Tobacco Deal Will Exempt Casinos

By Robert Macy
Associated Press Writer
Sunday, August 3, 1997; 2:35 p.m. EDT

LAS VEGAS (AP) -- Mark Savage, a victim of throat cancer, blames his malady on years of working in smoke-filled casinos. He isn't happy with a proposed tobacco industry deal that would exempt gambling halls from a nationwide ban on smoking in public places.

But the exemption makes sense to Mike Brewer. Dipping into a tray of 50-cent pieces at a slot machine in the Rio Hotel-Casino, Brewer said no gambler would want to leave a machine or a table to go for a smoke while on a roll.

``Anyone with a brain knows it's like a sync, when you get in that flow, you don't want to stop gambling," said Brewer, of Orange, Calif., who said he's trying to quit smoking.

Wayne Mehl, a Washington lobbyist for the powerful Nevada Resort Association, says the state's lifeblood gaming industry could take a $1.9 billion hit over the next five years if casino smoking is banned.

The proposed $368 billion settlement between tobacco companies and 40 states that have filed lawsuits against the industry has rekindled a controversy in Nevada.

The settlement would restrict indoor smoking in public facilities, but would exempt casinos, as well as bingo parlors, prisons, restaurants, bars, private clubs and hotel guest rooms.

A study commissioned by the Las Vegas and Greater Reno-Sparks chambers of commerce predicts dire consequences if smoking is banned in casinos. The study says gamblers would leave tables and slot machines for 12 minutes every hour to light up.

This, the study says, translates to:

--A $1.9 billion loss to the casino industry over five years;

--A sales tax loss of $50 million the first year;

--The loss of 20,000 to 30,000 jobs the first year.

The study, conducted by a University of Nevada, Reno professor, contends that one-third of all casino patrons are smokers and that 30 percent of non-smoking patrons are married to or travel with smokers.

But Savage, who has never smoked and now heads the Nevada branch of the American Cancer Society in Reno, discounts the idea that smokers would boycott smokeless casinos for casinos on Indian lands or offshore, where federal regulations wouldn't apply.

``Casinos used to cater to smokers because they were natural born risk takers," Savage said. ``That demographic has changed. Casinos are now attracting more families."

While casinos are loathe to draw gamblers away from the tables for any reason, anti-smoking advocates have become increasingly vocal, saying puffing players are hazardous to the health of other customers and casino workers.

Resort officials have fought proposed smoking bans since 1987, when the federal Occupational Safety and Health Administration first considered banning smoking in public buildings. The Nevada Resort Association lobbied against such a ban and won, with some help from Capitol Hill.

Nevada has one of the highest proportions of adult smokers -- 30 percent -- and 29 percent of the state's teens smoke, according to the state health division.

Mandy Canales-Salazar, program director of the American Cancer Society in Las Vegas, says Nevada leads the nation in the percentage of lung cancer cases, with 1,100 state residents dying annually from the disease.

Tony Badillo, a card dealer for 40 years until his recent retirement, recalls losing battles with smoking players.

``I think the secondhand smoke is dangerous and the dealer doesn't have any right to complain because he will be terminated immediately," said Badillo, who now heads the Nevada Casino Dealers Association. ``One of my fellow workers asked a customer to move an ash tray slightly. The floorman got involved, and the dealer was terminated. The customers are very touchy."

``Casino workers shouldn't be forced to choose between their health and their livelihood," said Willie Edwards, tobacco education and information officer for the Nevada Health Division.

The proposed tobacco deal would bar any class-action lawsuits by casino workers, such as a pending suit by flight attendants in Florida. To date, no such lawsuit has been filed.

Maureen Martelli, of Alexandria, Va., who was dropping quarters into a slot machine Rio Hotel-Casino, said she'd be upset if she had to take a break to go for a smoke.

``I don't even want to leave to go to the bathroom."

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Friday August 1 8:00 PM EDT

Supreme Court ruling could jeopardize Liggett pact

By Gail Appleson, Law Correspondent

SAN FRANCISCO (Reuter) - A recent U.S. Supreme Court ruling that ended a widely watched asbestos class action could jeopardize Liggett Group's historic agreement to settle smokers' suits, lawyers said on Friday.

Leslie Brueckner, an attorney with the Trial Lawyers for Public Justice, said she expects a federal judge to issue a ruling in the next few weeks on challenges to the Liggett accord as it applies to personal injury suits.

Brueckner spoke during a panel discussion on the future of class-action suits that was held as part of the American Bar Association's annual meeting here.

The Liggett agreement on private suits is included in the overall settlement the company reached with state attorneys general in March. Liggett, which is owned by Bennett LeBow's Brooke Group, was the first of the tobacco companies to agree to settle tobacco litigation and the first to admit that nicotine is addictive.

The accord provides that the attorneys general drop their suits against Liggett seeking to recoup Medicaid costs of smokers.

It also provides that Liggett set aside 25 percent of its pretax earnings to settle suits filed by individual smokers. That part of the agreement was filed as a class action in West Virginia federal court.

In May, U.S. District Judge Charles Haden granted preliminary approval of the settlement and issued a temporary order stopping all individual tobacco plaintiffs from proceeding against Brooke and Liggett.

However in June, the U.S. Supreme Court upheld a lower court ruling that threw out the asbestos class action known as ``Georgine." The nation's highest court agreed that federal class-action laws cannot be used to settle massive personal injury cases where the plaintiffs' injuries and interests are too diverse.

The Trial Lawyers for Public Justice and some other plaintiffs lawyers have challenged the litigation agreement, arguing that it must be thrown out because of the Georgine ruling. Brueckner said the class in the Liggett case is far too broad, encompassing anyone who might have an injury in the next 25 years. She said this would include smokers and those exposed to second-hand smoke.

``If our motion is granted, the case is virtually dead," Brueckner said.

However she said that even if her group wins its motion, it would not affect Liggett's settlement of the attorneys general Medicaid cases.

She said that Liggett's pretax income last year was close to nothing and that the agreement affecting private cases is unfair because it provides no funding for individual smokers' claims.

``They are trying to extinguish all cases for nothing," she told reporters after the discussion.

Brueckner said Liggett was trying to use federal class action law to avoid bankruptcy, in which ``all the money would have to be on the table."

U.S. District Judge William Schwarzer of the Northern District of California, another speaker on the panel, also said he felt the Liggett settlement was an ``end run around bankruptcy laws." MO.N RN.N BTI.A GLH.N UST.N LTR.N BGL.N

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JournalNow

Tobacco suit appears headed for trial in Florida

Friday, August 1, 1997

THE ASSOCIATED PRESS

WEST PALM BEACH, Fla.

With no settlement in sight, Florida's landmark tobacco lawsuit is headed to trial with 300 potential jurors set to gather today to start a selection process expected to last a month.

Florida is the first to go to trial among more than 40 states that have sued cigarette makers. Mississippi recently settled a similar suit for $3.4 billion after cigarette makers agreed to a $368.5 billion national settlement that still needs congressional approval.

"This is the biggest case in American juris prudence," said Bob Montgomery, who is leading a team of nine attorneys representing the state.

Attorney General Bob Butterworth said that the state and the industry were not talking at this stage. The state is seeking to recover the costs of treating sick smokers on Medicaid.

"The industry has not offered the state of Florida anything which the governor will accept," he told reporters in Tallahassee yesterday before heading to West Palm Beach with Gov. Lawton Chiles.

Attorneys for both sides will use months of detailed studies of the area's population to gauge opinions on tobacco-related issues to pick 15 jurors -- a six-member panel and nine alternates.

Montgomery said that the state sued the industry in Palm Beach County because of its demographic makeup.

He would not discuss the details of the state's research.

"We know generally what the cross section of this community feels about this case," he said. "We know going in what's good about the case and what's bad about the case."

