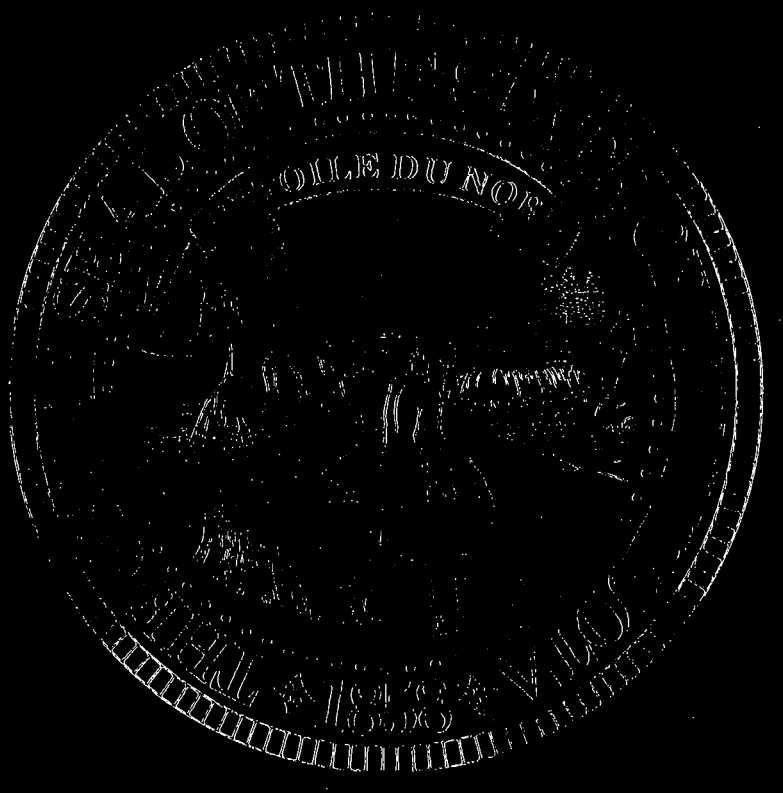

OFFICE OF ATTORNEY GENERAL

HUBERT H. HUMPHREY III

February 20, 1997

MEMORANDUM FOR ELENA KAGAN

FROM: Elizabeth Drye

SUBJECT: Background for Tobacco Meeting with Skip Humphrey's Staff

Luanne Nyberg and Doug Blanke of AG Humphrey's staff will brief us Friday at 10:00, in the Ward Room, on Humphrey's views on possible tobacco legislation. Humphrey, and 21 other state Attorneys General, is suing tobacco companies to recover tobacco-related state health care costs. Humphrey prefers that challenges to FDA's tobacco rule and liability suits be fought out in the courts and not preempted by Congressional action. Nevertheless, he is leading an effort among the AGs to draft legislation acceptable to him and anti-tobacco groups to inform any debate in the Congress. His staff will advocate that the White House stand firm in support of FDA's rule and that the White House fight for very progressive legislation if the rule is struck down in the courts.

This memo briefly reviews the President's tobacco initiative and recent events affecting it, and discusses Humprhey's proposal. Additional background materials are attached. Our goal at tomorrow's meeting should be to get a clear picture of Humphrey's and, to the extent possible, of other AG's concerns. As noted below, I do not think a legislative deal will be put forward in the near term, and we are not pursuing one, so the meeting won't involve any decision making.

Contents of FDA's Rule

On August 28, 1996, the President announced FDA's final rule: "Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents." The rule aims to reduce children's access to tobacco and reduce tobacco's appeal to youth. It's goal is to reduce smoking among young people by 50% over 7 years. FDA issued the rule after finding that cigarettes and smokeless tobacco are delivery devices for nicotine, an addictive drug, and are therefore subject to regulation under the Food, Drug, and Cosmetic Act.

Key provisions to restrict access: requires age verification and face-to-face sale (except for mail orders); eliminates free samples; prohibits sales of single cigarettes; and bans vending machines and self-service displays (except in adults-only facilities).

Key provisions to restrict appeal: bans outdoor advertising within 1,000 feet of schools and publicly owned playgrounds; permits black-and-white text-only advertising for all other outdoor advertising, including billboards, signs inside and outside of buses, and inside stores; permits black-and-white text-only advertising in publications with "significant" youth readership (those with more than 15 percent or 2 million youth readers); prohibits sale or giveaway of gym bags, caps, and clothes, and other products with tobacco logos; prohibits brand-name sponsorship of sporting teams, entries, or events (but permits in corporate name).

Implementation Timetable

Most of the provisions of the rule take effect August 28, 1997. Two provisions take effect later this month -- a prohibition on the sale of tobacco products to persons under age 18 (already state law in all states), and a requirement that retailers check photo identification for all individuals under age 27. The prohibition on sponsorship is effective on August 28, 1998. In the coming months, FDA will also propose to require tobacco companies to educate children and adolescents about the danger of cigarettes through a national multi-media campaign.

Litigation

Immediately after FDA issued the proposed tobacco rule in August 1995, four sets of plaintiffs -- including manufacturers of cigarettes and smokeless tobacco, the American Advertising Federation, and the National Association of Convenience Stores -- sued to enjoin the FDA regulations from taking effect. The suits have been consolidated, and Judge William Osteen in the U.S. District Court for the Middle District of North Carolina is hearing the case. Plaintiffs filed motions for summary judgment on October 15, 1996, after the final rule had been issued. The motions are based on three principle grounds: (1) Congress has withheld from FDA the authority to regulate tobacco; (2) the Food, Drug, and Cosmetic Act does not authorize FDA to regulate tobacco (i.e. FDA does not have jurisdiction under the Act); (3) and the First Amendment free speech protections prohibit the restrictions. The judge heard oral arguments on February 10, and expects to rule within 5-10 weeks from that date.

Legislative Activity

Rumors have surfaced occasionally over the last several month that key industry people, anti-tobacco lawyers, and members of Congress are brokering legislation that would override the FDA rule, establish a non-FDA regulatory program, establish a multi-billion dollar lawsuit settlement fund, and grant tobacco companies immunity from future liability (see attached WSJ article). Commissioner Kessler's resignation and Erskine's appointment inadvertently gave some momentum to these rumors. But the President has been clear that he is standing firmly by the FDA proposal, and industry and trial attorneys do not appear to be anywhere close to a deal. Further, key members of Congress -- including Congressman Bliley and Senator Faircloth -- have said they have no plans to introduce legislation affecting FDA's rule and are waiting for the courts to resolve the matter. In short, I do not expect that a legislative debate is imminent. The legislative outlook may change again, however, if the court stays FDA's rule.

Highlights of Humphrey's proposal

Humphrey's legislative proposal goes well beyond the Administration's rule (see attached). It codifies the FDA rule and adds a number of additional regulatory provisions, including provisions to: require owners of non-residential buildings to reduce the public's exposure to environmental tobacco smoke; require companies to disclose cigarette additives; and limit federal preemption of state and local tobacco control laws. In addition, the legislation creates a multi-billion dollar fund

-- paid for by industry -- to compensate states litigating for recovery of health care costs and private plaintiffs who choose to settle tobacco suits, and to fund health-related initiatives. Two-page and ten-page descriptions of the proposal are attached.

I would be happy to discuss this issue with you at greater length at your convenience.

Attachments: HHS Fact Sheet: Key Elements of President's Plan
Final Rule
HHS Fact Sheet: Reducing Children's Use of Tobacco: A Chronology
HHS Fact Sheet: Legal Issues Relating to FDA Rule
Outlines of Humphrey's draft legislative proposal -- 2 pager and 10 pager
WSJ article on rumored legislative deals.

Final

February 20, 1997

VP. Toby Donenfeld
Elizabeth Stack

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WSJ article on rumored legislative deals.

Kathleen M. Whalen

02/20/97 10:57:22 AM

Record Type: Record

To: Elizabeth Drye/OPD/EOP

cc:

Subject: Reimbursing for gift of dinner

All you need to do is send a letter to your friend at the non-profit and enclose the check. There are no forms that need to be filled out.

STATE OF MINNESOTA
OFFICE OF THE ATTORNEY GENERAL
LAW ENFORCEMENT SECTION

Hubert H. Humphrey III
Attorney General

TRANSMISSION BY FACSIMILE

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DATE: 2-18-99

TO: Elizabeth Drie

LOCATION: 202-456-5581

FAX NO.: ↑

FROM: Luanne Nyberg

TELEPHONE NO.: (612) 215-1553

FAX NO.: (612) 296-9663

NUMBER OF PAGES (including cover page): 16

COMMENTS: I've included a cover sheet that went to the public health folks - these documents also went to the 20 other AG. who are litigating

See you Thursday! 612

FOR TRANSMISSION PROBLEMS, PLEASE CALL: 296-8926

FAX OPERATOR:

SAINT PAUL

MINNESOTA'S FIRST NEWSPAPER

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14 SECTIONS, 612 PAGES
A SECTION

PioneerPlanet SUNDAY www.pioneerplanet.com

States draw line on tobacco settlement

Court to hear challenge to rules that would limit smoking by youths. Story, Page 6A

Humphrey details goals if firms seek win in Congress

DAVID SHAFFER STAFF WRITER

State attorneys general led by Hubert Humphrey III of Minnesota have told members of Congress they would settle tobacco lawsuits if the industry paid billions of dollars in damages and submitted to stricter regulation, including an unprecedented effort to wipe out youth smoking.

The proposal, initially drafted by Humphrey, is a response to reports that Congress may offer a compromise to the tobacco industry, possibly affecting 21 state lawsuits against tobacco companies and the fate of new U.S. Food and Drug Administration rules on cigarette advertising.

Humphrey said Saturday that attorneys general have presented their proposal to a small number of lawmakers over the past two months. The proposal has not been discussed with tobacco companies, he added.

