Republican seat, and the administration nominated him on Thursday. Sen. Ernest F. Hollings (D-S.C.) supports Ralph Everett, his former chief of staff, for chairman. The Senate has not acted on the May nomination of Harold Furchtgott-Roth, chief economist for the House Commerce Committee, for one of the Republican seats.

Another factor slowing the nomination process is that the administration, in its eagerness to win Senate confirmation for its nominees, has agreed to let Senate Republicans take the lead in naming candidates for Republican slots, many of which have been slow in coming. A White House official noted that the Senate majority leader's office has not

forwarded its picks for the NLRB.

"It is difficult to get nominees who will satisfy diversity needs, have the requisite expertise and skills, be politically pleasing to the president, capable of passing the severe scrutiny of their private lives and, lastly, [be] willing to undergo this horrendous process," said Jeremy Mayer, professor of political science at Kalamazoo College in Michigan.

As a result, sometimes talent is spread so thin that senior-level people, such as Retsinas, are holding multiple jobs. In one case at the Agriculture Department, Congress prompted the White House to nominate someone for a top food safety regulatory position by threatening to cut off funding for the job.

Sometimes Republicans step in to help. At the FDIC, Andrew C. "Skip" Hove, a Republican, has been acting chairman since former FDIC chairman Ricki Helfer, a Democrat, left on May 30. Hove filled in three times before, including during the period when Helfer was awaiting Senate confirmation.

This kind of management worries Robert Pitofsky, chairman of the five-member FTC, which has two openings and a third coming up in September.

Pitofsky said a surfeit of openings at an independent agency causes an "inevitable gaming of the process" where a business regulated by the agency calculates when it's best to press its issues, depending on how many seats are vacant or who's in the seats.

The FTC's openings include one lame-duck commissioner, former chairwoman Janet D. Steiger, a Republican whose term ended in September 1995. Commissioner Christine A. Varney, who was serving a term that expired last September, recently announced her departure. Commissioner Roscoe B. Starek III's term ends in September.

The administration has been waiting since January for the Senate to act on its nomination of Sheila Foster Anthony for one of the seats.

Other names sent to the Senate at the beginning of the year and still awaiting action include George Black, a Republican who has been nominated for another term on the National Transportation Safety Board, and Ellen S.

Seidman, special assistant to the president for economic affairs, who has been nominated to be the OTS director.

The Surface Transportation Board, which has two of three seats filled, already is working to prepare for a vote next April on the proposed \$10.2 billion takeover of Conrail Inc. by Norfolk Southern Corp. and CSX Corp., the largest takeover of a railroad ever to come before the board. The third seat has been open since J.J. Simmons left in 1996.

"They are hard at work on this thing and the longer you wait, the harder it is for someone to come up to speed," said Frank Wilner, former chief of staff for Republican Commissioner Gus Owen. "This is the fewest number working on a railroad proceeding since 1920."

An analysis of the caliber of political appointments by political scientists B. Dan Wood and Richard Waterman showed that appointees have "extraordinary influence" over policy -- and ultimately they increase the power of the president.

This was well understood in the Reagan White House when appointments were made with dispatch.

"If you don't have people in place to run the agencies, you don't control the policy," said E. Pendleton James, assistant for presidential personnel to President Ronald Reagan. James said Reagan believed it was important to be ready to nominate so that "the president announces a replacement -- at least for the senior posts" the day after a vacancy occurs.

The uncertainty that comes with having openings at agencies affects the natural order of things in Washington.

"The problems mushroom and multiply when you don't have a full commission," said one telecommunications lobbyist, who asked not to be identified. "It affects their voting because they [commissioners] are more reluctant to make the calls on the controversial orders. They get more concerned about not offending potential employers or clients."

Sometimes, the problems are not readily apparent because members with expired terms "hold over" until a replacement is found, as is the case at the SEC, FCC and FTC. The placeholder may be a Republican or someone the Bush administration put in the job.

Similarly, appointees who were put in place by the

president during a congressional recess -- which means they serve for a short time but bypass Senate confirmation -- might be hampered in doing their jobs.