The state accuses the industry of producing a defective product and conspiring to conceal that defect. Montgomery said that children and smoking is a "paramount concern" among residents in the area -- people from which jury pools are culled.

The tobacco companies deny any wrongdoing.

Attorneys for the industry were less forthcoming about what they have done to prepare for jury selection. Attorney Steven Krigbaum said that the industry has "been doing research" but he would not comment further.

Circuit Judge Harold Cohen will give prospective jurors a brief presentation about the case today. They also will be asked to complete a lengthy questionnaire intended to help attorneys and the judge select a jury.

Despite complaints from both industry and the state's attorneys, Cohen ruled that the responses to the questionnaires are public record. The judge said that the questionnaires are meant to expedite a process that would otherwise be handled in open court.

Justus Reid, an attorney for Lorillard, argued that making the questionnaires public would only be "an invitation . . . to look up, talk to or call a juror" and that they may also be subject to threats.

"There have been threats in this case," Reid said. "I'm not going into it, 'cause that's not proper." He wouldn't say more.

Cohen also dropped negligence and product liability counts against U.S. Tobacco Co. because it stopped manufacturing cigarettes in 1984.

The company still faces racketeering counts under the suit.

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Thursday July 31 9:13 PM EDT

Jury answers in Fla tobacco case to be made public

WEST PALM BEACH, Fla., July 31 (Reuter) - A Florida judge ruled on Thursday that the answers given by prospective jurors on a jury questionnaire in the state's billion-dollar lawsuit against tobacco companies can be made public.

Jury selection for trial of the lawsuit, in which Florida seeks to recover the costs of treating sick smokers, was scheduled to begin on Friday. Some 300 potential jurors have been called, from which six jurors and nine alternates will be chosen.

The ruling went against the wishes of attorneys for the state and the tobacco industry, who urged Palm Beach Circuit Judge Harold Cohen to keep the answers private.

The questionnaires are designed to help attorneys screen jurors by probing their attitudes toward smoking, lawsuits and other issues.

W.C. Gentry, an attorney representing the state, said he felt the privacy of jurors should be protected and they might be "more candid" if they knew the only people to see the answers would be the judge and attorneys.

Attorneys also argued that threats could be made against the jurors if the questionnaires were made public.

"It is certainly possible that attorneys or jurors can wind up with threats to their lives" before the trial is over, said Justice Reid, an attorney for Lorillard Tobacco Co.Inc., a unit of Loews Corp. (LTR).

Gentry said threats had been made against witnesses who were part of the state's lawsuit.

"These threats were made against cigarette company whistleblowers who brought the questionable conduct of the industry to the public," he said.

One of these was Dr. Jeffrey Wigand, perhaps the best known industry whistleblower, who made public the famous Brown & Williamson tobacco papers, Gentry said.

Cohen ruled that there had been "a representation" of threats in the case but said there was "no sufficient (court) record to support it."

However, to protect the privacy of jurors, Cohen inserted into the jury questionnaire a statement that no prospective jurors need answer a question if they felt it dealt with a private issue. Those questions could be taken up in a private conference if needed, he said.

Gentry said that Florida Gov. Lawton Chiles and Attorney General Bob Butterworth were expected to appear before the jurors before they begin the laborious task of filling out the questionnaires. Jury selection was expected to take at least five weeks.

More news for referenced ticker symbols: BGL, BTI, GLH, LTR, MO, RN, UST, *and related categories and industries*: food/beverages, household, insurance, leisure, tobacco, stock capsules, options, international.

Help

Thursday July 31 9:52 PM EDT

Fair Florida trial 'nearly impossible'-tobacco

WEST PALM BEACH, Fla., July 31 (Reuter) - By winning a series of crucial pretrial rulings, Florida has made it ``nearly impossible" for tobacco companies to get a fair trial in the state's billion-dollar lawsuit for Medicaid damages, tobacco giant Philip Morris Cos. Inc. said on Thursday.

In a statement issued from West Palm Beach, where jury selection in the landmark trial was scheduled to begin Friday, the company said some of Judge Harold Cohen's pretrial rulings ``directly contradict over 100 years of judicial precedent and the Florida Supreme Court."

In one critical ruling Wednesday, Cohen said the tobacco companies would not be allowed to use public knowledge of the dangers of cigarette smoke as a defense.

``The state has apparently succeeded in making it nearly impossible for the tobacco industry to get a fair and impartial trial in Florida's unprecedented bid to collect millions of dollars in damages as a result of the state-approved sale of cigarettes and the legal use of those products by state citizens," Philip Morris attorney Gregory Little said in the statement.

The tobacco companies had wanted to argue that Florida smokers were aware of the risks of cigarette smoking, an argument the industry has used successfully to win individual product liability and wrongful death lawsuits filed by ailing smokers or their families.

Attorneys for the state said Wednesday the ruling virtually stripped the industry of its defenses against the lawsuit, which seeks to recover the Medicaid costs of treating smoking-related illnesses.

``The basic tenet of the American judicial system is that when you're accused of doing something wrong, you have the right to defend yourself," Little said. ``This court ... continues to strip the tobacco industry of its constitutional right to a fair trial."

More news for referenced ticker symbols: BGL, BTI, GLH, LTR, MO, RN, UST, *and related categories and industries:* food/beverages, household, insurance, leisure, tobacco, stock capsules, options, international

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Posted: Wednesday, July 30, 1997 at 1:57 AM

Tobacco calls state hypocrite

By SCOTT GOLD Staff Writer

In its monthly bulletin in 1906, the Florida Board of Health dubbed cigarettes "the worst form of tobacco addiction," tainted with "cigar stumps and street scrapings." There was "every argument against its use."

More than 70 years later, on June 1, 1979, then-Gov. Bob Graham issued a formal proclamation lauding tobacco as an industry that deserves public support because of its benefit to the state's economy.

And just two years ago, the state Department of Agriculture was begging Philip Morris to sponsor the State Fair -- and offering the designation of Feb. 10, 1996, as "Benson & Hedges Day."

Two days before Florida becomes the first of 40 states to go to trial against the tobacco industry, cigarette makers argued they should be able to use the state's hypocrisy to defend itself against racketeering and fraud charges.

But Palm Beach County Circuit Judge Harold J. Cohen was not convinced. Cohen ruled that the state's involvement in the marketing, promotion and distribution of cigarettes could not be used as a defense.

"It was not a defense in grade school that 'everybody does it,'" said Notre Dame University law professor G. Robert Blakey after the ruling. "It is not a defense in court."

Blakey, who was instrumental in writing Florida's racketeering statutes in 1977, is a member of the state's legal team.

Cohen left open the possibility that the state's role as cigarette maker and distributor could be considered in assessing damages if the jury finds the tobacco companies guilty.

It was another victory for the state, but tobacco's attorneys intend to press the issue further at more hearings today and pledged to find an avenue to present it to jurors.

"If you look at the facts, the state of Florida has been promoting, selling and marketing defendants' cigarette products with full knowledge of the health effects," said Stephen Krigbaum, a West Palm Beach attorney and a member of tobacco's trial team. "They are giving our cigarettes to kids."

According to tobacco, the industry's success is due, in part, to the state.

Florida manufactured millions of cigarettes, many of which ended up in teen-agers' hands, abandoned an industry-funded program designed to reduce teen-age smoking and has never revoked a license to sell tobacco based on under-age sales.

In 1995, when inmate Thomas Waugh sued Florida, saying he was addicted to cigarettes and needed treatment, the state disputed the claim in part by saying that it is "your choice whether you purchase these products or not."

That response was filed after the state sued the tobacco industry in February 1995, seeking $1 billion to recover public funds spent treating poor people who contract diseases linked with smoking.

Part of that claim: The addictive nature of cigarettes "virtually extinguishes personal choice."

The state has an interest in keeping such evidence from a jury.

