4 W? (Disallow legal fees) need to have loss

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ATTORNEYS' FEES~~--HOURLY~~ CAP PROPOSAL

FINDING: This historic legislation is the product of efforts undertaken by the federal government, as well as state governments, the public health community, and other private parties. Private attorneys have battled the tobacco industry through litigation on behalf of the states and have also played a significant role in fostering the enactment of this legislation. Congress recognizes that this legislation and creation of a federal trust has an impact on pending litigation and might affect the prospect of compensation for these attorneys. Thus, Congress finds that a need exists to create a system that provides just and fair compensation to attorneys who may be affected by the legislation, but that does not ignore the efforts of others by bestowing an unconscionable windfall on some attorneys.

1. Many forces
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3.

(a) SOURCE AND PAYMENT OF AWARDS.--Manufacturers [who elect to enter the protocol described in section ___] [who elect to assume various burdens in exchange for liability protection] shall be responsible for the payment of all attorneys' fees and expenses under this section. In no event shall any award be paid from, credited against, or otherwise affect in any way any fee payments that are required to be made by any participating manufacturer under section ___ or under any other provision of this Act. Any such award shall be paid by participating manufacturers pursuant to an allocation agreement among such manufacturers. In no circumstance whatsoever should the federal government be liable for the payment of any attorneys' fees or expenses, and there shall be no remedy against the government for payment of damages on any claim related to this act..

(b) GENERAL LIMITATION.--Notwithstanding any other provision of law, any attorneys' fees paid in connection with the settlement of an action maintained by a State against 1 or more tobacco companies to recover tobacco-related Medicaid expenditures or for other causes of action involved in the tobacco settlement agreement, shall [generally not exceed $250 per hour, excluding any reimbursement of actual ~~out-of-pocket expenses as approved by the ar~~bitration panel established in section (c)] [be a reasonable fee. A reasonable fee shall be established by multiplying a reasonable hourly rate by the number of hours reasonably expended on the matter. Reimbursement of actual out-of-pocket expenses shall be allowed in addition to the reasonable fee]. 1600 hr

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PL - 105 - 78
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42 USC 1984

(c) ARBITRATION PANEL.--

(1) ESTABLISHMENT.--For the purpose of awarding of attorneys' fees and expenses relating to litigation affected by, or legal services that arguably resulted in whole or in part in, this Act, there is established an Arbitration Panel which shall consist of 5 members to be appointed by the Attorney General, after consulting with

(A) the manufacturers;

(B) the Attorneys General of the States; and
(C) the private attorneys.

(2) OPERATION.--
(A) ESTABLISHMENT.--The members of the Arbitration Panel shall be appointed not later than 30 days after the effective date of this Act.
(B) PROCEDURES.--Not later than 30 days after the date on which all members of the Arbitration Panel are appointed under paragraph (1), the Panel shall establish the procedures under which the Panel will operate which shall include--
(i) a requirement that any finding by the Arbitration Panel must be in writing and supported by written reasons;
(ii) procedures for the exchanging of exhibits and witness lists by the various claimants for awards;
(iii) to the maximum extent practicable, requirements that proceedings before the Panel be based on affidavits rather than live testimony; and
(iv) a requirement that all claims be submitted to the Arbitration Panel not later than 6 months after the effective date of this Act and a determination made by the Panel with respect to such claims not later than 7 months after such date of enactment. The claim submission must include a detailed time accounting with respect to the work performed in relation to any legal action which is the subject of the settlement or with regard to the settlement itself; and must also disclose any fee arrangements entered into, or fee arrangements made, with respect to any legal action that is the subject of the settlement.

(3) RIGHT TO PETITION.--Any individual attorney or group of attorneys involved in litigation affected by this Act shall have the right to petition the Arbitration Panel for attorneys' fees and expenses.

(4) CRITERIA.--In making any award pursuant to this section, the Arbitration Panel shall consider the following criteria in determining [whether to award the general maximum fee of $250 per hour or a lesser per-hour fee, or whether the circumstances are sufficiently unusual, when compared to petitions brought by other claimants, so that a departure from that amount for a higher fee award is justified] [what shall be deemed a reasonable hourly rate and a reasonable number of hours expended on the matter, in determining a reasonable attorney fee]:

(A) The risk taken by the claimant and the novelty and difficulty of the questions involved in the action.
(B) The skill requisite to perform the legal service properly.
(C) The preclusion of other employment by the attorney due to acceptance of the action involved.
(D)Time limitations imposed by the client or the circumstances.
(E) The amount involved and the results obtained.
(F) The experience, reputation, and ability of the

attorneys involved.
(G) The undesirability of the action.
(H) Such other factors as justice may require.

(5) APPEAL AND ENFORCEMENT.--The findings of the Arbitration Panel shall be final, binding, nonappealable, and payable within 30 days after the date on which the finding is made public, except that if an award is to be paid in installments, the first installment shall be payable within such 30 day period and succeeding installments shall be paid annually thereafter.

(6) LIMITATION PROVISION.--The above provisions shall only apply insofar as they do not interfere with an vested, enforceable property right. Maximum interests

(7) SEVERABILITY PROVISION.--If any provision of this section, or the application of such section to any person or circumstance, is held to be invalid, the remainder of this Act, or an amendment made by this Act, or the application of such provision to other persons or circumstances, shall not be affected.