Members of the Senate, for example, have complained to NLRB Chairman Gould that two board members, Democrat Sarah Fox and Republican John Higgins, are voting in important cases despite their temporary status as recess appointees. The White House nominated Fox on Jan. 9, and she is awaiting Senate confirmation.

Robert E. Moffit, deputy director of domestic policy studies for the Heritage Foundation, said lapses such as these cause a problem of accountability because career bureaucrats have to manage and make crucial decisions when appointees aren't in place.

"The consequence of this is bad government," said Moffit. "Personnel management has not been key for this administration. They just aren't good at it."

NATIONAL LABOR RELATIONS BOARD

On board: William Gould (D), Chairman

Appointed March 3, 1994; term expires Aug. 27, 1998.

In TRANSITION:

Sarah Fox (D)

Recess appointment Jan. 19, 1996; term expires at the end of the congressional session; has been renominated.

John Higgins (R)

Recess appointment Aug. 30, 1996; term expires at the end of the congressional session.

VACANT: Two seats.

FEDERAL COMMUNICATIONS COMMISSION

On board: Susan Ness (D)

Appointed May 20, 1994; term expires June 30, 1999.

In TRANSITION:

Reed Hundt (D), Chairman

Appointed Nov. 22, 1993; term expires June 30, 1998;
announced plans to resign May 27, 1997.

Rachelle Chong (R)

Appointed May 20, 1994. Term expired June 30, 1997;
now a holdover.

James Quello (D)

Appointed July 1, 1991. Term expired June 30, 1996; now
a holdover.

VACANT: One seat.

FEDERAL TRADE COMMISSION

On board: Robert Pitofsky (D), Chairman

Appointed April 7, 1995; term expires Sept. 25, 2001.

Roscoe Starek (R)

Appointed Oct. 22, 1990; term expires Sept. 25, 1997.

Mary Azcuenaga (I)

Appointed Nov. 25, 1991; term expires Sept. 25, 1998.

In TRANSITION:

Janet Steiger (R)

Appointed Aug. 4, 1989. Term expired Sept. 25, 1995;
now a holdover; may be renominated.

VACANT: One seat.

WHERE THEY STAND

The status of the 109 presidential appointments at
independent regulatory agencies that require Senate
confirmation:

Agency Vacant

(No. of or awaiting

appointments) Appointed Nominated nomination*

Commodity Futures

Trading Commission (5) 3 0 2

Consumer Product

Safety Commission (3) 3 0 0

Environmental

Protection Agency (14) 9 0 5

Equal Employment

Opportunity Commission (5) 3 1 1

Farm Credit

Administration Board (3) 3 0 0

Federal Communications

Commission (5) 1 3 1

Federal Deposit

Insurance Corp. (3) 2 0 1

Federal Election

Commission (6) 2 1 3

Federal Energy

Regulatory Commission (5) 3 0 2

Federal Housing

Finance Board (4) 1 0 3

Federal Reserve System (7) 5 2 0

Federal Trade

Commission (5) 3 1 1

National Labor

Relations Board (5) 1 1 3

National Mediation

Board (3) 2 0 1

National Transportation

Safety Board (5) 3 1 1

National Credit Union

Administration Board (3) 1 2 0

Nuclear

Regulatory Commission (5) 4 0 1

Occupational Safety and

Health Review

Commission (3) 1 1 1

Postal Rate Commission (5) 3 1 1

Securities and Exchange

Commission (5) 3 0 2

Small Business

Administration (4) 4 0 0

Social Security

Administration (3) 1 1 1

Surface Transportation

Board (3) 2 0 1

Total 63 15 31

* Includes members serving in terms that have expired or are about to expire, or who have announced plans to resign.

SOURCE: White House
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POLITICS & POLICY

Tobacco-Funded Group Gives Legislators Free Trips

By TATIANA S. BONCOMPAGNI
And JILL ABRAMSONStaff Reporters of THE WALL STREET JOURNAL
For a member of the Mississippi legislature, Charlie Williams gets around.

