Settlement 6/13

Jerold R. Mande

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4 Groups See Urgency for Accord on Tobacco

Related Article
Tobacco Talks Are Said to Break Off Over Nicotine Control Issue (June 11)

By SHERYL GAY STOLBERG

ASHINGTON -- Four major public health organizations Thursday offered their strongest support yet for a legal settlement with the nation's cigarette manufacturers, creating further divisions in the already discordant body of anti-smoking advocates.

Dr. John R. Seffrin, the chief executive of the American Cancer Society, said that after examining the public health measures agreed to so far by the cigarette industry, a settlement could save the lives of one million American children who might be discouraged from smoking.

Support for a settlement, made at a Washington news briefing, was joined by the American Heart Association, the American Medical Association and the National Center for Tobacco-Free Kids.

While acknowledging that no agreement would be perfect, Seffrin said he had "reason to hope" that the continuing negotiations would produce a settlement that he and the others could support.

Seffrin was joined by Matthew Myers, the executive vice president of the National Center for Tobacco-Free Kids.

"These talks occur not in a utopia," Myers said, "but in a world where we have to take into account the political environment and what is achievable."

Thursday's briefing was convened by Tobacco-Free Kids, a nonprofit organization that has been harshly criticized by some anti-smoking advocates because Myers is taking part in the talks.

The American Lung Association and some other anti-tobacco groups have opposed the settlement talks, citing fears that the industry would benefit more than the public.

Myers defended his role in the talks, saying that a "broad public health agenda has dominated these discussions from the start."

He enumerated the concessions agreed to so far by the industry, including far-reaching restrictions on marketing, stark health warnings on cigarette packages and money for state and local tobacco control initiatives.

Myers also said he was convinced that such sweeping public health measures were unlikely to be undertaken without a legal settlement -- codified in federal legislation -- between the manufacturers and state attorneys general who are suing for reimbursement of Medicaid payments on smoking-related illnesses.

Their lawsuits continue to mount; Thursday, California became the 37th state to sue the industry, and Oregon and Idaho filed suit earlier this week.

"The leverage from these lawsuits," Myers said, "gives us an opportunity to impose a rigorous regime on the tobacco industry."

A settlement is far from assured. The outcome of the negotiations hinges on two unresolved and critical issues: the extent to which the Food and Drug Administration will be permitted to regulate nicotine as a drug and the industry's demand for protection against future lawsuits by smokers, including a ban on punitive damages.

While Thursday's briefing was intended to dispel what Myers called "wild reports" about those demands, it aroused the ire of another influential public health advocate, Dr. C. Everett Koop, the former surgeon general.

Along with David A. Kessler, who recently stepped down as the commissioner of Food and Drugs, Koop has been asked by Congress to be the chairman of a new tobacco control advisory panel that will evaluate any settlement. The panel also includes Myers and officials of the cancer, heart and medical associations.

Koop complained Thursday that they were undermining his efforts to unify anti-smoking forces.

"Here are people jumping the gun and talking about something that sounds like a fait accompli," Koop said in an interview. "This is a time for a united front, and I asked them to withhold their judgment until we had a final settlement."

In another move that may influence the negotiations, Rep. Henry Waxman, D-Calif., released several internal documents from Liggett & Myers Tobacco Corp., shedding new details on its aborted effort to develop a safer cigarette.

In the 1970s, Liggett researchers found that the addition of palladium, a heavy metal, to tobacco sharply reduced the incidence of cancerous tumors produced when the condensate of cigarette smoke was applied to the mice.

James Mold, Liggett's chief scientist, testified nearly a decade ago in a smoking trial that Liggett had decided not to market the new product because of fears about liability. The documents released Thursday added further support to that contention.

An unsigned 1977 memorandum drafted by Liggett's top lawyer, Joseph H. Greer, noted that marketing safety claims based on animal testing would undercut the company's legal stance, which was to attack animal studies linking smoking and cancer as unscientific.

Such a move, his memorandum said, "may incite accelerated cancer litigation which may, in turn, result in infinite liability."

The documents released by Waxman were divulged by Liggett after it agreed to settle lawsuits in March with state attorneys general over legal and regulatory issues involving smoking.

They were not among a potentially more explosive group of documents involving meetings between lawyers for Liggett and other cigarette makers that are the subject of current court battles. George Sard, a Liggett spokesman, declined comment on the documents.

Waxman said that any settlement involving state attorneys general and the cigarette industry must include disclosure of all documents for which the companies are claiming attorney-client privilege.

Bennett S. LeBow, the chief executive of Liggett Group, said his company planned to comply as early as next month with a Massachusetts law requiring disclosure of cigarette ingredients and additives on cigarette packages. Other cigarette makers are still battling that law.

