

Approved: Feb. 29, 2000  
Date

MINUTES OF THE HOUSE TAXATION COMMITTEE.

The meeting was called to order by Chairperson Wagle at 9:00 a.m. on February 16, 2000, in Room 519-S of the Capitol.

All members were present except: Rep. Campbell - excused  
Rep. Kirk - excused

Committee staff present: Chris Courtwright, Legislative Research Department  
April Holman, Legislative Research Department  
Don Hayward, Revisor of Statutes  
Shirley Sicilian, Department of Revenue  
Ann Deitcher, Committee Secretary  
Edith Beaty, Taxaton Secretary

Conferees appearing before the committee: Representative Tony Powell  
Terri Roberts

**HB 2821 - Relating to income taxation; imposing a tax upon income derived from certain state controversy settlement agreements.**

Representative Tony Powell spoke to the Committee as a proponent of **HB 2821** and copies of the bill were distributed. (Attachment 1) Representative Powell was sworn in.

Copies of the Final Report and Decision of the Strategic Contribution Fund Allocation Committee were handed out. (Attachment 2).

Terri Roberts gave testimony in opposition of **HB 2821**. (Attachment 3).

Copies of published articles regarding the Attorney General's litigation with the tobacco companies were distributed. (Attachment 4).

**The day's entire testimony was taken verbatim by a court reporter. These minutes are attached.** (Attachment 5).

The meeting was adjourned at 10:45 a.m. The next meeting is scheduled for Thursday, February 17, 2000.

**7-121a.**

**History:** L. 1956, ch. 52, § 6; L. 1957, ch. 431, § 5; L. 1963, ch. 398, § 18; Repealed, L. 1973, ch. 129, § 9; July 1.

**7-121b. Attorney fees in damage actions for acts or omissions of health care providers; approval; definitions.** (a) Whenever a civil action is commenced by filing a petition or whenever a pleading states a claim in a district court for damages for personal injuries or death arising out of the rendering of or the failure to render professional services by any health care provider, compensation for reasonable attorney fees to be paid by each litigant in the action shall be approved by the judge after an evidentiary hearing and prior to final disposition of the case by the district court. Compensation for reasonable attorney fees for services performed in an appeal of a judgment in any such action to the court of appeals shall be approved after an evidentiary hearing by the chief judge or by the presiding judge of the panel hearing the case. Compensation for reasonable attorney fees for services performed in an appeal of a judgment in any such action to the supreme court shall be approved after an evidentiary hearing by the departmental justice for the department in which the appeal originated. In determining the reasonableness of such compensation, the judge or justice shall consider the following:

- (1) The time and labor required, the novelty and difficulty of the questions involved and the skill requisite to perform the legal service properly.
- (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the attorney.
- (3) The fee customarily charged in the locality for similar legal services.
- (4) The amount involved and the results obtained.
- (5) The time limitations imposed by the client or by the circumstances.
- (6) The nature and length of the professional relationship with the client.

(7) The experience, reputation and ability of the attorney or attorneys performing the services.

(8) Whether the fee is fixed or contingent.

(b) As used in this section:

(1) "Health care provider" means a person licensed to practice any branch of the healing arts, a person who holds a temporary permit to practice any branch of the healing arts, a person engaged in a postgraduate training program approved by the state board of healing arts, a licensed medical care facility, a health maintenance organization, a licensed dentist, a licensed professional nurse, a licensed practical nurse, a licensed optometrist, a licensed podiatrist, a licensed pharmacist, a professional corporation organized pursuant to the professional corporation law of Kansas by persons who are authorized by such law to form such a corporation and who are health care providers as defined by this subsection, a registered physical therapist or an officer, employee or agent thereof acting in the course and scope of such person's employment or agency; and

(2) "professional services" means those services which require licensure, registration or certification by agencies of the state for the performance thereof.

**History:** L. 1976, ch. 248, § 1; L. 1986, ch. 231, § 2; L. 1986, ch. 229, § 22; L. 1986, ch. 10, § 1; L. 1988, ch. 246, § 10; July 1.

House Taxation

Date 2/16/00

Attachment # 1



**FINAL REPORT AND DECISION**

**of the**

**STRATEGIC CONTRIBUTION FUND  
ALLOCATION COMMITTEE**

**May 21, 1999**

House Taxation

Date 2/16/00

Attachment # 2-1



**Members of the Committee**

*W. J. Michael Cody*  
*Dave Frohnmayr*  
*John K. Van de Kamp*

*As required by the Tobacco Master Settlement Agreement*  
**EXHIBIT "U"**

# Strategic Contribution Fund Allocation Committee Final Decision

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  - *Amendments to the MSA*
3. Letter to the SCF Allocation Committee (*Attorneys General Moore and Butterworth*)
4. Initial Letter of Request (*NAAG Executive Committee*)
  - *Guidelines for Submission*
5. Second Letter of Request (*SCF Allocation Committee*)
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6. Third Letter of Request (*SCF Allocation Committee*)
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7. Filing and trial dates chart
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### III. Panel Biographies

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**TO THE  
NATIONAL ASSOCIATION  
OF  
ATTORNEYS GENERAL**

This document constitutes the Final Report of the Strategic Contribution Fund Allocation Committee. (Hereafter SCF Allocation Committee)

**I. Introduction**

We are grateful for the privilege of serving the jurisdictions which have labored to obtain this historic legal agreement with the Tobacco industry. This remarkable settlement was developed unanimously, and with great effort, by state and territorial Attorneys General, the District of Columbia, United States possessions and their respective allies. On behalf of their fellow citizens, these officers, together, resolved the most successful legal attack on a major public health hazard in the history of recorded civilization.

We salute the human energy, unusual collegiality and devotion to the public interest which this accord required. We understand, acutely, the potential of any new and additional distribution to upset the labors of those who have preceded us.

The admirable seriousness of purpose which led to the Tobacco Settlement also has guided the thoughtful submissions of applicant jurisdictions to this SCF Allocation Committee, both prior to our required Preliminary Decision and thereafter. We deeply appreciate the good spirit and exceptional professional advocacy of these efforts.

## **II. Legal Jurisdiction and Authority**

### **A. Selection**

The SCF Allocation Committee was selected pursuant to the criteria of Exhibit U (appended to this decision as Attachment 1) of the Tobacco Master Settlement Agreement (hereafter MSA) of November 23, 1998 and the processes thereafter of the National Association of Attorneys General (hereafter NAAG). Each of us separately has determined that we have no professional conflicts of interest that preclude our participation.

### **B. Criteria and Processes for Decision**

We have studied thoroughly the broad criteria governing the distribution, beginning in the year 2008 AD, of approximately \$8.6 billion of the Strategic Contribution Fund (hereafter SCF). The Exhibit U criteria are established in Section 4 and are as follows:

"The criteria to be considered by the Allocation Committee in its allocation decision include each Settling State's contribution to the litigation or resolution of state tobacco litigation, including, but not limited to, litigation and/or settlement with tobacco product manufacturers, including Liggett and Myers and its affiliated entities."

We have been asked to be the sole arbiters of efforts of all jurisdictions ("each Settling State....") which merit special recognition in this allocation. This recognition, unlike the typical post-litigation reimbursement arrangements of other historic settlements, is above and beyond the thoroughly examined and ultimately state-court approved awards of full damages, costs and attorneys fees to all jurisdictions. Those awards as well as this allocation all are to be paid by the tobacco industry and related settling defendants.

Our preliminary decision and this Final Report both have been premised on the assumption that the requisite number of "state-specific" judgments under the MSA will have been achieved pursuant to the MSA and its processes.

Few, if any, precedents remotely apply to the occasion of this award process. The paucity of responses to our solicitation for advice on publications which might provide guidance to us confirms our own judgment. This settlement provision is uniquely challenging to apply. We therefore felt bound only by our understanding of the literal terms of our Exhibit U charge.

We did not, however, reach our decisions arbitrarily or in isolation. We deliberately designed a participatory process, more fully described below, which gave Settling States a significant and continuing measure of involvement respecting both process and criteria. We were helpfully informed by the reflective observations of many states about appropriate criteria. They aided us in meeting our responsibility. We set forth our application of the criteria in our Preliminary Decision. We revisited them after the comment period, in order to render our now binding and non-appealable decision. (Exhibit U, Section 6)<sup>1</sup>

We were asked to distribute a portion of the MSA award based upon special merit. The broad criteria are not of our authorship. By the terms of the MSA, the SCF Allocation Committee lacks capacity to examine the genesis or even the consensus understanding of the history and development of Exhibit U<sup>2</sup>.

In view of the comment theme of several submissions of at least one jurisdiction, we reassert this point more fully in this text accompanying footnote 2, below. We do not have authority to revisit the "intent" of the drafters. No critique of our decision can fairly rest on some alleged divination of that unknowable intent. The MSA would not exist but for the ratification of its signatories. Therefore, we looked to the comment process to inform, though not (by some oversimplified notion of majority rule) control our judgments. We fully understand our responsibility to be final arbiters of the language of Exhibit U. We have tried to be faithful to our mandate.

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<sup>1</sup> With only a handful of exceptions, comments did not challenge our choice of criteria. The weight allotted to the criteria, of course, is legitimately debatable.

<sup>2</sup> Pursuant to Section XVIII (f) and (g) of the MSA, no evidence of any alleged understanding about the meaning of this language is admissible.



### C. Panel Procedures

From the outset, we have made public to each jurisdiction, the submissions of all others which bear on our committee processes pursuant to Exhibit U. We also are required to make our decisions on the basis of "written documentation." (Attachment 1, MSA Exhibit U, section 3) For that reason, we ruled out consideration of any *ex parte* comments and respectfully decided not to provide an occasion for oral argument prior to the submission of our Preliminary Decision of March 8, 1999.

As a consequence of discussions during the NAAG spring meeting of March 24 to March 26, 1999 a significant, and--to this SCF Allocation Committee--welcome amendment was proposed and shortly thereafter, was ratified unanimously by MSA signatory jurisdictions.

By amendment to the MSA, two senior members of NAAG, the Attorneys General of Mississippi and Florida, were authorized to confer with the Committee. These jurisdictions obtained settlements earlier and apart from the MSA. Their representatives thus had no conflict of interest.

While by its immediate terms, the MSA amendment extended the comment period on our Preliminary Decision by some days, its clear intent additionally was to permit two seasoned and experienced members of NAAG to canvass member jurisdictions and MSA signatories individually.<sup>3</sup> Thereafter, these Attorneys General met with us to provide factual context for written submissions, including their own.<sup>4</sup>

Attorneys General Moore and Butterworth accurately reported in their letter to us of May 6, 1999 (see Attachment 3), "[w]hile you welcomed the texture and context we could provide to this matter, you also correctly viewed us as experts or advisors, not as additional decisionmakers."

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<sup>3</sup>See NAAG memorandum #99-55, March 30, 1999 from Mike Moore and Chris Gregoire to "All Attorneys General and All Attorney General Tobacco Contacts" (Attachment 2)

<sup>4</sup>In view of the widespread discussion of this proposed process prior to its initiation, and given the unanimous approval of the MSA amendments, any procedural objection to this process is deemed waived or overruled.

Ultimate responsibility for the decisions of this Final Report remained unequivocally with the three members of the SCF Allocation Committee.

#### **D. Process Limitations and Challenges**

Numerous submissions throughout this process highlight the obvious difficulties of our task, a process which was severely limited by the strict timelines of Exhibit U, section 5. We were told that we have a "difficult, if not impossible task," that what we were asked to decide is, "at heart, impossible" and that "all states will not view your ultimate decision with equal enthusiasm."

Others cautioned that we could not reconstruct history or dissect the likely ultimate effectiveness of legal pleadings, motion practice and trial strategies. We were alerted fully to the perils of any psychoanalytic judgment of internal or external political dynamics. Many questioned whether we could hope to capture full awareness of complex personal and multistate relationships. All legitimately might wonder whether anyone fully possesses the capacity to assess the widening chains of causation that heroic or determined individual activities may have contributed to this monumental victory.

We cannot counter these understandable concerns fully. It is not our objective to do so. Any legal process routinely leaves historical reconstruction, with all of its imperfections, to judges and juries. Arbitration panels are not different in kind. We were appointed to act with justice and fairness in a universe of wholly plausible but often competing considerations of principle. Given the challenge of our legal mandate, we accepted our responsibility, nonetheless, to explore and make informed judgments about some of these problematic questions.

Where it is possible or rationally persuasive to do so, we adopted objective criteria or built on prior understandings of MSA participants. In particular, our partial reliance on the MSA Exhibit A formula for the baseline award recognizes and rewards certain jurisdictions, especially large ones and, some believe, small ones, in very favorable ways. We also studied suggested principles for specific contribution award categories submitted by many ratifying jurisdictions. Our allocation decisions respect the center of gravity of most of these thoughtful suggestions. As should be obvious, our multiple requests for comments were

designed, in significant part, to help us identify any overreaching or non-meritorious claims on this special fund.<sup>5</sup>

Our own deliberations have been marked by mutual respect, dedication to the assigned task, and a real attempt by all concerned to reach common ground. Despite the provision in Exhibit U, section 5 permitting decision by majority vote, all of our SCF Allocation Committee decisions have been unanimous.

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<sup>5</sup>We acknowledge, with gratitude, the statesmanship of the jurisdictions. In the pursuit of collegiality, some declined altogether to criticize the submissions of others. Others spoke only generically respecting proposed criteria. Some jurisdictions affirmatively mentioned contributions of sister states. Our general criteria were available for participatory comment in numerous cycles and were largely formed from them.

### **III. Procedural History**

After our appointment as the SCF Allocation Committee, we received and studied the submissions of applicant jurisdictions. Pursuant to instructions of the NAAG Executive Committee, these submissions were limited to a maximum of 10 pages. The initial letter of request is appended as Attachment 4. Each submission was posted on the NAAG "back page" on the World Wide Web so that it would be available to all other jurisdictions. We considered each submission fully.

Following our initial meetings by conference call, we asked each jurisdiction to submit a further statement, not to exceed three pages, suggesting criteria which might guide our judgments, and asking for comments on submissions of other jurisdictions. A copy of our request is appended as Attachment 5. Nearly all jurisdictions responded. All responses were posted and have been considered fully.

At our meeting in San Francisco, California on February 12-13, 1999, we developed preliminary criteria and explored a variety of tentative emphases which might be assigned to these considerations. We agreed separately to rank states into groupings based upon our initial individual views of the extent of their efforts. This exercise served as an independent process to validate our jointly developed tentative methodology. Our separate assessments were remarkably similar. We also requested the NAAG Executive Director to solicit, in a submission not to exceed two pages, further comments on more explicit suggested criteria. We wished to insure that all jurisdictions had a full and fair opportunity to address these criteria. A copy of that request is appended as Attachment 6. Slightly more than half of the initial jurisdictions responded to this final solicitation. All responses were posted and have been considered fully.

We further requested the NAAG Executive Director to identify objective data, such as litigation filing and trial dates of applicant jurisdictions, and to solicit the identity of jurisdictions which served in an active capacity in various settlement proceedings. Those two requests also were meant to identify participants in the June 20, 1997 negotiations and membership on the Allocation Committee. Answers are appended as Attachment 7. The responses revealed a number of helpful corrections to the filing and trial dates. The responses were

posted and have been considered fully. The corrected litigation dates were posted with the electronic version of our Preliminary Report.

The SCF Allocation Committee met by telephone conference calls on February 19, 1999 and February 26, 1999. We reconvened in San Francisco, California for further deliberations on March 5-6, 1999. Our tentative allocations in our Preliminary Decision were submitted on March 8, 1999 pursuant to the deadlines established in Exhibit U of the MSA.

We are informed that the Preliminary Decision generated substantial discussion at the NAAG Spring Meeting from March 24 to March 26, 1999. Thereafter, as described above in this report, and contemporaneously with the unanimous endorsement by Settling States of the MSA amendment previously described, the SCF Allocation Committee met by telephone conference call on April 12, 1999 with Generals Moore and Butterworth.

On April 19, 1999, prior to the conclusion of the comment period, Generals Moore and Butterworth wrote to all jurisdictions explaining how they had fulfilled their responsibilities and conveyed their written recommendations to the Committee.<sup>6</sup>

We reconvened on April 21-22, 1999 in Chicago, Illinois with Generals Moore and Butterworth to review their findings which had been sent to all Attorneys General and posted electronically. The allocation recommendations provided to us, and contained herein as Attachment 8, were examined thoroughly on a jurisdiction by jurisdiction basis. Generals Moore and Butterworth commented further on our processes and made further recommendations in a letter dated May 6, 1999 (Attachment 3).

We considered fully all written comments whether directed to the Preliminary Report or to the recommendations of Generals Moore and Butterworth.

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<sup>6</sup>Memo to All Attorneys General from Generals Moore and Butterworth, April 19, 1999 (see Attachment 8)

Members of the SCF Allocation Committee agreed individually to examine a randomly assigned group of jurisdictions, excepting those "banded" (see below), to read written submissions anew, and to reassess relative rankings amongst putative peer states, and the overall rankings which we previously had developed separately and which, in our Preliminary Decision, we reported as being strikingly similar in these separate assessments.<sup>7</sup>

We convened a telephone conference call on May 7, 1999 to discuss pending matters, including further review of our allocation reassessment following the Chicago meeting. We agreed on the broad outlines of the "banding" recommendation contained in the May 6, 1999 letter of Generals Moore and Butterworth and numerous other procedural and methodological questions.

We reconvened in person in Denver, Colorado on May 16, 1999 for final disposition of our responsibilities. This Final Report reflects our unanimous and considered decision respecting this weighty responsibility. This report is delivered to you in compliance with the requirements of Exhibit U of the MSA.

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<sup>7</sup> By conservative estimate, we have, individually and collectively, reviewed and assessed each jurisdiction a minimum of ten times. The limitation of "written submissions" and the skillful and commendable art of advocacy has challenged us to penetrate to the realistic core of each jurisdiction's contribution.

#### IV. Guiding Principles

We adopted, at the outset, the following policy principles:

A. We must follow our best understanding of the language and meaning of Exhibit U. This is our sole and binding charter.

B. We should endeavor to develop clear and understandable criteria and principles which thereafter guide the distribution process. The principles should be simple to understand, consistent with the dictates of fairness in application. In our Preliminary Decision, and in the comment period which preceded it, we were quite specific in identifying the matters of special interest to the Committee.