House Hearing Sizes Up Tobacco Suit Legal Fees

With Estimates in Billions, Limits Are Debated

By Saundra Torry
Washington Post Staff Writer

Attorneys battling the tobacco industry could earn as much as $18 billion in fees, if all the state contracts with lawyers were carried out to the letter, according to a law professor who testified yesterday before an influential House panel.

While states suing the industry insist that will never happen, those astronomical figures set the tone for the hearing at which both Republicans and Democrats criticized the fees lawyers might receive.

The proposed $368.5 billion tobacco settlement, as it now stands, "will become a huge windfall for a few plaintiffs' attorneys," said Rep. Scott McInnis (R-Colo.). Rep. Edward G. Bryant (R-Tenn.) said, "The image of the greedy, self-serving lawyer is only enhanced by recent headlines" on a fight over $2.8 billion in fees in the Florida tobacco case.

The potential for huge legal profits for about 150 law firms involved in a proposed national settlement has been a rallying cry for GOP lawmakers since the possible deal was announced in June. Congress must approve the settlement, and several lawmakers, led by McInnis, already have introduced a bill that would cap the fees in the tobacco litigation at $150 an hour.

But yesterday's hearing made clear that Democrats too are concerned about the fees and that the issue, like so much else in the settlement, is complex.

Experts could not even agree on how much the fees would be under the current contracts with most of the 40 states suing the industry. Cardozo Law School professor Lester Brickman made the $18.6 billion estimate, while Massachusetts Institute of Technology economist Jeffrey Harris predicted that the current value of the fees, to be paid out over 25 years, is $8 billion.

Brickman and Alan Morrison, of the Public Citizen Litigation Group, disagreed in their testimony over whether it would be constitutional

> ***"Nobody is seeking [fees like] that, except those lunatics in Florida."***
>
> —John Coale, leader of a group of tobacco suit lawyers who favor arbitration

for Congress to set fees. Brickman said it is, while Morrison argued it was not, adding that states already have the tools to limit excessive fees.

Meanwhile, Mississippi lawyer Richard Scruggs, one of the settlement's major architects, testified that many of the lawyers have agreed to forgo their earlier contracts with the states and instead submit to an independent arbitration panel to set their fees. The money would be paid by the tobacco companies from funds outside the $368 billion, which is destined to repay states for the costs of treating sick smokers and to curb teenage smoking.

Still, a breakaway group of lawyers in Florida, which already has reached its own $11.3 billion settlement with tobacco companies, is suing the state for immediate payment under the original contract—fees that could hit as much as $2.8 billion.

"Nobody is seeking [fees like] that, except those lunatics in Florida," said Washington lawyer John Coale, a leader of a second group of lawyers who

FILE PHOTO

REP. EDWARD G. BRYANT
. . . lawyers' bad image "enhanced"

have sued the industry. "Anybody who has had anything to do with the deal favors an arbitration system."

After the hearing, Rep. Barney Frank (D-Mass.) said that the fee estimates "are too arbitrary" at this point to merit debate. The arbitration panel, he said, might work, depending on its members and the terms it would use to determine fees.

Rep. Howard Coble (R-N.C.), chairman of the House Judiciary subcommittee on courts and intellectual property, said after the hearing that the proposed $150-an-hour cap "is obviously inadequate," while the $2.8 billion being sought by some Florida attorneys is clearly "excessive."

During the hearing, Frank also took a jab at the $150-an-hour cap, when he asked New York attorney D. Scott Wise, who represents R.J. Reynolds Tobacco Co., "How much do you make?"

After a pause, Wise answered, "About $500 an hour."

FOR MORE INFORMATION

To access more information on tobacco litigation, click on the above symbol on the front page of The Post's Web site at www.washingtonpost.com

The Washington Post
THURSDAY, DECEMBER 11, 1997

38

Senate GOP Declares Kyoto Pact Dead

Some Democrats Suggest Clinton Delay Submission to Ratification Vote

By Helen Dewar and Kevin Sullivan
Washington Post Staff Writers

BY RAY LUSTIG—THE WASHINGTON POST

Republican Sens. Larry E. Craig (Idaho), left, Jon Kyl (Ariz.) and Pat Roberts (Kan.) gather to denounce agreement in Japan on cutting greenhouse gases.

The difficulty delegates to the global warming conference in Kyoto encountered in reaching agreement on reducing greenhouse gases is likely to pale beside the trouble Republicans have promised the Clinton administration when it seeks ratification of the newly negotiated international treaty.

As finalized early this morning, Japanese time, the Kyoto accord calls for industrialized nations to cut their greenhouse emissions by 6 percent to 8 percent below 1990 levels by 2012. It left aside until at least next year the contentious issue of how much developing countries would be required to cut their own emissions.

Hours before the final agreement was reached, however, key Senate Republicans declared the accord "dead on arrival," and a leading Democratic supporter urged that the Senate delay a vote in light of its bleak prospects.

