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Nation/World - *Stories from the latest print edition*

CONGRESS CONSIDERS TOBACCO SUBPOENA

VALUE OF SECRET DOCUMENTS DEBATED

By Pat Widder, Washington Bureau
Web-posted Thursday, July 31, 1997; 6:03 a.m. CDT

Dateline: WASHINGTON

Tobacco company secrets, for decades shielded from scrutiny, may hold a key to the future of the $368.5 billion tobacco settlement. But a debate is brewing on Capitol Hill about whether getting at those documents is important enough to delay resolving questions about the proposed landmark settlement and reaping its potential public health benefits.

Minnesota alone has gathered 33 million pages of internal tobacco industry documents in preparation for its lawsuit against Big Tobacco. The state's attorney general, Hubert Humphrey III, has urged Congress to use its subpoena power to get its own look at those papers.

"Congress should subpoena those documents," Sen. Frank Lautenberg (D-N.J.) urged Wednesday. "The tobacco industry dreads" the release of some of those secrets--a factor that is driving the "rush to settlement," said Sen. Dick Durbin (D-Ill.).

Reflecting the complexity and far-reaching implications of the proposed settlement, the Senate Judiciary Committee Wednesday wrestled with that question and other issues, such as the deal's impact on convenience stores and outdoor advertising, how high the price of cigarettes needs to be to deter smoking by youths, and what lessons can be learned from the ongoing asbestos litigation debacle.

Committee chairman Orrin Hatch (R-Utah) said he wouldn't object to the committee "looking at a limited number of documents" but wouldn't favor a comprehensive review of the millions of pages gathered for Minnesota's litigation.

Sen. Patrick Leahy (D-Vt.), the committee's ranking Democrat, said he wants to find out from the documents what tobacco executives knew and when they knew it. "It would be difficult to vote for the settlement without having more information than we now have," said Leahy.

Mississippi Atty. Gen. Michael Moore minimized the document debate as "a pretty good sideshow." He contended there is nothing in the document reservoir that would go beyond what everyone knows-- which is, he said, that the tobacco industry is "rotten to the core. The national budget isn't enough to pay for what they've done to the country."

"The question is, how much can you get in compensation?" he said.

Dr. Lonnie Bristow, a past president of the American Medical Association who helped craft the settlement, told senators the public health benefits of the settlement could "potentially dwarf the impact of even the polio vaccine."

Mindful of that, and of the uncertainty that surrounds ongoing tobacco litigation, Hatch asked, "Can we afford to fritter away the huge opportunity we have to stop 3,000 kids a day from starting smoking?" He added, "If we don't move now, we may lose whatever advantage we have here."

In a rebuke to Drs. David Kessler and C. Everett Koop, who on Tuesday urged Congress to reject the deal and start over, Hatch said the settlement would have to be "a balance. It's not all or nothing as it appears to my good friends."

Dr. Jeffrey Harris, a health economist at the Massachusetts Institute of Technology, said he believes an additional tax of $1.50 on a pack of cigarettes would deter enough teen smoking to meet the targets set, even if nothing else were done.

Robert Falise, chairman of the Manville Personal Injury Settlement Trust, testified that the settlement ought to include asbestos victims who also smoked because of the "synergistic effects between smoking and asbestos."

But he also detailed the disaster caused by years of asbestos litigation, which "drove 18 companies into bankruptcy and we're still only paying 10 cents on the dollar (to victims). There just aren't enough assets."

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ACTION ON SMOKING AND HEALTH
A National Legal-Action Antismoking Organization

2013 H St., NW, Wash. DC 20006, (202) 659-4310

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FLORIDA'S ATTORNEY GENERAL STANDS FIRM[7.31.97.1]
Insists On Secret Document Release

Action on Smoking and Health has consistently urged release of the secret documents. See, for example,"NO GLOBAL SETTLEMENT UNTIL SECRET DOCUMENTS RELEASED" posted on the ASH web site on Friday. Florida's attorney general appears to agree and is insisting on the release of 8 of those secret documents as part of any settlement deal in the Florida case. Here are some excerpts from the **New York Times** report:

Florida's Attorney General, Robert A. Butterworth, said yesterday he would not settle the state's Medicaid-related lawsuit against tobacco producers unless they dropped their efforts to prevent the release of eight sensitive Liggett Group documents.