A 13-page outline of the legislative package, stamped "confidential," was released late last week after an earlier draft was leaked to national news organizations. Its key provisions would:

- Require tobacco companies to pay billions of dollars into a litigation settlement fund. The amount isn't specified, but the proposal notes a stock analyst has suggested that guaranteeing the future of the U.S. cigarette market might be worth $60 billion to industry leader Philip Morris.
- Launch a national campaign, using some of the tobacco industry settlement money, to virtually wipe out smoking by children over the next decade.
- Force the tobacco industry to submit to FDA regulations that restrict advertising and the placement of cigarette vending machines.
- Allow states and individuals to continue suing the tobacco industry, but give

TOBACCO CONTINUED ON 6A ▶

TOBACCO

▼ CONTINUED FROM 1A

them incentives to settle for a share of the settlement fund.

■ Require tobacco companies to disclose most internal documents on smoking and health and to dissolve trade associations, which have been accused of spreading misinformation about the dangers of smoking.

Humphrey and attorneys general from two other states said they are not pushing for a settlement of state lawsuits seeking reimbursement of costs for treating smoking-related illnesses.

Instead, officials said the proposal grew out of concerns that pro-industry lawmakers will revive a plan to give cigarette makers immunity from liability suits. The plan, disclosed last August, has not been enacted.

"I think there are clear things the attorneys general are concerned about. One of them is their concern regarding children. . . . We have to realize that (nicotine) is addictive and that children are very vulnerable."."

CHRISTINE GREGOIRE
ATTORNEY GENERAL
WASHINGTON STATE

"We are fully preparing for trial, and I believe that is the appropriate forum for resolution of this case," Humphrey said. "I don't want that effort taken away from us because of some quick deal, some fast-track legislation that is introduced."

Connecticut Attorney General Dick Blumenthal described the proposal of the attorneys general as "almost an anchor or a ballast that we can use when the political winds get heavy as we expect they will in Congress.

"Our instinct was that at some point, folks in Congress might say to us, in essence, 'What is your bottom line?' " said Blumenthal, who is one of the attorneys general suing the tobacco industry.

Attorneys general met in Washington before Christmas to review a first draft of the proposal and showed it to several lawmakers and public health advocates, according to officials who attended the meetings.

"I think we have a consensus," said Christine Gregoire, attorney general for Washington state. "I think there are clear things the attorneys general are concerned about. (of them their cern regarding children. . . . We have to realize that (nicotine) is addictive and that children are very vulnerable."

Peggy Carter, spokeswoman for No. 2 cigarette maker R.J. Reynolds, said the company was not part of the discussions and had no comment.

It was unclear whether Republican leaders in Congress had seen the proposal. Humphrey and others would not say which lawmakers had been given copies of the outline. Congressional leaders could not be reached Saturday.

A proposal that surfaced last August in Congress would have forced the tobacco industry to pay $100 billion over the next 15 years in return for partial immunity from lawsuits. That proposal was drafted mainly by lawyers from Mississippi suing the cigarette companies.

At the time, attorneys general assailed the p as too soft on the industry. The latest proposal calls for tobacco companies to make an unspecified lump-sum payment, followed by annual payments that could inc if goals to reduce youth smoking are not met. Those payments would be in addition to the $5 billion collected annually in federal excise taxes on cigarettes.

People and states suing the t co industry, including Minnesota and Wisconsin, could continue their litigation under the proposal. But the creation of a settlement fund would give them an incentive to settle — rather than to risk losing in court. A federal judge would oversee settlements.

Humphrey said attorneys general are universally opposed to any effort by Congress to pre-empt states' rights to press their lawsuits.

Under the new proposal, 10 percent of any tobacco industry settlement w l spent by the FDA on tobacco-control efforts, including anti-smoking advertising, medical research, smoking cessation programs and control of environmental tobacco smoke. The goal would be to reduce the number of underage smokers by 30 percent every three years.

The plan also calls for passage of a federal law requiring owners of nonresidential buildings used by the public to ban smoking or restrict it to adequately ventilated rooms.

- Humphrey - US a vis other AG's
- Millions of pages of documents

Kessler — 301-320-9420
- 26 million pages of documents

STATE OF MINNESOTA
OFFICE OF THE ATTORNEY GENERAL
LAW ENFORCEMENT SECTION

Hubert H. Humphrey III
Attorney General

TRANSMISSION BY FACSIMILE

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Tele No.: (612) 296-7575

To: Alan Blum
Scott Ballin
John Banzhof
John Burns
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Dick Daynard
Brion Fox
Jeff Harris
Stan Glantz
Joe Marx
Matt Myers
Mike Perchuk
John Slade
Ken Warner

Date: Feb 10, 1997

16 pages incl

Other supporters: Blumenthal agree/sure - Washington Stew comm in MD.

As you know, Minnesota looks forward to going to trial against the tobacco companies. Those 26 million pages of documents are very interesting!

However, you may have read in today's Washington Post about an effort among some attorneys general to be able to answer the question "What's our bottom line?" if we are asked by Congress.

The attached documents that begin to answer that question are a work in progress. We very much want your input so that, when asked, we can articulate the strongest possible public health agenda as part of any settlement framework.

Please contact me with your thoughts and responses, formal or informal. Thanks!

Luanne Nyberg
Senior Public Health Advisor on Federal and State Tobacco Issues
612-215-1533 ph
612-296-9663 fx

Humphrey

DRAFT

Tobacco Regulation and Public Health Act

FDA Jurisdiction Over Tobacco

- Confirms FDA's jurisdiction over tobacco products under the Food, Drug and Cosmetic Act.
- Fully incorporates FDA's 1996 Rule on tobacco marketing to children, and permits enforcement by states and private parties, as well as FDA.
- Incorporates terms of the proposed Smoke-Free Environment Act of 1993, requiring owners of all non-residential buildings entered by the public to ban indoor smoking or provide separately-ventilated smoking rooms.
- Gives Dept. of Health and Human Services broad power to regulate the manufacture, promotion and sale of tobacco products, comparable to the regulation of other products
- Provides for disclosure of cigarette additives, new warnings about environmental tobacco smoke and additional labeling requirements.
- Does not allow any outright ban of tobacco products.

New National Tobacco Control Programs

- Earmarks $___ billion annually (ten percent of industry's annual payments under the Act) for new national tobacco control initiatives.
- Dedicates this fund for counter-advertising and other public education; medical research; policy advocacy; cessation programs and efforts to control environmental tobacco smoke.
- The allocation of funds among these and similar activities would be specified in the bill after consultation with the public health community.

Industry Reforms

- Dissolves trade associations because of their role in years of conspiracy.
- Provides for a consent decree to govern the conduct of any new trade associations.
- Requires disclosure of industry's internal documents on smoking and health, with exceptions for genuine trade secrets and true attorney-client privileges.
- Requires tobacco companies to share their technologies for making cigarettes less hazardous.
- Voids "gag" agreements that silence former tobacco company employees.
- Criminalizes the intentional concealment of information on tobacco and health.

No Preemption

- Does not preempt state or local laws.
- Repeals preemptive provisions of Cigarette Labeling Act that currently limit states' ability to regulate advertising or require warning labels.
- Does not abrogate existing lawsuits against tobacco companies without consent of the parties, but provides incentives for voluntary settlement.
- Does not abrogate future private lawsuits, but does provide incentives for voluntary settlement.

DRAFT

Tobacco Company Payments

- Requires tobacco companies to pay an initial $ ___ billion, and annual payments of $ ___ billion thereafter.
- Ninety percent of these revenues will be used to compensate those litigating states and private plaintiffs who choose to settle, and ten percent of these revenues will be used to fund major new health-related initiatives at the state and national levels, as described above.

Reimbursement to States and Private Plaintiffs for Tobacco-Related Damages

- Creates a fund for reimbursement of those litigating states that choose to settle their claims for health-care expenditures attributable to tobacco, and for reimbursement of private plaintiffs who choose to settle voluntarily.
- Requires an initial payment into the fund of $___ billion by manufacturers, as compensation for past conduct, followed by annual payments of $__ billion.
- Requires manufacturers to pay in proportion to their market share.
- Allows states to recover in proportion to their damages, with some additional premium, to be set by a federal district court, for states that filed cases before 1997.
- Requires states to set aside ten percent of their recoveries for tobacco control at the state and local level, but permits the states to use the remaining funds as they choose.

Effect on Legal Actions

- Pending cases are not abrogated against the wishes of the parties.
- Future legal actions by private parties are not abrogated against their wishes.
- Future actions by additional states, asserting claims based on the industry's past conduct, must be filed within 90 days after the Act takes effect.
- No restrictions on future civil lawsuits, public or private, for any future misconduct by the industry.
- No restrictions on prosecution for any individual crimes, whether committed in the past or future.

February 7, 1997

DRAFT

OUTLINE OF THE TOBACCO REGULATION AND

PUBLIC HEALTH ACT OF 1997

Short Title

The Tobacco Regulation and Public Health Act of 1997.

Findings and Purpose

To be incorporated largely from the 1993 "Fair Regulation of Nicotine and Tobacco Act" authored by Rep. Synar in the House and by Sen. Bingamon in the Senate (hereinafter "Synar/Bingamon") with necessary factual updates and amplifications to address the litigation. The findings and purpose sections should set out the compelling public interests in regulating tobacco products and reducing tobacco usage, including findings of historical industry misconduct, and should also specify what the tobacco companies get in return.

Definitions

To the extent available, to be based on the FDA regulations or other existing sources such as Synar/Bingamon.