C. We should endeavor to preserve the collegial atmosphere without which the settlement could not have been reached and cannot be administered harmoniously.

D. We tried to design an allocation system that would encourage rather than discourage the formation of multi-state cooperative efforts in the future.

E. We believed, and continue to affirm that our decisions should recognize the value, where feasible and appropriate, of those actions which protect and advance the office and historic powers and responsibilities of Attorneys General.

F. We endeavored to anticipate and provide a process for responding to additional comment--and modification where justified--before the final decision was issued.

By and large, commenting jurisdictions agreed with these principles. We consider them, therefore, to be within the understanding of the overwhelming majority of MSA-ratifying jurisdictions.

## V. Criteria for Allocation

In our Preliminary Decision, we made five allocations:

- 1) a baseline award that recognized the significance of unprecedented unanimity even beyond the achievement of "critical mass.";
- 2) awards based upon litigation activity, including perfected filings, with all attendant fiscal and personnel resource commitments; trial readiness; assistance to others; and specific or unique contributions;
- 3) awards based upon participation or activities in the pre-MSA settlements, more specifically the Liggett Settlements and the June 20, 1997 accord and its aftermath;
- 4) awards based upon activities leading to negotiation of the final MSA settlement; and
- 5) an allocation "hold back" from the preliminary awards for the purpose of making adjustments pursuant to submissions we might receive in the comment period following this decision.

We now discuss our further conclusions respecting each of these criteria.

### A. Baseline Award

We have assigned twenty percent (20%) of the SCF to this category. In our view, the importance of obtaining a "critical mass" cannot be understated. As is somewhat analogous to the era of the Articles of Confederation, a strong consensus of sovereign jurisdictions, not merely a majority by population or raw number, were required to reach a decision. This daunting reality was an obstacle successfully overcome. Every signatory jurisdiction thus participated strategically to achieve this impressive result.<sup>8</sup>

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<sup>8</sup> The submissions of ratifying jurisdictions which responded to our specific inquiry on this point asked for a "baseline" by a nearly 3:1 ratio (33 favored; 12 opposed). Several of those which opposed the baseline would have received less, by other objective criteria, than they ultimately gained through the baseline. It is also fair to observe



We composed the baseline considering two distinct elements. First, a flat \$10 million per jurisdiction recognizes the equality of each signatory as a sovereign authority. This award totaled approximately \$520 million. The balance of the baseline award up to twenty percent of the total is to be distributed according to the formula of Exhibit A of the MSA. Here we recognized and adopted overtly the consensus formulaic balance of many considerations achieved by those who preceded us and who were acutely aware of the economic, political and legal delicacy of their task.

Some jurisdictions urged us to distribute most, if not the entire SCF according to the formula of Exhibit A. This was a temptingly simple course, but we declined to adopt it for two major reasons.

First, Exhibit A and Exhibit U are two distinct articles of the MSA relating to awards. If Exhibit A were meant to control the operation of Exhibit U, time-honored principles of the construction of legal documents would require some reference in one or both of the exhibits explicitly so stating. There is no such reference. Therefore, we presumed that the processes and formulas of these two exhibits were meant to be separate and analytically distinct.

Second, we studied the report and explanation of the NAAG Allocation Committee (Attachment 9). Its major emphasis, embodied in MSA Exhibit A, was to develop a "cost-basis" formula.<sup>9</sup> Exhibit U separately requires us to reward each state's "strategic contribution," a process which the MSA Allocation Committee explicitly noted would be distributed according to a "later assessment."<sup>10</sup> We used Exhibit A as a limited proxy for some values, such as population, in the baseline, while not using it to compose the entire baseline formula.

## B. Litigation Efforts

We assigned forty percent (40%) of the total award to this category. We are

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that the MSA component of the baseline for large states, gave explicit recognition to what their more substantial populations contributed to settlement momentum.

<sup>9</sup>"Explanation of the Allocation Formula for Tobacco-Settlement Proceeds." p.3. (undated)

<sup>10</sup>*Id.* at 4.

convinced, through our review of numerous submissions, that early and substantial involvement in the initiation of litigation was a gateway to this settlement, a powerful signal to litigation adversaries and a key, quite early in the process, to the resulting settlement. In assessing each jurisdiction's submissions, we examined a number of factors.

### 1. Litigation filings

Substantial consideration was given to early filing jurisdictions and to the timing of suit of each jurisdiction. This factor is a rough proxy for risk and resource commitment, and therefore, tangible evidence of leadership.

### 2. Trial dates

We assessed readiness for trial, and therefore the likely threat to the industry by various active lawsuits. We gave somewhat greater emphasis to those jurisdictions in which trials had commenced or were scheduled into May, 1999 than to those in June 1999 or thereafter. We recognized, discussed and assessed the inherent flexibility of the trial setting process in some jurisdictions. We weighed our judgments very carefully, always based upon information presented in "written documentation."

### 3. Direct Litigation Assistance

This award category emphasized identifiable active contributions of many jurisdictions to advance their cases and those of others by one or more of the following actions. We identified these explicit criteria for comment well before our Preliminary Decision. If a jurisdiction failed in its submission of its claim on this fund to address the criteria, we could not enhance an award from this part of the Fund. We now list these considerations again without defining a priority order or value:

1. Discovery effort and assistance with or to other jurisdictions;
2. Defense of preemptive lawsuits brought by the tobacco industry against jurisdictions or their Attorneys General and, in some cases, preemptive litigation efforts initiated by Attorneys General;

3. Successful efforts to defeat claims of evidentiary privilege by tobacco industry representatives and their counsel and allies;
4. Recruitment of additional litigating or amicus jurisdictions;
5. Identification and development of expert testimony;
6. Drafting of model complaints, motions or other relevant documents; and
7. Refinement of persuasive damage models.

#### 4. Specific Contributions of Identifiable Value

Leadership in a variety of instances was powerfully demonstrated in a number of exemplary submissions. As a consequence, a portion of the general award category here was allocated to recognize readily identifiable and objectively verifiable contributions beyond those previously listed. We are aware of numerous cases of personal courage in which an office-holder assisted the effort at substantial political cost. These instances provided context for our judgments.

Without suggesting priority order or comprehensiveness in this enumeration, we gave weight to particularly powerful legal claims such as RICO, consumer fraud, or state specific, common law or statutory remedies that plausibly would be successful; actions which engaged tobacco industry insurers; efforts to defeat foreign arbitration preemption; W.R. Grace Litigation; state legislation directly related to litigation remedies; and legal attacks on the Tobacco Institute or similar entities.

In view of the views expressed in several comments, we also note some factors which did not enter into our consideration.

We did not assign award percentages for the advocacy or enactment of anti-smoking legislation and related efforts in any jurisdiction. While these are meritorious policies, we found no sufficient nexus between them and the successful negotiation of the MSA. We also drew no special distinction, for lack of any defensible evidentiary or policy reason, between the use of retained counsel

and in-house counsel. The totality of effective effort, where documented, was, however, considered.

### C. Pre-MSA Settlements

We assigned fifteen percent (15%) of the award to efforts in these categories. All three Liggett Settlements were noteworthy, as their references in Exhibit U requires us to acknowledge. In our Preliminary Decision, we especially recognized efforts respecting Liggett II; in this Final Decision, we give additional weight to the undeniably catalytic effect and evidentiary breakthroughs established by Liggett I.

We also are convinced that even though the June 20, 1997 settlement ultimately failed to achieve Congressional approval, it was a watershed event in developing momentum for the final settlement. Initial efforts at devising allocation formulas, a new round of filings by additional jurisdictions, new energy in negotiation strategies and coalitions, widespread activity in Washington, D.C. and numerous other major activities that led to the MSA can be traced to the efforts of many. Our awards in this category recognize these numerous leadership contributions, perhaps to a greater degree than was embodied in our Preliminary Decision.

### D. Negotiation and MSA Settlement

We allocated fifteen percent (15%) of the total SCF to these culminating efforts. We identified three subcategories of effort where individual and collective activities of jurisdictions could be determined. We are acutely aware that not every jurisdiction could be represented on certain key committees. Some committee membership decisions, of course, may have been determined by considerations other than litigation success or even participation at the time of appointment. We therefore also evaluated and recognized productive activity in venues other than formal committee membership.

The three subcategories recognized in this part include participation in the MSA negotiating team effort; participation in the work of the Allocation Committee (efforts which began during the June 20, 1997 settlement process); and, finally, individual state efforts during this time period. Some submissions

were more detailed and specific in responding to our inquiries on these points. Given our reliance on written submissions we gave careful scrutiny to all asserted efforts.

This last category includes consideration of states which were asked to abstain from litigation or in obtaining smaller settlements; demonstrable ability to bring key defendants into a negotiation and settlement posture; efforts to secure additional defendants from whom recoupment could be sought; drafting assignments or reviews; and development of advocacy coalitions, including those relating to public health.

#### E. Discretionary Adjustment Awards

We reserved ten percent (10%) of the preliminary allocation for adjustments because the comment period was likely to reveal perceived inequities, forceful arguments for new considerations, or greater emphasis on particular criteria. Rather than force a reallocation which would require any jurisdiction's enhancement to dilute all others, we elected to allocate this preliminary reserve to assure that any adjustments in our final decision, "wherever possible," would be additive.

The comment process and our subsequent deliberations leave us persuaded that our methodology and criteria were both principled and fundamentally sound. We appreciated the kind observation by Generals Moore and Butterworth in their May 6, 1999 letter respecting the "sophistication and attention to process" of our methodology.

An appropriate reconfiguration of awards proved possible within the 10% figure. We did make a number of adjustments, in some instances downward but ultimately in every case upward, as a consequence of our review of comments and information provided by Generals Moore and Butterworth:

1. As a result of re-reviews of submissions to us, we found a number of occasions where, on reconsideration, greater weight should have been given to a jurisdiction's efforts respecting our articulated criterion or criteria.

2. In our early reviews, independently and together, we readily identified the undisputable importance of the state of Washington. That jurisdiction was the only one actually in trial against tobacco industry adversaries at the time of the MSA. Washington's Attorney General chaired the MSA negotiations and led the process to the result. Attorney General Gregoire received the Wyman Award in partial recognition of this effort.

Absent the mathematics of the baseline award in our Preliminary Decision, Washington would have received the largest strategic contribution. We find that Washington is deserving of the highest award. This award also reflects the sense of the NAAG Spring Meeting as reported to the Committee by Attorneys General Moore and Butterworth to adjust the award to reflect Washington's unusually meritorious contribution.

3. We are persuaded that all territories and possessions, with the exception of the District of Columbia and Puerto Rico, should be treated identically.

4. In one case, that of Massachusetts, we discovered that, through clerical error, credit was not given for documented negotiation participation at a critical juncture. This omission was rectified.

5. We accepted the strong recommendation, which we understand was a consensus understanding of the March, 1999 NAAG Spring Meeting, that no jurisdiction should be put in a position which arbitrarily and unfairly might cause its effort to be deemed "last" or least worthy.

As a consequence, we adopt the "banding" concept of Generals Moore and Butterworth as expressed in their May 6, 1999 letter:

"We recommend that the contributions of Wyoming, Tennessee, Nebraska, Alabama, D.C., Virginia, Kentucky, Idaho, South Dakota, Delaware and Arkansas all be viewed as equal. This recommendation reflects the sentiments of the Attorneys General attending the NAAG Spring Meeting; while not lead states in this litigation, they all made contributions that advanced the cause.... Precedent exists for the tiering of states in multistate actions which Attorneys General have collectively undertaken."

6. Finally, we allocated the residuum of the "holdback" to non-"banded" jurisdictions in proportion to their previously-determined strategic award percentages, exclusive of the baseline award.

After viewing comments, and in light of our further conclusion that a "baseline" award is a sound component of the award structure, we have not changed the baseline as presented in our Preliminary Decision.

#### F. Future Adjustments

Unless otherwise directed, we believe that our authority to make allocations from the SCF expires as of the date of submission of this Final Decision under the terms of section 5 of Exhibit U.

In our Preliminary Decision we suggested a proposal for future adjustments. Two jurisdictions (Washington and New York) argued, correctly, we believe, that the SCF Allocation Committee lacks authority to propose such adjustments. Accordingly, for future reference only, we append as Attachment 10 the comment dated March 29, 1999 from the Honorable Christine O. Gregoire, Chair, MSA Negotiating Team, suggesting how the MSA might be construed to address future adjustments.

## **VI. Final Decision Allocation**

Section 5 of Exhibit U (Attachment 1) required our preliminary decision allocating SCF payments within 45 days after receiving "itemized requests for funds" to Settling States "who submitted itemized requests for funds." The NAAG "Guidelines for Submissions to the Panel" (Attachment 4) state that the term "itemized request" means "an itemization of criteria or reasons a state is entitled to an allocation and not an itemization of amounts or percentages of allocations requested."

We deem that all MSA Settling States sufficiently complied with this requirement, and that there has been no timely objection to full participation by all MSA signatories.

Section 5 of Exhibit U (Attachment 1) requires a "final decision" within 45 days of the 30 day comment period. Notwithstanding the shortened period for deliberation occasioned by the extension of the comment period, we now issue this final decision within the contemplated process deadline.

## **VII. Final Award**

Our final award, as required, is set forth on the following page in percentage terms to be applied ultimately to the funds available pursuant to the MSA.

For convenience of the reader, Figures 1 and 2 translate these percentages into approximate dollar totals to be received by each state based on an estimated \$8.6 billion available to the Strategic Fund, first on a ranking basis (Figure 1), and then on an alphabetical basis (Figure 2).

This Final Report and Decision reflects the unanimous judgment and order of the SCF Allocation Committee.



**Final Decision**

State	%
Washington	5.7647432%
New York	5.4873402%
California	5.1730408%
Massachusetts	4.8113027%
Connecticut	3.3131372%
Maryland	3.2884290%
Pennsylvania	3.2572691%
Oklahoma	3.1196696%
Arizona	3.0553024%
New Jersey	2.8469526%
Ohio	2.7819695%
Iowa	2.7210212%
Illinois	2.7169243%
Indiana	2.6499166%
Louisiana	2.6279206%
Wisconsin	2.6176864%
Michigan	2.5771774%
Oregon	2.4160580%
Hawaii	2.3645190%
Colorado	2.3544100%
West Virginia	2.2774408%
North Carolina	1.9423049%
Kansas	1.8502336%
Utah	1.8257711%
Vermont	1.8175127%
North Dakota	1.7388123%
Alaska	1.7118798%
Puerto Rico	1.6531733%
Missouri	1.5514860%
South Carolina	1.3322130%
Maine	1.3281978%
Rhode Island	1.0954758%
Montana	1.0447501%
Nevada	1.0303306%
New Mexico	0.9959277%
Georgia	0.9363477%
New Hampshire	0.8989628%
Tennessee	0.7549361%
Wyoming	0.7549361%
Nebraska	0.7549361%
Alabama	0.7549361%
D.C.	0.7549361%
Virginia	0.7549361%
Kentucky	0.7549361%
Idaho	0.7549361%
South Dakota	0.7549361%
Delaware	0.7549361%
Arkansas	0.7549361%
U.S. Virgin Islands	0.1800232%
N. Mariana Island	0.1800232%
Guam	0.1800232%
American Samoa	0.1800232%

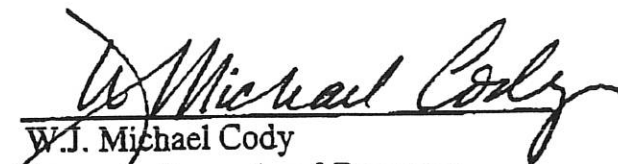
Figure 2


State	Total	%
Alabama	\$65,000,000.00	0.7549361%
Alaska	\$147,392,848.61	1.7118798%
American Samoa	\$15,500,000.00	0.1800232%
Arizona	\$263,061,538.89	3.0553024%
Arkansas	\$65,000,000.00	0.7549361%
California	\$445,398,816.58	5.1730408%
Colorado	\$202,714,700.45	2.3544100%
Connecticut	\$285,261,115.20	3.3131372%
D.C.	\$65,000,000.00	0.7549361%
Delaware	\$65,000,000.00	0.7549361%
Georgia	\$80,619,537.69	0.9363477%
Guam	\$15,500,000.00	0.1800232%
Hawaii	\$203,685,084.67	2.3645190%
Idaho	\$65,000,000.00	0.7549361%
Illinois	\$233,927,184.79	2.7169243%
Indiana	\$228,157,820.74	2.6499166%
Iowa	\$234,279,927.00	2.7210212%
Kansas	\$159,305,113.24	1.8502336%
Kentucky	\$65,000,000.00	0.7549361%
Louisiana	\$226,263,967.47	2.6279206%
Maine	\$114,357,833.15	1.3281978%
Maryland	\$283,133,735.53	3.2884290%
Massachusetts	\$414,253,158.39	4.8113027%
Michigan	\$221,894,972.62	2.5771774%
Missouri	\$133,582,942.63	1.5514860%
Montana	\$89,952,986.26	1.0447501%
N. Mariana Island	\$15,500,000.00	0.1800232%
Nebraska	\$65,000,000.00	0.7549361%
Nevada	\$88,711,462.90	1.0303306%
New Hampshire	\$77,400,695.17	0.8989628%
New Jersey	\$245,122,619.56	2.8469526%
New Mexico	\$65,749,376.20	0.9959277%
New York	\$472,459,991.25	5.4873402%
North Carolina	\$167,232,447.80	1.9423049%
North Dakota	\$149,711,735.38	1.7388123%
Ohio	\$239,527,574.01	2.7819695%
Oklahoma	\$268,603,548.39	3.1196696%
Oregon	\$208,022,590.98	2.4160580%
Pennsylvania	\$280,450,868.98	3.2572691%
Puerto Rico	\$142,338,223.45	1.6531733%
Rhode Island	\$94,320,469.30	1.0954758%
South Carolina	\$114,703,541.71	1.3322130%
South Dakota	\$65,000,000.00	0.7549361%
Tennessee	\$65,000,000.00	0.7549361%
U.S. Virgin Islands	\$15,500,000.00	0.1800232%
Utah	\$157,198,889.58	1.8257711%
Vermont	\$156,487,843.70	1.8175127%
Virginia	\$65,000,000.00	0.7549361%
Washington	\$496,344,386.46	5.7647432%
West Virginia	\$196,087,655.47	2.2774408%
Wisconsin	\$225,382,795.78	2.6176864%
Wyoming	\$65,000,000.00	0.7549361%
Total	\$8,810,000,000.00	

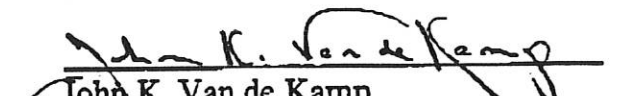
Figure 1

State	Total	%
Washington	\$496,344,386.46	5.7647432%
New York	\$472,459,991.25	5.4873402%
California	\$445,398,816.58	5.1730408%
Massachusetts	\$414,253,158.39	4.8113027%
Connecticut	\$286,261,115.20	3.3131372%
Maryland	\$283,133,735.53	3.2884290%
Pennsylvania	\$280,450,868.98	3.2572691%
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Colorado	\$202,714,700.45	2.3544100%
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North Carolina	\$167,232,447.80	1.9423049%
Kansas	\$159,305,113.24	1.8502336%
Utah	\$157,198,889.58	1.8257711%
Vermont	\$156,487,843.70	1.8175127%
North Dakota	\$149,711,735.38	1.7388123%
Alaska	\$147,392,848.61	1.7118798%
Puerto Rico	\$142,338,223.45	1.6531733%
Missouri	\$133,582,942.63	1.5514860%
South Carolina	\$114,703,541.71	1.3322130%
Maine	\$114,357,833.15	1.3281978%
Rhode Island	\$94,320,469.30	1.0954758%
Montana	\$89,952,986.26	1.0447501%
Nevada	\$88,711,462.90	1.0303306%
New Mexico	\$85,749,376.20	0.9959277%
Georgia	\$80,619,537.69	0.9363477%
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Wyoming	\$65,000,000.00	0.7549361%
Nebraska	\$65,000,000.00	0.7549361%
Alabama	\$65,000,000.00	0.7549361%
D.C.	\$65,000,000.00	0.7549361%
Virginia	\$65,000,000.00	0.7549361%
Kentucky	\$65,000,000.00	0.7549361%
Idaho	\$65,000,000.00	0.7549361%
South Dakota	\$65,000,000.00	0.7549361%
Delaware	\$65,000,000.00	0.7549361%
Arkansas	\$65,000,000.00	0.7549361%
U.S. Virgin Islands	\$15,500,000.00	0.1800232%
N. Mariana Island	\$15,500,000.00	0.1800232%
Guam	\$15,500,000.00	0.1800232%
American Samoa	\$15,500,000.00	0.1800232%
Total	\$8,610,000,000.00	

We submit this Final Report and Decision, effective the 21<sup>st</sup> day of May, 1999.