"Unless they show good faith and let these documents go," Mr. Butterworth said, "there is no way they're going to see me at a bargaining table."

Jury selection in Florida's lawsuit is set to begin on Friday in West Palm Beach. The state is seeking to recover billions of dollars in Medicaid expenses for treating smoking-related illnesses.

Normally, exchanges between lawyers representing different clients are protected from disclosure unless the plaintiffs can show that the lawyers were involved in a crime or fraud. So far, several judges in Florida have ruled the documents produced by Liggett, a subsidiary of the Brooke Group, contain evidence that industry lawyers were involved in such conduct.

The differing positions of Mr. Butterworth and cigarette company executives raise the possibility that Florida's Medicaid case could go forward despite efforts in recent weeks to negotiate a settlement.

HERALDLINK FULL STORY
Published Thursday, July 31, 1997, in the Miami Herald

1973 study linked tobacco to cancer

Researcher testifies industry insisted he rephrase findings

By CATHERINE WILSON
Associated Press

A former tobacco researcher testified Wednesday he found cancer of the larynx in laboratory hamsters exposed to cigarette smoke in 1973, but the industry insisted he tone down the findings to erase the word cancer entirely.

Dr. Freddy Homburger did as he was told in the study's draft but inserted it again without telling the Council for Tobacco Research, which funded his work, while the study was in galley form just before publication.

"I believed the science was clear that cancer was induced, and therefore it should not be masqueraded as a more benign situation," the Boston University pathologist said in a videotaped deposition.

The testimony is the first from a tobacco researcher in the flight attendants' secondhand-smoke case against the tobacco industry, which is accused of deceiving the public for decades about the risks of smoke.

Homburger presented his cancer findings at a medical conference in 1974. He said he didn't realize until years later that a planned news conference on his research at the meeting was canceled by a council public relations representative.

When he found the assigned room was empty, he said, "I thought it was one of those mixups that sometimes occur."

Before publication, an industry scientist and attorney visited him at his summer home in Bar Harbor, Maine, and suggested he use a 13-syllable term that Homburger considered meaningless, "not ever the term cancer."

The Swiss-born Homburger, 81, who spoke heavily accented English, said he was threatened with the loss of research money if he didn't make the requested changes.

Half of his hamsters developed cancer or precancerous lesions on the larynx and had some lung changes. He said he didn't believe he could induce lung cancer because smoke didn't reach the depths of the hamsters' small lungs.

Homburger also described earlier research exposing rats and mice to smoke, but he said they died so quickly there was no time for cancer to develop.

Earlier in the day, a tobacco attorney portrayed a heart specialist as a recent convert to the belief in secondhand-smoke disease, but the doctor fought back with a soft-spoken, technical explanation of his views.

David Hardy, representing Philip Morris and Lorillard, asked Dr. John Holbrook whether prior to two months ago there was ``a scientific controversy as to whether environmental tobacco smoke is indeed a cause of coronary heart disease."

The University of Utah cardiologist said he previously believed people exposed to secondhand smoke had an elevated risk of developing heart disease, including heart attacks and clogged arteries.

``The evidence has been accumulating, and I will now say unequivocally it is a cause," he said. Previously, ``I think there was a legitimate discussion among investigators about the quality of epidemiologic data."

The timing is important for two reasons. The industry denies a cause-and-effect link between smoke and illness as unproven, but the biggest study to date concluded in May that exposure to relatively low levels of secondhand smoke doubles the risk of heart disease. The attendants claim much greater exposure.

Holbrook was barred from telling jurors how large the Harvard study of 32,000 nurses was, and tobacco attorneys even objected to calling it ``a broad epidemiological study."

The objections were part of an intensifying courtroom campaign by the industry to limit unfavorable depictions of cigarettemakers and damaging testimony that they criticize simply as repetitive.

In contrast, retired Pan Am mechanic Billy Williams, the first lay witness, testified for 20 minutes without objection or cross-examination.

He reported finding residue that smelled like tobacco and was hard to wash off his hands on jet wiring, valves, cabin walls, sensors, lights and ductwork.

Asked to describe the residue, he said, ``It was kind of, I don't know, icky's not a very good word. It didn't feel clean."

The trial could prove to be the only major tobacco case to be decided by a jury because the proposed $368 billion nationwide settlement would erase such suits.