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Clinton Prefers Hands-Off Role
In Tricky Tobacco Negotiations

By HILARY STOUT
Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON -- When talks between tobacco companies and antismoking forces began to sputter recently, negotiators indicated they might need the White House to broker a deal on two or three outstanding issues. Bruce Lindsey, the deputy White House counsel, told them no.

As the negotiations resume next week and lurch toward conclusion or collapse, the White House stands in a precarious position. President Clinton and his advisers don't want to blow an opportunity to wring historic concessions from the big tobacco corporations. Yet at the same time they are wary of getting too close to the negotiation of a pact that could backfire politically.

Negotiators have been promising a draft agreement to the White House for days now, but they continue to stumble on key issues, including the extent of the government's regulatory control of nicotine, limits on damage awards in lawsuits against cigarette companies, and the amount of money the tobacco corporations will pay out to states and smokers.

ALSO AVAILABLE

A tobacco settlement is drawing closer. Florida will help catch retailers who sell tobacco to minors, while California sued the industry. Liggett will begin listing additive ingredients on its cigarette cartons.

As testament to its keen interest in the outcome, the White House has been mobilizing the tentacles of government to scrutinize any preliminary pact. An interagency task force of officials from the Justice, Agriculture, and Health and Human Services departments is standing by, ready to comb any settlement. A product-liability task force is discussing liability issues. A small group of domestic-policy officials, led by Bruce Reed and Rahm Emanuel, have been meeting to hash out tobacco matters and will take over review of the agreement and make a recommendation to Mr. Clinton on whether to endorse it before it goes to Capitol Hill.

Phone Lines Light Up

At the center of this delicate balancing act is Mr. Lindsey, one of the president's closest friends, who months ago was charged with monitoring the talks. When each secret negotiating session ends, Mr. Lindsey's phone lines often light up with calls from representatives from all sides: the state attorneys general suing cigarette companies, public health crusaders, and tobacco lawyers.

"It's mostly them just calling me and telling me what's going on," he says. "I get every side and sometimes two or three people from each side." Mr. Lindsey has spent time on little else but tobacco this week but is preparing to move aside and let others less immersed in the negotiations review the agreement if it is reached.

Mr. Lindsey is the last of the Arkansan clique of friends and colleagues who came to Washington with the Clintons in 1993 still in a position of true influence. A few are still scattered around the government, in less important positions; several have been tainted by scandal.

Mr. Lindsey has had his own brushes with scandal. Just a year ago, he was named an "unindicted co-conspirator" in a trial of two Arkansas bankers who handled Mr. Clinton's 1990 gubernatorial campaign money. Though he was never charged formally with wrongdoing and strongly maintains his innocence, the label brought the maze of Arkansas money scandals virtually to the president's feet. More recently, he has emerged as the person who counseled Mr. Clinton against releasing information about his contacts with Asian campaign donors before the November election.

In spite of all that, Mr. Lindsey's importance in the administration has continued to grow, and his advice to the president on the tobacco issue will be crucial.

Advising Caution

For now, he is counseling caution. As pressure for a deal grows, the White House remains determined to steer clear of the negotiating table, even if its entry into the talks could spur a settlement. "What I don't want to do is get pulled in and have them say, 'The White House wants this, the White House wants that,' " Mr. Lindsey says.

As the tobacco issue edges away from Mr. Lindsey's near-exclusive purview to officials throughout the administration, it could encounter more trouble. Though some people feel a tobacco settlement could be the victorious culmination of the president's campaign against smoking, others view a potential deal with wariness. His campaign against smoking has been a political triumph so far. The picture of Mr. Clinton standing up to tobacco companies has helped lend an image of moral fortitude to a president who has been lacking in that area in the public's mind. A deal, on the other hand, could be perceived as a sellout.

The administration has other concerns. Some officials are upset because the agreement is unlikely to address marketing by U.S. cigarette companies overseas. Others worry that the administration could find itself in an embarrassing position over the issue of limiting damage awards in lawsuits against cigarette companies.

The White House is particularly wary of limiting punitive damage awards against tobacco companies. The president has long argued against congressional efforts to curb punitive damages generally. In the case of tobacco, however, administration officials have indicated they might go along, provided other elements of the settlement seem attractive enough.

The bottom line is that the White House is more inclined to follow on this issue than to lead. If an agreement is deemed acceptable to a wide array of public-health groups, the president will likely jump on board. If it isn't, he won't. Some in the administration have even argued the White House should refrain from taking a position on the bill and see if Congress can negotiate a better piece of legislation.

Monitoring the tobacco negotiations fell to Mr. Lindsey for a variety of reasons. Chief of Staff Erskine Bowles was from North Carolina, the nation's leading tobacco-growing state, and felt conflicted over the issue. Mr. Lindsey, a former labor lawyer, had attained some notable successes in complex negotiations, acting as the liaison to both sides in the American Airlines labor dispute this winter and the baseball strike a few years ago.

This one, however, could prove the most challenging yet.