Sen. Larry E. Craig (R-Idaho), head of the Republican Policy Committee, told reporters here that the treaty is "designed to give some nations a free ride, it is designed to raise energy prices in the United States and it is designed to perpetuate a new U.N. bureaucracy to manage global resource allocation." It would also undermine the recent reform of farm programs and threaten U.S. agricultural production, warned Sen. Pat Roberts (R-Kan.).

Rejecting Democratic proposals to postpone consideration of the accord, Craig called on President Clinton to "promptly submit the treaty and allow the Senate to kill it." Even if the administration delayed submitting it for ratification—perhaps until a developing countries treaty can be reached next year—Craig said he expects the Senate will act on its own to declare its opposition to the pact, serving notice in advance that the United States will not ratify it. Ratification requires a two-thirds vote in the Senate.

The comments of Craig and other Republican leaders were made at a news conference called yesterday to denounce what they had heard about the emerging agreement. Judging from what they had learned from congressional observers in Kyoto, Senate Energy and Natural Resources Committee Chairman Frank H. Murkowski (R-Alaska) said, "it's dead on arrival."

In Kyoto, a leading Democratic member of the observer delegation agreed that the treaty was not acceptable to the Senate in its current form. "What we have here is not ratifiable in the Senate in my judgment," Sen. John F. Kerry (D-Mass.) said. According to aides in Washington, Kerry wanted Clinton to sign the deal but hold off submission of it until follow-on conferences scheduled for next year in Bonn in June and Buenos Aires in November.

At those meetings, the next step in the process of designing an international strategy to combat global warming, international delegates will again discuss more active participation by developing countries, which was essentially removed from the pact during the final hours of deliberation in Kyoto because of objections from China and India.

U.S. opponents of a global warming pact, including the Republicans and major American industries, especially coal, oil, steel and electric power producers, have argued that a deal that requires industry in this country to go through the expensive process of significantly cutting emissions of greenhouse gases was unfair unless the same requirements applied to all nations.

The treaty approved by consensus in Kyoto will be available for signature at United Nations headquarters in New York beginning March 15. Once a country signs, it has a year to ratify the pact. Technically, the administration could wait years before acting on the pact. Countries that do not sign during the allotted period may still become parties to the treaty at any point in the future.

Kerry said a delay in formal approval of the treaty need not impede compliance with its goals, noting that the United States often has gone along with treaties before they were ratified. He and Sen. Joseph I. Lieberman (D-Conn.), who also supports the treaty, said in Kyoto that they are confident strong U.S. public support for action on global warming will help them eventually push the pact through the Senate.

"The people are ahead of the politicians on this one," Lieberman said.

Kalee Kreider, director of Greenpeace's U.S. climate change campaign, said in Kyoto that environmental groups in the United States would begin an extensive grass-roots campaign to increase public support for the accord. She said the groups have been focusing their effort on government officials in the time leading up to the Kyoto conference, and "we haven't done as much public education as we should have."

Kreider said U.S. opponents of the treaty have greatly overstated its economic effect and insisted that a multimillion-dollar advertising campaign mounted this fall by industries opposed to emissions cuts failed to weaken public support for fighting global warming.

Republicans said yesterday they were adamantly opposed to any delay in submitting the treaty for ratification, warning they would object to any steps to implement the treaty "piecemeal," as Craig put it, without Senate approval.

Although yesterday's news that the treaty was nearing agreement in Kyoto brought a new round of Senate denunciations, the global warming pact was in trouble from the start. During the summer, the Senate voted 95 to 0 to assert its opposition to any treaty that endangers the U.S. economy and spares developing countries from constraints imposed on developed nations.

On Tuesday, Majority Leader Trent Lott (R-Miss.) wrote Sen. Chuck Hagel (R-Neb.), head of the Senate observer group, saying the treaty was falling short of these conditions and declaring the Senate "will not ratify a flawed climate change treaty."

He criticized Vice President Gore, who in a Kyoto speech on Monday promised increased flexibility on the part of U.S. negotiators, saying Gore's intervention "further clouded an already murky situation" and "added to the bleak prospects for Senate ratification."

"If they [the administration] won't take our advice, we won't give our consent," said Sen. Jon Kyl (R-Ariz.).

Few on either side of the already rancorous debate over the pact could remember many major treaties—even going back to bitter Cold War-era arguments over arms control—that headed toward the Senate in such tattered shape.

One major reason is that, as Craig put it yesterday, the issue carries "so much domestic political baggage," and Republicans lost no time in rummaging through the contents.

It seems that Clinton and Gore are "rushing to reach a deal at any cost," Craig asserted. In a preview of political debates to come, Craig said that if the treaty is signed on behalf of the United States, "it will be the first time in history that an American president has allowed foreign interests to control and limit the growth of the U.S. economy."

While disputing these conclusions, several Democratic staff aides conceded that it is always difficult to impose short-term pain (higher costs) for long-term gain (cleaner air and a stable climate). "If there is a 5 percent carbon tax, you start paying it now. If you're in Louisiana, for instance, it may mean you keep your land from sinking into the Gulf of Mexico, but you may not know this for 20 years," one aide said.

Sullivan reported from Kyoto.