  
 W.J. Michael Cody  
 Attorney General and Reporter,  
 Tennessee, 1984-1988  
 Partner, Burch, Porter & Johnson  
 Memphis, Tennessee

  
 Dave Frohnmayer  
 Attorney General of Oregon, 1981-1991  
 President, University of Oregon  
 Eugene, Oregon

  
 John K. Van de Kamp  
 Attorney General of California, 1983-91  
 Of Counsel, Dewey Ballantine  
 Los Angeles, California

# ATTACHMENT 1

EXHIBIT USTRATEGIC CONTRIBUTION FUND PROTOCOL

The payments made by the Participating Manufacturers pursuant to section IX(c)(2) of the Agreement ("Strategic Contribution Fund") shall be allocated among the Settling States pursuant to the process set forth in this Exhibit U.

Section 1

A panel committee of three former Attorneys General or former Article III judges ("Allocation Committee") shall be established to determine allocations of the Strategic Contribution Fund, using the process described herein. Two of the three members of the Allocation Committee shall be selected by the NAAG executive committee. Those two members shall choose the third Allocation Committee member. The Allocation Committee shall be geographically and politically diverse.

Section 2

Within 60 days after the MSA Execution Date, each Settling State will submit an itemized request for funds from the Strategic Contribution Fund, based on the criteria set forth in Section 4 of this Exhibit U.

Section 3

The Allocation Committee will determine the appropriate allocation for each Settling State based on the criteria set forth in Section 4 below. The Allocation Committee shall make its determination based upon written documentation.

Section 4

The criteria to be considered by the Allocation Committee in its allocation decision include each Settling State's contribution to the litigation or resolution of state tobacco litigation, including, but not limited to, litigation and/or settlement with tobacco product manufacturers, including Liggett and Myers and its affiliated entities.

Section 5

Within 45 days after receiving the itemized requests for funds from the Settling States, the Allocation Committee will prepare a preliminary decision allocating the Strategic Contribution Fund payments among the Settling States who submitted itemized requests for funds. All Allocation Committee decisions must be by majority vote. Each Settling State will have 30 days to submit comments on or objections to the draft decision. The Allocation Committee will issue a final decision allocating the Strategic Contribution Fund payments within 45 days.

Section 6

The decision of the Allocation Committee shall be final and non-appealable.

Section 7

The expenses of the Allocation Committee, in an amount not to exceed \$100,000, will be paid from disbursements from the Subsection VIII(c) Account.

# ATTACHMENT 2

NATIONAL ASSOCIATION OF ATTORNEYS GENERAL  
 750 FIRST STREET NE SUITE 1100  
 WASHINGTON, DC 20002  
 (202) 326-6053  
 (202) 408-6999

CHRISTINE T. MILLIKEN  
*Executive Director  
 General Counsel*

PRESIDENT  
 MIKE MOORE  
*Attorney General of Mississippi*

PRESIDENT-ELECT  
 CHRISTINE O. GREGOIRE  
*Attorney General of Washington*

March 30, 1999

VICE PRESIDENT  
 ANDREW KETTERER  
*Attorney General of Maine*

MEMORANDUM #99 -55

IMMEDIATE PAST PRESIDENT  
 JAMES E. DOYLE  
*Attorney General of Wisconsin*

TO: All Attorneys General and All Attorney General Tobacco Contacts  
 FROM: Mike Moore and Chris Gregoire, Co-Chairs, NAAG Tobacco Committee  
 RE: Amendments to the MSA

**IMPORTANT TOBACCO INFORMATION**  
**PLEASE DELIVER TO THE ATTORNEY GENERAL/TOBACCO**  
**CONTACT IMMEDIATELY**

This memo is sent to ask all Settling States to agree to two technical amendments to the Master Settlement Agreement, both of which are attached to this memo. The first amendment, in particular, is very time sensitive. *Accordingly, please complete and fax the enclosed authorization form to NAAG by close of business this Friday, April 2, 1999.* The form may be signed by the Attorney General or an authorized representative of the Attorney General.

The first amendment (Amendment No. 12) grants States an additional 15 days to submit written responses to the Strategic Contribution Fund Committee's Preliminary Decision. The reason for the 15-day extension is to give Attorneys General Mike Moore and Bob Butterworth an opportunity to have individual conversations with the Attorney General of each Settling State before the Settling States must give their written response to the SCF Committee and Mike and Bob can then relay the information from those conversations to the SCF Committee. Unless the attached amendment is approved, the States' responses are due April 7, 1999. This amendment would give States another 15 days – or until April 22, 1999 – to respond. The amendment would not affect the timing of the SCF Committee's final decision because it changes the time for the SCF Committee to make its final decision from 45 days after the State's response deadline (i.e., 45 days after April 7, 1999, or by May 22, 1999) to 30 days after the State's response deadline (i.e., 30 days after April 22, 1999, or still by May 22, 1999).



The second amendment (Amendment No. 13) makes a minor change to the Tobacco Enforcement Fund Protocol. The Protocol, as drafted, was based on the Milk Fund Protocol. The NAAG investment policies have changed since the Milk Fund Protocol was adopted. The proposed amendment updates section 6 of the Tobacco Enforcement Fund Protocol (Exhibit J to the MSA) to conform to NAAG's current investment management practices.

Because both of these technical amendments affect only the Settling States and not the Participating Manufacturers, only the signatures of the Settling States are necessary for the amendments to be effective.

Please note that we expect to send you an additional amendment for approval next week. That amendment tracks the resolution approved at the NAAG Spring Meeting last week concerning payment of the States' in-house costs and fees.

If you have any questions or concerns about these amendments, please give Laurie Loveland (701-223-4640) or Mary Schlaefel (202-326-6004) a call. Thank you for your prompt attention to this matter.

Attachments

PLEASE COMPLETE AND FAX THIS FORM  
BY 5 PM ON FRIDAY, APRIL 2, 1999  
TO CHRIS MILLIKEN AT NAAG  
(FAX NO. 202-408-6999)

Yes, you are authorized to affix my signature to both Amendment No. 12 to the Master Settlement Agreement and Amendment No. 13 to the Master Settlement Agreement.

No, you are not authorized to affix my signature to both Amendment No. 12 to the Master Settlement Agreement and Amendment No. 13 to the Master Settlement Agreement.

Name of Attorney General: \_\_\_\_\_

State of \_\_\_\_\_

Date: \_\_\_\_\_

# ATTACHMENT 3

NATIONAL ASSOCIATION OF ATTORNEYS GENERAL  
 750 FIRST STREET NE SUITE 1100  
 WASHINGTON, DC 20002  
 (202) 326-6053  
 (202) 408-6999

CHRISTINE T. MILLIKEN  
*Executive Director  
 General Counsel*

May 6, 1999

PRESIDENT  
 MIKE MOORE  
*Attorney General of Mississippi*

PRESIDENT-ELECT  
 CHRISTINE O. GREGOIRE  
*Attorney General of Washington*

VICE PRESIDENT  
 ANDREW KETTERER  
*Attorney General of Maine*

IMMEDIATE PAST PRESIDENT  
 JAMES E. DOYLE  
*Attorney General of Wisconsin*

Strategic Contribution Fund Panel  
 c/o Christine T. Milliken  
 750 First St., NE  
 Suite 1100  
 Washington, D.C. 20002

Dear Messrs. Cody, Van de Kamp, and Frohnmayer:

We write as a follow-up to our recent meeting in Chicago. We thank you again for taking on this difficult task. Both of us were impressed with the degree of sophistication and attention to process that the three of you were employing. Your careful reading of each submission (ours included) was clearly evident. While you welcomed the texture and context we could provide to this matter, you also correctly viewed us as experts or advisors, not as additional decision makers.

You requested a subsequent written submission from us on the issue of treating a group of states and territories as a tier. That is to say that the total of their baseline and strategic contribution be equalized at the \$64-65 million level. We recommend to you that the contributions of Wyoming, Tennessee, Nebraska, Alabama, D.C., Virginia, Kentucky, Idaho, South Dakota, Delaware, and Arkansas be all viewed as equal. This recommendation reflects the sentiments of the Attorneys General attending the NAAG Spring Meeting; while not lead states in this litigation, they all made contributions that advanced the cause. It would be unfair to any state to be listed last, or next to last. As to the four territories, we would recommend a second banding together. Each jurisdiction made a contribution in its own way and manner. Precedent exists for the tiering of states in multistate actions which Attorneys General have collectively undertaken. Also, precedent exists in the general collegiality which the Association embraces that allows the states to work together on complicated and sensitive matters.



Mike Moore  
 Attorney General of Mississippi



Robert A. Butterworth  
 Attorney General of Florida

# ATTACHMENT 4

## STRATEGIC CONTRIBUTIONS FUND

### Guidelines for Submissions to the Panel

The Strategic Contribution Fund Protocol is Exhibit U of the Master Settlement Agreement. It provides that the Panel will be formed to determine allocation of monies set aside for the fund. Each state that wishes to participate in that fund must submit an itemized request to the Panel within 60 days of the MSA Execution date. The MSA Execution date was November 23, 1998, which means that submissions must be made by January 22, 1999. The following guidelines will apply:

1. Four copies of the submission to the Panel shall be provided, along with a copy of the filed on disk, or by email (send to [tmorgan@naag.org](mailto:tmorgan@naag.org)). Submissions are to be addressed as follows:

SCF Panel  
c/o National Association of Attorneys General  
750 First Street, NE, Suite 1100  
Washington, DC 20002

2. Submissions must be postmarked no later than January 22, 1999
3. Submissions are to be typewritten and are not to exceed ten pages in length, utilizing the general criteria found in Section 4 of Exhibit U. The "itemized request" referred to in Section 2 of Exhibit U means an itemization of criteria or reasons a state is entitled to an allocation and not an itemization of amounts or percentages of allocations requested. It is recommended that no specific amount of money be requested. States are free to submit any criteria which they feel caused their state to contribute to the overall outcome of the litigation or settlement. The Panel will have the sole, final and non-appealable discretion to determine what weight to give any criteria submitted and how the allocation will be made, subject only to the provisions of the MSA and Exhibit U thereto.
4. Time frames for final determinations by the Panel and opportunities for comment are set out in Section 5 of Exhibit U.
5. No video tapes, audio tapes, witness testimony, overhead projections, computer disc presentations, or exhibits will be considered unless included within the ten page limitations set out above.
6. No supporting letters or other communications from third parties will be considered.
7. The Attorney General and any other official deemed necessary by the Attorney General shall sign the submission to the Panel.
8. The 10 page limitation is exactly that- a maximum. States are free to use fewer pages, brevity being the soul of wit.

As a postscript: This portion of the settlement discussion, negotiations, agreement and now implementation has been a source of heat and often temper since its inception. Different states view the fund differently, and how the fund is viewed obviously determines reaction to different proposals. It is perhaps most healthy to view this source as " gravy." We have earned for our respective states a substantial monetary settlement; those figures have been announced. If we qualify for additional sums, they will be on top of fair and equitable distributions already made. We should receive the results of the work of the Panel with magnanimity and grace, honoring the work of our colleagues and the results of their labor, along with our own.

# ATTACHMENT 5

February 2, 1999

MEMO TO: Applicant Jurisdictions

FROM: Strategic Contribution Fund Panel  
Mike Cody  
Dave Frohnmayer  
John Van de Kamp

SUBJECT: Request for Additional Information

We deeply appreciate the very thoughtful and concise submissions we have received. Thank you for your responsiveness and genuine help.

The SCF will hold its initial panel deliberations on February 12-13, 1999. No preliminary allocation decisions have been made. The panel will consider allocation principles first. Without suggesting that the following questions are the most significant, the panel seeks additional guidance from submitting jurisdictions.

Please address the following questions within three, single-spaced pages:

1. Please list the three most important allocation criteria, in descending order of importance, which you believe should guide the panel's decision making and the relative weights which you would assign them.
2. Identify the principal meritorious allocation principles provided in submissions from other jurisdictions.
3. Please identify any allocation principles urged by other jurisdictions with which you do not agree.
4. Should there be a baseline award for all jurisdictions based upon the need or leveraging power for a critical mass in the settlement process? If there is such a baseline award, what proportion of the SCF should be devoted to this?
5. If the weight is given to settlement efforts, what relative weights should be assigned to each effort? Please consider the Liggett settlements, as well as the assumed settlement date of June 20, 1997, and the actual Master Settlement Agreement of November 23, 1998.
6. Optional: What professional literature, if any, relating to any analogous settlement allocation could usefully guide the panel? Please cite no more than two publications.

The Committee prefers responses to the NAAG, Washington, DC office by Noon EST on February 8. Responses will be read and considered if postmarked by February 10.

xc: Christine Milliken  
Fax: 202-408-6999

2-38



# ATTACHMENT 6

NATIONAL ASSOCIATION OF ATTORNEYS GENERAL  
 750 FIRST STREET NE SUITE 1100  
 WASHINGTON, DC 20002  
 (202) 326-6053  
 (202) 408-6999

CHRISTINE T. MILLIKEN  
*Executive Director  
 General Counsel*

PRESIDENT  
 MIKE MOORE  
*Attorney General of Mississippi*

PRESIDENT-ELECT  
 CHRISTINE O. GREGOIRE  
*Attorney General of Washington*

February 16, 1999

VICE PRESIDENT  
 Andrew Ketterer  
*Attorney General of Maine*

MEMORANDUM #99-25

IMMEDIATE PAST PRESIDENT  
 JAMES E. DOYLE  
*Attorney General of Wisconsin*

via facsimile

To: MSA Attorneys General  
 All Tobacco Contacts

From: The MSA Strategic Contribution Fund Panel:  
 Messrs. Cody, Frohnmayer, and Van de Kamp

Re: *Further Submissions Opportunity  
 Progress Report*

---

Over the last few weeks we have had the opportunity to review and discuss all state submissions received through Friday, February 12, 1999. They were extraordinarily helpful. We have, at this juncture, developed a rough methodology which most of you have addressed or touched upon in your submissions.

While we do not wish to burden you with needless paperwork, we do want to make sure that we have given everyone a full and fair opportunity to address particular issues which have emerged in our deliberations. Hence, this memo.

At present, we have three general categories that require very specific state information.<sup>1</sup> Most of your submissions have already furnished this information. We would ask that you review the categories that are listed below and provide the Panel with any new or additional information relevant to your state's role. Please do not duplicate material provided in previous submissions. Only include information that makes your submission complete. And finally, unless extraordinary, compelling circumstances exist, please confine your response to two pages or less. Submissions received by Friday, February 19, 1999 would be the most helpful. The absolute cut-off is Monday, February 22, 1999. Please fax submissions to Christine Milliken at NAAG (202)408-6999.

cc: Other Attorneys General

---

<sup>1</sup> We have tentatively agreed to a "critical mass" factor. This baseline requires no further submission.

2-4/0

## TENTATIVE GENERAL CATEGORIES

- **Litigation**- This category as presently constituted includes recognition of filing and trial dates. Please review the attached list and indicate any corrections in your submission. The category also recognizes direct litigation assistance, work done in specific preparation of your own case or in direct assistance to others. Recruitment of states, defense of preemptive litigation by tobacco companies, defense or assertion of Attorneys General powers and duties, developing damage models, finding and developing key expert witnesses, defeating claims of privilege, draft model complaints or other documents, and assistance in discovery are examples of what we have in mind. Finally, in this category, the Panel will also review the unique, specific litigation contributions made by states. For example, powerful, legally credible claims like RICO or strong consumer fraud counts or legislation which is specifically tied to litigation will be considered in this area.
- **Pre-MSA Settlements**- This category will include various Liggett settlements, the June 20<sup>th</sup> proposed settlement and the aftermath. With regard to this category, multistate committee work as a Negotiating Team member, a member of the Allocation Committee or any other Committee/group leader, whether formal or informal, should be noted. Washington activity (legislative, White House, public health groups, states officials, and others) should also be included if not mentioned in earlier submissions. Finally, NAAG participation should also be referenced.
- **Negotiation and MSA Settlement**- This category seeks to reflect contributions beyond the mean that closed the deal. Negotiators, drafters of provisions, or of key background legal memorandums, Allocation Committee work, public health liaison, inclusion of different defendants, and, in general, specific state actions that benefitted the whole.