Regulation

The bill would incorporate tobacco regulations from three sources: the current FDA regulations, Synar/Bingamon, and the proposed Smoke-Free Environment Act of 1993 (H.R. 3434/S. 1680). In addition, the bill contain its own innovative provision to progressively tighten practices contributing to youth smoking. Incorporating the FDA rules, Synar/Bingamon and the Smoke-Free Environment Act permits the States to advocate existing models to achieve our public health aims. Synar/Bingamon, through amendments to the Federal Food, Drug and Cosmetic Act, would grant broad rule making authority to the Secretary of Health and Human Services, while prohibiting a ban on the sale of tobacco products. The 1993 bill's approach is fundamentally fair: It would require regulation of tobacco products "which are consistent with the manner in which other products which are ingested into the body are regulated." This proposal, in the aggregate, would:

- Authorize the Secretary of Health and Human Services to promulgate regulations "governing the manufacture, distribution, sale, labeling, and advertising and promotion of tobacco products which are consistent with the manner in which other products which are ingested into the body are regulated...."
- Prohibit an outright ban on tobacco products
- Deem product as misbranded unless labeled with a warning about environmental tobacco smoke.

- Deem product as misbranded if the label does not contain a list of chemical additives and constituents of tobacco smoke.
- Prohibit implied or direct health claims through the use of listed words *unless* approved by the Secretary, who may do so if she/he believes that the claim "will have a significant impact on the health consequences associated with cigarette smoking and other tobacco use."
- Grant additional, flexible authority to meet future developments.
- As proposed in the Smoke-Free Environment Act of 1993, require the owners or lessees of "public facilities" (nonresidential buildings entered by ten or more persons) to provide a smoke-free environment to building occupants by either banning indoor smoking or restricting smoking to adequately ventilated rooms.
- Specify the intent of Congress to eliminate the use of tobacco products by persons under the age of 18. Upon the effective date of this Act, and every three years thereafter, until and including 2012, the Secretary shall conduct a study of tobacco product use by brand and age, by persons under the age of 18. If the study shows that under-age smoking has not declined by 30% in the aggregate after the first three three-year periods, as measured against the baseline number of under-age smokers shown in the original study (i.e. 60% after six years, 90% after nine), the Secretary shall adopt such additional regulations as he deems necessary to meet the aggregate target goals by the end of the next three-year period. Such industry-wide regulations may include additional restrictions on the advertising and marketing of tobacco products generally. With respect to specific brands which show less than the required percentage decrease in consumption, there shall be imposed an additional, substantial per-sales-unit (pack, pouch, etc.) surcharge. In addition, the Secretary may (1) adopt additional restrictions on advertising and marketing, (2) ban all advertising for repeat offenders, and (3) mandate a decrease in effective nicotine yield.

Comments: (1) It has been suggested that the proposal specifically define nicotine manipulation as "misbranding". The general sense of the group, however, is to leave the nicotine manipulation issue to the sound discretion of a fully empowered FDA.
(2) The Smoke-Free Environment Act of 1993 was endorsed by a broad coalition of health experts, business organizations, and public officials, including the Attorneys General of AZ, CT, FL, HI, IL, IN, IA, KA, ME, MD, MA, MI, MN, MS, MT, NM, NY, OK, RI, TX, UT, and WA.
(3) In response to comments, this draft of the proposal sets the goal as the "elimination" of under-age smoking, rather than its "substantial elimination".
(4) There was unanimous agreement on the inclusion of triggers for future action against unabated youth smoking.

Appropriation

- Earmark 10% off the top of payments received from the tobacco industry, to be granted by the FDA for new, national tobacco-related initiatives, programs, grants, or research.

- Input from public health and tobacco control communities to determine how money should best be used to further tobacco-related public health goals.
- Estimate funding needed for Administrator's operation; and provide for that amount to come out of the 10%. Any residuum in 2012 to be granted to public health organizations.

Enforcement of FDA Tobacco Advertising and Marketing Regulations

The States, as well as the FDA, should be able to enforce the advertising and marketing restrictions, *and* obtain meaningful relief. In addition, individuals should have standing as "little attorneys general" to enforce the Act in a manner analogous to the False Claims Act.

- The Attorney General or the chief health officer of each State may enforce the tobacco advertising and marketing provisions of the FDA Act or Rules in state or federal court
- If State prevails, the court shall enter an order enjoining the violations, *and* grant the State its actual costs and reasonable attorneys fees.
- Civil penalty of up to $100,000 per violation
    - "Per violation" defined so that each placement of forbidden advertising or marketing materials is a separate violation
- Money damages to injured parties.
- Individual rights of action, similar to those provided in the False Claims Act, after notice of a violation to the State enforcement authorities and State failure to act.

Comment: The costs, fees and civil penalty provisions are necessary to deter industry violations and make the States whole for costs of enforcement. Permitting enforcement by the state attorney general, chief health officer of the state and private individuals will decrease the likelihood of non-enforcement by a single, pro-industry enforcer. Private actions may be the only way to get enforcement in some states.

Industry reform

- Dissolution of the Tobacco Institute, the Council for Tobacco Research, and the Smokeless Tobacco Institute.
- Upon application of the States, a consent decree could contain injunctions against specific anti-competitive acts, limiting the activities of any new trade association which may be formed. The D.C. District Court would be vested with jurisdiction for this purpose. The industry would give the States notice that it intends to form a new trade group, and the States would then, within a given period of time, move the court for any orders.
- All papers of the three trade organizations and their current or former affiliates, including all research, to be turned over to the Administrator to be made public in a central depository. This includes material in the possession and control of industry lawyers, and extends to the

books and records of any current or former affiliate or subsidiary of any of the trade associations.

- The Tobacco Manufacturers, their current or former affiliates, subsidiaries, agents, attorneys and grantees to turn over to the FDA all previously unpublished information in their possession regarding tobacco use and health. This information must include not only final research reports, but all documents relating to the reports, and any other document responsive to a document request served on the industry in any past or present smoking and health litigation. All information except trade secret information relating to current and proposed products must be public. Commissioner may challenge the industry's classification of anything as "trade secret"; disputes settled by D.C. District Court. Disputed claims of attorney client privilege determined the same way. *(Alternative: Given the Industry's past abuse of the attorney-client privilege, forbid its use to conceal any smoking and health related information.)*
- Release current and former employees from secrecy and non-compete agreements.
- Felony to knowingly withhold or conceal information required to be produced under this section.
- Mandatory cross-licensing of safer cigarette technology.

Comments: (1) The dissolution of industry trade groups is a standard antitrust remedy designed to break up the vehicles of conspiracy. We have used this remedy consistently in cases where the principal purpose of the trade association has been to implement illegal behavior. In order to address the argument that trade associations still perform lawful and useful activities, the industry would be able to form new associations, the activities of which would be limited by any injunctive provisions the States could persuade the DC District Court to order. Any State (or a committee of the original litigating States) could move to enforce.
(2) The next two points, disclosure of trade association papers, and all research and product design information in the hands of the individual companies, go to the heart of our "let's get out the truth once and for all" goal. The research and product information the FDA will need as a basis for its regulation. Given the industry's abuse of the attorney client privilege, in particular, there must be a neutral arbiter of privilege claims.
(3) Enforcement of the FDA regs, and other Industry obligations, through individual state consent decrees is discussed in a separate section, below.

Limitation of actions

Any global settlement legislation should create incentives for States, individuals and other injured parties to participate *without* preempting or limiting their claims, except for a limitation on public entity and private third party payer claims after a reasonable opt-in period.

- No limitation of individual acts (but opt-in incentives to be provided-see "Compensation").

- Opt-in "window" period for non-litigating states (see "Compensation", below). After the window closes, no new "Medicaid-type actions" by states, other governmental entities or other third party payers *for past tobacco company misconduct.*
- No limitation on legal actions for *post-effective date* tobacco company misconduct, or any limitations on the States' ability to enforce their laws against conduct occurring after the date of the Act.
- No criminal actions for enumerated offenses such as perjury, obstruction of justice, false statements to Congress or regulators, against any corporation which complies with the full disclosure provisions--but *no* criminal immunity for individuals.

Comment: From the beginning, some Attorneys General felt strongly that no limitations of private actions were appropriate. Accordingly, only future Medicaid-type actions by non-participating States, or by local governments, or private third party payers which had not already filed, would be preempted or limited.

Preemption

The only existing lawsuits preempted under this Act would be Industry lawsuits against the states, such as the "preemptive" suits and the challenge to the Massachusetts ingredient disclosure law.

- No preemption or abrogation of existing lawsuits against tobacco companies.
- Industry lawsuits against States (e.g. preemptive suits) would be preempted.
- No preemption of state or local ordinances except as specified in the current FDA regulations.
- Some preemptive provisions of the Cigarette Labeling Act, preventing States from regulating cigarette advertising, would be repealed.

Compensation for tobacco plaintiffs

Compensation for the litigants should be determined after consultation with appropriate experts. Material information would include, for example, the Bernstein Research analysis by Gary Black who calculates, in his report titled "Litigation Myopia: Damages Should Be Viewed As Expenses - Not Liabilities," that "Philip Morris now discounts $60 billion in litigation risks." In other words, a settlement which permits continued sale of cigarettes would be worth an immediate $60 billion to the owners of just one of the tobacco defendants.

The compensation provisions of the bill must provide for past damages; future compensation, in the form of periodic payments, to offset the continuing costs of the use of tobacco products; attorneys fees and costs.

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- For any state which has filed tobacco litigation, or opts in by filing a case within 90 days of the effective date of the Act:
  - Compensation for past damages, in a lump sum. The total past damages should be determined after consultation with appropriate experts and based on the principles of fair compensation, deterrence and unjust enrichment which apply in other law enforcement cases.
- Future payments of $____ billion per year, adjusted for inflation, toward the future costs of treating tobacco-related, Medicaid-covered illnesses.

- Local governments and private third party payers which filed actions before the cut-off date would also be entitled to past damages and future payments. Others which had not so filed would not be eligible to come in during the 90-day window; only states would.