Florida's trial team is expected today to continue beating back tobacco's hypocrisy defense by arguing that the industry should not be able to use the state's former production of cigarettes as a defense.

From 1935 to 1978, state prison inmates produced the cigarettes, which were dubbed "RIPs" -- Rest In Peace -- because they were so harsh.

The cigarettes were used in large part to keep the peace in state prisons but were also handed out in state hospitals, according to the tobacco industry. Some were smoked by children, either teen-agers who were being tried for crimes as adults or were being held in juvenile detention centers.

The state even profited when it left the business by selling its production equipment to the state of Illinois for $5,000.

But the state argued that tobacco's arguments were not evidence but a legacy of addiction left by an industry rooted in deceit and fraud.

"Tobacco has been part of the history and culture of this society," Blakey said. "While we are withdrawing, there are going to be vestiges of the past. It's not going to be a clean break."

USA TODAY Tobacco settlement

07/28/97 - 12:19 AM ET - Click reload often for latest version

Tobacco trials are more likely

Attorneys for states suing the tobacco industry are gearing up for what both sides hoped they could avoid: trials.

Mounting opposition among health groups to the $368.5 billion national tobacco settlement raises the likelihood that state lawsuits scheduled for trial between now and the time Congress considers the issue could go forward.

Both sides expected those states and the industry to reach separate settlements before trials begin, and ample time remains for that to happen. But so far, only Mississippi has settled. Florida's lawsuit goes to trial Friday unless a deal is reached before then. "Intense" negotiations are under way, says Ron Motley, an attorney representing Florida.

Texas' lawsuit goes to trial September 8.

If any one of the trials goes forward, and a jury returns a verdict, the winning side would have less incentive to support a national settlement.

"It always is better not to have a lot of skirmishes going on when you're settling a war," says tobacco industry attorney Phil Carlton, one of the lead negotiators of the national settlement. "I would hope they can be resolved."

In Washington, public health groups have raised concerns about the settlement, especially how it limits the Food and Drug Administration's ability to regulate tobacco.

Mississippi Attorney General Mike Moore, who led the anti-tobacco negotiations, says critics should recognize political realities. "It's wonderful to have pie-in-the-sky ideas, but let's propose something that will begin saving lives now." He and Carlton remain confident the settlement will be accepted by Congress this year.

The public health industry is "sometimes fractious," says American Cancer Society CEO John Seffrin, and "it is naive to think we're going to get all of the public health individuals on the same page."

The settlement provides regulations aimed at reducing teen smoking in exchange for limits on tobacco industry liability for past misconduct.

By Doug Levy, USA TODAY

- Tobacco settlement index

YAHOO! FINANCE — REUTERS

Monday July 28 7:52 PM EDT

Florida must prove tobacco was criminal enterprise

WEST PALM BEACH, Fla, July 28 (Reuter) - A Florida judge ruled Monday that the state must prove to a jury that tobacco companies engaged in conduct that would mislead the public about the hazards of smoking.

Palm Beach County Circuit Judge Harold Cohen said the state must provide the jury ultimately selected to hear the $1 billion Florida Medicaid lawsuit with ''clear and convincing evidence'' that cigarette makers joined together in an illegal enterprise to further their alleged scheme.

The state sued cigarette manufacturers to recover the costs of treating people with smoking-related illnesses. Jury selection was scheduled to begin Friday.

Lawyers for the state had asked Cohen to find that the ''enterprise'' existed and was proved by the tobacco companies' association through the Tobacco Institute and the Council for Tobacco Research, two industry groups.

But Cohen refused, ruling that the issue must be put before the jurors.

''The jury is entitled to make a finding that an enterprise exists,'' and that the ''evidence is clear and convincing'' that criminal intent existed on the part of the defendants, he ruled.

Only then, Cohen said, would he rule on the state's demands for damages. Florida is seeking recovery of all profits made from the sale of cigarettes, among other damages.

Professor G. Robert Blakey, a Notre Dame University professor of law who wrote the federal and Florida racketeering statutes, said those profits could be all the companies made from the sale of cigarettes to minors since 1977 in Florida.

''The maximum would be the profits the tobacco companies made worldwide from the sale of cigarettes, but that is not likely,'' said Blakey, who argued successfully to Cohen that Florida was entitled to seek equitable relief which would enhance the $1 billion the state already is seeking for the care of Medicaid patients with smoking-related illnesses.

Murray Garnick, an attorney for Philip Morris Cos. Inc., said he was pleased with Cohen's enterprise ruling.

Earlier Monday, Cohen ruled that federal law, not state law, governed issues of health and smoking since the 1969 passage of the Cigarette Labeling and Advertising Act.

The ruling prevents Florida from using tobacco company advertising and promotions to prove they deliberately set out to mislead the public and state agencies.

Jury selection was scheduled to begin Friday and the trial should begin shortly after Labor Day, lawyers said.

More news for referenced ticker symbols: AMB, BGL, BTI, LTR, MO, RN, UST, *and related categories and industries:* food/beverages, household, insurance, leisure, tobacco, options, international.

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T - Wall Street

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Published Thursday, July 24, 1997, in the Pioneer Press.

PIONEERPLANET

Philip Morris opposed witness' invoking of Fifth

DAVID SHAFFER STAFF WRITER

Philip Morris opposed the decision by its former research director, Dr. Thomas Osdene, to refuse to answer questions in Minnesota and Texas lawsuits by asserting his Fifth Amendment right against self-incrimination, new court papers show.

Osdene, who retired from the nation's largest cigarette maker in the early 1990s, has twice invoked the Fifth Amendment during pretrial question-and-answer sessions, known as depositions, for lawsuits filed by the Minnesota and Texas attorneys general.

He is considered a key witness in the lawsuits, which allege cigarette makers deceived the public about the dangers of smoking. But Osdene has refused to answer questions unless the U.S. Justice Department grants him immunity from prosecution in a pending criminal investigation of the tobacco industry. The justice department reportedly has refused.

The transcript of a May 6 closed-court hearing in St. Paul reveals that Philip Morris disagreed with Osdene's decision to invoke the Fifth Amendment.

``His assertion of the Fifth Amendment is contrary to the desires of Philip Morris," Maurice Leiter, an outside counsel for the company, told Ramsey County District Judge Kenneth Fitzpatrick during the in-chambers discussion in May.

Anti-tobacco lawyers have long suspected that some retired tobacco industry researchers worked in concert with their former employers to thwart pretrial discovery in smoking lawsuits. The transcript suggests the opposite is the case with Osdene.

``We did not want him to take the Fifth," Leiter told the judge. ``We are not pleased with the fact that he took the Fifth Amendment. We urged him to testify completely and truthfully."

Leiter said news of Osdene's refusal to testify ``would generate an extraordinary amount of press . . . very unfavorable and unfair to the company," according to the transcript.

Indeed, Osdene's assertion of his Fifth Amendment right against self-incrimination has been widely reported around the country despite confidentiality orders imposed by judges in Minnesota and Texas.

Fitzpatrick earlier refused a Pioneer Press request to release the May 6 in-chambers transcript. It was filed Tuesday in court without explanation.

Peter Sipkins, a Minneapolis attorney representing Philip Morris, said the company could not elaborate on the transcript because of the confidentiality orders. He did confirm that the transcript ``does accurately reflect the company's position."

Gary Nunes, a Washington, D.C., attorney representing Osdene, declined to comment.

Osdene, who lives in Richmond, Va., is considered a key witness partly because he wrote a memo in the 1970s suggesting that damaging internal company research could be shipped abroad or destroyed.

He has been questioned twice, in May and June. Both times he refused to answer questions.

Nunes told a federal judge in April that Osdene sought immunity from the Justice Department but that ``while justice agreed that he may be a candidate for immunity, they would not immunize him at this time."

The Justice Department is investigating whether tobacco companies lied to Congress and regulatory agencies about nicotine, the addictive substance in tobacco, and other matters.