In the past two years, Mr. Williams has gone to Spain, Belgium, Australia and Costa Rica, all courtesy of the New York Society for International Affairs.

In June, Mr. Williams and a small group of officials from other states spent five days in Costa Rica, including a stay at the posh Melia Playa Conchal resort, where they were treated to a jungle boat safari. The New York Society paid for everything, including accommodations for their guests.

Mr. Williams is happy to have his international education underwritten by the society. The 53-year-old Tate County Republican, who has served in the Mississippi legislature since 1975, hopes to win the GOP gubernatorial nomination in his state in 1999. If he makes it to the governor's mansion, he'll have to push Mississippi exports into the global marketplace. If he loses, it might be to Mike Moore, the state's brash Democratic attorney general who filed the landmark lawsuit against the big tobacco companies.

Therein lies one reason why a New York international affairs society would assiduously court a Mississippi state legislator.

The nonprofit New York Society, it turns out, receives almost all of its funding from Philip Morris Cos. Mr. Moore, who helped his state collect the first installment on a \$3.4 billion settlement with the tobacco industry to recover costs from smoking-related illnesses, has been a major thorn in Philip Morris's side. Mr. Williams opposes the lawsuit Mr. Moore filed against Big Tobacco and says, "It is unfair that the state can go to court and sue when tobacco is a legal entity that has paid taxes."

No Strings Attached

With some states toughening their ethics laws and corporate junkets attracting unflattering press attention, the trips sponsored by the New York Society provide a vehicle for lawmakers to travel without any special-interest strings showing. A few years ago, for example, Mr. Williams drew criticism for letting Philip Morris pay his way to the Super Bowl. And the trips give Philip Morris, under fire from the attorneys general of more than 20 states, the possibility of finding new allies at the state level.

The society recruits its trip-goers through two political organizations, the

Council of State Governments and the National Governors Association. Mr. Williams is the chairman-elect of the CSG, a bipartisan group of state legislators. A spokeswoman for the CSG says the trips "provide our members with a wonderful opportunity," and says she thinks the New York Society has diverse funding.

Andrew Whist is president of the society. In an interview, he says he helped launch the group years ago with the late David Morse, a labor lawyer who once led the International Labor Organization. The 63-year-old Mr. Whist says the organization aims to promote international trade and says it has underwritten 18 trips for governors and various state officeholders.

In Costa Rica, besides Mr. Whist, there were three other representatives of the New York Society, including Kevin Callahan, its director, a younger woman who was introduced to the legislators as an intern, and another person whose name seems to have escaped his travel companions' minds.

Headquartered in a Chair

Other basics about the organization are also difficult to pin down. Where is the New York Society for International Affairs headquartered? At first, Mr. Whist supplies an address on Madison Avenue. The doorman at the address knows nothing of such an organization. It's a residential building. During a second interview, Mr. Whist concedes that the New York Society's office is "a chair in my apartment."

Mr. Whist also has a chair at Philip Morris, where he has worked since 1966. He now serves as senior vice president for external affairs, in which capacity, the company says, he advises it on international trade issues. Mr. Callahan also works at Philip Morris, right under Mr. Whist in the external affairs department. The New York Society intern who went to Costa Rica? She, too, works at Philip Morris. And that shadowy figure on the Costa Rica trip was Ed Beauchemin, a high-profile Philip Morris lobbyist in Austin, Texas. Two Texas state legislators also made the trip.

Philip Morris's Contributions

Mr. Whist rejects the suggestion that the New York Society's trips are thinly veiled tobacco junkets. "I have never spoken or lobbied about tobacco on the trips," he says. "There's a great wall," he maintains, between his international charitable activities and his Philip Morris duties. But he declines to disclose anything about the group's funding and claims to have "thousands" of private sponsors. A spokeswoman for Philip Morris also declines to divulge the company's contributions.