- In addition to the above, for states, local governments and private third party payers which filed actions before the determined cut-off date, and bore the risk and expense of bringing, Congress, the public and the Industry to terms with this issue:
  - A premium set aside from the past payment, to compensate the litigants who had taken the risks and initiative to earn the recovery--those having filed before the cut-off date to be determined. The premium would be based on:
    - The amount of time the entity had been litigating.
    - The amount of work the entity had put into its litigation.
    - The quality of its contribution to the overall success of the tobacco litigation.
    - The quantity, quality and value of other tobacco control activities undertaken by the entity.
    - Actual amount per litigant to be determined by the District of Columbia District Court.
  - Attorneys fees and costs, to be approved by the courts in the jurisdiction in which each action is pending, in accordance with applicable retainer agreements and applicable law. The amount of attorneys' fees so determined shall be considered as an element of the premium to those states who are so entitled to the premium.

- Individuals with future claims would have the alternative of arbitration through a state claims board or litigating on their own.
- For individual private litigants who filed suits before the cut-off date, an amount to be set aside from the "past damages" lump sum payment, to give private claimants an incentive to opt in. This includes class actions. Attorneys fees for private litigants to come out of their awards in an amount to be determined by the court of jurisdiction.
- Amount set aside also from future payments for injured individuals who prevailed in a optional arbitration proceeding (process to be established). Other private individuals could litigate on their own merits.

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- The companies' obligations under this Act are not dischargeable in bankruptcy proceedings, under section 523 of the Bankruptcy Code, and have priority under section 507 of the Code.
- The companies' payments under this Act are not tax deductible.

Division of payments among eligible public entities and private third-party payers

- State shares divided in a manner to be calculated. See *Comment*, below.
- States and local governments can keep entire award, notwithstanding the normal federal right to reimbursement for recoveries under the Medicaid law. (States need not pay back the federal share of Medicaid expenditures.)
- Private third-party payers having filed before the cut-off receive their expenditures for smoking attributable diseases.
- The administrator notifies each tobacco manufacturer and each eligible, state, local government, or insurer, of the amount the manufacturer owes to the eligible entity by April 30.

Comment: There have been three proposals for dividing the money among the States: based on each State's percentage of the total Medicaid population (a formula which would allocate more to states with large Medicaid populations and low reimbursement rates); based on percentage of state-share Medicaid payments (which favors states having high reimbursement rates); and based on each state's percentage of total--i.e. state and federal--Medicaid payments (which tends to balance the two). There is no need to decide among these formulae at this time.

Use of payments by States

This bill would impose minimal restrictions on the States' use of the money, mandating a percentage for controlling tobacco use but with the States free to use the remainder any way they wish (as long as it did not trigger increased federal spending obligations). Note that there would be no restrictions or limitations on the use of a jury award. Under this proposal the Administrator would act only as a convenient recipient who performs services in connection with the distribution of money.

- At least ten percent of the money would be used by States for specified tobacco control activities such as smoking cessation research and programs, anti-tobacco-use advertising and underage sales compliance checks. Specific programs to be determined after consultation with public health and tobacco control communities. The States would be able to choose from a menu of programs and activities determined effective by the FDA and public health advocates.
- No restrictions on use of the rest of the money, except that the money can't be used to increase the State's share of any program which would require the federal government to

increase its spending to match. Conversely, there shall be no reduction in federal funding to state and local governments to offset recoveries from the tobacco litigation.

- States make annual report to Administrator showing compliance with this mandate.

Note: The proviso regarding matching share programs, together with the amount appropriated from the fund to the Administrator, are designed to make this bill revenue neutral for the federal government.

Division of payments among companies

Each company's payment for past damages would depend on its market share as of the effective date. Payments for future costs based on sales, as provided above.

The Administrator

- Appointed by the President.
- Background in tobacco control.
- Within the Department of Health and Human Services.
- Receives money from tobacco industry and pays out money to states (non-discretionary).
- Determines the appropriateness of companies' designation of information as trade secret or attorney/client privileged.
- Reviews and certifies States' compliance with the requirement that the States use 10% of the money for tobacco control activities.
- Custodian of records of the dissolved tobacco industry trade associations.

Jurisdiction of the District of Columbia District Court

There are a number of decisions which, on an ongoing basis, are probably more appropriately made by a court than by the Administrator. To provide a central location in a court which will develop some expertise in tobacco industry matters, the D.C. District Court seems a logical, and unbiased, choice. Matters for the court:

- Determining the amounts of the settlement "premium".
- Hearing State petitions for any injunctive relief limiting the activities of any new industry trade association.
- Reviews Administrator's determinations of trade secret and privilege status of disputed documents.

Individual State Content Decrees Authorized

- As a condition of immunity from future "Medicaid-type" actions, the Industry would have to consent to entry of state-by-state consent decrees, to ensure future enforcement of terms.

Comment: A number of Attorneys General have asked for inclusion of such a provision to help ensure that the settlement will remain enforcement even in there is future, adverse action in Congress.

Severability

- Include a severability clause.

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Repealer

- Repeal inconsistent provisions of federal law, including the problem parts - e.g. preemption - of the cigarette labeling and advertising act, __ U.S.C. __. See also the Synar Bill.

Effective Date

Effective when signed by the President.

AG:59559 v1

Questions for Humphrey's staff. —

• emphasis on disclosure
- turn over to FDA all unpublished info. re. tobacco use and health —
- All info except trade secret information relating to current and proposed products must be public.
court arbitrates privilege claims.

- FDA jurisdiction

- other AG's —
- How linked are regulation, disease / liability debate —

Doug — 21 AGs have sued.
KOH proposal Mississippi-based — Represents not views of all 26 ags —

Kessler/Pres — Thread this way through the minefield separately — mind field —

33 states amicus brief supporting rule —

21 lawsuits —
20 class actions. —

Drug — fraud, conspiracy / antitrust basis in MN law —
2nd suit
MISS — product liability
MINN case is about conduct of the executives —
filed 1994 (Oct?)
— tagged as Medicaid
suit
— Intent of suit is to have them alter the way they
do business. —
Co plaintiff. BC of MN
—

Other, nonfinancial approach that PDA took
Londres / MINN — largest document production — undisclosed
Philip Morris 125 million fights suit to close
1,000 people working on it
trial in 10 months Jan 98
Never had fought big battles on atty-client privilege

3 AG's support Blumenthal
WASH AG (?)
MD

Majority of 21 States

Priorities for Public Health
Jurisdiction is WA to monitor, regulate
product. — numbers, addictions.
August draft duck & do Intent — give
add'l

FDA — would depend on what alternative jurisdiction
don't see clear alternative —
of AG's would be up and
Farrow — superior FDA — would jurisdiction —
but would be a money

Bruce — If you had to create alternative
best allowable agency across —
instead of no law — now
would go or do it.

Dorg — would have to be more than
marketing —
— Congress to look at nicotine and
its role —

2. Drafts before cut off / current existing lawsuits
— if there has to be a resolution —
has to create incentives to opt-in —
Congress shouldn't put a price tag on it —
isn't Congress's constitutional cases
— private law suits — trial lawyers
might be stands ~~alarmed~~ derailed

Bruce — Hanchai — is it for the tobacco cos?
Dorg — 15 Am On-Line case — 44 States —
negotiated settlement for refunds —
Argued — vast majority of claims would settle.

Bruce - but they can outspend most -
So these lawsuits are not over then

Doug - but landscape is changing

3. Attny's fee issue - labor to dispell that this is trial lawyers against tobacco industry

States - all have contractors - on contingency fees.

Bruce - On attny's fees - your approach could result in more money.

Doug - no nicotine out from under regulatory

Minnesota -

Bruce - 5th Circuit decision - 7 openings to Deal
significant adverse ct. rulings.

West VA, AZ, MISS - want to settle
LA

Legget / Meyers - LA settlement
Settlement. 5 states.
2%) market -

[illegible] - Different states have different interests - $ or public health
Believe settlement is in everyone's interest.
but have to have public health community with us. when stocks go up.

Bruce - make a mistake that it's a no-starter. -

Industry - explore before MISS. case go to trial (4 mo. countdown). June
FL, TX August.

[margin notes:] want serious proposal with people in public health community on board
[illegible] + get consensus
& will consult [illegible] of [illegible]

Sloan Humphrey doesn't want to be left out in cold — doing stuff because Scruggs is doing stuff. —

David asked RJR ~~at~~ high level — do they care by Scruggs —

David
— Admin should do absolutely nothing — control industry shows ~~its~~ hand
President

Scruggs has access because of Morris. —

At some point, at some time — will be legislation

David brought Humphrey into see Quinn before Christmas. — was violently opposed to legislation

260 million documents — minimize Case broad discovery.

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

HUBERT H. HUMPHREY III
ATTORNEY GENERAL

102 STATE CAPITOL
ST. PAUL, MN 55155-1002
TELEPHONE: (612) 296-6196

Statement of
Attorney General Hubert H. Humphrey
In Response to Business Week
Regarding Global Tobacco Settlement Proposal

January 30, 1997

"We are proceeding full speed to put together the toughest case the tobacco industry has ever faced and take it to trial. We prefer to present it to a court where evidence and facts reign supreme, rather than the political arena where tobacco lobbyists' contributions come into play.

I had grave concerns about the trial balloon proposal from earlier this year. That proposal would provide special immunity to the tobacco industry from the laws that all other businesses must obey and falls short of protecting future generations from tobacco addiction.

While my strong preference is to try this case in court, if Congress does intervene I will insist on a principled outcome. From the very beginning, I have stressed three principles as a bottom line for resolving our lawsuit -- reform of the industry, including an ironclad ban on marketing tobacco products to kids, payment of damages commensurate with the harm caused, and full disclosure of the truth about things like safer cigarettes.