Again, our thanks for your thoughtful submissions and many kind words. We have affirmed our earlier view that in keeping with the spirit and terms of the MSA, our March 8 decision be based on written submissions. And, as always, we have instructed NAAG to post all written submissions on the NAAG backpage for everyone's review.

### PLEASE

✉ Fax Response to the SCF Panel c/o Christine Milliken at 202-408-6999

-AND-

✉ Email Response to Leslie Ellis at <lellis@naag.org>

\* (These submissions should begin appearing on the backpage on Monday, February 22, 1999

-CTM)

# ATTACHMENT 7

2-42

### Filing and Trial Date Chart

*\* indicates information different from or in addition to the dates indicated in the version of this table dated 2/16/99*

State	Filing Date	Trial Date
Alabama		
Alaska	April 14, 1997	February 2000
American Samoa		
Arizona	August 20, 1996	March 1999
Arkansas	May 5, 1997	
California	June 12, 1997	February 1999*
Colorado	June 5, 1997	CO Rules of Procedure* did not allow for the setting of a trial date before CO's case was "at issue" (defendants's answers were due in early Dec. 1998)
Connecticut	July 18, 1996	jury selection was* scheduled for June 1999
Delaware		
DC	December 23, 1998*	
Florida		
Georgia	August 29, 1997	
Guam		
Hawaii	January 31, 1997	August 1999
Idaho	June 9, 1997	
Illinois	November 12, 1996	
Indiana	February 19, 1997	
Iowa	November 27, 1996	between Fall of 1999 and Spring 2000* (tentative)
Kansas	August 20, 1996	Oct. or Nov. 1999* (tentative)
Kentucky	chose not to file*	
Louisiana	March 13, 1996	
Maine	June 17, 1997	April 2000 (tentative)
Maryland	May 1, 1996	April 1999

Massachusetts	December 19, 1995	February 1999
Michigan	August 21, 1996	
Minnesota		
Mississippi		
Missouri	May 12, 1997	January 24, 2000*
Montana	May 5, 1997	
Nebraska	August 21, 1998*	
Nevada	May 21, 1997	
New Hampshire	June 4, 1997	
New Jersey	April 11, 1996- <i>announced</i> intention September 10, 1996- filed*	no later than the year 2000*
New Mexico	May 27, 1997	
New York	January 27, 1997	May 1999
North Carolina	December 21, 1998*	
North Dakota	December 17, 1997*	
No. Mariana Islands		
Ohio	May 8, 1997	January 2000*
Oklahoma	August 22, 1996	January 1999
Oregon	June 10, 1997	April 1999
Pennsylvania	April 23, 1997*	
Puerto Rico	June 1997	September 1999
Rhode Island	June 18, 1997	
South Carolina	May 12, 1997	requested a trial date of Spring 1998*
South Dakota	February 23, 1998	
Tennessee		
Texas		
Utah	September 30, 1996	
Vermont	May 29, 1997	November 1999
Virginia		
Virgin Islands		

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Washington	June 5, 1996	September 1998
West Virginia	September 24, 1994	
Wisconsin	February 5, 1997	September 1999
Wyoming	December 22, 1998	

2-45

# ATTACHMENT 8



TO: All Attorneys General  
FROM: Mike Moore and Bob Butterworth  
DATE: April 19, 1999  
RE: Allocation of Final 10% of SCF

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At our Spring Meeting in Washington, D.C., you unanimously asked us to do our best to recommend to the three former attorneys general the allocation of the remaining 10% of the Strategic Contribution Fund (SCF). As the only attorneys general who filed suit who are not effected by this distribution, we undertook what many of you called "an impossible and thankless job." We have spent the last three weeks doing our best to carry out the intent of the Strategic Contribution Fund.

You set several parameters for our job. You advised us not to recommend lowering the preliminary allocations for any state. You also advised us that no single state should be the lowest for contribution. Many of you made it clear to us in that you wanted us to address the inequities of the Strategic Contribution Fund. Our efforts were therefore directed solely to the "contribution" column. We made no recommendations as to changes in the "baseline" allocations at this time. We then spent many hours personally going over the numbers and talking to most of you "sometimes more than once" in order to get your input as to the fairest way to deal with this very difficult situation.

Attached is our best effort to recommend what we think is right. As you can see, we held back 20% (\$180 million) in order to either make even further recommended adjustments ourselves or to give the three former attorneys general flexibility to deal with other submissions that they are receiving from some of you. Please get back to us by 3:00 P.M. (EDT) tomorrow, April 20, with your final suggestions so that we can further refine these numbers before we meet with the former attorneys general on Thursday, April 22.

We know that this isn't perfect. As many of you said both in D.C. and in our private conversations, this immensely complicated job can't be done in such a way as to satisfy everyone. In these last three weeks, we had only 10% of the money to solve 100% of the problems.

You should also know that we worked hard so that these numbers would both recognize contributions and promote collegiality. As we all know, this tobacco fight was never only about money. It was always about attorneys general working together against the common enemy of teenage smoking.

In all our years of serving as attorneys general and working on the tobacco effort, this responsibility was the most difficult. It required us to do the impossible, but we have done our best. If we have learned nothing else, we know that our only real strength is in our unity. We ask each of you as you look at these numbers and remember that there will be future fights against future enemies.

We look forward to hearing from you later today or tomorrow.

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Civil Litigation

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RECOMMENDED TOTAL CONTRIBUTION

State	Original Contribution	Recommended Adjustment	Recommended Total Contribution	Baseline	Original Total	Recommended Adjusted Total
Washington	\$ 360,278,867.96	\$ 100,000,000.00	\$ 460,278,867.96	\$ 34,680,163.56	\$ 394,959,031.52	\$ 484,959,031.52
New York	\$ 308,132,954.98	\$ 0.00	\$ 308,132,954.98	\$ 163,399,812.62	\$ 471,532,567.60	\$ 471,532,567.60
Massachusetts	\$ 300,088,356.21	\$ 0.00	\$ 300,088,356.21	\$ 58,548,527.58	\$ 358,636,883.79	\$ 358,636,883.79
California	\$ 281,129,923.18	\$ 0.00	\$ 281,129,923.18	\$ 163,422,743.91	\$ 444,552,667.09	\$ 444,552,667.09
Connecticut	\$ 252,186,501.76	\$ 0.00	\$ 252,186,501.76	\$ 32,315,578.35	\$ 284,502,080.11	\$ 284,502,080.11
Oklahoma	\$ 245,410,540.95	\$ 0.00	\$ 245,410,540.95	\$ 22,454,366.74	\$ 267,864,907.69	\$ 267,864,907.69
Arizona	\$ 234,639,226.18	\$ 0.00	\$ 234,639,226.18	\$ 27,716,091.69	\$ 262,355,317.87	\$ 262,355,317.87
Maryland	\$ 230,780,552.36	\$ 0.00	\$ 230,780,552.36	\$ 37,170,693.14	\$ 267,951,245.50	\$ 267,951,245.50
Iowa	\$ 183,387,229.88	\$ 36,812,770.12	\$ 220,000,000.00	\$ 20,453,397.34	\$ 203,840,827.22	\$ 240,453,397.34
Pennsylvania	\$ 186,520,227.65	\$ 13,479,772.35	\$ 200,000,000.00	\$ 79,077,242.78	\$ 265,597,470.43	\$ 279,077,242.78
Wisconsin	\$ 132,469,987.57	\$ 67,540,012.43	\$ 200,000,000.00	\$ 34,905,908.78	\$ 167,365,896.35	\$ 234,905,908.78
Indiana	\$ 157,410,435.67	\$ 42,583,067.63	\$ 200,000,000.00	\$ 34,518,438.87	\$ 191,935,348.14	\$ 234,518,438.87
New Jersey	\$ 159,875,023.33	\$ 27,000,000.00	\$ 186,875,023.33	\$ 56,481,295.53	\$ 216,156,318.88	\$ 243,156,318.88
Louisiana	\$ 131,448,112.28	\$ 55,226,905.45	\$ 186,675,023.33	\$ 37,109,344.26	\$ 168,557,462.14	\$ 223,784,367.59
West Virginia	\$ 115,830,377.52	\$ 70,844,645.81	\$ 186,675,023.33	\$ 20,655,254.01	\$ 136,485,631.53	\$ 207,330,277.34
Hawaii	\$ 185,791,469.14	\$ 0.00	\$ 185,791,469.14	\$ 17,234,417.30	\$ 203,025,886.44	\$ 203,025,886.44
Oregon	\$ 183,874,911.64	\$ 0.00	\$ 183,874,911.64	\$ 23,794,851.56	\$ 207,469,763.20	\$ 207,469,763.20
Colorado	\$ 175,708,097.29	\$ 0.00	\$ 175,708,097.29	\$ 26,477,754.03	\$ 202,185,851.32	\$ 202,185,851.32
Ohio	\$ 168,469,643.50	\$ 0.00	\$ 168,469,643.50	\$ 70,550,867.80	\$ 239,020,511.30	\$ 239,020,511.30
Illinois	\$ 167,479,052.22	\$ 0.00	\$ 167,479,052.22	\$ 65,844,051.34	\$ 233,423,103.56	\$ 233,423,103.56
Michigan	\$ 138,792,356.40	\$ 21,207,643.60	\$ 160,000,000.00	\$ 62,310,410.15	\$ 201,102,766.55	\$ 222,310,410.15
Kansas	\$ 113,535,085.22	\$ 27,585,566.31	\$ 141,120,651.53	\$ 20,020,727.82	\$ 133,555,813.04	\$ 161,141,379.35
Utah	\$ 117,450,954.03	\$ 23,669,897.50	\$ 141,120,651.53	\$ 15,347,540.54	\$ 132,798,494.57	\$ 156,468,192.07
Vermont	\$ 141,120,651.53	\$ 0.00	\$ 141,120,651.53	\$ 14,942,444.90	\$ 156,063,096.43	\$ 156,063,096.43
North Dakota	\$ 134,885,195.03	\$ 0.00	\$ 134,885,195.03	\$ 14,399,485.88	\$ 149,284,680.91	\$ 149,284,680.91
Alaska	\$ 132,889,024.26	\$ 0.00	\$ 132,889,024.26	\$ 14,103,852.77	\$ 146,992,877.03	\$ 146,992,877.03
North Carolina	\$ 127,356,293.69	\$ 0.00	\$ 127,356,293.69	\$ 38,034,065.70	\$ 165,390,359.39	\$ 165,390,359.39
Puerto Rico	\$ 118,503,794.42	\$ 0.00	\$ 118,503,794.42	\$ 23,477,754.35	\$ 141,981,548.77	\$ 141,981,548.77
Missouri	\$ 91,033,435.18	\$ 3,791,399.61	\$ 94,824,834.79	\$ 37,340,705.22	\$ 128,374,140.40	\$ 132,165,540.01

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RECOMMENDED TOTAL CONTRIBUTION

Maine	\$ 94,824,834.79	\$ 0.00	\$ 94,824,834.79	\$ 19,247,593.01	\$ 114,072,427.80	\$ 114,072,427.80
South Carolina	\$ 90,292,029.43	\$ 0.00	\$ 90,292,029.43	\$ 24,139,749.84	\$ 114,431,779.27	\$ 114,431,779.27
Rhode Island	\$ 75,452,129.33	\$ 0.00	\$ 75,452,129.33	\$ 18,641,242.91	\$ 94,093,372.24	\$ 94,093,372.24
New Hampshire	\$ 51,895,128.37	\$ 23,557,000.96	\$ 75,452,129.33	\$ 18,004,526.68	\$ 69,899,655.05	\$ 93,456,656.01
New Mexico	\$ 63,454,975.87	\$ 11,997,153.46	\$ 75,452,129.33	\$ 17,168,604.19	\$ 80,623,580.06	\$ 92,820,733.52
Montana	\$ 58,718,573.50	\$ 16,733,555.83	\$ 75,452,129.33	\$ 15,105,604.38	\$ 73,824,177.88	\$ 90,557,733.71
Nevada	\$ 71,165,846.86	\$ 0.00	\$ 71,165,846.86	\$ 17,331,419.90	\$ 88,497,266.76	\$ 88,497,266.76
Georgia	\$ 14,047,965.40	\$ 26,952,034.60	\$ 41,000,000.00	\$ 39,502,579.15	\$ 53,550,544.55	\$ 80,502,579.15
Arkansas	\$ 23,356,073.50	\$ 17,843,926.50	\$ 41,000,000.00	\$ 19,953,354.52	\$ 43,309,428.02	\$ 60,953,354.52
Idaho	\$ 30,678,878.50	\$ 10,321,121.50	\$ 41,000,000.00	\$ 14,366,423.66	\$ 45,045,302.16	\$ 55,366,423.66
South Dakota	\$ 34,583,195.23	\$ 2,916,804.77	\$ 37,500,000.00	\$ 14,194,328.52	\$ 48,777,523.75	\$ 51,694,328.52
Nebraska	\$ 34,977,748.13	\$ 0.00	\$ 34,977,748.13	\$ 17,151,699.27	\$ 52,129,447.40	\$ 52,129,447.40
Tennessee	\$ 25,275,087.12	\$ 0.00	\$ 25,275,087.12	\$ 39,339,551.88	\$ 64,614,639.01	\$ 64,614,639.01
Virginia	\$ 11,181,173.08	\$ 14,093,914.04	\$ 25,275,087.12	\$ 34,577,836.10	\$ 45,759,009.18	\$ 69,852,923.22
Kentucky	\$ 14,842,575.58	\$ 10,432,511.54	\$ 25,275,087.12	\$ 31,169,126.37	\$ 46,011,701.95	\$ 56,444,213.49
Alabama	\$ 11,181,173.08	\$ 14,093,914.04	\$ 25,275,087.12	\$ 29,425,892.22	\$ 40,607,065.30	\$ 54,700,979.34
Delaware	\$ 1,341,173.08	\$ 23,933,914.04	\$ 25,275,087.12	\$ 14,753,543.39	\$ 16,094,716.47	\$ 40,028,630.51
Wyoming	\$ 14,047,965.40	\$ 11,227,121.72	\$ 25,275,087.12	\$ 12,985,105.70	\$ 27,033,071.10	\$ 38,260,192.82
D.C.	\$ 14,047,965.40	\$ 0.00	\$ 14,047,965.40	\$ 17,297,561.97	\$ 31,345,527.37	\$ 31,345,527.37
Guam	\$ 4,739,857.29	\$ 0.00	\$ 4,739,857.29	\$ 10,263,683.94	\$ 15,003,541.23	\$ 15,003,541.23
U.S. Virgin Islands	\$ 4,739,857.29	\$ 0.00	\$ 4,739,857.29	\$ 10,208,658.79	\$ 14,948,516.08	\$ 14,948,516.08
American Samoa	\$ 1,341,173.08	\$ 3,398,684.21	\$ 4,739,857.29	\$ 10,182,908.34	\$ 11,524,081.42	\$ 14,922,765.63
N. Mariana Island	\$ 4,739,857.29	\$ 0.00	\$ 4,739,857.29	\$ 10,101,419.95	\$ 14,841,277.24	\$ 14,841,277.24
<b>Total</b>	<b>\$ 6,027,000,000.03</b>	<b>\$ 676,843,157.92</b>	<b>\$ 6,703,843,157.95</b>	<b>\$ 1,722,000,000.01</b>	<b>\$ 7,749,000,000.04</b>	<b>\$ 8,425,843,157.96</b>

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CIVIL Litigation

050

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# ATTACHMENT 9

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## EXPLANATION OF THE ALLOCATION FORMULA FOR TOBACCO-SETTLEMENT PROCEEDS

### Summary

The Attorneys General involved in the tobacco-settlement process developed a formula to allocate the tobacco-settlement proceeds that is included in the November 1998 settlement. The Attorneys General understood that the settlement was likely to involve most, if not all, states and territories - among which there were suing jurisdictions with vastly different claims, suing jurisdictions with some claims dismissed or limited, and jurisdictions that had not brought lawsuits. Thus, while the allocation formula was designed with reference to state lawsuits against the tobacco industry, the negotiations were not based on the nature of or potential recovery under specific state lawsuits. The negotiating Attorneys General, rather, were attempting in part to obtain a fair monetary recovery for all states considering the common aims of the multi-state settlement process.

The allocation formula is based on the following factors: damage estimates used as proxies for states' actual or potential law-enforcement and unlawful-business-practice claims; damage estimates used as proxies for states' smoking-related health-care costs; and adjustments to reflect the availability of more recent and accurate data, methodological irregularities, economics-of-scale issues, and negotiated enhancements.

### Relation to Current Multi-State Settlement

In November 1998, the Attorneys General unanimously decided to enter into a settlement agreement with the tobacco industry. The settlement proceeds are approximately \$206 Billion through the year 2025 (although the payments under the agreement actually continue in perpetuity). The allocation formula was used solely as a means to distribute settlement proceeds. Thus, the allocation formula itself did not relate to the amount of settlement proceeds sought or obtained. The negotiating Attorneys General, for example, did not use specific claimed monetary injuries in state lawsuits, such as consumer protection penalties or Medicaid costs, to justify monetary settlement demands. The negotiators felt, rather, that the scale, complexity, and broad goals of the settlement would render ineffective any attempt to tie the negotiation to litigation damages.

### Development of the Formula

In the weeks before the June 20, 1997 proposed settlement was reached and announced, the negotiating Attorneys General resolved to form an allocation subcommittee to develop a formula for distributing tobacco-settlement proceeds. The negotiators named Indiana Attorney General Jeff Modisett to chair the subcommittee.