Tobacco - documents

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To: Elizabeth Drye/OPD/EOP

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Subject: NYTs Article

Minnesota Official Invites Congressional Scrutiny of Tobacco Industry

By BARRY MEIER

INNEAPOLIS -- Earlier this month, trucks pulled up to a warehouse here already swollen with cigarette company records and unloaded more than 200,000 documents that may represent the tobacco industry's best-kept secrets and its biggest vulnerability.

The new documents have been seen by only a handful of people who are legally barred from speaking about them. But lawyers for the state of Minnesota, which is suing the tobacco industry, claim that the documents, which have only been disclosed to them in summary form, contain evidence of a decades-long conspiracy by cigarette makers and their lawyers to suppress evidence and deceive the public about the dangers of smoking.

In the wave of smoking-related lawsuits filed by states in recent years, Minnesota can claim two distinctions. In the talks leading to last month's $368.5 billion tobacco settlement proposal, its attorney general, Hubert H. Humphrey III, emerged as the plan's principal opponent. After losing that round, Humphrey seized on a unique aspect of Minnesota's case -- no other state has plumbed the padlocked files of the tobacco companies with such intensity and single-mindedness.

Two weeks ago, Humphrey, in an effort to influence the congressional debate over the proposal, urged the Senate Judiciary Committee to subpoena key records from his state's case so that Congress could review them as it considers turning the proposal into legislation.

"I want Congress to know the facts to the greatest extent possible before a bargain is made with the American people," Humphrey said in an interview.

Critics of Humphrey, who is running for governor, see his proposal as little more than political grandstanding and a continuation of the obstructionist role that he played during settlement talks. But his suggestion has not fallen on deaf ears.

Sen. Orrin Hatch of Utah, the Judiciary Committee's ranking Republican, and Sen. Patrick Leahy of Vermont, its ranking Democrat, have said they want to see the most important Minnesota documents. And even those involved in crafting the plan, like Stanley Chesley, a class-action plaintiffs' lawyer, have recently scrambled to provide some 200 selected industry documents to committee members.

Under the proposed settlement, cigarette companies would be required to disclose health-related documents except those which they claim involve trade secrets or are protected by attorney-client privilege. But the comments of Humphrey have broadened the debate from criticisms of the records-disclosure provision to larger questions about which industry documents Congress should have as it weighs the monetary value and public health benefits of the agreement.

Recently, for example, Leahy said he could not back a settlement that provided cigarette producers with immunity against punitive damages and class-action lawsuits, as the proposed settlement would, unless they reveal everything they know about their products' dangers.

"I offer one simple and direct principle to guide us," Leahy said at a recent Judiciary Committee hearing. "No immunity without full disclosure."

Industry officials and others involved in the accord said demands for document disclosure are unrealistic. Tobacco companies, they said, must shield some documents because of future lawsuits. And one industry lawyer said new documents suggesting deceptive activity by tobacco companies would not produce revelations but would only reinforce existing public opinion.

"The bad stuff about the industry is already out there," said the lawyer, who spoke on the condition of anonymity.

Whatever the case, the breadth of industry documents collected by lawyers for Robins, Kaplan, Miller and Ciresi, a firm here that represents the state and Blue Cross and Blue Shield of Minnesota, is unrivaled in the history of tobacco litigation. For example, in all previous smoking-related lawsuits, Brown & Williamson Tobacco Corp., a subsidiary of BAT Industries PLC, produced about 5,000 records, said David Bernick, a company lawyer. But since the start of the Minnesota case in 1994, the cigarette maker has disclosed four million pages of documents.

After reviewing some 30 million pages of documents produced by all major tobacco companies, lawyers for the state eventually chose about 2 percent of those records to form the basis of their lawsuit, which seeks to recover billions of dollars in Medicaid money spent treating smoking-related illnesses. The document collection also was used as part of the underpinning of similar Medicaid-related lawsuits filed by other states.

Because of a court order in Minnesota affecting the confidentiality of the industry documents, few of the records have been made public. Last year, lawyers for the state filed a now-publicized document written in the early 1970s by researchers for R.J. Reynolds Tobacco Co., which is owned by RJR Nabisco Holdings Corp. It suggested that the popularity of the Philip Morris Cos.' Marlboro brand was attributable to the company's manipulation of nicotine levels.