I have initiated discussions with attorneys general, public health advocates, members of Congress, and Administration officials on these principles. While I am willing to explain these general principles, discussion of the details of these fluid conversations and ever-changing rough drafts is premature."

--30--

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STATE OF MINNESOTA

Office of the Attorney General

TO	:	TOBACCO LITIGANTS AND HEALTH ADVOCATES	DATE	:	February 7, 1997
FROM	:	HUBERT H. HUMPHREY III Minnesota Attorney General	PHONE	:	297-4272 (Voice) 297-7206 (TTY)
SUBJECT	:	REVISED OUTLINE FOR TOBACCO LEGISLATION			

Accompanying this memorandum is a revised outline for tobacco legislation. Since our meeting in Washington on December 17 I have talked to many of you about possible global settlement. I have spoken, too, with several key members of Congress--every one of whom has applauded our collective effort to define new public policy standards for the Tobacco Industry.

The revised outline incorporates many of the comments I received from you and your staffs, and those of key members of Congress, in the weeks after our Washington meeting. Highlights of the changes:

- No preemption or other limitations on individual damages actions.
- Incorporation of the Proposed Smoke-Free Environment Act, which was introduced in 1993 and endorsed by 22 state attorneys general.
- Triggers for additional regulatory action if youth smoking reduction goals are not met (last point under "Regulation").
- Decoupling of future funding from per-pack amount to preserve maximum flexibility.
- Specific authorization for individual state consent decrees to help ensure enforceability.

As with previous drafts, there is no discussion or recommendation of specific settlement amounts. I am convinced from stock market analyses that the Tobacco Industry can pay many times any figure mentioned to date; and I am equally convinced from what we have all seen in our litigation that the Industry *should* pay much more. I look forward to working with all of you in what I regard as the most significant joint project ever undertaken by a group of state attorneys general.

Tobacco Regulation and Public Health Act

FDA Jurisdiction Over Tobacco

- Confirms FDA's jurisdiction over tobacco products under the Food, Drug and Cosmetic Act.
- Fully incorporates FDA's 1996 Rule on tobacco marketing to children, and permits enforcement by states and private parties, as well as FDA.
- Incorporates terms of the proposed Smoke-Free Environment Act of 1993, requiring owners of all non-residential buildings entered by the public to ban indoor smoking or provide separately-ventilated smoking rooms.
- Gives FDA broad power to regulate the manufacture, promotion and sale of tobacco products, comparable to the regulation of other products
- Provides for disclosure of cigarette additives, new warnings about environmental tobacco smoke and additional labeling requirements.
- Does not allow any outright ban of tobacco products.

New National Tobacco Control Programs

- Earmarks $___ billion annually (ten percent of industry's annual payments under the Act) for new national tobacco control initiatives.
- Dedicates this fund for counter-advertising and other public education; medical research; policy advocacy; cessation programs and efforts to control environmental tobacco smoke.
- The allocation of funds among these and similar activities would be specified in the bill after consultation with the public health community.

Industry Reforms

- Dissolves trade associations because of their role in years of conspiracy.
- Provides for a consent decree to govern the conduct of any new trade associations.
- Requires disclosure of industry's internal documents on smoking and health, with exceptions for genuine trade secrets and true attorney-client privileges.
- Requires tobacco companies to share their technologies for making cigarettes less hazardous.
- Voids "gag" agreements that silence former tobacco company employees.
- Criminalizes the intentional concealment of information on tobacco and health.

No Preemption

- Does not preempt state or local laws.
- Repeals preemptive provisions of Cigarette Labeling Act that currently limit states' ability to regulate advertising or require warning labels.
- Does not abrogate existing lawsuits against tobacco companies without consent of the parties, but provides incentives for voluntary settlement.
- Does not abrogate future private lawsuits, but does provide incentives for voluntary settlement.

Tobacco Company Payments

- Requires tobacco companies to pay an initial $ ___ billion, and annual payments of $ ___ billion thereafter.
- Ninety percent of these revenues will be used to compensate those litigating states and private plaintiffs who choose to settle, and ten percent of these revenues will be used to fund major new health-related initiatives at the state and national levels, as described above.

Reimbursement to States and Private Plaintiffs for Tobacco-Related Damages

- Creates a fund for reimbursement of those litigating states that choose to settle their claims for health-care expenditures attributable to tobacco, and for reimbursement of private plaintiffs who choose to settle voluntarily.
- Requires an initial payment into the fund of $___ billion by manufacturers, as compensation for past conduct, followed by annual payments of $__ billion.
- Requires manufacturers to pay in proportion to their market share.
- Allows states to recover in proportion to their damages, with some additional premium, to be set by a federal district court, for states that filed cases before 1997.
- Requires states to set aside ten percent of their recoveries for tobacco control at the state and local level, but permits the states to use the remaining funds as they choose.

Effect on Legal Actions

- Pending cases are not abrogated against the wishes of the parties.
- Future legal actions by private parties are not abrogated against their wishes.
- Future actions by additional states, asserting claims based on the industry's past conduct, must be filed within 90 days after the Act takes effect.
- No restrictions on future civil lawsuits, public or private, for any <u>future</u> misconduct by the industry.
- No restrictions on prosecution for any individual crimes, whether committed in the past or future.

February 7, 1997

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OUTLINE OF THE TOBACCO REGULATION AND PUBLIC HEALTH ACT OF 1997

Short Title

The Tobacco Regulation and Public Health Act of 1997.

Findings and Purpose

To be incorporated largely from the 1993 "Fair Regulation of Nicotine and Tobacco Act" authored by Rep. Synar in the House and by Sen. Bingaman in the Senate (hereinafter "Synar/Bingaman") with necessary factual updates and amplifications to address the litigation. The findings and purpose sections should set out the compelling public interests in regulating tobacco products and reducing tobacco usage, including findings of historical industry misconduct, and should also specify what the tobacco companies get in return.

Definitions

To the extent available, to be based on the Food and Drug Administration ("FDA") regulations or other existing sources such as Synar/Bingaman.

Regulation

The bill would incorporate tobacco regulations from three sources: the current FDA regulations, Synar/Bingaman, and the proposed Smoke-Free Environment Act of 1993 (H.R. 3434/S. 1680). In addition, the bill contain its own innovative provision to progressively tighten practices contributing to youth smoking. Incorporating the FDA rules, Synar/Bingaman and the Smoke-Free Environment Act permits the States to advocate existing models to achieve our public health aims. Synar/Bingaman, through amendments to the Federal Food, Drug and Cosmetic Act, would grant broad rule making authority to the FDA, while prohibiting a ban on the sale of tobacco products. The 1993 bill's approach is fundamentally fair: It would require regulation of tobacco products "which are consistent with the manner in which other products which are ingested into the body are regulated." This proposal, in the aggregate, would:

- Authorize the FDA to promulgate regulations "governing the manufacture, distribution, sale, labeling, and advertising and promotion of tobacco products which are consistent with the manner in which other products which are ingested into the body are regulated...."
- Prohibit an outright ban on tobacco products
- Deem product as misbranded unless labeled with a warning about environmental tobacco smoke.
- Deem product as misbranded if the label does not contain a list of chemical additives and constituents of tobacco smoke.

- Prohibit implied or direct health claims through the use of listed words *unless* approved by the, FDA who may do so if it believes that the claim "will have a significant impact on the health consequences associated with cigarette smoking and other tobacco use."
- Grant additional, flexible authority to meet future developments.
- As proposed in the Smoke-Free Environment Act of 1993, require the owners or lessees of "public facilities" (nonresidential buildings entered by ten or more persons) to provide a smoke-free environment to building occupants by either banning indoor smoking or restricting smoking to adequately ventilated rooms.
- Specify the intent of Congress to eliminate the use of tobacco products by persons under the age of 18. Upon the effective date of this Act, and every three years thereafter, until and including 2012, the FDA shall conduct a study of tobacco product use by brand and age, by persons under the age of 18. If the study shows that under-age smoking has not declined by 30% in the aggregate after the first three three-year periods, as measured against the baseline number of under-age smokers shown in the original study (i.e. 60% after six years, 90% after nine), the FDA shall adopt such additional regulations as he deems necessary to meet the aggregate target goals by the end of the next three-year period. Such industry-wide regulations may include additional restrictions on the advertising and marketing of tobacco products generally. With respect to specific brands which show less than the required percentage decrease in consumption, there shall be imposed an additional, substantial per-sales-unit (pack, pouch, etc.) surcharge. In addition, the FDA may (1) adopt additional restrictions on advertising and marketing, (2) ban all advertising for repeat offenders, and (3) mandate a decrease in effective nicotine yield.

Comments: (1) It has been suggested that the proposal specifically define nicotine manipulation as "misbranding". The general sense of the group, however, is to leave the nicotine manipulation issue to the sound discretion of a fully empowered FDA.
(2) The Smoke-Free Environment Act of 1993 was endorsed by a broad coalition of health experts, business organizations, and public officials, including the Attorneys General of AZ, CT, FL, HI, IL, IN, IA, KA, ME, MD, MA, MI, MN, MS, MT, NM, NY, OK, RI, TX, UT, and WA.
(3) In response to comments, this draft of the proposal sets the goal as the "elimination" of under-age smoking, rather than its "substantial elimination".
(4) There was unanimous agreement on the inclusion of triggers for future action against unabated youth smoking.

Appropriation

- Earmark 10% off the top of payments received from the tobacco industry, to be granted by the FDA for new, national tobacco-related initiatives, programs, grants, or research.
- Input from public health and tobacco control communities to determine how money should best be used to further tobacco-related public health goals.

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- Estimate funding needed for Administrator's operation; and provide for that amount to come out of the 10%. Any residuum in 2012 to be granted to public health organizations.