The subcommittee first commissioned a group of physicians, biostatisticians, economists, and health-care experts at Indiana University to proposed potential bases for the allocation formula. Through contact with the Centers for Disease Control in Atlanta, the

subcommittee learned that a group of researchers affiliated with the University of California system were doing work on the costs of smoking-related illness. This work, being conducted by Drs. Leonard Miller and Dorothy Rice and three of their colleagues, first studied the costs to state Medicaid programs from smoking-related illness. Later, the researchers expanded their study to include smoking-related health-care costs occurring within a state regardless of whether government, private insurance, or individual patients was the source of the payment. (A similar study using different methodology had been conducted earlier by the CDC.) It was also brought to the subcommittee's attention that some of the suing states were working with other researchers and consulting firms to develop damage models for litigation purposes.

The subcommittee also did an exhaustive review of the claims each suing state had brought. The claims were numerous (over 20) and varied significantly as the following list demonstrates: negligence, breach of assumed duty, negligence *per se*, conspiracy, unjust enrichment, federal racketeering, state racketeering, public nuisance, unfair trade practices, consumer protection violations, contributing to the delinquency of a minor, unfair or deceptive acts, antitrust, unfair competition, misrepresentation, performance of another's duty to the public, state false claims act, strict liability, aiding and abetting, breach of express or implied warranty, and fraud. Damages sought included restitution, disgorgement of unjust profits, recovery of costs to state-funded health-care programs, punitive damages, treble damages, fines, and penalties.

With the proposals of the Indiana University experts and a preliminary analysis of how the work of Drs. Miller and Rice might be used for the allocation formula, the full subcommittee met in Indianapolis in August 1997. The subcommittee considered many different bases for the formula but settled on a smoking-related health-costs basis drawn from the work of Drs. Miller and Rice. The subcommittee felt that the basis was representative of damages most suing states were seeking to recover, was consistent with the goals of the multi-state settlement, and would not disadvantage non-suing states.

Specifically, the total smoking-related cost study could be used as a proxy for the many state law-enforcement and unlawful-business-practice claims. Because this work did not focus solely on government-related costs but on all costs in a state, the subcommittee felt that this proxy permitted a closer relation between the method of allocation and certain claims like antitrust, consumer protection, racketeering, and other that are viewed as injuries to a state as a whole or to all citizens in a state (although states realized they were not recovering or attempting to recover damages that an individual could recover against the industry). All government costs, including Medicaid costs, were removed from this variable so that it more closely fit this use as a proxy. It was also felt that using the smoking-related Medicaid-costs study as a separate proxy would be consistent with the claims in many state lawsuits that sought to recover government-related health care-costs. Moreover, using a plenary cost-based formula permitted a symbolic relation to one of the important general interests of tobacco litigation and tobacco control: emphasizing the scope and tragedy of smoking-related illness.

Thus, the subcommittee settled on a cost-basis formula. That formula is a proxy for the tobacco companies' various and unlawful business practices and for the states' costs of

smoking-related illness. The proxies were used with the realization that the evidence and methods of proof required at trial, as well as the claims, varied significantly from state to state.

### Methodology

Ultimately, Drs. Miller and Rice published two smoking-attributable-cost studies - one estimating total costs in a state regardless of payment source and one estimating Medicaid costs in a state. Variations of these smoking-attributable-costs studies form the basis of the allocation formula for tobacco-settlement proceeds. There have been several additional adjustments, however, to accommodate issues that arose during the development of the formula, e.g., adjustments to reflect a revised smoking-attributable-costs methodology, to address an economies-of-scale issue for small-states, and to treat the Commonwealth of Puerto Rico "as a state."

To put the formula in its proper context, it is critical to know that the subcommittee used these studies - which are essentially estimates of smoking-attributable costs - not to measure the *actual* costs to state governments or to all healthcare payers but as *proxies* for the claims states brought (or could bring) in tobacco lawsuits. That is, states stood to recover not only healthcare costs in their lawsuits but other damages, fines, and penalties unrelated to health care. Furthermore, methods of proving damages varied greatly from state-to-state. Moreover, some states did not sue the industry, some suing states did not seek to recover healthcare costs, and some using states had their cost-recovery claims thrown out of court.

Mathematically speaking, the formula begins by determining what each of the 52 settling jurisdictions would have received under the June 20, 1997 level of proceeds (196.5 Billion) as allocated according to each state's cost-estimates under two Miller/Rice studies assigning a 50 percent weight to each study. (Recall that one study is used as a proxy for law enforcement and unlawful-business-practice claims and the other for government health-care-cost-claims.) The result is a fixed-dollar amount for each jurisdiction to which particular adjustments are made.

Based on the availability of methodological improvements and more accurate data as the formula was developed, it was deemed appropriate to first adjust certain states' allocation amounts upward and, at the same time, adjust California and New York with respect to each other.

The previously settling states of Mississippi, Florida, Texas, and Minnesota are not participants in this allocation and their shares were deducted. Through negotiations with the tobacco industry, the percentage allocation attributed to these states was set less than it otherwise would have been, resulting in a proportional increase in allocation for the 52 remaining jurisdictions.

The formula was next adjusted to treat Puerto Rico as a state in the sense that the unadjusted formula significantly underestimated Puerto Rico's smoking-related health-care costs.

The formula was also adjusted to provide an enhancement to small states (defined as states that were to receive less than 0.5 percent of the allocation under the proposed June 20, 1997 settlement) because of economic-of-scale problem in tobacco-control program purchasing power identified by a recent CDC report as affecting those states.

Finally, under the agreement, \$8.6 Billion is to be set aside from this allocation of funds to be distributed accordingly to a later assessment of each state's strategic contribution to the tobacco litigation and settlement effort.

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**EXHIBIT A****STATE ALLOCATION PERCENTAGES**

State	Percentage
Alabama	1.6161308%
Alaska	0.3414187%
Arizona	1.4738845%
Arkansas	0.8280661%
California	12.7639554%
Colorado	1.3708614%
Connecticut	1.8565373%
Delaware	0.3954695%
D.C.	0.6071183%
Florida	0.0000000%
Georgia	2.4344375%
Hawaii	0.6018650%
Idaho	0.3632632%
Illinois	4.6542472%
Indiana	2.0398033%
Iowa	0.8696670%
Kansas	0.8336712%
Kentucky	1.7611586%
Louisiana	2.2553531%
Maine	0.7693505%
Maryland	2.2604570%
Massachusetts	4.0389790%
Michigan	4.3519476%
Minnesota	0.0000000%
Mississippi	0.0000000%
Missouri	2.2746011%
Montana	0.4247591%
Nebraska	0.5949833%
Nevada	0.6099351%
New Hampshire	0.6659340%
New Jersey	3.8669963%
New Mexico	0.5963897%
New York	12.7620310%
North Carolina	2.3322850%
North Dakota	0.3660138%
Ohio	5.0375098%
Oklahoma	1.0361370%
Oregon	1.1476582%
Pennsylvania	3.7463588%
Rhode Island	0.7189054%
South Carolina	1.1763519%
South Dakota	0.3489458%
Tennessee	2.4408945%
Texas	0.0000000%
Utah	0.4448869%
Vermont	0.4111851%
Virginia	2.0447451%
Washington	2.0532582%
West Virginia	0.8864604%
Wisconsin	2.0720390%
Wyoming	0.2483449%
American Samoa	0.0152170%
N. Mariana Isld.	0.0084376%
Guam	0.0219371%
U.S. Virgin Isld.	0.0173593%
Puerto Rico	1.1212774%

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# ATTACHMENT 10

2-56

March 29, 1999

VIA FACSIMILE (202-408-6999)

Strategic Contribution Fund Committee  
c/o National Association of Attorneys General  
750 First Street, NE, Suite 1100  
Washington DC 20002

Re: "Future Adjustments" to SCF Allocations

Dear Members of the Committee:

Thank you for agreeing to serve on the Strategic Contribution Fund Allocation Committee ("Committee") and for the time and effort you put into the Committee's March 8, 1999, Preliminary Decision discussing distribution of the Strategic Contribution Fund ("SCF") payments established in section IX(c)(2) of the Master Settlement Agreement ("MSA"). On behalf of those Attorneys General who served on the MSA Negotiating Team, I respectfully request that the "Future Adjustments" provision in the Committee's Preliminary Decision be revised before you issue the final decision.

Specifically, Section V(F) of the Preliminary Decision states:

F. Future Adjustments

Unless otherwise directed, we believe that our authority to make allocations from the SCF expires as of the date of submission of our "Final Decision" under the terms of section 5 of Exhibit U.

It is possible that at the time of distributions, the SCF may be diminished or expanded in amount. In either event, we now state our preliminary recommendation, and therefore our likely decision, subject to any other binding legal authority under the MSA. If the SCF amount is less than the approximately \$8.6 billion, the total award to each jurisdiction should be reduced, pro rata as its share relates to the present Litigation, Pre-MSA Settlements, and MSA Settlement Award. Similarly, if the corpus of the SCF is larger, each jurisdiction's share should be increased, pro rata, as its share relates to the present Litigation, Pre-MSA Settlements and MSA Settlement Award.

In our opinion the MSA does not authorize the Committee to include in its decision a provision controlling "future adjustments" to the SCF allocations.

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Strategic Contribution Fund Committee  
March 29, 1999  
Page 2

MSA § IX(c)(2) is the section establishing the SCF payments and distribution. That section states that the payments are to be "be allocated among the Settling States on a percentage basis to be determined by the Settling States pursuant to the procedures set forth in Exhibit U, and the resulting allocation percentages disclosed to the Escrow Agent, the Independent Auditor and the Original Participating Manufacturers not later than June 30, 1999." (Emphasis added.) This language reflects our agreement with the Original Participating Manufacturers ("OPMs") that by June 30, 1999, they will be provided with a list of percentages to be used in calculating the OPMs' payment obligations under MSA § IX(c)(2) and the distribution of those payments to the Settling States.

We do not believe that the MSA authorizes the Settling States to give the OPMs either a formula or a list of percentages subject to qualifications based on future occurrences or conditions. The final product of the SCF Committee must be a document like Exhibit A to the MSA, containing simply a list of percentages.

In addition, section IX(c)(2) specifically states that the SCF payments are subject to various adjustments, offsets, and reductions, and MSA § IX(j) controls how those adjustments, offsets, and reductions are applied to the various payments, including the SCF payment. There is nothing in the MSA that allows a variation of the manner in which these adjustments, offsets, and reductions are to be applied to the SCF payments.

It should also be noted that the proposed pro rata proposal discussed in the Future Adjustments section of the Preliminary Decision is inappropriate because not all reductions in the SCF amount should result in a pro rata reduction of the SCF distributions to the States. Specifically, under the MSA, the SCF payments must be adjusted upward or downward based on the Inflation Adjustment, the Volume Adjustment, the Non-Settling States Reduction, the offset for miscalculated or disputed payments, the NPM Adjustment, the Federal Tobacco Legislation offset, the Litigating Releasing Parties Offset, a claim-over offset, or additional payments by Subsequent Participating Manufacturers ("SPMs"). Some of these adjustments, reductions, and offsets apply across the board (e.g., the Inflation Adjustment, the Volume Adjustment, the Non-Settling States Reduction, and additional payments by SPMs); some, if they apply at all, are state-specific (e.g., the NPM Adjustment, the Federal Tobacco Legislation Offset, the Litigating Releasing Parties Offset, and a claim-over offset); and the miscalculated or disputed payments offset could apply across the board or could apply to just one State. It would be inappropriate to reduce the SCF allocation to all States because of an offset that reduces the SCF total amount but is applicable to only one State. Under those circumstances, only the State that is subject to the offset should bear the offset, not all States on a pro rata basis. Again, the MSA already describes how these increases and decreases should be handled.

Strategic Contribution Fund Committee  
March 29, 1999  
Page 3

We believe if your Final Decision includes this Future Adjustments provision (or any similar provision), your decision will not be in accordance with the MSA and will be disputed by the Original Participating Manufacturers. For that reason, we respectfully request that the Committee issue a final decision: (1) that is simply a list of percentages, in the format of Exhibit A, giving a single allocation percentage for each State participating in the SCF distribution and (2) that does not include any provision concerning future adjustments, allowing the MSA to speak for itself on those adjustments. Thank you for your consideration of this letter.

Sincerely,

*Christine O. Gregoire*  
by *LJL*

Christine O. Gregoire  
Chair, MSA Negotiating Team

cc: Mike Moore  
Bob Butterworth  
MSA Negotiating Team  
NAAG Tobacco Committee

# PANEL BIOGRAPHIES

## Strategic Contribution Fund Allocation Committee

### *Biographies*

*W. J. Michael Cody* is a partner at the law firm of Burch, Porter & Johnson in Memphis, Tennessee. Mr. Cody was the United States Attorney for the Western District of Tennessee from 1977-1981. In 1984, he was appointed by the Tennessee Supreme Court to serve a four-year term as the state Attorney General. Mr. Cody received his B.A., with Distinction, from Rhodes College in 1958 and he received his law degree from the University of Virginia Law School in 1961. As an expert in ethics laws, Mr. Cody has authored an ethics publication *Special Ethics Duties for Attorneys Who Hold Public Positions* and co-author of *Honest Government, An Ethics Guide for Public Service*. Mr. Cody has served as an adjunct professor of law at Memphis State University and at Vanderbilt University. Mr. Cody resides in Memphis, Tennessee with his wife Suzanna. They have three children: Jane, Michael, and Mia.

\* \* \*

*Dave Frohnmayer* is President of the University of Oregon, a position he assumed July 1, 1994. He formerly served as Dean of the University's School of Law. Mr. Frohnmayer was elected Oregon's Attorney General in 1981, a position he held for 11 years. During his tenure as Attorney General, he served as President of the National Association of Attorneys General from 1987-1988. Mr. Frohnmayer was the recipient of the Wyman Award, the Association's most prestigious honor, in recognition of his outstanding effectiveness in office. Prior to his election to statewide office, Mr. Frohnmayer served three terms in the Oregon House of Representatives, was a law professor of the University of Oregon School of Law, and was legal advisor to the president at the University of Oregon. Mr. Frohnmayer graduated *magna cum laude* from Harvard College (1962), attended Oxford University on a Rhodes Scholarship (1964), and received his law degree from the University of California at Berkeley (1967).

\* \* \*

*John K. Van de Kamp* has had a long and distinguished career in public service. After graduating from Stanford Law School in 1959, he worked in the U.S. Attorney's Office from 1960-1967, including a stint as U.S. Attorney for the Central District of California from 1966-67. Mr. Van de Kamp was the first appointed Federal Public Defender for the Central District in 1971. In 1975, Mr. Van de Kamp was appointed Los Angeles District Attorney and was subsequently elected twice to this office. In 1982, he was elected California's Attorney General and served two terms. Under his leadership as Attorney General, he created the Public Rights Division, which vigorously fought to enforce antitrust laws and statutes. In 1989, the National Association of Attorneys General presented Mr. Van de Kamp with their coveted Wyman Award in recognition of his outstanding effectiveness in office. In 1991, Mr. Van de Kamp joined the law firm of Dewey Ballentine as partner and chairman of the Los Angeles office's litigation department.

We would like to express our gratitude to the following individuals for their tireless efforts:  
Christine Milliken, Steve Glanzman, Traci Otey, Sara Kornely, Leslie Ellis, NAAG Staff  
Dan Howard, Anne Lyman, and Carol Rydbom, University of Oregon  
Attorney General Mike Moore and Attorney General Bob Butterworth



February 16, 2000

## ***H.B. 2821 Tax Code Revisions***

Good morning, my name is Terri Roberts and I am here today as a private citizen addressing the issue of taxing the attorney fees for those who represented Kansas in the tobacco settlement litigation.

First of all I want to say that I am one of those individuals who has a passion about seeking a world that is less harmed by addiction to nicotine, where clean air in the workplace and public places is an expectation--not a hard won battle. Among friends and colleagues that share this same passion we often refer to ourselves as anti-smoking activists or zealots. Since December of 1995 I have personally invested time and money to educate myself about smoking as a habit, and what public policies could best facilitate a world with less nicotine addiction. Having said this I want to add that I have only a professional relationship with the Attorney General Carla Stovall or any of her staff, have met Stu Entz once during a presentation he did for a Kansas Smokeless Kids program and have talked with Jeff Chanay approximately five times (and two of those were about a nursing client he was representing). I know none of these individuals personally, shared a meal with them or ever discussed my family or my day with them. I'm here because I have a sign on my door which quotes Abraham Lincoln and says: *"To Sin with Silence, when they should protest, makes cowards of men"* and I try to speak out when I believe it may make a difference.

The bill, H.B. 2821 as introduced retro-actively imposes a tax on specific proceeds that attorneys received as compensation for representing the state of Kansas.

I'm not sure it will necessarily be limited to just those who represented Kansas in the tobacco settlement, what about attorneys that represent KU Hospital Authority in collections, what about KPERS settlements or other areas where attorneys have been engaged to represent the state. Might this have a chilling affect on attorneys considering representation of our state?

House Taxation  
Date 2/16/00  
Attachment # 3-1

I'm not a practicing attorney, nor an expert in constitutional law, however one basic premise of our constitution is representative and fair taxation, and I remember several years ago when Kansas was sued on behalf of military retirees that were disenfranchised by a revised Kansas tax code, and Kansas lost that legal battle and settled (and to the best of my recollection it was about \$57 Million, with the court awarding approximately \$10 Million to the attorneys that represented the Kansas military retirees). Certainly the constitutionality of any provision of this nature will be evaluated prior to its implementation.

Why is the legislature seeking a portion of the attorney fees in this case? After two days of hearings on the related issue of why Entz and Chanay were selected, I'm not clear of the public policy behind this tax proposal.

I do know one thing though, the Tobacco Industry is a formidable opponent, every hour of every day. I strongly suspect that they like seeing all this conflict and anguish---it eliminates and reduces time that could be spent on listening to proposals related to clean air and tobacco use and prevention strategies. It's a distraction and they are masters of distraction. I was dissappointed that John Campbell was not afforded the opportunity to review in detail the MSA---that agreement as you know made history----largest civil settlement in the history of the world and as you also know---the largest payout to attorneys who fought and won against the industry. The details of the MSA are important and the restrictions on the Tobacco industry significant, and as a matter of public policy, I do believe you would benefit greatly from hearing about them.

I'm confident that the greater wisdom will prevail and that this tax proposal will not be enacted. My hope is that it dies swiftly, so that no more time is spent on this issue.--while the Tobacco Industry watches. Tax Code revisions should be fair and purposeful, they should not be retaliatory or punitive.

**THANK YOU**

Terri Roberts  
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# Attorney general not in conflict, auditors report

But Stovall's choice of outside law firms may look like favoritism.