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(T) - Liggett

A Maverick's Complaint

Liggett's LeBow Broke Tobacco's Ranks, But He Says the States Broke a Deal

By John Schwartz
Washington Post Staff Writer
Thursday, July 24, 1997; Page E01
The Washington Post

Bennett S. LeBow, the tobacco mogul who became his competitors' worst nightmare, claims he deserves some of the credit for driving the industry to negotiate a nationwide settlement of liability claims it faces.

LeBow made headlines worldwide last year when his tobacco company, Liggett Group Inc., said tobacco companies do indeed market to kids, and added for good measure that the products are addictive and cause disease.

He also became the first ever to settle a smoking lawsuit, and paid a million dollars last year to the five states that signed that initial settlement. He followed up last March with a broader settlement with the 22 states that had sued the industry by then.

That deal was a precursor to -- and, LeBow believes, the trigger for -- the three months of secret negotiations leading to the industry-wide agreement being reviewed at the White House and in Congress. LeBow said the new deal could kill his ailing company, and was in Washington last week lobbying lawmakers for better treatment in any legislation that might come out of Congress.

LeBow, 59, was in the spotlight again earlier this week when he testified on behalf of flight attendants suing the tobacco industry in Florida over their exposure to secondhand smoke -- fulfilling the terms of his agreement with the attorneys general by cooperating with suits against the industry.

He is an unlikely tobacco executive, and an accidental one. LeBow is an investor whose holdings over time have included jewelry manufacturers, computer companies, a microfilm equipment company and trading cards.

In 1986, GrandMet USA, the American subsidiary of British conglomerate Grand Metropolitan PLC, was ready to sell Liggett's domestic cigarette operations, having sold the overseas rights to its brands to Philip Morris Cos. several years before.

Liggett was under a litigation cloud at the time, albeit a tiny one compared with the storm that was to come. Advisers told LeBow not to worry about the 20 or 30 pending lawsuits because no tobacco company had ever paid a penny in damages in a smoker suit. "The lawyers said `no problem,' " LeBow recalled.

LeBow picked up the cigarette maker for $137 million. Thanks to the heavy cash flow from cigarettes, LeBow said, he was able to pay off a substantial portion of the initial debt in the first year and a half.

Though he never joined the close club of tobacco executives, he said he quickly learned the lay of the land. "It was like a little fraternity -- everybody did what Philip Morris did," he said. "Liggett, being the smallest and the peanut of the crowd, we all did what we were told."

LeBow improved the bottom line of the company by pushing low-cost brands, but Philip Morris responded in 1993 -- in a day later dubbed "Marlboro Friday" -- with a price drop on its premium brand. LeBow quickly found himself with a company that showed no profit but which had huge debt payments on the way.

He said he did not want out of the business -- in fact, he and Wall Street dealmaker Carl Icahn worked together in repeated unsuccessful attempts to take over giant RJR Nabisco Inc. in order to spin off its profitable food businesses.

But LeBow began to realize that tobacco companies might not be immune to courtroom losses. His doubts had already deepened when his outside law firm broke up in 1995. The lawyers wanted to join a firm with ties to the industry; LeBow preferred that they join another, headed by an attorney he trusted, Marc Kasowitz of New York. Kasowitz had just helped bring LeBow's Western Union out of bankruptcy, and was building a product liability practice.

Philip Morris stepped in and offered to pay LeBow's legal expenses if he went with the industry firm. "I couldn't turn it down," he said.

Still, the idea that the larger company was concerned enough about his legal representation to take matters into its own hands troubled LeBow. "It just didn't make sense. I really started to think, what's going on here?"

Philip Morris has said it paid LeBow's legal expenses because his company could not afford them, and court losses would hurt the entire industry -- especially the market leader. Last July a jury award of $750,000 to a former Florida smoker caused a one-day drop of about $10 billion in Philip Morris's stock value.

LeBow began speaking with Kasowitz and other lawyers about the liabilities facing the companies, and focused on the question of addiction. Unlike the diseases caused by smoking, addiction wasn't part of the warning labels on cigarette packages -- and internal industry documents appeared to show that the companies knew their products hooked people, he said.

When addiction showed up as a central issue in the state suits and in a number of class action suits filed by private lawyers, LeBow said, his worries grew. A loss in court, he determined, would kill his weakened company. A deal, on the other hand, could eliminate the most troubling suits -- those launched by the states. "I said, `This is ridiculous. Let's settle this if we can,' " he recalled.

Kasowitz began secret negotiations with the state attorneys general and private lawyers that led to the March 1996 settlement. The industry's lawyers didn't know about the deal until they saw it in the newspapers.

The industry lawyers resigned as his counsel, and Kasowitz began reviewing company papers. "Some of these documents are really bad," LeBow recalls the lawyer saying -- "really devastating" if brought out in court.

As LeBow began negotiating with the growing number of attorneys general looking for a broader settlement, he realized he had an important asset: the documents. "The one thing we had to offer was cooperation," he said.

He claims, in fact, that it was the prospect that his internal industry documents would be made public that drove the companies to the bargaining table. Along with pressure from the Food and Drug Administration and the other lawsuits, he said, the internal documents -- including those of other companies in Liggett's files -- broke the dam. The companies are fighting the release of documents dealing with cooperative efforts of the industry, claiming that they are protected by attorney-client privilege.

LeBow said the state officials who reached agreement with him promised in the settlement to expend their "best efforts" to protect Liggett in any broader agreement.

When the broader settlement emerged in June, it held his company to financial terms that he said would drive it into bankruptcy. He contrasted his treatment from the attorneys general with that of industry whistle-blower Jeffrey Wigand. The attorneys general threatened to walk away from the industrywide talks if Brown & Williamson Tobacco Co. didn't drop its legal attacks on Wigand, a former top researcher with the company who had gone public on cigarette safety issues.

James E. Tierney, a former Maine attorney general who has served as a consultant to states suing the industry, bristled at the comparison to Wigand, who went from a mid-six-figures income as a Brown & Williamson executive to the pay of a high school teacher. "May I remind him? He is a tobacco company," Tierney said. Tierney nonetheless praised LeBow for cooperating with the states and said the attorneys general would honor their promises to him.

Tobacco analysts doubt that LeBow's settlement forced the industry to settle. Negotiations had begun months before among the companies themselves, said Gary Black, an analyst with Bernstein Research.

"Do I believe he caused the earth to shake?" said independent analyst Mary Aronson. "I don't think so. He may be big, but he's not that big."

Because the ultimate fate of the deal is not known, she said, "we're a long way from seeing whether this credit is worthy of being given out to anybody."

Black said LeBow "was the first to understand that a settlement was the way to go," but that the Liggett settlement was deeply flawed. Black said the companies should have simply bought LeBow out when they had the chance to do so cheaply and quietly before he started negotiating a settlement. "Egos got in the way," Black said; "they'd rather destroy LeBow than buy him out."

IN PROFILE

Bennett LeBow

CEO of Liggett Group

Age: 59.

Birthplace: Philadelphia; his mother taught school, his father sold insurance.

Education: Engineering degree from Drexel University; graduate work in computing at Princeton.

Other interests: Scuba diving.

Career highlights

1961: Starts a computer company in Rockville, DSI Systems; later saves it with a merger and financial restructuring, then sells it.

1985: Acquires

MAI Systems; company files for bankruptcy 1993, reemerges in 1994.

1986: Buys Liggett from GrandMet for $137 million.

1987: Buys most of Western Union, which has a negative net worth of $200 million. The company, renamed New Valley, later sells its interest in Western Union Financial Services for $1.2 billion.

1988: Sells his shares in American Brands after failing in an effort to merge it with Liggett and makes a $30 million profit.

1989: Fails in hostile bid to acquire Prime Computer.