Peggy Carter, a spokesman for R.J. Reynolds, said the researchers were simply speculating on the reasons for Marlboro's popularity, not concluding that Philip Morris was manipulating nicotine. A spokesman for Philip Morris, which has denied that it manipulated nicotine levels, had no comment on the document.

Lawyers in the Minnesota case have established another document repository in England to house records collected in Europe. They also have uncovered evidence that tobacco companies shifted records to operations abroad or destroyed potentially incriminating documents. And several months ago, Justice Department officials, who are conducting a criminal investigation into possible fraud and nicotine manipulation by tobacco companies, came here to review lawsuit documents.

But the latest battle in the Minnesota case has focused on documents that involve exchanges between tobacco industry executives and their lawyers. Normally, such communications are shielded from disclosure, but the attorney-client privilege is lost if the plaintiffs in a case can show that lawyers aided in the commission of a crime or fraud.

In May, a state judge here found that Minnesota lawyers had produced initial evidence of such conduct and ordered cigarette makers to turn over the documents for court inspection and possible release. That decision has been appealed. Industry lawyers maintain that the documents, which cover such areas as health research and youth marketing, do not contain dire secrets.

"Since the day this lawsuit has been filed there have been allegations about industry secrecy about hazards," said Bernick, the Brown & Williamson lawyer. "But the state has still been unable to tell us what we concealed about the dangers of cigarettes."

Michael Ciresi, a lawyer for the firm that represents the state, said the documents will speak for themselves when the state's case goes to trial in January. Though other state courts have also initially found that industry executives and lawyers engaged in fraud, none of the pertinent documents has been made public.

"When this information comes out it will create legal exposure for both companies and individuals that they do not want to face," Ciresi said.

Just where reality lies between such legal swordplay is anyone's guess because most of the key Minnesota documents have not been seen. And despite Hatch's recent comments that he might seek to subpoena some of the Minnesota documents, it is not clear how many his panel will be able to obtain.

An order in the Minnesota case permits government agencies to review confidential industry documents so long as the records are not publicly disclosed. But one industry lawyer said cigarette companies would resist subpoenas for documents that they claim are protected by the attorney-client privilege.

If Humphrey and cigarette company officials represent opposite poles on the document disclosure issue, there are those who think that a middle ground should be reached before a tobacco settlement is approved by Congress.

Tom Miller, the Iowa attorney general, said that he believes that the settlement provisions that provide individuals with a legal mechanism to challenge industry claims of document confidentiality are too cumbersome, costly and time-consuming.

"The cigarette companies have a tremendous history of fighting any document release, so who would have the incentive to invest the resources to go through this process?" Miller asked.

But Miller, who has given his qualified support to the proposal, said Congress should take up the document issue cautiously, so that in seeking to expand its knowledge it does not get distracted from the larger goals of the proposal.

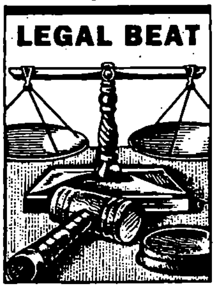
"There could be some good that comes out of this," he said, referring to calls for greater document release "so long as its does not divert attention from the broader settlement."

Decision Pressures Tobacco Firms To Accept a Tougher Settlement

By Ann Davis
Staff Reporter of The Wall Street Journal

A Florida appeals court cleared the way for the release of potentially damaging tobacco-industry documents. The ruling puts pressure on the cigarette makers to reach a separate settlement with Florida before the state takes its Medicaid case to trial next month – and to agree to tougher terms in the proposed national tobacco settlement.

The eight highly sensitive documents – which have been reviewed privately by judges but never seen by tobacco adversaries – came from the files of **Brooke Group** Ltd.'s Liggett Group, which broke ranks with the industry in March and agreed to hand them over as part of its own settlement with state attorneys general. Liggett's larger tobacco rivals then asserted that the documents should be shielded by attorney-client privilege because they involved the industry's joint defense against a barrage of lawsuits by smokers.



In a decision yesterday, Florida's Fourth District Court of Appeal in West Palm Beach upheld a trial-court ruling that the documents were exempt from attorney-client privilege because there was evidence that they involved plans to commit criminal or fraudulent acts.