By JOHN PETTERSON  
Topeka Correspondent

KCS 10/7/97

TOPEKA — When Attorney General Carla Stovall awards outside contracts for legal work to friends and political contributors, there can be a perception of favoritism, the Legislative Post Division said Monday.

Despite that, the auditors found the awarding of the contracts did not violate the state's conflict of interest law.

"While such contract awards don't fall under the definition of conflict of interest contained in state law, they can create at least the appearance of favoritism," the auditors reported.

The Legislative Post Audit Committee was presented the report at its meeting Monday in Ulysses in southwest Kansas.

In a strongly worded response to the audit, Stovall said she could have predicted the audit's findings on the day the work began: "No evidence of wrongdoing or conflict of interest in the manner in which I have awarded legal contracts exists."

Auditors examined 35 cases where Stovall had contracted with 29 private law firms to defend the state. In those cases, 20 of the 29 firms had made contributions to her campaign, ranging from \$50 to about \$6,500.

Those 20 firms received 27 of the 35 contracts.

But half of those successful firms also contributed to Stovall's



Stovall

opponent in either the primary or general election. In addition, members of 75 other firms and about 140 other attorneys contributed to her 1994 campaign but got no business from her.

One of the firms she hired to represent the state was Entz & Chanay of Topeka, her former law firm. The firm and its members contributed \$6,442 to her campaign.

It was named local counsel in the state's legal battle with tobacco companies.

Stovall argued that the cases went to outside counsel because they could best represent Kansas, not as political payoffs.

"When selecting outside legal counsel for a person or agency, I think only of one thing, the client," she said in her audit response.

She also noted that outside attorneys hired by Democratic Insurance Commissioner Kathleen Sebelius contributed more to the commissioner's campaign than outside attorneys hired by Stovall contributed to her effort.

Stovall, a Republican, said Sebelius received \$33,750 from her outside attorneys. The auditors said the attorney general's contributions from outside individuals and firms she hired totaled \$33,500.

Auditors recommended that the attorney general's office establish "reasonable procedures to ensure that its contracting process is as open as possible."

## Panel endorses plan to beef up coverage

The Associated Press

TCS 10-8-97

The House Broadcasting Committee endorsed on Tuesday a proposal by the Kansas Public Broadcasting Council to spend \$350,000 next fiscal year to enhance public television coverage of the Legislature.

Under a recommendation going to the Legislative Coordinating Council, the Legislature would appropriate \$350,000 more than it now provides for public TV grants to pay for a weekly half-hour program summarizing activities of the Legislature and discussing issues.

The House committee also recommended the Legislature appropriate \$85,000 to provide a second year of gavel-to-gavel coverage of the House of Representatives' daily sessions in 1998.

If the LCC accepts the idea, the House Broadcasting Committee would determine who provides the coverage for next session.

House Taxation

Date 2/16/00

Attachment # 4-1

# Kansas firm fighting tobacco giants lacks product liability experience

By Mike Shields

Harris News Service

TOPEKA - The potentially biggest product liability award in state history could go to a small Topeka firm that had no experience in product liability cases when it was signed by the state to sue the tobacco industry.

Entz and Chanay, the Topeka firm hired by Attorney General Carla Stovall to represent Kansas against the nation's major tobacco companies, could collect millions of dollars if the lawsuit is successful.

Jeffrey Chanay, a partner of the law firm, said when the firm decided to take the case that he thought the state might recover a sum "in nine figures," instead of the 10-figure estimates now being made.

"I could safely say the numbers bandied around now were never in the wildest dreams of any of us," he said. "The numbers now are almost exponentially greater."

According to the contingency agreement the firm signed with the state, Entz and Chanay, acting as local counsel on the

case, will be entitled to 12.5 percent, or half of the 25-percent contingency. Two out-of-state law firms that have lead roles in the national case will pay the expenses and split the other half of the contingency fee. The three firms worked that out among themselves.

Chanay said those who criticize the potential size of attorney awards from the case are showing "20-20 hindsight" and forgetting that the chances of winning against the tobacco industry appeared slim in 1996.

"People were not beating down the doors to join in this litigation," he said. "For this deal we were asked to litigate a theory never litigated in Kansas and only attempted in a limited number of states, none of which had gone to trial. It was against an opponent with unlimited ability and resources and an unblemished, 40-year record of never having lost a lawsuit."

"We certainly had our share of criticism from our peers, who called us stupid for

See LAW FIRM, Page 5A

Continued from Page 1A

ever having considered this litigation. The fact it's turned out better than anybody expected has been a surprise."

According to the Martindale-Hubbell and Kansas legal directories, Entz and Chanay specializes in construction law, employment relations, health-care law and lobbying. Martindale-Hubbell, using peer evaluations, rates attorneys and their firms either Av, Bv or Cv. Av is top-rate. Entz and Chanay is rated Bv - a middle-of-the-pack rating.

Stovall, who worked at Entz and Chanay before she was elected, admits the firm has never done a product liability case. However, it has handled Medicaid reimbursement cases. And Medicaid issues, she said, are at the core of the state's action against the tobacco industry.

But her confidence in the firm was the bottom line in her decision, she said.

"They're a law firm I trust and believe in, and that's why they were hired," she said.

Chanay said the firm faced a risk in taking the case on a contingency basis.

Throughout the litigation, which potentially could continue for years, the firm must cover the two partners' salaries as well as those of two new attorneys and a secretary hired to help deal with the workload brought on by the tobacco litigation.

He said the firm has done nearly all the research and court work associated with the release of confidential documents given up by the Liggett tobacco company as part of that company's separate settlement with the states. More than half the Liggett documents remained sealed by the court, and

the Kansas firm has been working to have those released. If Entz and Chanay succeeds in persuading the court to open the sealed tobacco files, that could weigh heavily in the outcome of the ongoing case against the remaining tobacco companies, he said.

"We're working for free until this is over and have been since we started looking at this case since summer of 1996," Chanay said. "That's part of the deal. If we don't bring in a good result, we don't get paid."

2/7

# Rift between Stovall, House smokes over tobacco issue

*Chronicle Tribune*  
Associated Press 4-3-98

TOPEKA — The dispute between Attorney General Carla Stovall and the Kansas House entered the budget arena, with lawmakers wanting to slash the state's contract with tobacco lawyers and Stovall saying they didn't know what they were doing.

As part of their lengthy budget debate, House members endorsed a proposal to force Stovall to sever the state's contract with law firms handling Kansas' massive tobacco litigation. Stovall used to belong to one of the firms and legislators said she had no businesses negotiating a contract worth potential millions to them.

Stovall quickly called a news conference to say lawmakers were punishing the people of Kansas in attempting to retaliate against her for her recent comments about a House-approved death penalty bill.

By being one of many states involved in a settlement with big tobacco companies, Stovall said, Kansas' legal costs would be paid as part of that agreement.

But by severing the contract, Kansas would have to cough up whatever legal costs it had incurred so far out of the budget.

"Big tobacco ought to pay this expense, and I don't think the House understands that," Stovall said.

But Powell disagreed.

"My understanding is this says, 'You better go negotiate the contract,'" said Rep. Tony Powell, R-Wichita. "We're not going to buy off on this, so go back and renegotiate a better deal."

In March, House members amended a bill to say that when a prosecutor plans to seek the death penalty, a judge would have a hearing. Stovall criticized the move, saying the amendment would "perpetrate a fraud."

Some House members said she should apologize, but she hasn't.

The House version of the \$8.5

billion state budget for fiscal year 1999 includes a provision requiring Stovall's office to end its contract with Entz and Chaney of Topeka — Stovall's former firm — and other law firms representing Kansas in the lawsuit.

Rep. Phill Kline, R-Shawnee, said the contract would amount to \$325 million, and Stovall had no right to negotiate it with her former firm.

But Stovall challenged the amount, saying a figure has not been calculated and whatever the state pays in legal fees would have to be approved by a judge as reasonable.

Tobacco companies have agreed to pay a total of \$368 billion over 25 years with states involved in the lawsuit. The deal has not been approved by Congress. Legal fees for Kansas have been capped at 25 percent of whatever Kansas gets as its share, said Stovall's spokeswoman, Mary Horsch.

Stovall said the measure would be ill-timed because a major legal brief supporting a ruling that the state should have access to secret industry documents is due in less than three weeks.



## Woman fined \$10,000 after locking up tenant, 80

The Associated Press

TC 54-2-98

**E**L DORADO — An 80-year-old woman has been fined \$10,000 after state officials learned she often locked an 84-year-old tenant in a bedroom before she left the boarding home to run errands.

Darlene Merryman, who ran Darlene's TLC Home, said Friday that she agreed to give up her boarding home license.

A \$10,000 fine is the maximum allowed in Kansas.

A Kansas Department of Health and Environment inspector described the tenant as confused, disoriented, non-verbal and said she suffered from Alzheimer's type dementia. The woman moved into an El Dorado boarding home last week.

Merryman is a retired nurse. She said she had kept the woman in her home for about 11 years. Merryman said she locked the woman in her room to prevent her from wandering the neighborhood.

"She is a very sweet woman, but she runs off," Merryman said. "I'm the only one here, so I had to put locks on the door."

Merryman was being paid by the tenant's family.

A report filed by the KDHE called the tenant's being locked in her room an inappropriate, dangerous and neglectful practice that created a life-threatening situation.

# Carla's Club

Awarding tobacco lawsuit  
to Stovall's former firm  
smacks big of patronage

Ottawa Herald

9/26 21/97

**S**ome of Kansas Attorney General Carla Stovall's former law partners stand to be millionaires if the state wins a big settlement from the tobacco industry. That is either because of pure political patronage or luck, depending on which side you believe.

A year ago, Stovall contracted with her former law firm, Entz and Chanay of Topeka, to pursue a lawsuit on a contingency basis against the tobacco industry. If Kansas wins, the firm will get 12.5 percent of the settlement or court award, which could amount to a payoff to the firm of up to \$250 million, the biggest ever in Kansas.

Sure sounds like a sweetheart deal.

Stovall did not put the work out for competitive bids, but she says she put out the word she was looking and heard from only two other firms, both of which she says had conflicts of interest. Stovall says that at the time few lawyers were interested in taking on lawyers for the big tobacco companies, especially on a contingency. The chances of winning appeared slim — and the possible settlement much less — a year ago, and lawyer Jeffrey Chanay says his peers considered him "stupid" for taking the case.

And so the small Topeka firm, with average marks from industry raters and no product liability experience, got the case. A year later, the selection has raised eyebrows.

Proponents of a change in state law to require competitive bidding for state contracts for legal and other professional services are using it as a prime example of the need to eliminate patronage and cronyism from state government.

Maybe Stovall was lucky to find any law firm to take on the tobacco companies on a contingency a year ago. Still, plenty of patronage remains in Topeka, and competitive bidding for outside work is a good idea.

Law firms are big contributors to Republican and Democratic candidates because the state has plenty of legal work to go around. That has been true for years. They would not do it if they did not know or believe they would be rewarded.

Perhaps if the tobacco litigation had turned out differently, no one would have noticed, and Entz and Chanay would have invested a lot of time on behalf of Stovall and the state for nothing.

But either way, patronage is still around, and a system for competitive bidding would do wonders for eliminating it.

*John D. Montgomery*

# Lawmakers question law firm choice

Associated Press

Wichita  
11/24/97  
TOPEKA — A legislative committee wants Attorney General Carla Stovall to renegotiate a contract under which her former law firm is representing the state in lawsuits against tobacco companies.

Stovall has said her decision to add the Entz and Chanay firm of Topeka to the legal team for the state was based on its extensive experience in cases dealing with the federal Medicaid program.

The state filed two lawsuits against six tobacco companies, hoping to recover the state's costs associated with

providing medical care to smokers.

States and tobacco companies have proposed to settle their litigation, and Kansas' share from the deal, which is pending with Congress, could be \$2 billion over 25 years.

The legal services contract said attorneys for the state could be paid up to 25 percent of what the state receives — \$500 million.

Two out-of-state law firms are involved in the Kansas litigation along with Entz and Chanay. However, members of the Legislative Budget Committee say Stovall's former firm still could receive as much as \$250

million.

The committee agreed last week to draft a report expressing concern about the legal contract and telling Stovall it should be renegotiated. One member, Rep. Henry Helgerson, D-Wichita, even suggested that the Legislature should refuse to provide funds to cover legal fees.

"I think there is a concern about the amount of the fee involved, and I think there is also a concern about the way the contract was negotiated and awarded," Helgerson said.

Stovall was not available for comment.

## Financing friends

Lawmakers wonder if Carla Stovall is blowing smoke. Or at least smoke rings.

A legislative committee wants Stovall, the state's attorney general, to renegotiate a contract with her former law firm to represent Kansas in lawsuits against the big tobacco companies.

And she should.

Stovall didn't advertise for a law firm. Nor did she make the selection competitive.

She simply gave it to her old law buddies, Entz and Chanay.

Stovall insists that she did nothing improper. She said she based her choice on Entz and Chanay's extensive experience in Medicare cases.

Lawmakers, wisely, think otherwise, especially since Entz and Chanay's offices served as Stovall's 1994 campaign headquarters and Jeff Chanay was a member of her advisory staff.

Then, three years later, Stovall turns around and plunks a deal worth up to \$250 million in Chanay's lap. Every law firm should have Carla Stovall for a for-

mer partner.

Stovall justified her selection by pointing out that a judge has final say on legal fees, so it's unlikely Entz and Chanay would receive the maximum amount the contract allows.

Maybe, and maybe not. After all, the courts can be fickle, as recent cases demonstrate.

But the size of the fee is a Stovall smoke screen; it's the way that she awarded the contract that raises concern. Because even if there is nothing technically illegal about what she's done, it still looks like payback, and that tarnishes Stovall's credibility.

Stovall, typically, has refused to budge on the matter. Perhaps Rep. Henry Helgerson has the right idea. Helgerson, a Wichita Democrat, has suggested that the Legislature should refuse to provide funds for legal fees until Stovall renegotiates the contract with Entz and Chanay.

He doesn't go far enough. Lawmakers should vote to void the contract.

Let Stovall puff on that.

# Harris News article was blowing smoke

Hitch 10-19-97  
By Carla J. Stovall

Attorney General, state of Kansas

"It will not happen!" That's my response to the Harris News Service article stating that a Kansas law firm could receive \$250 million for representing the state against Big Tobacco.

Why wasn't the headline of the article "Law firms stand to win \$0"? That is

Guest  
column

certainly a greater possibility than them receiving the ridiculous figure of \$250 million.

Or why wasn't the headline "3,000 children begin smoking today"? That is the real story behind the lawsuit.

I don't blame readers who may have been appalled that a law firm would be paid that obscene amount of money for having handled the tobacco lawsuit. But please read on! Entz and Chanay will not receive \$250 million.

The contract is a contingency contract. That means if Kansas doesn't win a dime, then the law firms don't get a penny! It takes the Harris article nine paragraphs of proclaiming they could receive \$250 million to finally mention, "Oh, by the way, they might not get anything."

The reporter interviewed me at great length for his story, but failed to convey the most important points I made. I provided him with more than enough information so that he would know it would be untruthful to suggest the firms would actually receive 25 percent of the current tobacco settlement.

Because this was "cutting edge" litigation, I had to have a firm I knew and trusted. I was once associated with Entz and Chanay. I had, and still have, more trust and faith in its partners than any other lawyers I've ever met. I knew they would work hard, represent the interests of Kansas expertly and would not have their judgment clouded by inappropriate influences.

And just as important was the 25 years of experience the partners have in Medicaid law. The article criticizes my decision because the firm does not have products liability experience. I told the reporter that this is not a products li-

bility case! Kansas is suing for Medicaid reimbursements that we paid for Medicaid recipients who had smoking-related health problems. It seemed important to me that the firm I engaged had Medicaid experience!

We anticipated this litigation would be heavily contested by Big Tobacco (they have 70 lawyers to defend Kansas' suit), and knew it would take more resources than the attorney general's office had available. (Our two national firms had already advanced \$30 million in the trials of Mississippi and Florida). The choice was either a contingency contract - or no lawsuit. I believe the suit is important to try to recover our Medicaid reimbursements and to stop the companies from marketing to children, and I went with a contingency contract.

The contract entitles the national firms to a maximum of 12.5 percent and the local firm to a maximum of 12.5 percent of an amount Kansas might recover. The actual amount would be determined by a judge. There was no way to predict last summer what amount of money Kansas could recover if we won - 25 percent might be appropriate if we did not receive a large judgment from the jury. On the other hand, the maximum language protected the state in the event the judgment was large. One firm I was negotiating with insisted that I guarantee 25 percent no matter the judgment, and I refused to enter such a contract.

If Kansas prevails at trial, it would be only after extensive work and a long, complicated trial. The judgment amount, if any, is unknown. If there is a judgment, the judge would have the responsibility to determine reasonable attorney fees. The article, in the eighth paragraph, is forced to admit that "legal experts" do not think a judge would ever say that amount is reasonable.

Big Tobacco's 70 lawyers receive an



Stovall

undisclosed amount of money per hour. I dare say their fees, at the conclusion of the lawsuit, would be astronomical compared to any amount our lawyers may receive! And the lawyers for Big Tobacco get paid regularly, every time they submit a bill. Our lawyers, if they receive anything, won't receive it until the conclusion of the trial and appeal process - years after they signed on for us.

If the national settlement is approved, the lawyers walk away from their contracts with the states. The settlement provides for a three-member panel to be established to decide the amount the lawyers involved in the tobacco litigation would receive. The amounts would not be based on any percentage but, rather on "what their work was worth." Big tobacco has agreed to pay 100 percent of all the states' lawyer fees out of monies separated and apart from the amounts the states would receive under the agreement. Kansas' legal costs would be zero! This is another reason the settlement agreement is so appealing. If we try the case and prevail, any lawyer fees are subtracted from the amount the jury finds the state is entitled to.

What the public must keep in mind is if there weren't attorneys who believed that it is time to hold Big Tobacco accountable and who weren't willing to risk great financial loss by taking these cases on contingency, there would not have been the first state case against Big Tobacco, nor would there have been historic settlement negotiations, with Big Tobacco making concessions never dreamed of one year ago.