1990: Combines several unprofitable interests into Brooke Group, later named Liggett.

1995: Joins with former rival Carl C. Icahn in a battle to force RJR Nabisco Holdings to spin off its food business. The assault fizzles.

@CAPTION: Bennett S. LeBow of Liggett Group Inc. confers with attorney Michael Faye during his testimony Monday in Miami in flight attendants' class action suit against tobacco companies.

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

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SENATORS TARGET AMERICAN CIGARETTES SOLD ABROAD [7.23.2]
Should We Be Contributing to a Drug and Health Crisis?

U.S. Senator Frank Lautenberg, D-NJ and some of his Senate colleagues are targeting U.S. cigarette exports with legislation to outlaw trade negotiations that weaken foreign tobacco curbs and to make sure smokers abroad get the same health warnings as Americans.

The bill, being introduced today, would forbid a repeat of 1988 trade negotiations with South Korea.

Then, under the threat of sanctions, South Korea had to agreed to eliminate its ban on tobacco advertising -- and by 1993, U.S. cigarette imports had increased by 1,000 percent.

Without restrictions, ``our government will be contributing to what will be a health crisis in the next century" worldwide, Lautenberg and Sen. Ron Wyden, D-Ore., wrote U.S. Trade Representative Charlene Barshefsky on Tuesday.

The bill also will modify existing law to require that exported U.S. cigarette packs bear the same warning labels required in this country, but in the language of their destination.

Related Items

From The Post

- Tobacco industry agrees to federal regulation and $368.5 billion payout to settle state lawsuits.
- With tobacco settlement, trial lawyers may see another mammoth payday.
- The pact imposes strict limits on the tobbaco industry.
- The plan got a chilly reception at the White House and on Capitol Hill.

From the AP

- Read highlights of the settlement.
- Winners and losers in the deal.

On the Web

CourtTV provides the full text of lawsuits filed by states against tobacco firms.

Editor's Note: Some of the above link takes you out of The Post's Web site. To return, use the *Back* button on your browser.

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Liggett Chief Says Philip Morris Paid His Bills

By Donald P. Baker
Washington Post Staff Writer
Tuesday, July 22, 1997; Page A10

Tobacco Links

Legal Battles
Medical Reports
Teenage Smoking
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Tobacco Industry

MIAMI, July 21-The maverick owner of the nation's fifth-largest cigarette company testified today that industry giant Philip Morris paid his financially ailing company's legal bills for several months in 1995 in an unsuccessful attempt to keep him from breaking Big Tobacco's solidarity on the issue of whether smoking causes cancer.

"We accepted it for a while," said Bennett S. LeBow, owner of the Liggett Group Inc., "but they canceled after five, six months."

LeBow did not specify how much money Liggett got from its largest competitor, but he did say that at the time Liggett was spending $10 million a year defending itself from law suits and other accusations that its products were killing its customers.

In a highly unusual move, LeBow testified on behalf of 60,000 former and current non-smoking flight attendants who are suing the tobacco industry for $5 billion for health problems they say they suffered from breathing secondhand cigarette smoke on the job. It's the first class-action lawsuit against the industry ever to come to trial.

LeBow is chairman of Brooke Group Ltd., whose Liggett Group makes Chesterfield, L&M and more than 100 discount and generic brands of cigarettes-accounting for about 2 percent of the U.S. market. In March 1996, Liggett settled lawsuits brought by five states and private attorneys to recover medical costs of treating sick smokers. This spring, LeBow's company settled lawsuits with 22 more states and agreed to cooperate in a legal attack on the industry.

Today, LeBow found himself testifying against his own company-Liggett is one of the defendants-and being questioned by lawyers for his company.

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Attorney Stanley Rosenblatt, who is representing the plaintiffs, said Philip Morris "didn't pay his bills out of the goodness of their heart. That was a means of buying his silence and his cooperation so he would not be a spokesman for the opposite position."

The bearded LeBow, who is a Miami resident, was unequivocal on whether smoking causes cancer, heart disease, emphysema and other diseases. "The answer is yes," LeBow said in answer to that question posed by Rosenblatt.

To another question, he responded, "Yes, we believe that for many people smoking cigarettes is very addictive."

But he was less certain whether secondary smoke-the issue in the trial-is injurious. LeBow said he had no basis on which to agree or disagree with studies by the U.S. Environmental Protection Agency and others that found that environmental tobacco smoke-also called secondhand smoke-causes cancer.

Lawyers for the four larger tobacco company defendants-Philip Morris, R.J. Reynolds, Brown & Williamson and Lorillard-peppered Rosenblatt's questioning of LeBow's testimony with so many objections-many of which were sustained by Dade County Circuit Court Judge Robert Kaye-that an exasperated Rosenblatt appeared to cut short LeBow's appearance on the witness stand.

The lawyers for the defendants contended in opening arguments that the flight attendants were exposed to the equivalent of no more than a few cigarettes a year during the time commercial airlines permitted smoking, a practice that ended in 1990.

Despite LeBow's statements today, two top analysts of the tobacco industry who were in the courtroom said his testimony was not as damaging as some industry boosters had feared.

"It could have been worse," said Gary Black, tobacco analyst for Sanford Bernstein Co. "I think the industry dodged the bullet."

Martin Feldman, tobacco analyst for Smith Barney, agreed. "I don't think he hurt the industry's case," said Feldman. "In a case this long [jury selection began June 2] it's hard to say who won a particular skirmish, but I do think the industry did a very effective job of defusing what might have been a very volatile LeBow."

LeBow is "clearly on a tightrope," according to Feldman. He wants to side with the plaintiffs, but his company remains a defendant in the case.

But Feldman said the jurors may be listening more to the "gross generalities" offered by plaintiffs' witnesses about the dangers of smoking to health than to defense suggestions that there is much less proof about the dangers of secondhand smoke.

During a brief cross-examination, LeBow told Brown and Williamson lawyer Edward Moss that he had changed his view about the health risks of smoking on the basis of reports to him by lawyers he had hired to review the research on smoking.

"I believe we absoulety did the right thing. We'd do it again in a minute," LeBow said.

"I believe we absolutely did the right thing. We'd do it again in a minute," LeBow said.

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States Divided in Sensitive Tobacco Talks

Some Are Balking at Offering Industry Protection From Liability

By BARRY MEIER

As talks with the tobacco industry enter a crucial week, conflicts are growing among negotiators representing states over the critical issue of liability, with at least one of them vowing to propose a settlement plan even if others balk.

About 30 states are suing cigarette producers to recover Medicaid money spent on treating smoking-related ills, and the companies have called on those states to provide uniform settlement proposals this week. The proposals will cover topics central to the two-month-long negotiations, like protection for the industry from legal damages, Government regulation of nicotine and the size of a settlement package.

In talks in New York City late last week, a core group of negotiators representing state attorneys general told industry representatives that they were withdrawing several proposals intended to protect the industry from lawsuits and damage awards. Those included a bar on punitive damages, requirements that smokers complete smoking-cessation classes before they could sue and sharp restrictions on the right of future smokers to sue.

But in an interview yesterday, Richard Scruggs, a lawyer who represents Mississippi and some 19 other states involved in the talks, said he believed that a majority of them would accept a bar on punitive damages in exchange for settlement benefits like industry commitments to reduce teen-age smoking.

Mr. Scruggs added that he believed such a plan could be presented to industry without the participation of several states, including Connecticut, Iowa, Minnesota and Wisconsin, that have been among the most vocal in their opposition to liability restrictions. "If a substantial majority of states agree to go forward, I think there will be a deal announced among the states who agree to it," Mr. Scruggs said. "Right now, the tail is wagging the dog."

Punitive damages are meted out to punish a company and deter similar conduct. Although punitive damages have never been awarded in a tobacco lawsuit, they are a legal wild card for cigarette makers because the damages can be huge and awarded repeatedly in different cases.