Enforcement of FDA Tobacco Advertising and Marketing Regulations

The States, as well as the FDA, should be able to enforce the advertising and marketing restrictions, *and* obtain meaningful relief. In addition, individuals should have standing as "little attorneys general" to enforce the Act in a manner analogous to the False Claims Act.

- The Attorney General or the chief health officer of each State may enforce the tobacco advertising and marketing provisions of the FDA Act or Rules in state or federal court
- If State prevails, the court shall enter an order enjoining the violations, *and* grant the State its actual costs and reasonable attorneys fees.
- Civil penalty of up to $100,000 per violation
    - "Per violation" defined so that each placement of forbidden advertising or marketing materials is a separate violation
- Money damages to injured parties.
- Individual rights of action, similar to those provided in the False Claims Act, after notice of a violation to the State enforcement authorities and State failure to act.

Comment: The costs, fees and civil penalty provisions are necessary to deter industry violations and make the States whole for costs of enforcement. Permitting enforcement by the state attorney general, chief health officer of the state and private individuals will decrease the likelihood of non-enforcement by a single, pro-industry enforcer. Private actions may be the only way to get enforcement in some states.

Industry reform

- Dissolution of the Tobacco Institute, the Council for Tobacco Research, and the Smokeless Tobacco Institute.
- Upon application of the States, a consent decree could contain injunctions against specific anti-competitive acts, limiting the activities of any new trade association which may be formed. The D.C. District Court would be vested with jurisdiction for this purpose. The industry would give the States notice that it intends to form a new trade group, and the States would then, within a given period of time, move the court for any orders.
- All papers of the three trade organizations and their current or former affiliates, including all research, to be turned over to the Administrator to be made public in a central depository. This includes material in the possession and control of industry lawyers, and extends to the books and records of any current or former affiliate or subsidiary of any of the trade associations.

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- The Tobacco Manufacturers, their current or former affiliates, subsidiaries, agents, attorneys and grantees to turn over to the FDA all previously unpublished information in their possession regarding tobacco use and health. This information must include not only final research reports, but all documents relating to the reports, and any other document responsive to a document request served on the industry in any past or present smoking and health litigation. All information except trade secret information relating to current and proposed products must be public. Commissioner may challenge the industry's classification of anything as "trade secret"; disputes settled by D.C. District Court. Disputed claims of attorney client privilege determined the same way. *(Alternative: Given the Industry's past abuse of the attorney-client privilege, forbid its use to conceal any smoking and health related information.)*
- Release current and former employees from secrecy and non-compete agreements.
- Felony to knowingly withhold or conceal information required to be produced under this section.
- Mandatory cross-licensing of safer cigarette technology.

Comments: (1) The dissolution of industry trade groups is a standard antitrust remedy designed to break up the vehicles of conspiracy. We have used this remedy consistently in cases where the principal purpose of the trade association has been to implement illegal behavior. In order to address the argument that trade associations still perform lawful and useful activities, the industry would be able to form new associations, the activities of which would be limited by any injunctive provisions the States could persuade the DC District Court to order. Any State (or a committee of the original litigating States) could move to enforce.
(2) The next two points, disclosure of trade association papers, and all research and product design information in the hands of the individual companies, go to the heart of our "let's get out the truth once and for all" goal. The research and product information the FDA will need as a basis for its regulation. Given the industry's abuse of the attorney client privilege, in particular, there must be a neutral arbiter of privilege claims.
(3) Enforcement of the FDA regs, and other Industry obligations, through individual state consent decrees is discussed in a separate section, below.

Limitation of actions

Any global settlement legislation should create incentives for States, individuals and other injured parties to participate *without* preempting or limiting their claims, except for a limitation on public entity and private third party payer claims after a reasonable opt-in period.

- No limitation of individual acts (but opt-in incentives to be provided-see "Compensation").
- Opt-in "window" period for non-litigating states (see "Compensation", below). After the window closes, no new "Medicaid-type actions" by states, other governmental entities or other third party payers *for past tobacco company misconduct.*

- No limitation on legal actions for *post-effective date* tobacco company misconduct, or any limitations on the States' ability to enforce their laws against conduct occurring after the date of the Act.
- No criminal actions for enumerated offenses such as perjury, obstruction of justice, false statements to Congress or regulators, against any corporation which complies with the full disclosure provisions--but *no* criminal immunity for individuals.

Comment: From the beginning, some Attorneys General felt strongly that no limitations of private actions were appropriate. Accordingly, only future Medicaid-type actions by non-participating States, or by local governments, or private third party payers which had not already filed, would be preempted or limited.

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- No preemption or abrogation of existing lawsuits against tobacco companies.
- Industry lawsuits against States (e.g. preemptive suits) would be preempted.
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Compensation for the litigants should be determined after consultation with appropriate experts. Material information would include, for example, the Bernstein Research analysis by Gary Black who calculates, in his report titled "Litigation Myopia: Damages Should Be Viewed As Expenses - Not Liabilities," that "Philip Morris now discounts $60 billion in litigation risks." In other words, a settlement which permits continued sale of cigarettes would be worth an immediate $60 billion to the owners of just one of the tobacco defendants.

The compensation provisions of the bill must provide for past damages; future compensation, in the form of periodic payments, to offset the continuing costs of the use of tobacco products; attorneys fees and costs.

- For any state which has filed tobacco litigation, or opts in by filing a case within 90 days of the effective date of the Act:

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- Compensation for past damages, in a lump sum. The total past damages should be determined after consultation with appropriate experts and based on the principles of fair compensation, deterrence and unjust enrichment which apply in other law enforcement cases.
- Future payments of $____ billion per year, adjusted for inflation, toward the future costs of treating tobacco-related, Medicaid-covered illnesses.

- Local governments and private third party payers which filed actions before the cut-off date would also be entitled to past damages and future payments. Others which had not so filed would not be eligible to come in during the 90-day window; only states would.

- In addition to the above, for states, local governments and private third party payers which filed actions before the determined cut-off date, and bore the risk and expense of bringing, Congress, the public and the Industry to terms with this issue:
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    - The amount of time the entity had been litigating.
    - The amount of work the entity had put into its litigation.
    - The quality of its contribution to the overall success of the tobacco litigation.
    - The quantity, quality and value of other tobacco control activities undertaken by the entity.
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- States and local governments can keep entire award, notwithstanding the normal federal right to reimbursement for recoveries under the Medicaid law. (States need not pay back the federal share of Medicaid expenditures.)
- Private third-party payers having filed before the cut-off receive their expenditures for smoking attributable diseases.
- The administrator notifies each tobacco manufacturer and each eligible, state, local government, or insurer, of the amount the manufacturer owes to the eligible entity by April 30.

Comment: There have been three proposals for dividing the money among the States: based on each State's percentage of the total Medicaid population (a formula which would allocate more to states with large Medicaid populations and low reimbursement rates); based on percentage of state-share Medicaid payments (which favors states having high reimbursement rates); and based on each state's percentage of total--i.e. state and federal--Medicaid payments (which tends to balance the two). There is no need to decide among these formulae at this time.

Use of payments by States

This bill would impose minimal restrictions on the States' use of the money, mandating a percentage for controlling tobacco use but with the States free to use the remainder any way they wish (as long as it did not trigger increased federal spending obligations). Note that there would be no restrictions or limitations on the use of a jury award. Under this proposal the Administrator would act only as a convenient recipient who performs services in connection with the distribution of money.

- At least ten percent of the money would be used by States for specified tobacco control activities such as smoking cessation research and programs, anti-tobacco-use advertising and underage sales compliance checks. Specific programs to be determined after consultation with public health and tobacco control communities. The States would be able to choose from a menu of programs and activities determined effective by the FDA and public health advocates.
- No restrictions on use of the rest of the money, except that the money can't be used to increase the State's share of any program which would require the federal government to increase its spending to match. Conversely, there shall be no reduction in federal funding to state and local governments to offset recoveries from the tobacco litigation.
- States make annual report to Administrator showing compliance with this mandate.

DRAFT

~~CONFIDENTIAL~~

Note: The proviso regarding matching share programs, together with the amount appropriated from the fund to the Administrator, are designed to make this bill revenue neutral for the federal government.

DRAFT

~~CONFIDENTIAL~~

Division of payments among companies

Each company's payment for past damages would depend on its market share as of the effective date. Payments for future costs based on sales, as provided above.

The Administrator

- Appointed by the President.
- Background in tobacco control.
- Within the FDA.
- Receives money from tobacco industry and pays out money to states (non-discretionary).
- Determines the appropriateness of companies' designation of information as trade secret or attorney/client privileged.
- Reviews and certifies States' compliance with the requirement that the States use 10% of the money for tobacco control activities.
- Custodian of records of the dissolved tobacco industry trade associations.

Jurisdiction of the District of Columbia District Court

There are a number of decisions which, on an ongoing basis, are probably more appropriately made by a court than by the Administrator. To provide a central location in a court which will develop some expertise in tobacco industry matters, the D.C. District Court seems a logical, and unbiased, choice. Matters for the court:

- Determining the amounts of the settlement "premium".
- Hearing State petitions for any injunctive relief limiting the activities of any new industry trade association.
- Reviews Administrator's determinations of trade secret and privilege status of disputed documents.

Individual State Content Decrees Authorized

- As a condition of immunity from future "Medicaid-type" actions, the Industry would have to consent to entry of state-by-state consent decrees, to ensure future enforcement of terms.

Comment: A number of Attorneys General have asked for inclusion of such a provision to help ensure that the settlement will remain enforcement even in there is future, adverse action in Congress.

Severability

- Include a severability clause.

DRAFT

~~CONFIDENTIAL~~

Repealer

- Repeal inconsistent provisions of federal law, including the problem parts - e.g. preemption - of the cigarette labeling and advertising act, __ U.S.C. __. See also the Synar Bill.

Effective Date

Effective when signed by the President.