The Washington Post
THURSDAY, DECEMBER 11, 1997

Tobacco — attorney fees

Billion-Dollar Legal Fees

Even before tobacco settlement money has reached public treasuries, some members of Congress are up in arms over the potential fees private lawyers might reap for legal work on suits brought by 40 state attorneys general to recover Medicaid costs arising from tobacco-related illnesses.

One House bill would limit private lawyers' fees in any national tobacco settlement to $150 an hour. A Senate bill would set an even lower limit of $125 an hour. Those amounts seem unfairly low for legal work of great national importance.

But in state litigation against the tobacco companies, some lawyers clearly stand to make astoundingly high fees. In Texas, Gov. George W. Bush is fighting a fee contract that would pay some 130 private lawyers involved in the case 15 percent of the $15.3 billion settlement between Texas and the tobacco industry, or $2.3 billion over 25 years. In Florida, a state judge has criticized as unconscionably high a fee agreement that would pay private lawyers 25 percent of a $11.3 billion settlement, and has sent that case into arbitration.

These high amounts naturally fuel resentment toward the lawyers involved, but they can argue that the contracts they signed with state attorneys reflect the financial risk that the states themselves refused to take. In fact, a Federal district court judge in Texas recently ruled that the fee arrangement there was reasonable given the difficulties of the case and the risks involved.

Now that three states have reached settlements and Congress is contemplating a $368 billion national settlement with the industry, it is easy to forget what long shots these cases were. No one had ever sued tobacco companies for public health costs before, and given the industry's scorched-earth tactics and record of victory in lawsuits, the likelihood of winning seemed small. State legislatures were not willing to spend tens of millions of taxpayer dollars pursuing these untested claims.

Instead, nearly every state in this litigation turned to outside counsel, typically with a contingency fee arrangement where the lawyers work without pay but receive a percentage of the money recovered if they win. The private lawyers also have to pay all the expenses, like fees for medical experts, travel, deposition costs and the staff needed to collect and analyze millions of pages of documents. In Texas, the lawyers spent more than $40 million preparing for trial, an amount they stood to lose if they did not prevail.

That level of investment and lawyerly skill should be compensated generously. Still, a question arises. When does generous become shocking to the conscience? The courts have well recognized authority to review the fairness of fees and awards and to revise the underlying contracts in order to protect the parties to the suit and the public interest. Our sense is that the Texas judge probably leaned too far in favor of the lawyers. Unanticipated multi-billion-dollar fees in cases based on public suffering are bound to create a backlash.

One lesson that is even clearer is that some attorneys general erred in not imposing a cap or a sliding scale that reduced the percentage on huge judgments. It is possible to guarantee that most of the money goes to the public and still leave the lawyers plenty of room to get rich.

Germany's Racist Resurgence

Germany's unemployment, at a postwar high, is now beginning to produce a worrisome surge of racist and neo-Nazi violence among young people in the former eastern states, where the jobless rate tops 21 percent. While the incidence is still well below the alarming levels of 1992, the violence requires a firmer response from the federal and state governments than it has received.

Germany's unification in 1990 produced a wave of attacks on foreigners, anti-Semitic incidents and assaults on leftist groups and the handicapped. In the west, neo-Nazi groups could exploit the resentments of citizens suddenly handed a huge bill to pay for the costs of unification. In the east, they found young people raised in an authoritarian culture suddenly free to express their rebellion. Foreigners moving to the east for the first time made convenient targets for young people looking for someone to blame for their new unemployment and dislocation.

Millions of Germans joined anti-racist marches, which provoked a Government crackdown in 1993, with new police strategies and educational programs. But neo-Nazi violence began to rise again last year. The Government says 1997 statistics will show a 15 percent increase over 1996. Almost all is in the eastern states, which are now the site of about 20 percent of Germans but half the country's right-wing violence.

In some ways, Germany has done more to combat racist violence than any other nation. Neo-Nazi parties and propaganda are illegal. Germany's liberal laws offering political asylum gave it the highest percentage of foreign-born residents of any European nation. Yet Germany's response to the violence has been inadequate. The German Government was slow to take it seriously in the early 1990's. Scholars who study racist incidents today say they are underreported and often go uninvestigated.

Germany, which still reserves citizenship largely for those with German blood, has never been comfortable with immigrants. In a misguided response to the violence, asylum laws were tightened. In reality, most immigrants live in prosperous western cities with few racial incidents.

Racial violence is rising throughout the world, and since each country uses different measures, there is no way to know whether it is worse in Germany than in other countries. But Germany will always receive special scrutiny. It must make special efforts to give no shelter to extremist acts.

The New York Times

WEDNESDAY, FEBRUARY 11, 1998

BR/Ek/JM
FYI.
Tom

*** FULL REPORT -- DIGEST, LEGISLATIVE ACTION, COSPONSORS, SPEECHES ***

MEASURE: HR2740

SPONSOR: McInnis (R-CO)

OFFICIAL TITLE: A bill to limit attorneys' fees in the tobacco settlement.