I have worked hard these last three years to earn the public's trust and to serve with the utmost integrity and honesty. This contract is not a departure from the record of service - it is another example of my efforts to exercise my best legal judgment on behalf of the state. It is my best legal judgment that when the tobacco suit is over, the benefit to Kansas will be well worth the legal fees paid, and there is no way those fees will be anywhere near the amount the Harris story suggests.



# Uninsured kids focus of efforts by officials

Garden City Telegram 9-5-97

TOPEKA (AP) — The director of the state's social services agency has formed a committee to draft recommendations to the 1998 Legislature for providing health coverage to uninsured Kansas children.

The announcement today from Rochelle Chronister, secretary of social and rehabilitation services, came two months after Insurance Commissioner Kathleen Sebelius formed her own committee to study issues related to uninsured children, also to draft legislative proposals.

The two groups have some members in common, among them Sen. Sandy Praeger, R-Lawrence, chairwoman of the Senate Public Health and Welfare Committee, and Rep. Carlos Mayans, R-Wichita, chairman of the House Health and Human Services Committee. Praeger will serve as chairwoman of Mrs. Chronister's panel.

Mrs. Chronister and Gov. Bill Graves are Republicans, and Sebelius is a Democrat. However, their spokesmen said the groups will not compete.

"It's one of those issues a lot of people want to take a look at," said Tom Wilder, director of governmental and public affairs for the

Insurance Department. "You're going to need to get a lot of input from legislators and providers and a lot of others."

Mike Matson, Graves' press secretary, said: "Everybody has the same goal."

State officials estimate that at least 73,000 children in Kansas are not covered by a private insurance policy or a government program. They say the parents of uninsured children often cannot afford care and wait until illnesses become serious before dealing with them.

Budget legislation approved by Congress earmarks extra funds for health care for children, and Kansas expects to receive about \$32 million a year for five years.

The state would have to put up some funds of its own to get the money. Sebelius has estimated the amount at \$8.6 million, but Mrs. Chronister said the required match is \$12.3 million.

Chronister said the federal money creates a unique opportunity for the state.

"When we provide health insurance to every child in Kansas who needs health insurance, there'll be plenty of credit to go around," SRS spokesman John Garlinger said of the two study committees.

## Poor decision

Hutch 9-21-97

The Kansas Attorney General's decision to award legal work to her former law firm reeks of political cronyism.

Attorney General Carla Stovall agreed last year to pay the Topeka law firm of Entz and Chanay a 12.5-percent contingency fee if the state wins its case against the tobacco industry. This inside deal could amount to as much as \$250 million over 25 years, based on the attorney general office's own estimates.

Kansas and 39 other states have filed a lawsuit to force tobacco companies to reimburse the Medicaid costs of treating sick smokers.

Stovall's office estimated in July that Kansas would receive about \$2 billion over 25 years under the proposed \$368.5 billion national settlement with the tobacco industry. The settlement draft has stalled in Congress while the White House considers whether to push for any changes.

The contingency agreement causes concern for two main reasons:

First, Stovall simply relied on press reports about the tobacco lawsuit to prompt law firms to inquire about the legal work. Three firms,

she said, contacted her in this informal manner. Two, she claimed, had conflicts of interest, so she eliminated them from consideration.

Amazingly, the attorney general ignored her own conflicts of interest with Entz and Chanay. She worked at the firm as an associate before winning election in 1994. Jeff Chanay, one of the firm's partners, served on her campaign advisory committee in 1994. She used the firm's office as her campaign headquarters.

Second, paying such enormous contingency fees to law firms — two other national firms will receive an additional 12.5 percent of the settlement — reflects poor judgment.

Stovall should have had the work done on an hourly basis or assigned people on her own staff to the case. Either option would have provided the state with as much legal firepower as the deal with her former law firm. Entz and Chanay, according to an independent law-firm rating service, has limited experience with product liability cases.

No wonder state legislators questioned the attorney general about this agreement. Kansas taxpayers should ask her to explain it, too.

## OPINION

By GEORGE B. PYLE / *The Salina Journal*

# Carla and her lawyers

### THE ISSUE

*Stovall and the tobacco deal*

### THE ARGUMENT

*Hiring her old partners was not smart*

Carla Stovall is a good enough lawyer to know that a case is only as strong as its weakest link.

The Kansas attorney general's attempts to dig into the nation's tobacco companies for some of the billions they cost us in medical expenses, lost productivity and death are commendable.

And her stated need to hire qualified outside counsel for the job, rather than have the A.G.'s own small and overworked staff take on some of the best-paid trial lawyers in the galaxy, is real.

But, in hiring her own former partners at the Topeka law firm of Entz and Chaney, Stovall unwisely handed her opponents a weapon.

And, in this dispute, her opponents aren't just the tobacco companies. They are her fellow Republicans.

Lawmakers have taken public offense at the suggestion that Stovall's former partners may rake in up to \$325 million in legal fees for their work — a fee that obviously doesn't reflect the hours actually spent on the job.

Stovall responds, correctly, that the matter of fair compensation for services rendered is up to a judge. The \$325 million figure, she says, is a maximum that amounts to a red herring for her political rivals to wave about.

Stovall, though, continues to have a tin ear about the apparent conflict of interest shown when she hired her former employer.

When state lawsuits against tobacco companies began a few years ago, few people thought there was a chance in heck of getting any money out of them. For a quality law firm to join in tilting at those windmills, it would have to be offered a healthy contingency fee.

But even if the law firm that was eventually chosen was taking a risk of a lot of work for only the dim hope of a big payday, more care should have been taken to shield the attorney general from the conflict of interest charges that have since surfaced.

Stovall may believe that an attorney general should be above the political fray. But it is an elective office, in an environment where any political weakness will only make it harder for Stovall to pursue the fight against Big Tobacco, or anyone else who needs fighting.

As a moderate Republican who favors abortion rights, Stovall should realize that conservative Republicans will be looking for any club they can swing.

We should, perhaps, feel fortunate that any law firm is willing to take on the challenge of the sort the tobacco case posed. But we should still open up the selection process to ensure the appearance of fairness.

## Home fined for confining woman

By Dave Ranney

*The Wichita Eagle*

An 80-year-old El Dorado woman has been fined \$10,000 after state officials learned that she often locked an 84-year-old female tenant in a bedroom before going to church, the grocery store and club meetings.

Darlene Merryman, who ran Darlene's TLC Home out of her house at 625 Harvard, said Friday that after learning about the fine, she agreed to give up her boarding home license.

The tenant, whom a Kansas Department of Health and Environment inspector described as "confused, disoriented, non-verbal (and who) suffers from Alzheimer's type dementia," moved to an El Dorado

nursing home earlier this week.

Merryman, a retired nurse, said she had kept the woman in her home for about 11 years. She locked the woman in her room, she said, to prevent her from wandering the neighborhood.

"She is a very sweet woman, but she runs off," Merryman said. "I'm the only one here, so I had to put locks on the door."

Merryman was being paid by the tenant's family members.

A report filed by the KDHE called the tenant's being locked in her room an "inappropriate, dangerous and neglectful practice (that) created a life-threatening ... situation."

A \$10,000 fine is the maximum allowed in Kansas.

Legislature 1997

# Stovall's decision poor judgment

There needs to be legislation to require competitive bidding on contracts as large as the one on tobacco litigation

*Days Daily News 9-22-97*  
Kansas Attorney General Carla Stovall said she wanted a law firm she knew and could trust "because this was such cutting-edge litigation."

The litigation was against the tobacco industry. So what did she do? She approved an agreement to hire a law firm that had no experience in product liability cases. And what law firm was it? It was the firm of Entz and Chanay, Topeka, the firm with which she was affiliated before becoming attorney general.

The firm stands to earn as much as \$250 million from the agreement.

In the first place, the agreement is legal, but it shouldn't be. To award a contract with a payoff of such magnitude should involve competitive bidding, even if it is not required.

To believe that the attorney general sees nothing wrong with such an arrangement, one would have to believe that she is naive. She certainly is not naive.

Stovall said she didn't think a bidding process was necessary because the press was covering the procedure and law firms could see that litigation was coming and if they were interested, they could have contacted her office.

Further, she said that two well-qualified law firms were eliminated because they had conflicts of interest.

There really are no good reasons for the attorney general not to have advertised for bids and secured a law firm through this process.

The choosing of her former law partners without such a process opens her up to justifiable criticism. It was poor judgment.

The trend away from bidding on government work is growing at all levels, and it is a trend that should be stopped through legislation.

— editorial by Jim Hitch

# Time to change law

*Garden City Telegram 9-24-97*  
State should bid for legal services

Kansas Attorney General Carla Stovall stumbled when she selected her old law firm to represent the state in a lawsuit against tobacco companies. But while she may have pulled a public relations blunder, what Stovall did was completely legal.

And that's the problem.

Kansas is one of 40 states seeking reimbursement from huge tobacco companies for money the state has paid through Medicaid for treating sick smokers. A proposed \$368.5 billion national settlement, which is stalled in Congress, could net Kansas about \$2 billion as the state's share of the settlement.

In August of 1996, Stovall signed a contingency agreement with Entz and Chanay, the firm where she worked before becoming attorney general. The pact gives the firm and two out-of-state law firms 25 percent of whatever Kansas collects from the tobacco companies as a result of either a settlement or a successfully tried lawsuit.

Under the agreement the firm could receive as much as \$250 million for its secondary role in the lawsuit.

Stovall defends her selection as saying her former law firm

was a group she could trust. Three firms had contacted her office about representing the state in the lawsuit. She decided two had conflicts of interest before signing the agreement with Entz and Chanay, which has the least experience with product liability cases. Stovall said Entz and Chanay does have 25 years of experience with Medicaid issues which is pertinent to the case.

Stovall claims she has nothing to gain by awarding the work to her former law firm. We have no reason to doubt her.

Nonetheless, her selection gives Kansans another reason to demand the Legislature develop law that requires competitive bidding for state legal work or other professional services.

Besides cleaning up the process of hiring lawyers for state work, it will also help ensure that taxpayers are not paying more than they have to for professional services.

In the case of this tobacco lawsuit, a negotiated contingency agreement just a few percentage points lower could result in tens of millions more dollars for Kansas — money that would go into state coffers instead of lawyers.

Clearly, the law needs to change. And this out-of-whack contingency agreement could be just the thing to get lawmakers into action on the issue.

— Tom E

4-9

# Kansas to join in legal assault against major tobacco firms

By LEW FERGUSON  
The Associated Press

TCS  
8-20-90

**K**ansas is joining the great tobacco war. After months of studying the issues and probability of success, Attorney General Carla Stovall is scheduled to announce today that Kansas is filing a lawsuit against six major tobacco companies.

Kansas is the 11th state to bring suit, along with Los Angeles County, the city of San Francisco and numerous individuals throughout the nation.

In the lawsuit to be filed in Shawnee County District Court, Stovall will seek recovery of money the state has spent on medical treatment for alleged victims of smoking.

Companies expected to be named in the suit include R.J. Reynolds, Philip Morris, Brown & Williamson and its parent company, British American Tobacco Industries, Lorillard Tobacco Co. and the American Tobacco Co.

Phillip Morris had lobbyists at the Republican National Convention in San Diego last week and paid for a bus trip by the Kansas Delegation to Yorba Linda to visit the Nixon Library.

The Kansas lawsuit will seek damages in excess of \$50,000, said Mary Horsch, Stovall's spokeswoman, "but we are talking about millions" the state eventually will request if the litigation is successful.

The damages are to compensate the state for what it has spent in Medicaid funding for treatment of patients with alleged smoking-related illnesses, Horsch said.

In addition to the damages, Stovall is expected to seek an injunc-

tion to forbid the tobacco industry from running advertising in the state designed to make smoking cigarettes attractive to young people, to disclose what tobacco companies knew about nicotine addiction, publish corrective advertising and finance a public education campaign against smoking.

Horsch said advertising aimed at young people seems to be increasing, and Stovall's suit will try to stop ads that glamorize smoking.

The first state to sue the tobacco companies was Mississippi, which reached a settlement with Liggett & Myers.

Other states who have brought lawsuits are Connecticut, Florida, Louisiana, Maryland, Massachusetts, Minnesota, Texas, Washington and West Virginia.

Only Texas has filed its lawsuit in federal court; the rest have filed in state courts, Horsch said.

None of the state lawsuits had gone to trial.

A Florida jury recently awarded \$750,000 to a smoker who said he was addicted until he got lung cancer, and the cigarette makers face some 200 lawsuits alleging they hid tobacco's dangers from customers.

The next big court test is in Indiana. An Indianapolis trial is due to go to the jury next month to see whether the Florida case — the first to unveil secret company documents indicating tobacco executives knew nicotine was addictive but hid it — is reinforced.

Stovall's news conference is scheduled for 11 a.m. in the Old Supreme Court chamber in the Statehouse.

Several anti-smoking organizations are expected to send representatives, Horsch said, including the Cancer Society, Lung Association, Heart Association and Smoke-Free Kansas, plus physicians and other health-care providers.

**■ Lawsuit will seek recovery of money the state has spent on medical treatment of alleged smoking victims.**

# Kansas joins suit

## State will file against tobacco companies

Hutchinson  
By Lew Ferguson  
Associated Press Writer

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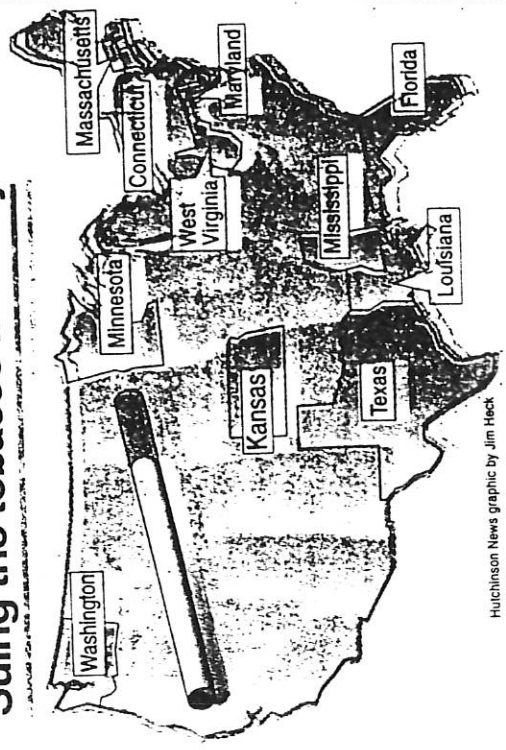


Stovall

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## Suing the tobacco industry



Hutchinson News graphic by Jim Heck

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# Kansas files tobacco suit

Hutch 8-21-90

By **Lew Ferguson**  
Associated Press Writer

TOPEKA - Kansas has joined the growing ranks of states taking on the tobacco industry in the courts, setting out Tuesday to make it pay for smoking-related illnesses and stop luring young people into becoming smokers.

Attorney General Carla Stovall filed a lawsuit in Shawnee County District Court seeking to recoup millions of dollars the state has spent on Medicaid patients allegedly suffering illnesses caused by smoking, and to enjoin tobacco companies from running youth-oriented advertising in the state.

Eleven other states already have filed similar suits - all but Texas in state courts. Stovall said she expects another dozen states to do the same.

Other states who have brought lawsuits are Arizona, which also filed on Tuesday; Connecticut, Florida, Louisiana, Maryland, Massachusetts, Minnesota,

Mississippi, Washington and West Virginia.

Michigan officials said they would file a lawsuit today.

Mississippi has settled, and none of the other suits has gone to trial.

Stovall's 98-page lawsuit, being handled for the state on a contingency-fee basis by two national law firms and a local counsel, alleges the tobacco industry "has conspired to deceive the state and its citizens about the addictive properties of nicotine and about the full extent of the health risks of smoking."

Companies named in the suit are R.J. Reynolds, Philip Morris U.S.A., Brown & Williamson and its parent company, British American Tobacco Industries, Lorillard Tobacco Co. and the American Tobacco Co.

Also named as defendants are the Council for Tobacco Research-U.S.A. Inc. of New York and the Tobacco Institute of Washington,

D.C.

Philip Morris issued a statement saying it will "vigorously defend this copycat lawsuit, and the company firmly believes it will ultimately prevail."

It accused Stovall, "in her zeal-ousness to jump on the bandwagon" of tobacco litigation, has ignored the fact that the state has no viable legal basis upon which to sue the cigarette manufacturers."

Stovall said her months-long review of litigation in other states convinced her a lawsuit could be successful.

"I couldn't reasonably find a reason not to file a lawsuit," she said. "The accumulation of evidence compiled by the other states is overwhelming."

Gov. Bill Graves said he did not urge the filing of the lawsuit, but agreed with Stovall that it should be undertaken and gave it his full support.

Nearly a dozen anti-smoking organizations had representatives at the news conference, including the Cancer Society, Lung Association, Heart Association and Smoke-Free Kansas, plus physicians.

## Getting tough

Hutch 8-22-90

Kansas has jumped on the lawsuit bandwagon by officially suing tobacco companies for Medicaid money spent treating tobacco-related illnesses.

Kansas becomes the 11th state in the union to bring such a lawsuit, while Los Angeles County and the city of San Francisco also are involved in similar litigation.

Ironically, Philip Morris, one of several companies named in the suit, paid for a bus trip by the Kansas delegation to Yorba Linda to visit the Nixon Library during the Republican National Convention last week.

The Kansas lawsuit will seek more than \$50,000 in damages, but that figure could climb high into the millions if litigation is successful.

Stovall also wants to get an injunction against the tobacco industry, stopping them from any advertisements in the state designed to make smoking cigarettes attractive to young people.

She wants the industry to dis-

close what they know about nicotine addiction, fund an education campaign against smoking and publish corrective advertising.

Tough talk. Stovall must think smoking is bad for your health.

Obviously, our attorney general disagrees with our own Bob Dole, Republican presidential candidate, who said recently cigarette smoking was not addictive.

We squarely fall on Stovall's side on this one. Smoking is hazardous to your health. No question about it.

The rest of the country seems to be agreeing as well. Tobacco companies have been taking big hits in court, with a Florida jury awarding \$750,000 to a smoker who said he was addicted until he got lung cancer.

The industry faces another 200 such lawsuits all alleging cigarette makers withheld important information about the damaging effects of smoking.

Kansas is now one of them. It will be interesting to see this one play out.

# A.G. takes on tobacco:

Surrounded by children and opponents of smoking, Carla Stovall announces Kansas has joined 10 other states in lawsuits alleging conspiracy, fraud and deception.