Mr. Whist acknowledges that Philip Morris was responsible for most of the \$370,000 in 1996 contributions the society

sought the reversal of the policy on arms sales to Latin American nations. They got a boost when Chile indicated it intends soon to replace its fleet of aging military jets. The country plans to buy about 20 aircraft, plus spare parts and trainers. John Biehl, the Chilean ambassador to the U.S., said in a telephone interview Friday. At current prices for F-16s, that purchase would amount to more than \$500 million. French and Swedish jet makers also are expected to compete for the Chilean business.

Eager to limit the controversy over lifting the ban, the governments involved are projecting only limited arms sales, but U.S. companies are hoping for more sales there over the long term. For example, plane makers expect Chile to follow its

Guest List

State officeholders who were guests of the New York Society for International Affairs, June 13-19, in Costa Rica

- Rep. Charlie Williams, Mississippi
- Rep. Bob Starks, Florida
- Rep. Jody Richards, Kentucky
- Rep. Steve Gaw, Missouri
- Rep. Carol Donovan, Massachusetts
- Sen. Manny Aragon, New Mexico
- Sen. David Cain, Texas
- Sen. Kenneth McClintock, Puerto Rico
- Sen. Ray Powers, Colorado
- Sen. Jeff Wells, Colorado
- Sen. Jeff Wentworth, Texas
- Lt. Gov. Oletha Walker, Utah

reported on tax records on file at the New York Attorney General's office, and says the company has also given in previous years. Philip Morris has also been a top contributor to the Council of State Governments and the National Governors Association.

Most of the legislators who have traveled on the New York Society's dime say they didn't ask questions about who was funding their trips; they assumed it was the CSG or the NGA. When questions were raised by the Milwaukee Journal Sentinel last week about three trips sponsored by Mr. Whist taken by Wisconsin Gov. Tommy Thompson, the governor said he knew nothing of a Philip Morris connection and that he might not have gone if he did. Kentucky's Speaker of the House, Jody Richards, who traveled to Spain, Belgium

and Costa Rica with Mr. Whist, also says that he knew nothing about the funding. "My invitation came from the CSG. So far as I know, it was their show," Mr. Richards says.

Even the New York Society's titular chairman, former Sen. Charles Mathias of Maryland, says he isn't "specifically" certain about the group's funding. "I'd pass on that question," he says. Mississippi's Mr. Williams says he knew that Mr. Whist worked at Philip Morris, though he views the trips as being sponsored by CSG.

Marlboros in Goblets

A few travelers on the Costa Rica trip did take notice of the ubiquitous cigars and cigarettes. "At most dinners, Marlboros were displayed in crystal goblets and fine cigars were given out during the 10-course dinners."

Joyce Brinkman, Indiana's state treasurer, says all the smoking "bothered my nose. I am a nonsmoker and not happy about being around smoke." State Sen. Manny Aragon of New Mexico, who is a smoker, concedes, "I may have smoked one or two of those Marlboros."

Back in Mississippi, Mr. Moore regards as "disturbing" the trips that Mr. Williams and Kirk Fordice, the Republican governor who tried to block Mr. Moore's lawsuit, have taken courtesy of the New York Society (Gov. Fordice went on an African trip). Trey Bobinger, an assistant attorney general and spokesman for Mr. Moore, says, "The tobacco industry is continuously working to influence elected officials across this country." He says the industry is "looking for a counterbalance" to Mr. Moore's leadership in the fight against tobacco. Mr. Williams, nonplused, says, "more people die of fat each year than from tobacco."

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Clinton Ends Latin America Embargo, Opening Way for U.S. Arms Suppliers

By THOMAS E. RICKS
And JEFF COLEStaff Reporters of THE WALL STREET JOURNAL
WASHINGTON — President Clinton lifted the 20-year-old embargo on arms sales to Latin America, a move eagerly awaited by Lockheed Martin Corp. and Boeing Co., which want to sell fighter jets to Chile.

"In the last decade, Latin America has changed dramatically from a region dominated by coups and military governments to one of democracy and civilian control," the White House said in a statement released late Friday. Henceforth, it said, requests for arms sales to Latin American nations will be considered on a "case-by-case" basis.