Limits on future lawsuits and damage awards are crucial goals for the cigarette industry, which wants to be able to predict with some certainty how such awards will affect corporate earnings. In exchange, the companies have said they would work to cut down sharply on teen-age smoking and reduce overall cigarette promotion and would probably concede regulatory authority over cigarettes and nicotine to the Food and Drug Administration.

A tobacco settlement proposal may not include all the states in the negotiations.

The comments of Mr. Scruggs, coming just days after state negotiators rejected industry liability proposals, seem to reflect confusion on the part of attorneys general and their antismoking allies at a critical moment. Several of them appeared to be taken aback by Mr. Scruggs's stance and said again that they were not willing, for the moment, to make any concessions on the issue of punitive damages. "A core position of ours is that this agreement can not restrict the rights of individuals to seek just compensation," said Matthew Myers, a lawyer with the Coalition for Tobacco-Free Kids.

Bob Butterworth, the Florida Attorney General, said, "We would have to weigh its importance at the time the whole package comes together."

Along with Michael Moore, the Attorney General of Mississippi, Mr. Scruggs is considered a principal architect of the tobacco talks. But both he and Mr. Moore are facing pressure to resolve the discussions because Mississippi's Medicaid case, the first of its kind in the nation, is scheduled to begin early next month.

The attorneys general have indicated they would agree to an annual cap on the legal damages that the cigarette industry might pay out, to provide the companies with some financial predictability. Though not set, the cap would be about $4 billion, people familiar with the talks said.

Mr. Scruggs said that a bar on punitive damages should also be ceded to the industry because a series of large punitive awards could bankrupt producers and wipe out a settlement's benefit to the public.

Mr. Moore said he hoped the attorneys general would soon reach a final proposal and present it to the industry. At that point, he said, he would seek to build a consensus with public health leaders and elected officials. "I would like to have unanimity" among the states, he said. "But the number is not the determining factor. I have complete faith that when this is done we will have a supermajority."

But just how salable such a plan would be to the White House or to Congress is still an open question.

Michael Ciresi, a lawyer for the State of Minnesota and one of the strongest critics of the talks, said he did not think a plan would be politically acceptable unless it had support from the public health community and all the states.

"A proposed settlement with opposition," he said, "would be dead on arrival."

Embrace Computers, Booksellers Are Told

CHICAGO, June 1 (AP) — When booksellers gathered this weekend at Bookexpo America, the annual meeting of the publishing industry, independent sellers were encouraged to do more than just complain about superstores and on-line dealers — they were told about some practical ways to fight back by turning to computer technology.

One seminar's title was part challenge, part threat: "Tomorrow's Bookstore: Will You Be There?" The message to the independent sellers: If you want to be there, make friends with computers.

"I think the title was meant to provoke people into really questioning whether they're doing what they have to do in order to compete in the 21st century," said the moderator of the panel, Richard Scott, managing editor of The American Bookseller, a trade publication. "If Barnes & Noble parks itself across the street from an 800-square-foot store, computers can't totally equalize it, but at least they can give you a fighting chance."

Beyond discounts or coffee bars, superstores like Barnes & Noble and on-line sellers like Amazon.com often have the advantage of bigger selections and a wider range of services. But panel members said computers could change that.

For instance, "on demand" printing mediated by computers would enable a store to download a book it did not have in stock or even a book that was no longer in print. And by setting up a computer — or a bank of them — sellers could not only track down a book but could also arrange for speedy delivery.

"Let's say you run a travel bookstore and I come into your store and I'm leaving in two days for Japan and I want a book you don't carry," said a panelist, Robert T. Brady, a Web site consultant and president of Ingram Internet Support Services in La Vergne, Tenn.

"You can have someone deliver it to your store in two days, and I'll have to come pick it up," he said. "Or you can take that customer and say, 'Why don't you come over to our Internet bookstore,' log them on, find the book, and it can be delivered overnight if they need it. They've saved that sale."

Sellers were advised to compile files on customers' buying habits, so a store could notify a Tom Clancy fan, for example, whenever he had a new book coming out.

Some speakers predicted that computers would become a standard part of any store. "I think it'll be a combination of computers and books," Mr. Brady said.

The New York Times

MONDAY, JUNE 2, 1997

For-Profit Education Venture to Expand

By PETER APPLEBOME

All but given up for dead three years ago, the Edison Project, the ambitious national venture into for-profit schools, will announce this week that it will double in size next year, to 25 schools in eight states with about $70 million in revenue.

The growth of Edison, a company begun with great fanfare in 1991 by the media entrepreneur Christopher Whittle, is a dramatic sign of the fundamental changes beginning to shape American education as the traditional model — public schools operated by a monolithic school district — slowly gives way to a far more varied landscape of autonomous charter schools and schools operated by for-profit and nonprofit organizations.

"I think there is every reason to believe we are witnessing a fundamental transformation of American education in which Edison is playing a big part, at least symbolically," said Denis Doyle, a senior fellow at the Hudson Institute. "They're certainly a significant entering wedge in a new way of thinking about schools."

Of the 500 charter schools — public schools operated autonomously — that have been created in the last few years, 10 percent are run by private companies like Edison, Advantage Schools Inc., Sabis Educational Systems, Education Alternatives Inc. and Alternative Public Schools, according to a survey in the coming issue of the Education Industry Report, a newsletter that rates the performance of 25 publicly traded education companies.

Edison will announce new sites in Chula Vista, Calif.; Detroit; Duluth, Minn.; Flint, Mich., and San Antonio, as well as expansions in some of the cities where it already does business. The company will also announce test scores indicating that it has had some striking success in improving educational performance.

Yet the signals remain mixed and murky on the company's ability to operate profitably over time.

Mr. Whittle, who originally promised a grandiose network of for-profit private schools, said all 12 of Edison's schools were operating profitably at the site level — that is, factoring out corporate and start-up costs. And some analysts say the company's growth and performance provide considerable evidence that a private company can operate schools better and more cheaply than school districts do.

"What's impressive is that Edison at this point is doing exactly what they said they'd do," said Michael Moe, who specializes in following education-related companies for Montgomery Securities. "It's too early to say this is a slam dunk, but there's a lot of evidence this is going to be a big, significant company that will be significant not just in terms of what it does, but in terms of the impact it has on American education. This could be a billion-dollar company in 10 years."

But some school officials and even some people within the company are far more cautious in assessing the company's chances to be profitable in the long run.

Bob Finzi, a general partner of the Sprout Group, a venture capital company that is a major Edison investor, said that although he was pleased with Edison's progress, particularly in terms of test scores, he would not agree with the characterization that all schools operate profitably now.

"What's the saying: Liars figure and figures lie?" said Mr. Finzi, a member of Edison's board. "You can cut things a lot of ways, but I wouldn't characterize it that way. Right now, we're falsely characterized as a for-profit. We're as much of a not-for-profit as anyone."

Similarly, Phillip Garrett, assistant superintendent for instruction at the Sherman Independent School District in Texas, where Edison opened one of its first four schools in the 1995-96 school year, said that test results thus far had been disappointing and that Edison had struggled to operate its schools with the same per-pupil allocation that is available to school districts.

All part of the new school landscape: profits, charters — and questions.

"I'd be very surprised if they were making a profit in Sherman," Mr. Garrett said.

Still, for a company that seemed in jeopardy of being dragged down as Mr. Whittle's media ventures collapsed or were sold off a few years back, Edison's resurgence is remarkable and revealing about the hunger for new approaches to running schools.

The company, headed by Mr. Whittle and Benno C. Schmidt Jr., the former Yale University president, will announce this week that by next fall it will have grown in three years from 4 schools to 12 to 25, which will enroll 13,000 students. Officials say Edison is likely to add even more schools in the 1998-99 school year than it will in 1997-98.