Among the papers, according to a report by the special master appointed by the trial judge to review the papers, are an undated memo on trial strategy; a 1981 letter, including notes of a meeting of in-house attorneys from each company who regularly got together to discuss litigation, public relations and research strategies; and notes from another meeting of the in-house lawyers.

Florida's lawyers said the documents make both the state's case and its bargaining position in settlement talks stronger.

The state's attorney general, Bob Butterworth, said that when the documents are released, "it's going to be a black eye not only for the industry but for many law firms" that worked for tobacco companies. In its suit seeking to recoup the public costs of treating those with smoking-related illnesses, Florida contends that the tobacco companies used their lawyers to fraudulently withhold information about the health consequences of smoking.

Mr. Butterworth also said the documents could have an impact on the public debate over the proposed national settlement, which was reached last month.

Cigarette makers vowed to seek a review of the decision. "We believe that today's ruling . . . is inconsistent with the law," said Daniel W. Donahue, senior vice president and deputy general counsel of the R.J. Reynolds Tobacco Co. unit of **RJR Nabisco Holdings Corp.** "We are confident that higher court review will find that the law doesn't support this ruling, and we will seek such a review."

The papers could be released in 15 days, if the tobacco industry isn't successful in petitioning the appeals court for a rehearing or appealing to the state Supreme Court. Lawyers representing the state said they planned to ask the court to shorten or eliminate the waiting period because they are scheduled to begin questioning potential jurors Aug. 4.

Although Florida has talked with the industry about a settlement, those discussions recently stalled because the state is seeking guarantees that cigarette makers would adhere to terms in the national pact, such as stronger warning labels and a ban on billboard advertising, as well as billions of dollars in damages. "Money is not the only issue here," Mr. Butterworth said yesterday.

Mississippi, the first of 40 states to sue the tobacco industry to recover the costs of treating sick smokers, settled earlier this month, four days before it was scheduled to take its case to trial. The nation's four largest cigarette makers agreed to pay Mississippi $3.6 billion over 25 years and $136 million a year indefinitely thereafter.

The Florida appeals court endorsed the findings of the lower court, saying there was evidence for a jury to conclude "that the defendants hid from and misrepresented to the public the health risks of smoking and that their conduct constituted fraud on the public. There was also evidence," it said, "that the defendants utilized their attorneys in carrying out their misrepresentations and concealment."

The industry had argued that the trial court had applied the wrong standard of proof. But state appellate court Judge Martha C. Warner, writing for a three-judge panel, ruled that the court had applied the correct standard.

Under Florida law, which is similar to most state laws, communications between lawyers and clients are confidential unless "the services of the lawyer were . . . obtained to enable or aid anyone to commit or plan to commit what the client knew was a crime or fraud."

Already, Florida is considered to have the strongest state case, in part because its state legislature three years ago passed a law stripping the industry of its traditional legal defense that smoking is an individual choice. The law now allows the state to aggregate damage claims and use mathematical formulas to calculate a figure.

–Suein L. Hwang contributed to this article.

Northeast Utilities To Get $25 Million From Its Officials

By William M. Bulkeley
Staff Reporter of The Wall Street Journal

Trustees and officers of **Northeast Utilities** agreed to pay $25 million to settle shareholder claims that they mismanaged and failed to supervise the company's troubled nuclear-power program.

The settlement – fully covered by an insurance policy and therefore no liability to the officials – was unusual because the plaintiffs will receive no direct payment. Rather, the insurer will pay the funds, less lawyers' fees, directly to Northeast, providing an indirect benefit to shareholders. Attorneys involved in the case say it is one of the largest settlements ever of such a holder-derivative lawsuit, in which plaintiffs allege that corporate officials – and not the company itself – violated their responsibility to shareholders.

The suits against the Hartford, Conn., utility's officers and trustees involved their management and oversight of Northeast's troubled nuclear program, including the three Millstone plants in Waterford. The plants, which are closed and under scrutiny by the U.S. Nuclear Regulatory Commission, have been cited by the NRC for cutting costs at the expense of safety and for ignoring worker complaints.

Besides the cash payment, the settlement involves an agreement by Northeast covering various corporate-governance issues. Among other things, Northeast's board of trustees, its equivalent of directors, will appoint a lead trustee, in addition to a nuclear committee consisting of independent trustees, a governance committee and an independent employee-concerns oversight panel. The company said it has already taken several of these steps.

