Attorney Says Numbering Snafu Complicates Tobacco Documents

By MILO GEYELIN
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A lawyer for the state of Minnesota said yesterday that the most sensitive of the 39,000 tobacco-industry documents posted on the Internet this week by the House Commerce Committee are virtually impossible for the public to find because the identifying numbers on the documents are different from the ones provided to the state.

Minnesota, which obtained the same batch of documents for its suit against the tobacco industry, had been hoping that its identifying numbers could serve as a roadmap for the public and for Congress.

"Obviously something was done to make it more difficult for the public to get at these documents," said Michael Ciresi, lead lawyer for Minnesota. Spokesmen for **Philip Morris** Cos. and R.J. Reynolds Tobacco Co., the nation's two largest cigarette manufacturers, couldn't explain the discrepancies.

David Fish, a spokesman for House Commerce Committee chairman Thomas Bliley, said the committee posted the documents, with the identifying numbers provided by the industry. "This has been one of the biggest cyberspace document releases ever," he said. "Our bipartisan team is doing its best to get the documents out as soon as possible and to correct any problems. If we hadn't released the documents, they'd still be secret."

The tobacco companies fought all the way to the U.S. Supreme Court to block disclosure of the documents, claiming they contained privileged communications between the industry and its lawyers. Mr. Bliley subpoenaed the documents and vowed to make them public while Congress is considering national tobacco legislation.

Separately, the Reynolds unit of **RJR Nabisco Holdings** Co. petitioned the state judge in St. Paul, Minn., who is presiding over the state's case to investigate why the state issued a press release describing one of the documents that the industry contends shouldn't have been posted.

The document, a 104-page overview of potential legal problem areas prepared by an outside law firm Reynolds hired in 1985, was briefly on the House committee's Web site. The House panel, at the behest of Reynolds, removed the document after Minnesota Attorney General Hubert Humphrey III issued a press release describing it and giving instructions on how to find it.

Charles Blixt, general counsel of Reynolds, contacted the committee and complained that the document fell within one of three categories – "documents authored by current outside counsel" – that Mr. Bliley had agreed to withhold for further review.

The document, which was widely reported by the media, described a pattern of lawyer involvement in scientific research at Reynolds that was intended to control the direction of research and, in some cases, suppress negative findings. It was prepared in December 1985 by the Cleveland firm Jones, Day, Reavis & Pogue after the firm was hired by Reynolds.

The paper was based on interviews with Reynolds employees, some of whom said documents were destroyed. Jones Day litigation head John Strauch said on Wednesday that the copies of the documents that the report indicated were destroyed were, in fact, saved and turned over to Minnesota.

In its motion yesterday, Reynolds argued that a protective order covering many of the 39,000 documents, including the Jones Day document, remain in place in Minnesota. (The state is still free to offer the Jones Day document and any of the others as evidence in the trial.)

Minnesota is one of three dozen states suing the tobacco industry, alleging that the companies conspired to hook generations of new smokers by manipulating nicotine levels in cigarettes and targeting children in marketing campaigns. The states are seeking to recover the public health-care costs linked to smoking. In Minnesota, the state and its co-plaintiff, **Blue Cross & Blue Shield of Minnesota**, are seeking $1.77 billion in damages.

Other categories of documents that were withheld by the Commerce Committee include business secrets and information affecting third parties.

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Gingrich States Goals On Tobacco

Speaker Resists Increases Proposed in Senate Bill; Tax Cuts Advocated

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WASHINGTON – House Speaker Newt Gingrich detailed a framework for possible action on tobacco legislation, warning he would resist a price increase so big that it might create a black market.

In an interview, the speaker said he supports curbing teenagers' access to cigarettes and trading price increases for tax cuts, and opposes industry liability protections. He said that the legislation most likely would move as a series of bills rather than a comprehensive package, such as the $516 billion tobacco bill that recently emerged from Republican Sen. John McCain's Commerce Committee.

Mr. Gingrich said he was "surprised" by the McCain legislation, which includes a price increase of $1.10 a pack over five years and expands regulatory oversight of tobacco. "The time to stop the momentum on a really bad bill is as soon as you can," he said.

The Georgia Republican met yesterday with White House Chief of Staff Erskine Bowles on Capitol Hill. Afterward, Mr. Bowles said, "We're making progress [on tobacco legislation]. I think we'll get it done."

Difference on Tax Increase

President Clinton supports a comprehensive approach to tobacco legislation, including a substantial cigarette-price increase and new authority for the Food and Drug Administration; he wants to spend the money on child-care and other programs. Larry Stein, a White House legislative aide, said he and Mr. Bowles told Mr. Gingrich "that we don't support a stripped-down bill." He said the meeting featured "a good discussion on the principles" involved in tobacco legislation.

Mr. Gingrich, who saw both his natural and adopted fathers die from lung cancer after years of smoking, said he is "very prepared" to pass legislation aimed at curbing teen smoking and is "willing to look at" increasing cigarette prices.

But, he said, if the goal is to discourage smoking – and not simply to increase federal taxes – the money should be returned to the public via tax cuts, probably targeted to reducing health-care costs. Fifty House members wrote Mr. Gingrich yesterday, urging him to resist any net tax increase related to tobacco.

The Democrats, he said, "want a tax increase and they want to hide it as a tobacco bill. The American people are already starting to get it."

Magnitude of Price Increase

In considering how much of a price increase to support, Mr. Gingrich said he would insist on additional testimony about the possibility that a price increase could encourage illegal sales. He questioned health officials' assertion that raising prices is the best tool to reduce underage smoking. Noting that the vast majority of smokers are adults, he said, "I'm not sure how a sledgehammer that hits 98 [percent] adults to get to 2 [percent] kids is effective."

Mr. Gingrich said he would oppose legal protection for tobacco companies, including the $6.5 billion annual liability cap contained in the Senate bill. Noting recent revelations in internal industry documents about targeting children, the speaker said: "The McCain bill gives them more than I would give them."

Democrats have accused the speaker of shifting his position and cozying up to tobacco interests. But Mr. Gingrich said his position hasn't changed and that he first offered his criticism of the McCain legislation more than a week ago, during a book tour.

'Something Bigger' in Senate

Meanwhile, Senate Majority Leader Trent Lott, of Mississippi, said he was still supporting the Commerce Committee bill and wasn't backing a narrower approach. "Odds are that the Senate would go with something bigger" than what the House is considering, Mr. Lott said. Still, he added, the Senate bill may be scaled back. For example, the $516 billion in industry payments "is probably too high," he said.

But a vast public-health constituency continues to argue that even the dollar amounts in Sen. McCain's bill are too low. Former Surgeon General C. Everett Koop and former Food and Drug Administration Commissioner David Kessler want a price increase of at least $1.50 a pack. They could use their public stature to level embarassing, election-year criticism at proponents of any smaller proposal.

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