"We could have done a lot more if we wanted to," Mr. Whittle said. "The growth is more a function of logistics than demand."

The company has yet to lose a client. All but one of its eight current cities have expanded their Edison schools since beginning the relationship. And Edison this week will announce test scores showing significant gains at many of its schools.

At Dodge-Edison Elementary School in Wichita, Kan., for example, fifth graders went to the 59th national percentile from the 46th in reading and to 64th from 35th in math on a standardized test taken by all public school students in Wichita. On tests conducted by the Educational Testing Service, gains by Edison kindergartners and first graders substantially exceeded students in a control group at the two sites where matched control groups exist, Edison the company said.

Increasingly, many skeptical educators are deciding that Edison has put together an educational plan — including a longer school day and year, computers for all families and state-of-the-art reading and math curriculums — that educates children better than conventional schools do.

"We had 40 inquiries nationwide for our charter school, which we pared down to a half dozen, and the parents, teachers, principals and school board members who evaluated them unanimously decided Edison was the best," said Mark Myles, superintendent of the Duluth School District in Minnesota, where Edison will operate a new charter school this fall. "They've really done their homework."

But Edison's educational program has come at a cost of $105 million raised thus far, with more needed to finance future expansion. Mr. Whittle and Mr. Schmidt said that financial results were encouraging and that Edison as a system could be profitable with 50 to 70 schools, a size it could reach in two years.

Mr. Finzi, however, described financial results thus far as "significantly less" than had been hoped for, as a result of factors including contracting costs that had not been anticipated and the enormous technology costs associated with Edison's much-touted guarantee of a computer for every family in the school.

Perhaps Edison's biggest setback came in its Renaissance School in Boston, which shocked parents in January by saying that, because of financial reasons, it would not offer a ninth-grade class next year as promised, forcing parents to make new high school plans for their eighth graders.

Mr. Finzi said the technology program was so expensive, and its payoff, particularly at the lower levels, so uncertain, that it was likely that Edison would need to rethink it, either offering computers to fewer students or offering less expensive and ambitious technology.

The New York Times
MONDAY, JUNE 2, 1997

Florida to Sell Tobacco Stocks From Its Retirement Fund

By MIREYA NAVARRO

MIAMI, May 28 — Florida officials decided today to divest the state's retirement fund of all tobacco stocks, maintaining that the proliferation of lawsuits against cigarette companies and the growing prospect of tight government regulation made them too risky as investments.

The state's plan to sell off $825 million of tobacco stocks in the $61 billion Florida Retirement System Trust Fund — one of the nation's 10 largest state pension funds — would represent the nation's largest divestiture of shares in cigarette companies, according to the Investor Responsibility Research Center in Washington, a nonprofit research service. At least a dozen universities have chosen to shed their tobacco holdings in recent years, but only one other state, Maryland, has taken similar action by selling $75 million of tobacco stock in its employee pension fund last year.

In Florida, the 2-to-1 divestiture vote by the state board that oversees the retirement fund for more than 700,000 current and retired public employees came as at least nine other states, including New York and Texas, have begun to review whether they should sell off their tobacco holdings.

Public officials are evaluating the financial risk of holding stocks in an industry that has come under increasing legal and political pressure. At the same time, some states have begun to question the wisdom of investing in companies that they are suing because of health care costs associated with smoking.

Questioning the wisdom of investing in companies that one is suing.

Gov. Lawton Chiles of Florida, who has spearheaded his state's $1.2 billion lawsuit against cigarette manufacturers, said shedding tobacco stocks eliminated what he saw as a conflict of interest. "What would happen if we win?" he asked. "Then you'd feel you failed in your fiduciary responsibility as guardian of this pension fund. It'd be foolish."

Governor Chiles and State Treasurer Bill Nelson, both Democrats, provided the majority in today's vote by the state pension board. State Comptroller Bob Milligan, a Republican, voted to keep the stock, saying none of the financial advisers the board consulted had suggestions for a better investment.

Although the board's staff deemed the stock solid and recommended against divestiture, Florida's Attorney General, Robert A. Butterworth, issued a 10-page opinion that found the tobacco industry "in an extremely volatile position, subject to the outcome of litigation, changing public opinion and public-policy decisions over which it has limited control."

Of the $825 million that the State of Florida has invested in tobacco stock, $602 million is with Philip Morris Companies Inc., and the rest is split among eight other companies.

Philip Morris officials said in a statement that the company provided "superior returns to shareholders," and reminded Florida's public pension managers of their duty "to manage their portfolios to produce the best financial returns for Florida's public employees."

Calvert D. Crary, a litigation analyst who specializes in tobacco stocks at Auerbach, Pollak & Richardson in Stamford, Conn., said Florida's decision was unlikely to significantly affect the biggest tobacco companies, including Philip Morris, whose shares have risen 16.5 percent this year.

Representatives of government employees whose retirement checks depend on the state's pension holdings, expressed some nervousness over the divestiture decision.

"It's premature," said Mark Neimeiser, political director of the American Federation of State, County and Municipal Employees, which has 27,000 members. "The guiding principle should be whether or not the investment is good for the plan."

Anti-smoking forces said Florida's decision might help prod other states to divest their tobacco holdings.

"The tobacco companies are on notice that there is a changed political climate when a state like Florida officially chooses to disassociate from tobacco," said Brad Krevor, executive director of the Tobacco Divestment Project in Boston, which advocates more regulation of the tobacco industry. "We think this will be opening up the floodgates."

Crash of Jet Fighter Kills Its Pilot, a Woman

TUCSON, Ariz., May 28 (AP) — An A-10 attack jet went down on Tuesday night in a training run, killing its pilot, who became the first female fighter pilot in the Air Force to die in a crash.

Search crews today found the body of the pilot, Capt. Amy Lynn Svoboda, in the wreckage of her jet at the Barry M. Goldwater Air Force Range near Gila Bend, about 100 miles from Tucson. There was no sign that she had tried to eject.

Captain Svoboda, 29, of Glen Ellyn, Ill., was one of just 14 female fighter pilots in the Air Force. She was two hours into a mission with another A-10 Thunderbolt when her plane went down. The cause of the crash remains under investigation.

Although Captain Svoboda was the first female fighter pilot in the Air Force to die in a crash, she was not the first in any of the military services. Lieut. Kara Hultgreen of the Navy was killed in 1994 while trying to land on an aircraft carrier in her F-14A.

The New York Times

THURSDAY, MAY 29, 1997

C.I.A. Destroyed Files on 1953 Iran Coup

By TIM WEINER

WASHINGTON, May 28 — The Central Intelligence Agency, which has repeatedly pledged for more than five years to make public the files from its secret mission to overthrow the government of Iran in 1953, said today that it had destroyed or lost almost all the documents decades ago.

Two successive Directors of Central Intelligence, Robert M. Gates in 1992 and R. James Woolsey Jr. in 1993, publicly pledged that the Iran records would be released as part of the C.I.A.'s "openness" initiatives. But they did not know there was virtually nothing left to open: almost all of the documents were destroyed in the early 1960's.

"If anything of substantive importance that was an only copy was destroyed at any time," Mr. Woolsey said tonight, "this is a terrible breach of faith with the American people and their ability to understand their own history.

"I had every reason to believe in '93 that the full historical record, anything important to the historical understanding, was there and available. I had no notion that anything important had been destroyed."

A historian who was a member of the C.I.A. staff in 1992 and 1993 said in an interview today that the records were obliterated by "a culture of destruction" at the agency.

The historian, Nick Cullather, said he believed that records on other major cold war covert operations had been burned, including those on secret missions in Indonesia in the 1950's and a successful C.I.A.-sponsored coup in Guyana in the early 1960's.

"Iran — there's nothing," Mr. Cullather said. "Indonesia — very little. Guyana — that was burned."