Although Northeast can undoubtedly use the funds, the settlement will cover only a small portion of the expected $1 billion cost of the nuclear shutdowns, which have already forced the utility to eliminate its dividend and to renegotiate borrowings. On Tuesday, the company reported a second-quarter loss of $64.4 million, mainly due to spending on nuclear repairs and for replacement power.

The settlement was reached after eight months of mediation talks. It remains subject to approval by the U.S. District Court in Connecticut.

The suits, filed last year, named all the trustees and a number of officers. However, several of those officers have resigned, and Northeast Chairman and Chief Executive Officer Bernard M. Fox has agreed to retire by the end of the year. A search is underway for his successor.

Under terms of the settlement, payment will be made by Aegis Insurance Services Co., a Jersey City, N.J., mutual insurance company that is owned by its electric and gas-utility clients.

The New York Times

July 24, 1997

Release of *Tobacco* Documents Upheld by Florida Appeals Court

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Related Articles

- Trial Begins in Class-Action Suit on Secondhand *Smoke* (July 15)
- *Tobacco* Index

Forum

- Join a Discussion on *Tobacco* Suits and Settlements

A Florida state appeals court on Wednesday rejected efforts by the ***tobacco*** industry to block the release of potentially explosive Liggett Group documents, finding that the papers contained evidence that ***cigarette*** companies had used their lawyers to misrepresent the dangers of ***smoking*** and to conceal research.

The two-judge appeals panel upheld a lower court finding that had ordered the release of the Liggett documents for use by Florida in its ***smoking***-related lawsuit against the ***tobacco*** industry. Liggett, a subsidiary of Brooke Group Ltd., had agreed to turn over the documents, which discuss talks among ***tobacco*** industry lawyers, as part of a settlement it reached earlier this year with state attorneys general.

Lawyers for other ***cigarette*** companies argued that the Liggett documents were shielded from disclosure by the privilege that protected normal communications between a lawyer and a client. But the appeals panel upheld the lower court, which in April found that Florida lawyers had made an initial showing that the companies had used the lawyers to commit fraud, so the lawyer-client privilege would not apply.

Fla. Appeals Court Backs Release Of Tobacco Industry Documents

By John Schwartz
Washington Post Staff Writer
Thursday, July 24, 1997; Page A15
The Washington Post

A Florida appeals court moved a set of internal tobacco industry documents a step closer to public release yesterday.

The tobacco industry has vigorously fought the release of the 13 documents, which have been delivered under seal to Florida and courts in nine other states as part of the Liggett Group Inc.'s settlement of 22 state lawsuits.

"Our great case against tobacco just got even better," Gov. Lawton Chiles (D) said in a statement.

A Philip Morris spokesman, however, said that the industry would challenge the ruling. The papers will not be released until all appeals have been exhausted.

Florida Attorney General Bob Butterworth is trying to get these and other internal industry documents introduced as part of the state's lawsuit seeking reimbursement for tobacco-related health care costs. The papers pertain to the industry's joint discussions about defense work in litigation. Liggett, which makes Chesterfield, Eve and Lark brands, provided those documents for quick review because it said they were most likely to prove that the industry engaged in fraudulent activity.

Other tobacco companies have tried to block their release by citing attorney-client privilege, the legal doctrine that protects discussions with counsel. The long-standing doctrine ensures that clients feel safe in confiding in their legal representatives.

That protection can be broken, however, if a court finds that the discussions are part of a fraud or crime. And that is what Florida has been trying to prove in order to make the Liggett documents public.

The Florida magistrate who reviewed the Liggett documents, R. William Rutter Jr., wrote that there is "evidence that the defendants utilized attorneys in carrying out and planning fraudulent activities and undertook to misuse the attorney/client relationship to keep secret research and other activities related to the true health dangers of smoking." Circuit Court Judge Harold J. Cohen agreed.

The industry appealed, saying the court had used an improperly loose standard of proof. Florida's 4th District Court of Appeals ruled that lower courts had properly evaluated the papers.

"Tobacco's game is up and their deadly secrets are going to be exposed," Chiles said. "These documents will provide our citizens with an inside look at how the cigarette cartel has committed fraud by working to addict our children, hide the evidence and stick taxpayers with the bill."