QUICK REFERENCE: Limit attorneys' fees in global tobacco settlement

INTRODUCED: 10/24/97

COSPONSORS: 2 (Dems: 1 Reps: 1 Ind: 0)

COMMITTEES: House Judiciary

CQ BILLWATCH BRIEF:

By Pherabe Kolb, CQ Staff Writer

HR2740 would limit the amount of money that attorneys could receive for working on the legal settlement between the states' attorneys general and the tobacco industry.

Bill sponsor Scott McInnis, R-Colo., said although tobacco companies are expected to pay as much as $368.5 billion to states for the Medicaid costs of treating individuals with smoking-related illnesses, nearly $111 billion of those funds likely will be used to cover the legal fees of hundreds of lawyers who worked on the deal.

"While attorneys are entitled to be paid for their time and effort," the bill states, "the maximum possible amount of moneys from any tobacco settlement should go directly to benefit public health."

The bill would limit attorneys' fees to $150 per hour and reimbursement of out-of-pocket expenses.

Before any lawyers could receive their payments, they would have to submit a detailed billing statement to Congress and the public to account for the time they worked.

CQ BILLWATCH INSIGHT:
No action has been scheduled on HR2740, which was referred to the House Judiciary Committee.

LEGISLATIVE ACTION:

10/24/97 Referred to Committee on the Judiciary (CR p. H9558)

10/24/97 Original Cosponsor(s): 2
Cox (R-CA) McHale (D-PA)

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13 DETAIL action, amendments, speeches
14 ACTION detailed action (no speeches
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16 STATUS most recent major action
17 MILESTONE key action dates table
18 COSPONSOR-ALL current cosponsors
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   Sorted by bill number with version in ascending order

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HR2740 McInnis (R-CO) 10/24/97 (112 lines)
Introduced in House

To limit attorneys' fees in the tobacco settlement.

Special typefaces used in this bill version:
// \\ Italic
!! !! Bold roman
Item Key: 6802

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105TH CONGRESS
1ST SESSION

H. R. 2740

To limit attorneys' fees in the tobacco settlement.

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IN THE HOUSE OF REPRESENTATIVES

October 24, 1997

Mr. MCINNIS (for himself, Mr. COX of California, and Mr. MCHALE) introduced the following bill; which was referred to the Committee on the Judiciary

======================

A BILL

To limit attorneys' fees in the tobacco settlement.

//Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,\\

!!SECTION 1. FINDINGS.!!

Congress makes the following findings:

(1) Under the proposed settlement between the tobacco industry and the various State Attorneys General, the attorneys involved in negotiating the settlement are entitled to reasonable fees.

(2) Under the proposed settlement, the tobacco companies would pay $368,500,000,000 to be allocated among various public

health programs.

(3) It is expected that of the total tobacco settlement of $368,500,000,000 as much as $111,000,000,000 could be taken away from public health programs for attorneys' "contingency fees".

(4) Since no national settlement can take effect without Congressional action to change existing law, the approval of Congress is necessary for the terms of the settlement, including the part relating to attorneys' fees, to take effect.

(5) While the average annual gross receipts for the 100 top-grossing law firms in America last year was $18,000,000, a 30 percent contingency fee would yield an average of approximately $925,000,000 per law firm involved in the litigation pending prior to the settlement.

(6) A casual decision at a young age to use tobacco products often leads to addiction, serious disease, and premature death as an adult. Nearly 90 percent of adult smokers began smoking at or before the age of 18. Smoking rates among youngsters are at their highest levels in 16 years. Every day another 3,000 children and adolescents become regular smokers. Therefore, the epidemic of youth addiction has enormous public health consequences.

(7) While attorneys are entitled to be paid for their time and effort, the maximum possible amount of moneys from any tobacco settlement should go directly to benefit public health, with the highest priority being given to efforts focused on persuading children not to smoke rather than to awards leading to unreasonable attorneys' fees.

!!SEC. 2. LIMIT ON DIVERSION OF PUBLIC HEALTH FUNDS TO ATTORNEYS.!!

(a) GENERAL LIMITATION.--Notwithstanding any other provision of law, any attorneys' fees paid in connection with the settlement of an action maintained by a State against 1 or more tobacco companies to recover tobacco-related medicaid expenditures or for other causes of action involved in the settlement agreement dated June 20, 1997, shall not exceed $150 per hour, together with reimbursement of actual out-of-pocket expenses as approved by the court in such action.

(b) FEE ARRANGEMENTS.--Subsection (a) shall apply to attorneys' fees provided for or in connection with an action of the type described in such subsection under any--

(1) court order;
(2) settlement agreement;
(3) contingency fee arrangement;
(4) arbitration procedure;
(5) alternative dispute resolution procedure (including mediation); or
(6) other arrangement providing for the payment of attorneys' fees.

(c) REQUIREMENTS.--No award of attorneys' fees shall be made under any national tobacco settlement until the attorneys involved have--

(1) provided to the Congress a detailed time accounting

with respect to the work performed in relation to any legal action which is the subject of the settlement or with regard to the settlement itself; and

(2) made public disclosure of the time accounting under paragraph (1) and any fee arrangements entered into, or fee arrangements made, with respect to any legal action that is the subject of the settlement.