U.S. defense companies interpreted the

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sensitive and would drop sharply if prices
rose.

The committee's chairman, Republican
Orrin Hatch of Utah, said he believed that
despite continuing criticism, a "con-
sensus" was developing in Congress in
favor of the settlement, with some minor
modifications. Mr. Hatch told reporters
later that he thought the deal could still be
approved by Congress this year, although
the Republican leadership on the House
side has thus far displayed little enthusi-
asm for it.

Biogen Sues Amgen, Claiming Violations Of Three of Its Patents

By a WALL STREET JOURNAL Staff Reporter

BOSTON—Biogen Inc. has sued Amgen
Inc. in U.S. District Court here alleging
violations of three of its patents in connec-
tion with the manufacture of Infergen,
Amgen's new drug for the liver disease
Hepatitis C.

Amgen is awaiting FDA approval for
the drug, which will compete with Biogen's
alpha interferon product. Schering-Plough
Corp., of Madison N.J., has a world-wide
license to make and market the Biogen
product, which it calls Intron A.

In the suit, Biogen, of Cambridge,
Mass., asks the court to enjoin Amgen, of
Thousand Oaks, Calif., from infringing its
patents. The suit also requests compensa-
tion and triple damages for what it terms
"willful" infringement of the patents. Am-
gen spokesman David Kaye declined com-
ment on the suit, saying the company has
not yet seen it. Infergen, he said, is a
naturally occurring compound devel-
oped by Amgen scientists in the 1980s.

Jay B. Silverman, an analyst at Robert-
son Stephens & Co. in New York, says the
suit won't have much effect on Amgen,
even if it loses. He estimates that Infergen
will have sales of \$25 million to \$50 million
in its first year on the market, and \$100
million by the third year.

"Amgen is going forward with approval
and launch," Mr. Silverman said. "The
worst-case scenario is that Biogen could
get a royalty out of Amgen."

That royalty would likely be a percent-
age in the lower single digits, he said.
Biogen received \$181.5 million in royalties
in 1996, much of it from sales of alpha
interferon.

and outside of Congress.

Tobacco Companies Lose a Key Argument Prior to Florida Trial

WEST PALM BEACH, Fla. (Reuter)—

In a key ruling two days before Flor-
ida's widely watched lawsuit goes to trial,
a state judge said tobacco companies can't
use public knowledge of the dangers of
cigarette smoking as a defense.

Lawyers for both sides said the ruling,
by Palm Beach Circuit Judge Harold Co-
hen, would have a significant impact on
the tobacco industry's ability to defend
itself against Florida's multibillion-dollar
lawsuit, which seeks to recover the Medic-
aid costs of treating smoking-related ill-
nesses.

"It means they have no defenses," said
W.C. Gentry, a lawyer representing the
state. "By this ruling the only thing they
can try to prove is that cigarettes don't
cause disease, the product wasn't defect-
ive, that they couldn't make a safer
cigarette."

Jury selection in the trial is scheduled
to begin tomorrow, with testimony ex-
pected to start in early September.

Lawyers for the tobacco companies,
arguing what evidence can be presented to
the jury selected to hear the case, wanted
to claim that the only way the state should
be able to recover damages was if it could
prove that Medicaid recipients were de-
ceived as to the dangers of smoking.

"If not, there can be no injury," Peter
Bleakley, an attorney for Phillip Morris
Cos., said. He said Judge Cohen's ruling
"seriously impairs our ability to defend
ourselves, here or elsewhere."

"The ruling is wrong," Mr. Bleakley
said. "The plaintiffs should have the bur-
den of proving what we did caused in-
jury." He said the judge's ruling could be
grounds for reversible error should the
case go to an appeals court.

Chaparral Board Approves Offer

MIDLOTHIAN, Texas — Chaparral
Steel Co. said its board approved the
recently increased offer from Texas Indus-
tries Inc. to buy out the shares of the
company that Texas Industries doesn't
already own.

during a period when he was wiring
to the U.S. that ended up in Dem-
Party coffers, records show.