That inside look may still not come about, however. Chiles and Butterworth have been negotiating a settlement of their suit, just as Mississippi settled its suit in the days before the scheduled start of trial. Jury selection for the Florida case is scheduled to begin next week. So far the state has had two formal negotiating sessions with industry representatives, Butterworth spokesman Joe Bizzaro said.

In addition to a monetary settlement, state officials are demanding a version of the public health measures called for in the proposed national settlement, Bizzaro said.

There are no new talks scheduled by the governor and attorney general, though "the door is obviously open," Bizzaro said.

Liggett owner Bennett S. LeBow said yesterday that he supports full disclosure of the documents, but sounded a pessimistic note. "You know what's going to happen? They're going to make a settlement soon in Florida. That's going to make the whole thing moot."

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Designers, Federal and local offi-

response is expected shortly after the doors are unlocked.

strong Republican suppo nomination is going to

NY Times Nat'l - Thurs. 7/17/97 page A20

Device to Cut Seizures Gets F.D.A.'s Nod

WASHINGTON, July 16 (Dow Jones) — The Food and Drug Administration today approved the first medical device intended to reduce epileptic seizures.

The device, the Neuorcybernetic Prosthesis System, made by Cyberonics Inc. of Webster, Tex., was approved for use in conjunction with drugs or surgery in adults and adolescents with what are called partial onset seizures, the agency said.

The approval came only 19 days after an F.D.A. advisory committee recommended it. The agency said it received an application on Jan. 27 to market the device and expedited its review because of the product's potential for reducing seizures in people who lack effective, alternative treatment.

The device consists of a generator implanted under the collarbone like a pacemaker and connected to the vagus nerve in the neck, where it delivers electrical signals to the brain to control seizures. It includes an external programming system used by a doctor to change stimulation settings. Patients can turn the stimulator on and off with a magnet.

Approximately 1.7 million Americans have epilepsy, about 200,000 of whom have seizures that cannot be fully or adequately controlled with drugs or surgery, the F.D.A. said.

The new device "will reduce the frequency of seizures in many people," said Bruce Burlington, director of the Center for Devices and Radiological Health at the agency.

In clinical trials the device was implanted in 454 patients with poorly controlled seizures at 45 medical centers in the United States, Canada and Europe. The agency said that most of the patients, who also continued to take anti-seizure medicine, showed some improvement.

Senator Seeks Tobacco Data

By JOHN M. BRODER

WASHINGTON, July 16 — The chairman of the Senate Judiciary Committee said today that he would seek thousands of pages of internal cigarette industry documents for the committee's review of the proposed tobacco settlement.

At the urging of Minnesota's Attorney General, the chairman, Senator Orrin G. Hatch, said the committee would like to examine documents, uncovered as a result of state lawsuits, that shed light on cigarette makers' scientific research, marketing plans and production methods.

Speaking at a hearing of the committee, Mr. Hatch, a Utah Republican, said he did not rule out using the Senate's subpoena power to obtain the records, although he later suggested that some of the evidence in them would not necessarily be vital.

"There's no question that many believe that the cigarette companies have been lying all these years, and I think there's much evidence for that," Mr. Hatch said after the hearing, the second of a series in which the committee is reviewing the settlement proposal. "I don't need 33 million documents to tell me that."

One witness at the hearing was the Minnesota Attorney General, Hubert H. Humphrey 3d, who opposes the $368.5 billion accord. Mr. Humphrey told the committee that the agreement was a "Trojan Camel" that gave the industry broad legal immunity while providing questionable public benefits.

The tobacco accord was negotiated by the attorneys general of 5 states on behalf of the 39 states that have sued the industry to recoup Medicaid costs of treating smoking-related illnesses. The pact has been endorsed by most of those states, but Minnesota has refused to join.

Mr. Humphrey offered to help the committee obtain some of the many documents provided by the industry as a result of Minnesota's suit. Virtually all are now under court seal, but Mr. Humphrey described some as "smoking howitzers."

He cited one report, by scientists for the British American Tobacco Company — the predecessor of B.A.T. Industries P.L.C., one of the world's leading cigarette makers — that concluded that smoking almost certainly caused lung cancer. That report was compiled almost four decades ago, in 1958.