(d) EFFECTIVE DATE.--The limitation on the payment of attorneys' fees contained in this section shall become effective on the date of enactment of any Act enacted in connection with the national tobacco settlement.

(e) REPORT.--Each attorney whose fees are subject to this section shall, within 30 days of the date of the enactment of this Act, submit to Committees on the Judiciary of the House of Representatives and the Senate a comprehensive record of the time and expenses for which the fees are to be paid. Such record shall be subject to section 1001(a) of title 18, United States Code.

There are no more items to read.

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*** FULL REPORT -- DIGEST, LEGISLATIVE ACTION, COSPONSORS, SPEECHES ***

MEASURE: HConRes140

SPONSOR: McInnis (R-CO)

OFFICIAL TITLE: Concurrent resolution expressing the sense of Congress that before the consideration of any legislation regarding the comprehensive tobacco settlement each plaintiff attorney shall fully disclose the attorney's anticipated fees as a result of such settlement agreement.

QUICK REFERENCE: Express sense of Congress that legal fees for tobacco settlement be disclosed

INTRODUCED: 07/31/97

COSPONSORS: 0 (Dems: 0 Reps: 0 Ind: 0)

COMMITTEES: House Judiciary

CQ BILLWATCH BRIEF:

By Emily Pierce, CQ Staff Writer

HCONRES140 would ask that lawyers representing the states in the recent tobacco settlement disclose their fees.

On June 20, 1997, the tobacco industry reached a $368.5 billion agreement with 40 states that sued to recover Medicaid funds for the costs of treating smoking-related illnesses. Tobacco companies agreed to make payments to the states over 25 years, and to Food and Drug Administration (FDA) regulation in exchange for immunity from future lawsuits. The agreement requires congressional approval for such issues as FDA regulation and advertising restrictions.

The resolution would express the sense of Congress that before any legislation codifying the settlement is enacted, the lawyers that represent the states should disclose their anticipated fees. Most of the states retained private attorneys to represent them in the tobacco lawsuits, and 25 of the 40 are using the same legal firm -- Scruggs, Millette of Mississippi.

Under the settlement, the tobacco companies agreed to pay the states' attorneys' fees separately from the $368.5 billion. Anticipated fees could be as much as 25 percent of the amount recovered -- almost $92 billion. Conservative estimates hover between $7 billion and $14 billion.

CQ BILLWATCH INSIGHT:
No action has been scheduled on HCONRES140, which was referred to the House Judiciary Committee.

CRS DIGEST:
Calls for each plaintiff attorney, before the consideration of any legislation regarding the comprehensive tobacco settlement, to fully disclose his or her anticipated fees as a result of such settlement agreement.

CRS SUBJECT INDEX TERMS:
- Law
- Actions and defenses
- Agriculture
- Business
- Congress
- Consumers
- Government and business
- Legal fees
- Legislation
- Medical care
- Medicine
- Politics and government
- Products liability
- Tobacco
- Tobacco industry
- Tobacco settlement

LEGISLATIVE ACTION:

07/31/97 Referred to Committee on the Judiciary (CR p. H6705)

There are no more items to display.

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13 DETAIL action, amendments, speeches
14 ACTI

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1 of 1 items CQ's WASHINGTON ALERT 11/03/97

HCONRES140 McInnis (R-CO) 07/31/97 (50 lines)
Introduced in House

Expressing the sense of Congress that before the consideration of any legislation regarding the comprehensive tobacco settlement each plaintiff attorney shall fully disclose the attorney's anticipated fees as a result of such settlement agreement.

Special typefaces used in this bill version:
// \\ Italic
Item Key: 5446

105TH CONGRESS
1ST SESSION

H. CON. RES. 140

Expressing the sense of Congress that before the consideration of any legislation regarding the comprehensive tobacco settlement each plaintiff attorney shall fully disclose the attorney's anticipated fees as a result of such settlement agreement.

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IN THE HOUSE OF REPRESENTATIVES

July 31, 1997

Mr. MCINNIS submitted the following concurrent resolution; which was referred to the Committee on the Judiciary

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CONCURRENT RESOLUTION

Expressing the sense of Congress that before the consideration of any legislation regarding the comprehensive tobacco settlement each plaintiff attorney shall fully disclose the attorney's anticipated fees as a result of such settlement agreement.

Whereas the average American earned $25,852 in 1994;

Whereas the average Colorado citizen earned $74 per day in 1995;

Whereas the average hourly wage earner earns $12.14 per hour in the United States;

Whereas those involved in negotiating a comprehensive tobacco settlement are entitled to reasonable compensation for their services; and

Whereas : Now, therefore, be it

//Resolved by the House of Representatives (the Senate concurring)\\ That it is the sense of Congress that before the consideration of any legislation regarding the comprehensive tobacco settlement each plaintiff attorney shall fully disclose the attorney's anticipated fees as a result of such settlement agreement.

There are no more items to read.