The records, requested by the
Governmental Affairs Committee
ago, were delivered by the White H
5 p.m. EDT on Tuesday, hours af-
end of a lengthy hearing focus-
the businessman, Ng Lap Seng. The
of the disclosure prompted an ang-
burst from Chairman Fred Thomps
Tenn.), who said it was part of a pa-
"obvious attempts to slow things
until his panel's investigation of car-
abuses ends on Dec. 31.

Mr. Ng was the source of most
\$1.4 million sent from overseas to
cratic fund-raiser Yah Lin "Charlie"
who gave \$220,000 to the party and
more than \$400,000 more. Most of t
donations were returned as p
gal. During Tuesday's hearing on
Trie and Ng, committee Repu
called Mr. Ng's transfers part of a
money-laundering scheme to fun-
eign funds to the Democratic
Committee. Through their
Messrs. Ng and Trie have said
ments were for expenses relat-
partnership between the two m
sought business opportunities in
elsewhere.

Mr. Ng, who cannot legally cr-
to U.S. political campaigns, bega-
money to Mr. Trie in mid-1994, a
to Senate investigators. His first
the White House was on June
according to White House records
by the committee yesterday. That
half of the others were to Mar-
ton, an associate of Mr. Trie's
left the White House to pur-
ness in Asia. A White House s
called the visits "social" but
couldn't elaborate. Mr. Ng also
DNC dinner for big donors, app-
Mr. Trie's guest, and toured
House, the spokesman said.

Mr. Ng, who lives in the P
enclave of Macau off the coast o-
a member of a commission that
Chinese government and its C
Party on economic matters, Ser-
tigators said. He has busines
throughout Asia.

Mr. Thompson expressed hi
the White House by vowing
sweeping subpoena for docum-
ending the committee's month-

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lawyers and denied that it was an attempt
to influence anyone. "We agreed that we
would pay their expenses, and we honor
our commitments," said Mr. Aldock, who
represents the Center for Claims Resolu-
tion, a consortium of about 20 compa-

Tobacco Settlement Won't Reach Goal For Curbing Teen Smoking, Says Expert

By JEFFREY TAYLOR

Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON—The proposed tobacco settlement won't raise cigarette prices enough to meet its goals for reducing youth smoking, a health-care economics expert told a Senate hearing on the pact.

Jeffrey Harris, a doctor at Massachusetts General Hospital and professor at Massachusetts Institute of Technology, told the Senate Judiciary Committee that the \$368.5 billion settlement would raise cigarette prices about 62 cents a pack within five years. Such an increase, he said, wouldn't reduce smoking among 13- to 17-year-olds enough to conform to the settlement's five-year target.

"To reach the target teenage smoking rate," Dr. Harris said, "I calculate that the price of a pack of cigarettes would have to rise by an additional \$1.50." He also contended that the penalties tobacco companies would pay if youth smoking doesn't meet the targets aren't enough of an incentive for them to reduce underage smoking.

Dr. Harris's testimony supported critics' contentions that tobacco companies wouldn't pay enough in exchange for aspects of the settlement that would benefit them, such as immunity from punitive damages in civil lawsuits that allege past misconduct. The pact is built on the assumption, based on some academic studies, that youth smoking is especially price-sensitive and would drop sharply if prices rose.

The committee's chairman, Republican Orrin Hatch of Utah, said he believed that despite continuing criticism, a "consensus" was developing in Congress in favor of the settlement, with some minor modifications. Mr. Hatch told reporters later that he thought the deal could still be approved by Congress this year, although the Republican leadership on the House side thus far displayed little enthusiasm for it.

Ringer Sues Amgen,

same day. The plaintiffs' lawyers also re-
pre- ed the ads of individual clients, whose claims were se- separately
from the class-action pact that failed to win
court approval.