AG:59559 v1

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PioneerPlanet SUNDAY www.pioneerplanet.com

States draw line on tobacco settlement

Court to hear challenge to rules that would limit smoking by youths. Story, Page 6A

Humphrey details goals if firms seek win in Congress

DAVID SHAFFER STAFF WRITER

State attorneys general led by Hubert Humphrey III of Minnesota have told members of Congress they would settle tobacco lawsuits if the industry paid billions of dollars in damages and submitted to stricter regulation, including an unprecedented effort to wipe out youth smoking.

The proposal, initially drafted by Humphrey, is a response to reports that Congress may offer a compromise to the tobacco industry, possibly affecting 21 state lawsuits against tobacco companies and the fate of new U.S. Food and Drug Administration rules on cigarette advertising.

Humphrey said Saturday that attorneys general have presented their proposal to a small number of lawmakers over the past two months. The proposal has not been discussed with tobacco companies, he added.

A 13-page outline of the legislative package, stamped "confidential," was released late last week after an earlier draft was leaked to national news organizations. Its key provisions would:

- Require tobacco companies to pay billions of dollars into a litigation settle t fund. The amount isn't specified, but the proposal notes a stock analyst has suggested that guaranteeing the future of the U.S. cigarette market might be worth $60 billion to industry leader Philip Morris.
- Launch a national campaign, ng some of the tobacco industry settlement money, to virtually wipe out smoking by children over the next decade.
- Force the tobacco industry to submit to FDA regulations that restrict advertising and the placement of cigarette vending machines.
- Allow states and individuals to continue suing the tobacco industry, but give

TOBACCO CONTINUED ON **6A** ▶

TOBACCO

▼ CONTINUED FROM 1A

them incentives to settle for a share of the settlement fund.

■ Require tobacco companies to disclose most internal documents on smoking and health and to dissolve trade associations, which have been accused of spreading misinformation about the dangers of smoking.

Humphrey and attorneys general from two other states said they are not pushing for a settlement of state lawsuits seeking reimbursement of costs for treating smoking-related illnesses.

Instead, officials said the proposal grew out of concerns that pro-industry lawmakers will revive a plan to give cigarette makers immunity from liability suits. The plan, disclosed last August, has not been enacted.

"I think there are clear things the attorneys general are concerned about. One of them is their concern regarding children. . . . We have to realize that (nicotine) is addictive and that children are very vulnerable."."

CHRISTINE GREGOIRE
ATTORNEY GENERAL
WASHINGTON STATE

"We are fully preparing for trial, and I believe that is the appropriate forum for resolution of this case," Humphrey said. "I don't want that effort taken away from us because of some quick deal, some fast-track legislation that is introduced."

Connecticut Attorney General Dick Blumenthal described the proposal of the attorneys general as "almost an anchor or a ballast that we can use when the political winds get heavy as we expect they will in Congress.

"Our instinct was that at some point, folks in Congress might say to us, in essence, 'What is your bottom line?' " said Blumenthal, who is one of the attorneys general suing the tobacco industry.

Attorneys general met in Washington before Christmas to review a first draft of the proposal and showed it to several lawmakers and public health advocates, according to officials who attended the meetings.

"I think we have a consensus," said Christine Gregoire, attorney general for Washington state. "I think there are clear things the attorneys general are concerned about. One of them is their concern regarding children. . . . We have to realize that (nicotine) is addictive and that children are very vulnerable."

Peggy Carter, spokeswoman for No. 2 cigarette maker R.J. Reynolds, said the company was not part of the discussions and had no comment.

It was unclear whether Republican leaders in Congress had seen the proposal. Humphrey and others would not say which lawmakers had been given copies of the outline. Congressional leaders could not be reached Saturday.

A proposal that surfaced last August in Congress would have forced the tobacco industry to pay $100 billion over the next 15 years in return for partial immunity from lawsuits. That proposal was drafted mainly by lawyers from Mississippi suing the cigarette companies.

At the time, attorneys general assailed the plan as too soft on the industry. The latest proposal calls for tobacco companies to make an unspecified lump-sum payment, followed by annual payments that could increase if goals to reduce youth smoking are not met. Those payments would be in addition to the $5 billion collected annually in federal excise taxes on cigarettes.

People and states suing the tobacco industry, including Minnesota and Wisconsin, could continue their litigation under the proposal. But the creation of a settlement fund would give them an incentive to settle — rather than to risk losing in court. A federal judge would oversee settlements.

Humphrey said attorneys general are universally opposed to any effort by Congress to pre-empt states' rights to press their lawsuits.

Under the new proposal, 10 percent of any tobacco industry settlement would be spent by the FDA on tobacco-control efforts, including anti-smoking advertising, medical research, smoking cessation programs and control of environmental tobacco smoke. The goal would be to reduce the number of underage smokers by 30 percent every three years.

The plan also calls for passage of a federal law requiring owners of nonresidential buildings used by the public to ban smoking or restrict it to adequately ventilated rooms.

Legal Affairs

PEACE TALKS IN THE TOBACCO WARS?

State attorneys general are weighing a settlement plan that would regulate the industry, BUSINESS WEEK has learned

After months of preparation, powerful state attorneys general who have declared war on the tobacco industry are girding for battle in the courtroom. Mississippi Attorney General Michael Moore will deliver opening arguments this June in his suit against seven cigarette makers to recover hundreds of millions of dollars in state Medicaid costs for smoking-related illnesses. Copycat cases in Florida and Texas will begin in September, while Washington Attorney General Christine O. Gregoire has a court date in October. On Jan. 27, New York became the 19th state to sue the industry.

But even as these suits speed toward trial, BUSINESS WEEK has learned that many attorneys general are simultaneously launching an important initiative aimed at reaching a settlement with their foes. Since December, sources say, several of the AGs who have sued the industry have held a series of meetings and conference calls to hammer out a unified position. Participants include Gregoire, Minnesota's Hubert H. Humphrey III, and Richard Blumenthal of Connecticut, and representatives from the Massachusetts and Florida AG offices, among others. This group's goal is ambitious: to develop a plan that would not only end their own disputes but also provide a framework for the long-term state and federal regulation of tobacco.

While the participants insist they are still committed to suing the cigarette makers, their feverish activity is a sign of how seriously all combatants in the tobacco wars now take the idea of settlement. Last August, when a small group of AGs first floated a settlement proposal, it quickly fizzled as the industry, health officials, several AGs, and many tobacco plaintiffs' lawyers decried the plan. This time, a far broader group of attorneys general is

talking, and the views of leading health officials are also being sought. Meanwhile, industry leaders Philip Morris Cos. and RJR Nabisco Inc. have both recently said they would be receptive to the idea of a settlement. Industry and AG sources, however, say the two groups are not now talking.

SHELL OUT BILLIONS. The centerpiece of the state AG talks is a proposal drafted by Minnesota's Humphrey, which Connecticut's Blumenthal says is now backed by him and Washington's Gregoire. Sources say that plan, structured as proposed federal legislation, would give the industry the thing it most craves: a legislative guarantee that tobacco will remain legal (table). The AGs also are weighing some protection against future litigation. In exchange, Humphrey's proposal would require companies to submit to permanent regulation by the Food & Drug Administration, to dissolve trade associations such as the Tobacco Institute, and to shell out billions for antismoking campaigns and past injuries, although no exact payment amounts have been specified. In a written statement to BUSINESS WEEK, Humphrey confirmed that the AGs have been discussing "common ground goals" but declined to elaborate. "Any discussion of the details of these fluid conversations or ever changing rough drafts would be premature and fruitless at this point," says Humphrey.

Attorneys general from other states, convinced the Humphrey proposal goes too far, are hoping to devise a more pragmatic plan. Some members of this group have rallied behind Mississippi plaintiffs' attorney Richard Scruggs, the author of last August's ill-fated peace proposal and lead outside counsel in seven of the AG suits. "Scruggs is working it very hard," says one source in the medical community. "Scruggs's view is that the tobacco industry is under a great deal of pressure and the opportunity exists to get a real breakthrough kind of deal."

Scruggs acknowledges that he came up with a new settlement proposal after his last one died, but says he hasn't worked on his plan since November and that he's now more focused on going to trial. His most recent proposal, formulated in October, calls for the industry to pay out around $12 billion a year for 25 years to states and individuals who can prove harm from smoking. Up to 10% of that sum could be used to compensate lawyers and states who helped engineer the settlement. It would take regulation away from the tough-minded FDA and create a tobacco czar to administer the payment fund. The proposal would also earmark $700 million for the Health & Human Services Dept. to use to counter tobacco marketing and would require the industry to disseminate its research.

The attorneys general say that their cases are going well, and that they are only trying to formulate a joint peace proposal in case other players in the tobacco litigation suddenly decide to opt for peace. Noting the incessant talk that settlement legislation could one day surface in Congress, Blumenthal says: "Eventually, Congress may turn to us and say, 'What's your bottom line?' We didn't want to then have to turn to one another and say, 'What is it?'"

But many tobacco industry executives, health officials, plaintiffs' lawyers involved in other antitobacco cases, and government officials say the attorneys general may also have some trepidation about going to trial. Their suits will be costly, are based on novel legal theories, and could flop. Critics say that AGs are interested in settling now in order to avoid an embarrassing defeat in court. "I would want to push the cause of settlement, too, because I would realize at some point a rational court would take a look at this house

of cards and make it come down," says Daniel W. Donahue, senior vice-president and deputy general counsel of RJR.

Whatever their motivations, the attorneys general still have many issues to sort out. For example, many of them have hired plaintiffs' law firms to help them bring the suits, and the lawyers are pushing for a big financial settlement, says a source in contact with the state AGs. Others are more interested in slapping tighter regulation on the industry than soaking it for billions. Despite this problem, North Carolina Attorney General Michael F. Easely, who has in the past served as a sort of unofficial emissary between the industry and the states that have filed suits, believes that "all of [the AGs] will settle."