Enter one or more numbers or ALL to display item(s),
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Enter MARK or SAVE and one or more numbers to limit or save your set,
Enter SMARTMATCH and a number to find comparable items,
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Bills w/ attorney fees & tobacco

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  1     HConRes140  McInnis (R-CO)          07/31/97
        Concurrent resolution expressing the sense of Congress that before
        the consideration of any legislation regarding the comprehensive
        tobacco settlement each plaintiff attorney shall fully disclo
se
        the attorney's anticipated fees as a result of such settlemen
t
        agreement.
        (BILLTRACK; BillWatch 08/28/97; CRS 10/06/97 -- digest 26 lines)
        Item Key: 4098
--- --- --- --- --- --- --- --- --- --- --- --- --- --- --- --- --- --- ---
  2     HR2264      Porter (R-IL)           07/25/97
        A bill making appropriations for the departments of Labor, Health
        and Human Services, and Education, and related agencies for the
        fiscal year ending Sept. 30, 1998, and for other purposes.
        (BILLTRACK; BillWatch 09/25/97; CRS 10/22/97 -- digest 656 lines)
        Item Key: 3931
--- --- --- --- --- --- --- --- --- --- --- --- --- --- --- --- --- --- ---
  3     S1061       Specter (R-PA)          07/24/97
        An original bill making appropriations for the Departments of
        Labor, Health and Human Services, and Education, for the fiscal
        year ending Sept. 30, 1998, and for other purposes.
        (BILLTRACK; BillWatch 09/24/97; CRS 10/22/97 -- digest 626 lines)
        Item Key: 3885
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  4     HR2740      McInnis (R-CO)          10/24/97
        A bill to limit attorneys' fees in the tobacco settl
ement.
        (BILLTRACK; BillWatch 10/31/97; no CRS information available)
        Item Key: 4867
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THE WALL STREET JOURNAL, TUESDAY, FEBRUARY 10, 1998

Will Lawyers' Greed Sink the Tobacco Settlement?

By MATTHEW SCULLY

As if the whole tobacco settlement weren't complicated enough, we now have the Clinton administration proposing to spend one-fifth of the $368.5 billion in expected revenues on new social programs. There is, of course, the minor problem that Congress has not yet approved the settlement. On top of that, we have the trial lawyers who brokered the deal already counting on fees upward of $14.5 billion—never mind what their client, the public, might have to say about that.

It all began two years ago with that landmark settlement between the Liggett Group, Inc., and the states. Back then just six state attorneys general, led by Mississippi's Mike Moore, had filed class-action lawsuits against the tobacco companies. By July 1997, when the $368.5 billion deal was announced, 41 states were in the deal, all represented by 300 or so trial lawyers operating out of 89 law firms. The leading lawyers were Ron Motley of South Carolina, retained by 19 states, and Richard Scruggs of Mississippi, retained by 12 states.

Under the deal, the tobacco companies would pay $368.5 billion in damages to the federal government over 25 years, with some $193 billion of the total to be divvied up among the 41 states. In return the companies would get immunity from further class-action litigation, plus caps on damages in individual suits. Behind this is the novel legal theory of government (via Medicaid) as victim. The cigarette makers pay protection money, their stocks stabilize, and they get to stay in business. We, the innocent consumers of America, recoup tobacco-related Medicaid costs.

Another legal landmark is the idea of using multimillionaire tort lawyers as de facto deputy attorneys general, armed with the coercive power of the state for their own private gain. Of the 41 states, only Maine paid its trial lawyers on an hourly basis; and somehow the attorneys general of California and Colorado managed to conduct their states' legal business without need of a single private lawyer.

Having "risked" all on our behalf, the tort lawyers who dreamed up this scheme expect handsome rewards for their ingenuity. In Florida, which struck its own $11.3 billion settlement in August, the bill comes to 25% of the total, or $2.8 billion—an average of $200 million per attorney, or roughly $14,000 per hour, assuming the lawyers spent every waking hour on the case for 42 months.

There's been a hitch, however, causing much alarm among attorneys engaged in the other states' suits. In November, Florida Circuit Court Judge Harold J. Cohen declared that $2.8 billion in fees "simply shock the conscience of this court." Some of the lawyers, insisting "a deal is a deal," have sued to put a freeze on the entire $11.3 billion—money that is supposed to fund health education programs alerting Florida's wayward teens to the dangers of smoking.

All the state-level fee arrangements may be subsumed by the national deal anyway, at least according to Mississippi's Mr. Moore, who told Congress: "An independent panel composed of three members, one selected by the states and their lawyers, one selected by the tobacco companies, and one agreed to by both sides, would set the fee amount." The industry has a side agreement with the trial lawyers not to "take any position adverse to the size of the fee award requested," so even this stacked arbitration panel could still work out very well indeed for the lawyers. The consensus puts the likely final fee at 4%, or $14.5 billion.

Richard Scruggs

But the liability limitations that made it all possible have brought about another unexpected turn of events. It's no longer Big Tobacco vs. Big Torts. Now it's Big Torts vs. Big Torts: a ferocious struggle over the carcass between a few trial lawyers in on the deal and the angry throng cut out. The no-liability provision is firmly opposed by every trial lawyer in America, minus 300.

The deal is "an unconstitutional sham," says Richard Hailey, president of the Association of Trial Lawyers of America. "Congress must ensure that citizens' existing legal rights will be preserved; no caps will be imposed on damage awards; and tobacco will be subject to unfettered FDA regulation." That's what is hanging in the balance here: nothing less than the basic American right to unfettered regulation.