Other members of the Judiciary Committee, such as Edward Kennedy, aren't as confident about the settlement's prospects this year. "Clearly, whether the goal is fair compensation or reducing youth smoking, the current settlement is inadequate," the Massachusetts Democrat said.

At yesterday's hearing, the last of three before the committee, the managing trustee of a fund set up to pay claims from victims of asbestos-related health problems contended that a portion of the \$368.5 billion should be set aside to pay smokers who also suffer from asbestos illnesses. The trustee, Robert Fallis, said the risk of death from lung cancer is much higher for workers exposed to asbestos who also smoked than for nonsmoking asbestos workers. Representatives of advertising and convenience-store groups, meanwhile, argued that the settlement's restrictions on cigarette marketing would hurt their businesses.

An array of committees in both houses of Congress have jurisdiction over the proposed settlement, and each is expected to hold hearings on it before beginning any formal action on the pact. The Senate Labor and Human Resources Committee, for instance, has scheduled hearings after Congress's August recess. The committees also are expected to contend with dueling versions of legislation based on the settlement, some drafted by tobacco industry lawyers and others by tobacco foes both in and outside of Congress.

Tobacco Companies Lose a Key Argument Prior to Florida Trial

WEST PALM BEACH, Fla. (Reuters)—In a key ruling two days before Florida's widely watched lawsuit goes to trial, a state judge said tobacco companies can't use public knowledge of the dangers of cigarette smoking as a defense.

They. implants caused by
c disease — is greatly
contested — moderate to severe pain
and disfigurement in the chest and
der area. Those claims of deformities and
localized pain, which Judge Spector
termed "cosmetic damages" and "inci-
dental local discomfort," would be dealt
with separately in the bankruptcy proceed-
ings from the systemic-illness allega-
tions.

People involved in the proceedings said they hope to negotiate a compromise reor-
ganization plan, but that the two sides
are far apart. If they don't agree, and
Judge Spector issues his own ruling, his
recommendations would be considered by
a federal district-court judge in Detroit. It
is still unclear, lawyers in the case say,
whether that judge will be Detroit's U.S.
District Judge Denise Page Hood or U.S.
District Judge Sam C. Pointer Jr., an
Alabama federal judge who has been as-
signed by U.S. Chief Justice William Rehn-
quist to supervise the Michigan federal
proceedings.

Judge Spector rejected Dow Corning's
request for a "science panel," a group of
experts who would evaluate the immune-
system claims. Judge Pointer already has
appointed such a panel, which conducted
hearings last week on the safety of silicone
implants, and lawyers say the Pointer
panel may well play a large role in the Dow
Corning bankruptcy proceedings.

Asian Tycoon With Ties to China Visited White House While Wiring Funds to U.S.

By PHIL KUNTZ

Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON — An Asian real-estate tycoon with ties to the Chinese government was admitted to the White House 10 times during a period when he was wiring money to the U.S. that ended up in Democratic Party coffers, records show.

The records, requested by the Senate Governmental Affairs Committee months ago, were delivered by the White House at 5 p.m. EDT on Tuesday, hours after the end of a lengthy hearing focusing on the businessman, Ng Lap Seng. The timing of the disclosure prompted an angry outburst from Chairman Fred Thompson (R-Tenn.), who said it was part of a pattern of "obvious attempts to slow things down" until his panel's investigation of campaign abuses ends on Dec. 31.

name invoices, sales orders, advertise-
and packing materials, all in viola-
of a settlement be the two
firms. When Hester in 1993 asked Tyson for
an accounting of its sales of Wing Flings, a
Tyson attorney replied the company "has
better things to do with its time," accord-
ing to a copy of the reply.

"Tyson has exhibited no more
a callous disregard for the rights of Hester,"
wrote Chief U.S. District Judge Thomas J.
McAvoy in his judgment, issued Tuesday.
The \$8.6 million award reflects an estimate
of the profit Tyson has earned from sales of
Wing Flings.