Even if the attorneys general do reach an agreement, they will have a tough time coming to terms with tobacco companies. Despite the industry's increased interest in the prospect of settlement, executives are thought to be unwilling to shell out the massive sums sought by the plaintiffs' attorneys. Both Philip Morris and RJR declined to comment specifically on the current AG talks. But one key industry lawyer says that some of the plaintiffs' attorneys assisting in attorney general suits have informally raised the issue of settlement with him in recent weeks. He says he brushed them aside.

SNOOKERED. Nor will leading health advocates be easy to bring on board. Antitobacco activists are worried about giving the industry any protection from future litigation, and angry that even like-minded AGs such as Humphrey are now willing to consider peace. "The public health community has always been snookered by the industry," says Richard A. Daynard, chairman of the Tobacco Products Liability Project (TPLP) at Northeastern University in Boston. Aware of the shifting political winds, however, health advocates are now weighing the possibility of a truce. The TPLP is sponsoring a seminar in May to hash out health advocates' stance toward settlement talks.

For now, the health community has nothing to worry about. The AGs are still a long way from a unified settlement position. But considering how fiercely the law enforcers have been fighting cigarette makers, the fact they're even discussing peace could mark a new chapter in the high-stakes tobacco wars.

By David Greising in Atlanta and Catherine Yang in Washington, with John Carey in Washington and Mike France in New York

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RELATED ITEMS

TABLE: Elements of a Deal

Return to top of story

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Updated Jan. 31, 1997 by bwwebmaster

Return to main story

Legal Affairs

TABLE: Elements of a Deal

Here's an outline of a proposal drawn up by Minnesota's Hubert H. Humphrey III. It's being debated by some of the other 18 state attorneys general who have sued the tobacco industry:

WHAT TOBACCO WOULD GET:
-- No ban on tobacco products
-- Potential restrictions on future state and private lawsuits against the industry
-- A potential limit on how much future litigants could recover

WHAT TOBACCO WOULD LOSE:
-- The FDA would gain jurisdiction over tobacco
-- 10% of all industry revenues would be earmarked for health programs
-- Trade groups such as the Tobacco Institute would be dissolved

DATA: MINNESOTA ATTORNEY GENERAL, BUSINESS WEEK

BusinessWeek

Updated Jan. 31, 1997 by bwwebmaster

Federal Court to Hear Testimony Today On Challenge to FDA Rules for Tobacco

Negotiations to Settle State Lawsuits Appear to Have Intensified

By John Schwartz
Washington Post Staff Writer
Monday, February 10 1997; Page A04
The Washington Post

When the judge bangs the gavel in a North Carolina courtroom today, the proceedings that follow may not have the drama of other recent high-profile trials.

But the stakes will be high.

Lawyers for the government will argue that at issue are the 400,000 lives lost each year to tobacco-related illnesses.

The opposing lawyers, representing the tobacco and advertising industries, will argue that the case is about nothing less than preserving the U.S. Constitution from unwarranted government regulation.

The confrontation will occur in a one-day hearing in U.S. District Court in Greensboro, where the tobacco industry is challenging the Clinton administration's controversial plan to curb underage smoking.

After a two-year investigation, the Food and Drug Administration asserted control over tobacco products by deeming them drug-delivery devices. And last August, it issued a broad set of regulations that would restrict the marketing and promotion of cigarettes and smokeless tobacco to minors. Those regulations are scheduled to be phased in beginning Feb. 28.

The tobacco industry claims the FDA rules are the beginning of "back-door prohibition" of tobacco products. The industry argues that neither the laws governing the FDA nor Congress allows the agency to assert jurisdiction over tobacco products. It also says the advertising restrictions would violate the tobacco industry's First Amendment rights.

U.S. District Judge William Osteen Sr. has limited testimony in the case to a single day, and will not rule on the matter right away. The case could eventually be appealed as far as the U.S. Supreme Court.

In the weeks leading up to the court confrontation, however, negotiations

to settle all or part of the complex web of litigation involving the tobacco industry appeared to intensify. A settlement could potentially render the court proceedings moot.

According to sources close to the negotiations, two deals are being explored: an attempt by the Liggett Group Inc. to settle lawsuits brought by 21 states against tobacco companies in exchange for turning over sensitive, possibly damaging, internal industry documents. The second, broader effort is an attempt to settle all of the state suits against the entire industry in return for a large but as-yet unspecified sum of money -- and, possibly, a partial retreat by the FDA.

Much of the activity has been shrouded in vagueness and mystery. "It's like shadow dancing in the dark," said Matthew L. Myers of the anti-tobacco group Coalition for Tobacco-Free Kids.

It is unclear, for example, whether the tobacco industry is involved in the discussions. While several top executives of tobacco companies have declared in recent months that they would not rule out a settlement, industry spokesmen have denied that the companies have been negotiating.

"We are not talking to plaintiffs' lawyers about settlement," said R.J. Reynolds Tobacco Co. spokeswoman Peggy Carter. "As far as we can tell, they are simply talking to each other."

But one of the lead negotiators in the Liggett talks said that deal was still moving forward. Liggett, the smallest of the major tobacco companies, broke ranks with the rest of the industry by signing a settlement with a number of attorneys general and attorneys suing the industry in 1996. More recently, the company has been discussing a new settlement that could remove it from all remaining state lawsuits. Negotiations over that Liggett settlement proposal have been going on with increasing urgency for weeks, largely through a series of conference calls among attorneys general and private lawyers.

Attorney General Grant Woods of Arizona has taken a prominent role in that effort, according to participants. As the talks progressed, there has been a sense that a deal could be imminent. But the complexity of the issues has kept the process dragging on. "It's like herding cats," said one attorney.

The broader settlement would require legislation be passed by Congress. That deal was initiated last year by Mississippi attorney Richard Scruggs, a driving force in many of the state suits and brother-in-law of Senate Majority Leader Trent Lott (R-Miss.). This year, Scruggs has said he is too busy preparing for his state's lawsuit to try to keep that settlement possibility alive. But rumors have persisted that talks have continued.

Some sources even say that negotiations on the broad settlement have been carried on with the White House, and with key congressional figures such as Lott. Lott said at a briefing last week that he was not directly involved in negotiations, though he had discussed the issues with the White House. "It could be that something will come out in that area," the senator said, but added that any agreement would be forged by private parties, not lawmakers.

Whether or not either negotiation is successful, the growing perception that a deal is near has widened the divide among the states that are suing the industry. Although the suits share a common theme of demanding repayment for tobacco-related Medicaid expenses, the substance and tactics of the suits vary widely. And, as the current round of negotiations shows, so do the states' commitments to seeing the lawsuits through to judgment.

Minnesota, which has gathered 26 million pages of tobacco industry documents in warehouses in Minneapolis and London, is among the states most ardent to go to court. The settlement negotiations have prompted Minnesota to work with like-minded states to put together a detailed outline of what they believe any settlement should contain -- a preemptive counter-proposal, so to speak.

The Minnesota document, obtained by The Washington Post, would create a fund of undetermined size to mount tobacco education programs, and would require the disbanding of industry groups such as the Tobacco Institute and Center for Tobacco Research. It also states that the FDA should not be removed from tobacco regulation. That point was negotiable under a global settlement plan that surfaced last summer, and organizations such as the Campaign for Tobacco-Free Kids have said that they would be willing to consider removing the FDA from the regulatory role so long as the government's ability to enforce similar rules through another agency is preserved.

The Minnesota proposal would require that teenage smoking be monitored, and that strong action be taken if rates do not decline over time. Also, the proposal would not allow any deal to preempt other lawsuits against the industry -- a key incentive for the industry to sign on.

Minnesota Attorney General Hubert H. Humphrey III said that the thrust of his group's memorandum is not the money that a settlement might bring, but the public policy issues that form the foundation of the lawsuits. The breakaway group is trying to build support for its principles in the public health community and on Capitol Hill as well, with Humphrey making personal visits to federal lawmakers.

Other members of the breakaway group said they prefer that the tobacco suits be dealt with in the courts and not in Congress. Connecticut Attorney General Richard Blumenthal said that he and colleagues shared "a strong concern that a deal would be cut in Congress adverse to our interests."

The idea behind the group's preemptive counter-proposal, then, is "to have a set of core principles," Blumenthal said, so that "when political winds blow pretty hard -- as they will -- so we can protect the very profound and powerful public interests that led us to sue in the first place."

Staff writer Saundra Torry contributed to this report.

ROAD TO REGULATION

Feb. 25, 1994: The Food and Drug Administration announces investigation into the tobacco industry to determine whether the agency has jurisdiction to regulate tobacco products.

April 14, 1994: Heads of seven major tobacco companies testify before congressional committee investigating the industry.

June 27, 1995: Philip Morris announces "Action Against Access," a voluntary plan to try to reduce youth smoking.

Aug. 10, 1995: President Clinton proposes the FDA regulate tobacco products for the first time and announces proposed regulations aimed at reducing smoking by young people. The tobacco industry immediately files a lawsuit to block the new FDA regulations.

May 15, 1996: Philip Morris proposes alternative plan -- federal legislation that would curb youth smoking without FDA regulation.

Aug. 23, 1996: Clinton announces final FDA regulations.

Feb. 28, 1997: First new FDA regulation is to go into effect, requiring photo ID checks of cigarette purchasers.

Aug. 28, 1997: All but one of the rest of the FDA's new regulations are to go into effect, limiting a wide range of tobacco marketing activities, including a near ban on cigarette vending machines, a ban on the sale of single cigarettes, a ban on tobacco billboards within 1,000 feet of schools and restricting other advertising to black-and-white text only.

Aug. 28, 1998: The last FDA regulation is to go into effect, limiting brand-name tobacco product sponsorship of sporting and entertainment events.

Back to the top