There remain a few obstacles between the tobacco lawyers and payday. Reps. Scott McInnis (R., Colo.), Chris Cox (R., Calif.) and Paul McHale (D., Pa.) have cosponsored a bill to limit all fees by attorneys engaged in the settlement to a maximum of $150 an hour, with an absolute cap of 0.01% of the total $368.5 billion. This is based on the simple enough theory that if the public is the victim, the public is the client. Ergo, those billions are ours, and we'll decide what constitutes reasonable pay here. Sen. Lauch Faircloth (R., N.C.) proposes to limit fees to $125 an hour.

The bills have had a good effect already: Suddenly all the tort lawyers are talking about the sanctity of private property and the limits of government power. A consumer activist for Ralph Nader's Public Citizen was heard to warn that a cap on lawyers fees "runs afoul of the Tenth Amendment, which prevents the federal government from trammeling on the sovereign interests of the state, and the Fifth Amendment's prohibition on the taking of private property without just compensation." A limit on multimillion-dollar lawyers' fees, said Tampa, Fla., trial lawyer C. Steven Yerrid, would deal irreparable harm to "working families, the disabled, and those who cannot afford the best legal talent this country has to offer."

All this from the same folks who have just completed $368.5 billion worth of takings, trammeling and unfettered regulation, and now demand $14.5 billion or more for the favor.

Mr. Scully is a writer in Washington.

An Empty Uniform

By MICHAEL GOUGH
And STEVEN MILLOY

President Clinton's nomination of David Satcher to be surgeon general has run into trouble, in the form of a filibuster by Sen. John Ashcroft (R., Mo.). Dr. Satcher's nomination, like nearly all nominations for surgeon general during the last three presidencies, has been ensnared in the abortion debate. Pro-choice members of Congress objected to President Reagan's appointment of C. Everett Koop; pro-life members objected to President Clinton's appointment of Joycelyn Elders and blocked his appointment of Henry W. Foster.

Today the Senate may vote to end Mr. Ashcroft's filibuster, in which case Dr. Satcher will probably be confirmed. But a better answer is simply to forget the whole thing.

We have not had a surgeon general for three years. Has anyone noticed? Is anyone's health at risk? Are people keeling over in unprecedented numbers?

No. According to the National Center for Health Statistics, life expectancy in the U.S. is at an all-time high. Death rates from cancer, heart disease and AIDS are falling. The gap between white and black life expectancies is narrowing. Infant mortality rates are lower than ever.

Given the surgeon general's job description, there's no reason to expect him to have any impact on the nation's health. The Department of Health and Human Services assigns the surgeon general only two functions: He "serves as a spokesperson to the Nation on matters of public health" and manages the personnel system of the Commissioned Corps of the Public Health Service.

As a result, the surgeon general's role has amounted to little more than warning people not to smoke, recommending condoms and, in Dr. Elders's case, advocating masturbation—a role perhaps more suitable for a captain of the Federal Behavior Bureau.

Surgeon Generals Koop and Elders: Who needs 'em?

The second duty explains why the surgeon general dresses like an admiral even though he's called a general. In 1798—watch for bicentennial celebrations later this year—Congress established the U.S. Merchant Marine Hospitals to care for sick and injured merchant sailors. In the late 1800s, those hospitals were reorganized into a national hospital system, administered by the surgeon general. Congress anointed the doctors who worked in those hospitals the Commissioned Corps of the Public Health Service. Hence the nautical uniforms.

There are 6,300 officers in the Commissioned Corps. Some are physicians, some dentists, some nurses, some technicians, and many are health bureaucrats of one stripe or another. They are sprinkled throughout the federal government, many in the Department of Health and Human Services, but some in the Environmental Protection Agency, the Bureau of Prisons, the Park Service—you name it. In general, they work for and report to members of the civil service, not to higher-ranking officers of the corps.

Essentially, the Commissioned Corps is a personnel system that parallels the civil service. Over the years Congress has moved toward but stopped short of eliminating it. It's time to abandon the corps along with its chief personnel officer, the surgeon general. The members of the corps can be taken into the civil service.

About the only thing that would be lost with the disappearance of the corps would be the fancy uniforms worn by its members. On HHS "Dress Up Days," Commissioned Corps officers can be seen wearing navy blue uniforms with the same badges of rank as naval and military officers who command destroyers, fighter squadrons and combat battalions. Never mind that no member of the corps has such command responsibilities.

Get rid of the surgeon general and the redundant personnel system that is the Commissioned Corps. No one will notice, except maybe some uniform makers.

Mr. Gough is director of science and risk studies at the Cato Institute. Mr. Milloy is executive director of the Advancement of Sound Science Coalition.

Notable & Quotable

Michael Kinsley on criticisms of independent counsels in Slate:

The solution is to make the independent prosecutor a permanent office, rather than appointing a new one every time a scandal or alleged scandal comes along. . . . A permanent independent prosecutor's office could be held more easily to reasonable financial and procedural guidelines. A permanent independent prosecutor's office would not need to feel that its reputation depended on prosecuting and convicting everyone it investigated.

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