The judgment against Tyson is actu-
ally the latest in a series of battles Hester
has waged against other chicken pro-
ducers that have tried to use a trademark
that sounds even remotely like "Wing
Flings." Since it introduced Wing Flings in
1964, Hester has successfully quashed a
number of alleged violations, including
"Wing King," "Wing Thing," and "Ding
A-Wing." The company insists it is legally
obligated to police its trademarks.

Tyson, based in Springdale, Ark., ad-
mits it "inadvertently" continued to use
"Wing Flings" for a short while after the
settlement. Nevertheless, the company in-
sists it hasn't used "Wing Flings" for
several years and plans to appeal the
judgment. Nowadays, a spokesman says,
the company hawks its product under the
name "Tyson Wings."

tice of merely requesting evidence from
the White House. "They have no credibil-
ity as far as I'm concerned," he said.

White House Counsel Charles Ruff re-
sponded that the White House has been
busy with the panel's other voluminous
document requests and said the committee
never said the Ng records "had priority."
Other White House aides said the records
surfaced this week as a result of inquiries
from reporters.

Meanwhile, yesterday's testimony fo-
cused on Mr. Trie's unsuccessful attempt
last year to deliver hundreds of thousands
of dollars in checks to President Clinton's
legal defense fund. The money was raised
from American members of a Buddhist
based in Taiwan, which financed
some of the contributions.
Records

farmers

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Dennis Rogers: Big deal doesn't do for farmers

The \$360 billion deal the tobacco companies got from the attorneys general of 40 states that would let them off the hook for future liability claims is a good one.

There is something in it for everybody. The attorneys general -- politicians all -- get to look like tough guys who stood up to Big Tobacco. That is not a bad image to have, come Election Day.

And the tobacco companies, like Michael Jackson, get to buy themselves out of a jam that could have cost them some really big money. That they were eager to pay \$360 billion shows two things: They knew that once juries really got cranking, that payoff would look like a bargain. And if they can take this kind of licking and keep on ticking, just imagine how much money there is in the tobacco business.

Drive through most Eastern North Carolina towns and you'll find some really big houses. Many of them rival the finest homes you'll see anywhere. Most of them were built by tobacco money, but almost none were built for the sweating men and women in the fields who have been cruelly and cynically left out of the talks that may decide their future.

But then, what's new? Tobacco farmers, whose hard work made it profitable for tobacco companies to give away \$360 billion and still come out smiling, have been screwed over since the days of old Wash Duke and his Bull Durham chewing tobacco.

The Eastern Belt, the primary tobacco market for North Carolina, opened last week. Talking to farmers in Wilson and Smithfield lets you know right off that the only casualties in America's holy crusade against tobacco will be the farmers who grow it.

And nobody gives a damn.

The companies don't. The execs at RJR wouldn't suffer a moment's discomfort if every tobacco farm in Eastern North Carolina shut down tomorrow. Tobacco is a cultivated weed that grows quite nicely in any number of countries, such as Brazil and Zimbabwe. The end of tobacco in Eastern North Carolina would only mean the companies would make even more money because they can buy it cheaper overseas.

Having been left out of the negotiations that could spell doom for their jobs and way of life, farmers are being told that their reluctance to give up their livelihoods without a fight shows that they are greedy and un-American.

All they hear -- mostly from people who don't know their butts

from first base when it comes to farming -- is that they need to grow something else. Hey, nobody is guaranteed a profit here in the land of the free and the home of the brave, they're told.

Oh, no? Tell that to the tobacco companies. Or to corporate giants like Harley-Davidson and Chrysler that were bailed out by the government when they were in a jam.

What would we have our farmers do? Eastern North Carolina is traditionally a land of small farms -- the corporate giants in the pork industry notwithstanding -- and tobacco is the only crop anybody has come up with that will make a family a good living on such a small plot.

Well, there is one other.

So when our tobacco farmers -- I say "our" because many of us native North Carolinians are only one generation removed from those hot fields -- start growing marijuana instead, I'm sure their critics are going to applaud their ingenuity.

Don't we owe our tobacco farmers as good a deal as we give

*the boardroom suits who wouldn't
know a flue from the flu?*

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