Brian Latell, the C.I.A. official who runs the Center for the Study of Intelligence at the agency, acknowledged today that most of the Iran records were destroyed or lost in the 1960's. He said he thought the agency still had "substantial" records on its covert actions in Indonesia, which it has promised to release. He said he could not discuss Guyana, which he called an operation whose existence the C.I.A. had never acknowledged.

"Dr. Cullather is correct" about the Iran records, he said.

In the early 1960's, Mr. Latell said, C.I.A. officials told the keepers of the Iran records "that their safes were too full and they needed to clean them out."

"This was the culture in the early 1960's," he said. "No such culture exists any longer and hasn't existed for some time."

The Directors in that era were Allen W. Dulles, who served from February 1953 through November 1961, and John A. McCone, who succeeded Mr. Dulles and served through April 1965. It is unclear whether either man was aware of the destruction.

Mr. Cullather, now an assistant professor of history at Indiana University and associate editor of the Journal of American History, came to the agency in 1992 as a member of its history staff. He was assigned to write a warts-and-all account of the C.I.A.-sponsored coup in Guatemala in 1954. Mr. Gates had just made his pledge of openness and promised to release the files on Guatemala, Iran and the 1961 Bay of Pigs invasion of Cuba.

But the C.I.A. "quickly found there were no documents on Iran," Mr. Cullather said. "They had been routinely purged. When I left in 1993, they had rounded up about 25 or 50 pieces of paper. There was almost nothing. The bulk of the documents on that operation were destroyed."

Mr. Latell said only "a small body" of Iran records remained. Other officials said the surviving files totaled about one cubic foot. No one at the agency had told Mr. Woolsey about the records' destruction before he gave a speech in September 1993 rededicating the C.I.A. to releasing the Iran files.

Ed Cohen, the director of information management at the C.I.A., said in an interview that strict procedures at the agency now insured that no valuable able historical records were routinely burned.

"The destruction process is not mindless," Mr. Cohen said.

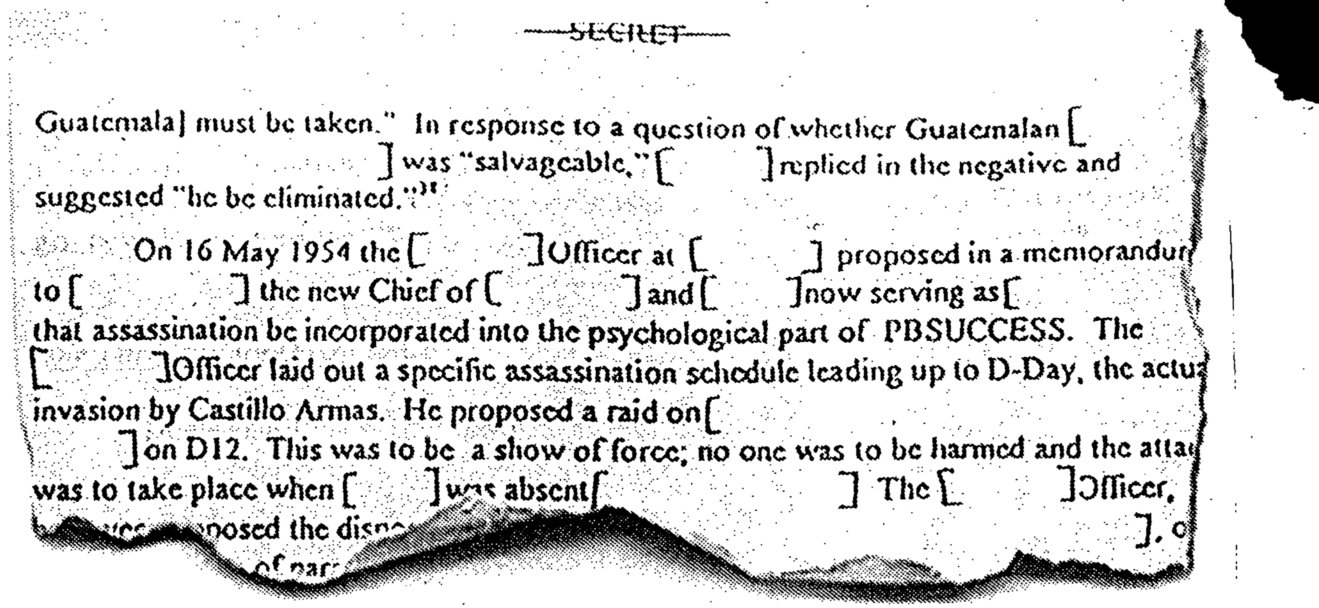
Historical records of secret operations are reviewed by the agency's covert operators, the C.I.A.'s general counsel, the agency's inspector general and the office of the historian, where Mr. Cullather worked.

Mr. Cullather agreed that "there's no grand conspiracy in the C.I.A. to destroy documents."

"What there is," he said, "is neglect, or negligence" and a "culture of destruction," born of secrecy.

The broad outlines of the Iran operation are known: the agency led a coup in 1953 that installed the pro-American Shah Mohammed Reza Pahlevi on the throne, where he remained until overthrown in 1979. But the C.I.A.'s records were widely thought by historians to have the potential to add depth and clarity to a famous but little-documented intelligence operation.

The C.I.A. has proved that it can release history-altering documents. On Friday, it declassified 1,400 pages on the Guatemala coup in 1954 and two historical papers, including Mr. Cullather's 116-page account of the operation.



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Guatemala] must be taken." In response to a question of whether Guatemalan [ ] was "salvageable," [ ] replied in the negative and suggested "he be eliminated."[21]

On 16 May 1954 the [ ] Officer at [ ] proposed in a memorandu to [ ] the new Chief of [ ] and [ ] now serving as [that assassination be incorporated into the psychological part of PBSUCCESS. The [ ] Officer laid out a specific assassination schedule leading up to D-Day, the actu invasion by Castillo Armas. He proposed a raid on [ ] on D12. This was to be a show of force; no one was to be harmed and the atta was to take place when [ ] was absent [ ] The [ ] Officer, ...posed the dis...]. o ...of par...

The New York Times

The C.I.A. burned nearly all of its files on its role in the 1953 coup in Iran. Documents detailing the 1954 Guatemala coup were recently declassified, including a study of assassination plans, above.

Mr. Cullather said the records on which he based his work were preserved only by a quirk of history: a lawsuit seeking the documents, filed under the Freedom of Information Act in 1982 by Steven Schlesinger, an author of "Bitter Fruit: The Untold Story of the American Coup in Guatemala," (Doubleday, 1982).

"The C.I.A. is presenting the Guatemala release as evidence of good faith and openness," Mr. Cullather said, "but it's the exception."

He said the breadth and depth of the documents' preservation "generally doesn't happen with C.I.A. operations."

Using the documents preserved by the lawsuit, Mr. Cullather produced an astonishingly frank account, written in 1993 and printed in 1994, which may be a high-water mark in the agency's openness.

His account says the C.I.A. directly lied to President Dwight D. Eisenhower when it told him that only one of the agency-backed rebels had died in the Guatemala coup. In fact, at least 43 rebels were killed. The account also says the Guatemala operation, which "went into agency lore as an unblemished triumph," was marked by poor security, bad planning and third-rate reporting.

It describes the leaders installed by the C.I.A. as repressive and corrupt. The coup, it says, destroyed the political center in Guatemala, which "vanished from politics into a terrorized silence," and led to a series of brutal military governments and a "cycle of violence and reprisals" that "claimed the lives of a U.S. Ambassador, two U.S. military attachés and as many as 10,000 peasants" in the 1960's.

"The C.I.A. never learned from the experience," Mr. Cullather said, so the Guatemala coup became a model for the Bay of Pigs debacle. "Legend replaced reality. It's a classic case of the C.I.A. not learning from its own history," a history that was secret.

The New York Times

THURSDAY, MAY 29, 1997