By ROGER MYERS  
The Capital-Journal

TCS  
8-21-96

**H**oping to eliminate cigarette advertising aimed at children and youths, Attorney General Carla Stovall on Tuesday filed suit against six tobacco companies accusing them of conspiracy, fraud and deception.

The 98-page lawsuit, which also seeks to recover some or all of the estimated \$100 million a year that Kansas spends on Medicaid patients with smoking-related illnesses, was filed in Shawnee County District Court.

Stovall formally announced the filing during a news conference in the Old Supreme Court room of the Statehouse that was packed with children and anti-smoking organization representatives.

The attorney general said the Kansas lawsuit against the tobacco companies is broad-

er than similar suits filed by 10 other states against the cigarette manufacturers in that one element of the relief sought is an injunction to prevent the companies from targeting children in their advertising.

The lawsuit seeks recovery of unspecified monetary damages and a requirement that the tobacco companies reveal the truth about addictive properties of nicotine and the health risks involved through a public education program.

"One of my primary reasons for filing this lawsuit is to halt the aggressive marketing of cigarette products to young people in Kansas," Stovall said.

"And we must put a stop to the advertising that glamorizes smoking to kids and teenagers — advertising such as the Joe Camel cartoon character which increased R.J. Reynolds' share of the illegal children's market from 0.5 percent to 32.8 percent."

Reynolds is one of the defendant compa-

nies named in the suit.

"It is illegal for young people to smoke. Across the country, one billion packs of cigarette sold to people under the age of 18 in violation of the law. That generates \$221 million of profit for the tobacco companies," Stovall said.

She said an estimated 11,000 young people start smoking each year and 4,000 Kansans die annually because of smoking-related disease.

"I am filing the suit because the tobacco industry has engaged in unlawful conduct including negligence, civil conspiracy, deceptive consumer practices and has violated state anti-trust laws," Stovall said.

In January, Rep. Henry Helgeson of Wichita, urged Stovall to join five other states in a proposed settlement with one of the largest of the country's tobacco companies, the Liggett Group. Liggett had offered to settle with the states, which also were seeking reimbursement for Medicaid spending

patients with smoking-related illnesses. Liggett wasn't one of the companies sued, but Stovall said it may be added later to the suit.

The Kansas attorney general had refused to join the other states suing the tobacco companies on grounds the litigation would be complicated and expensive, and skepticism that the state could win large damages quickly or easily.

Stovall said in April she didn't know whether Kansas law even would allow the state to recover damages for smoking-related Medicaid claims. But on Tuesday, Stovall said she decided to join the other states in suing the tobacco companies because, "after studying the pleadings of other states and all the evidence put together from discovery of the tobacco companies, I couldn't legitimately find a reason not to join the lawsuit, frankly."

The lawsuit will be handled for the attorney general's office by two law firms which

have worked with other states on their suits, the Seruggs, Millette firm of Pascagoula, Miss., and the Nuss, Matley law firm of Charleston, S.C.

The Kansas firm which will represent the state in the suit is the Entz & Chanay firm of Topeka, the firm with which Stovall practiced before resigning to campaign full-time for attorney general. She said her old law firm was chosen because of its reputation for recovery in Medicaid fraud cases.

She also noted the firms took the case on a contingency fee basis, meaning that if the state collects nothing, they receive no payment. If the state does recover damages, the national firms would share up to 12.5 percent of the amount recovered. The Topeka firm also would receive up to 12.5 percent of the recovery.

Stovall said it will be two or three years before the state can expect to get a court hearing on its case.

4.13

# Confidential tobacco files delivered to Stovall

By Mike Shields  
Harris News Service

TOPEKA - Once-secret tobacco industry documents from the first company to settle out of court with government lawyers are arriving at the office of Attorney General Carla Stovall.

Several dozen have been delivered so far, but thousands more are expected.

"Boxes and boxes," said Mary Horsch, a Stovall spokesman. "We are pursuing delivery of the rest."

The files are from the Liggett Group, maker of Chesterfield and L&M cigarettes. Among other things, they detail industry efforts to produce more strongly addictive cigarettes and marketing efforts directed at youth.

The records could be used as evidence against the nation's biggest tobacco companies, which still face a class-action lawsuit joined by 22 states, including Kansas.

The states sued for recovery of state Medicaid dollars spent on sick

smokers. Kansas joined the suit in August 1996.

It was reported Thursday that lawyers for the dominant firms, Philip Morris and RJR Nabisco, were considering a \$300 billion settlement with the states. Reportedly discussed as part of the settlement negotiations was possible industry agreement to regulation by the federal Food and Drug Administration and a ban on billboard advertising. Also, no longer used would be ads depicting people, such as the Marl-

boro Man. In exchange, the companies would receive blanket immunity from future lawsuits.

But Stovall said Friday that "nothing concrete," has emerged from the discussions which began April 3, four days after Liggett, the smallest major tobacco company, announced its settlement.

"I wouldn't say a settlement (with the other companies) is imminent, or even likely," Stovall said.

That means the Liggett documents remain important to the

states' case.

Liggett agreed to several terms in its separately negotiated settlement. Among them:

■ The company will put stronger warnings on its cigarette packs beginning no later than Sept. 20. The labels will warn, as health experts have long maintained, that smoking is addictive and causes cancer.

■ Public admission that tobacco companies have marketed to teenagers as young as 14 and that cigarettes were identified as a

cause of lung cancer and other diseases as early as 1950.

■ A one-time, \$25 million payment to the states and 25 percent of the company's pretax profits during the next 25 years. Horsch said Kansas will receive about \$1 million as its share.

Liggett also agreed to turn over to the states incriminating documentation of industry nicotine research and other topics potentially damaging to the remaining companies in the lawsuit.

"A lot of the problems he had to deal with were created by Charles Jones," Neufeld said.

Jones, head of the environment division from 1991 to 1995, said one of the tough parts of that job was "having to deal with idiots like Melvin Neufeld."

"Melvin is the kind of guy who hates anything he can't understand," Jones said, "which means he hates all science and most of reality."

For his part, Neufeld is anxious to restructure the environment section at KDHE. He said the environment in Kansas is doing "extremely well," adding that the state's real problem "is a matter of making bureaucracy work with the people; that's our big hang-up."

## Replacement forthcoming

O'Connell told Graves in December he intended to quit; the decision was made public last week.

Mike Matson, Graves' spokesman, would neither reveal the number of candidates who have been interviewed for the position nor their areas of expertise. He said the governor, who praised O'Connell for his work with the state, will announce a replacement this week.

O'Connell, described by fellow cabinet members Steve Williams, head of Wildlife and Parks, and Allie Devine, secretary of the Department of Agriculture, as a true professional, will move on to work with the law firm of Sinclair, Sawyer, Thompson, Haynes and Cowing.

4-14



# Wichita firm assists in tobacco settlement

By Robert Short

The Wichita Eagle

Forty months ago, the Wichita law firm of Hutton & Hutton joined a group of law firms from several states to go after one of the country's most formidable legal opponents — Big Tobacco.

The group of 65 law firms called themselves the Castano Consortium — named after the first case filed. They sued on behalf of millions of Americans, including as many as 800,000 Kansans, who were addicted to nicotine.

Andy Hutton, a partner at Hutton & Hutton with his brother, Mark, put six people on the case. More than two years ago, Hutton & Hutton hired two full-time attorneys in New Orleans, where the consortium was headquartered.

"The reason the consortium was put together was to take on the tobacco industry collectively," Hutton said. "We decided we were not going to get beat because we were outmanned, out-gunned or out-financed."

Still, nothing came easy. At one hearing last week in federal court in Tulsa, Hutton said, he sent one attorney and the tobacco companies sent 40.

On Friday, a \$375 billion global agreement was struck between the lawyers that provided money to help nicotine addicts, pay future claims of damages and reimburse the government for Medicaid payments to sick smokers. The settlement also includes restrictions on sponsorships, advertising and sales.

Hutton's part in the consortium was to serve as chairman of the science and causation committee and take the lead on the smokeless tobacco claims. The Wichita firm was in charge of four of the 22 state class action suits, which included cases in Kansas, Oklahoma and Hawaii. The one smokeless suit was in Louisiana, the only pending suit of its kind in the United States.

Robert Short writes about crime and public safety. He can be reached at 268-6340.

## Survey: Kansas is 26th-healthiest state

The Associated Press

**L**AWRENCE — Kansas is no longer deemed the eighth-healthiest state, falling to 26th this year in rankings of an independent study.

Kansas dropped the furthest from last year's ranking in the Morgan Quitno Press Healthiest State Award.

The study released Friday was based on 23 health-related factors.

Hawaii moved into first place, beating out Iowa, which dropped to eighth. Arkansas came in last for the fourth year, said Morgan Quitno President Scott Morgan.

Factors considered for the award included a state's infant mortality rate, percentage of population not covered by health insurance, and

Study by Lawrence firm shows Kansas dropping 18 spots from last year's rankings.

childhood immunization rate. Also included were per capita expenditures for health care, percent of adults who smoke and community hospitals per 1,000 square miles.

"We use this award to reflect the affordability of health care in a state, access to health care providers and a generally healthy population," Morgan said.

Each factor received point values ranging from one to 50, with one being the worst and 50 being the best. All factors were given equal weight.

Kansas' average point value was 26.30, while Hawaii was 36.48.

Kansas ranked 13th in number of mothers who received prenatal care but lagged behind 44 states in percentage of children aged 19 months to 35 months who are fully immunized. Kansas also had the fourth-worst infant mortality rate.

Morgan Quitno Press, an independent private research and publishing company, writes reference books and reports comparing states in different subject areas.

The Lawrence-based company is neither a subsidiary of any other company, nor is it subsidized by an outside interest group.

EVE KRASKE



# Stovall hits political home runs

KCS 6130/97

The Royals aren't hitting many home runs this season. Maybe the team needs Carla Stovall.

The former carpet saleswoman turned Kansas attorney general just smacked two round-trippers — on back-to-back work days, no less.

Just that quickly, Stovall transformed herself from a vulnerable 1998 incumbent into a formidable candidate with a look-what-I've-done-for-you-lately aura.

**Dinger One:** The U.S. Supreme Court's 5-4 ruling last Monday that upheld Kansas' sex-predator law.

In a high-risk move, Stovall argued the case herself before the justices. She defended the law that permits Kansas to confine sex offenders for treatment even after their sentences expire.

The win allowed Stovall to bask in waves of publicity. A political grand slam.

**Dinger Two:** On the previous Friday, the landmark tobacco settlement hit. Stovall, the 11th of 40 attorneys general who signed onto the case and the first Republican, deserves credit for jumping in early.

Although the settlement is coming under mounting criticism that could eventually turn this home run into a bunt single, it allowed Stovall to make headlines again as a winner.

"It couldn't have come at a better time," said Rep. Kenny Wilk, a Lansing Republican, of Stovall's triumphs.

This is the point in the election cycle when potential candidates decide whether to run. The timetable has advanced because state law now prohibits candidates from raising money during legislative sessions. Jumping in next year doesn't allow enough time for fund-raising.

According to some estimates, the media flurry gave Stovall a \$200,000 boost in name recognition and will make it easier for her to raise money. Her latest campaign report showed her with a paltry \$5,000 in the bank.

The fund-raising edge may prove significant because many conservatives, not to mention more than a few Democrats, dislike Stovall. She's stoutly pro-choice, for one thing.

for another, she's been criticized for moderates last year. And her aggressive probe of BioCore Inc., the Topeka company that employs conservative lawmakers, also didn't sit well.

Stovall didn't exactly take Topeka by storm during the first half of her term when she was able to boast of few big accomplishments. Some questioned whether Stovall, 40, had enough experience to lead such a major operation.

Stovall barely escaped embarrassment this year when legislators tried to knock her off the state sentencing commission, which advises on prison-term lengths.

"She has a tendency to overpoliticize everything," complained Rep. Ed McKechnie, a Pittsburg Democrat.

Now, even conservatives offer Stovall a nod.

"She's hitting her stride," conceded Rep. Tony Powell, a Wichita Republican who may challenge Stovall in next year's primary.

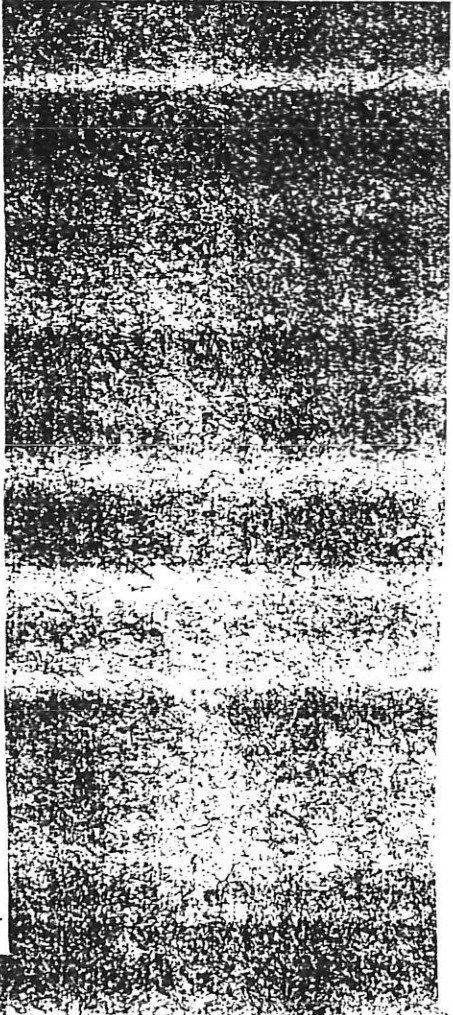
The positive press has affected Powell's timetable.

"It would give any potential challenger pause," he said.

If Stovall wins next year, what's next? She jokes about serving longer than her predecessor, Bob Stephan, who stuck around for 16 years.

Others, though, describe a more ambitious plan. Stovall, who gets terrific reviews for her stump speaking, might try for governor, they say.

Another home run or two and suddenly that doesn't look so far-fetched.



# State receives 24 proposals for building office, parking spaces

By ROGER MYERS  
The Capital-Journal

TCS  
7-2-97

**D**evelopers and property owners submitted 24 proposals on Tuesday to the state for providing office and parking space for state agencies and employees in the downtown area. The proposals were turned over to a selection committee headed by Jim Reardon, director of the division of facilities management in the State Department of Administration, which began reviewing the proposals shortly after they were received.

"I'm pleased with the proposals we received. We like competition," said Frances Welch, a procurement officer in the division of purchases and a member of the selection committee.

Submission of the proposals constitutes the start of phase 1 of a program state officials announced in February would be undertaken to provide the state space in the downtown area where it can consolidate most of its agencies and personnel.

The division of facilities management told developers it wanted proposals for blocks of office space ranging from 10,000 square feet to 100,000 square feet, and that future development is planned for another state agency which will require 200,000 square feet of space.

The facilities management division instructed developers to submit proposals that would include one parking place for each 400 square feet of office space in adjacent or nearby locations.

"Well, I think 24 proposals would be a record for an RFP (request for proposals.) But this is one of potentially good-sized scope, so I'm not really surprised," Reardon said.

He said there is no time frame for developing the additional downtown office and parking space for state agencies and workers, nor any total price tag on the development that may result.

The selection committee will tour the sites of the proposed properties Monday and will make its first cut on proposals that will receive further study by July 25.

The selection committee is scheduled to select the list of properties it would like developed during meetings on Aug. 24 and 25.

Those who submitted proposals include: Jayhawk Towers Joint Venture, Topeka; Elk

Building Joint Venture, Topeka; New England Building, LLC, Topeka; Bill Erdman, Lawrence Griffith and Blair Realtors, Topeka; O.A. Development, Atlanta, Ga.; The Myriad Development Co., Topeka; Evan Johnson Topeka; J.E. Dunn, Topeka; Pinegar & Smith Topeka; Security Benefit Group of Companies Topeka; Cohen-Esrey, Topeka;

Commerce Bank and Trust, Topeka; Dennis J. Eskie and Associates, Leawood; Aeolian Corp. Topeka; Mainstreet Investors, Topeka and Lawrence; Senate Management Corp., Topeka Palace Plaza Properties, Topeka; Larry E. Haage, Topeka; Shortman Properties, Topeka, Ariz.; Manhattan Buildings, Topeka and Manhattan; Brier Development Co., Topeka; Van Buren Plaza, Topeka; H.T. Paul, Topeka.

11-7

# \$2 billion possible in cigarette deal

Stovall defends selecting her former law firm to represent Kansas.

from the settlement.

Her former law firm, Entz & Chanay of Topeka, would be limited to no more than 25 percent of the amount the state receives from the settlement and probably will receive far less, she said. The firm will receive nothing if the settlement falls apart, she said.

Stovall also told the Legislative Budget Committee that the state has an important argument today before Shawnee County District Judge Fred S. Jackson.

Jackson will hear arguments by attorneys for cigarette manufacturers that Kansas isn't entitled to examine documents from the Liggett Co., the lone tobacco company that has offered to settle with the 40 states that have filed lawsuits against the cigarette makers.

She said the cigarette company attorneys will argue that disclosure of the Liggett documents is barred by

the theory of joint defense, a legal strategy in which all the tobacco companies except the Liggett Group have joined.

"We don't have joint defense in Kansas," Stovall said.

Stovall filed suit a year ago against six major tobacco companies and several related entities under the state's consumer protection act.

Her suit alleged that the tobacco industry engaged in unlawful conduct, including negligence, civil conspiracy, and deceptive consumer practices and had violated the state's anti-trust laws.

She also sought to recover millions of dollars the state spent on Medicaid recipients who suffered smoking-related illnesses.

In March, the cigarette manufac-

**Attorney General Carla Stovall says Entz & Chanay doesn't have experience in tobacco litigation, but said it has 25 years of experience in Medicaid recovery**



urers offered to settle lawsuits that attorneys general in 39 states and Puerto Rico had filed against them. The tobacco companies agreed to pay \$368.5 billion to the states over 25 years and to submit to sharp restrictions on tobacco advertising and more regulatory authority over tobacco by the federal Food and Drug Administration.

In exchange, class-action lawsuits against the cigarette companies would be prohibited and limits would be imposed on the liability of ciga-

rette manufacturers from lawsuits.

In order for the settlement to become effective, Congress must pass laws barring class-action lawsuits against the tobacco companies and limiting their financial liability.

Stovall said attorneys' fees won't be paid from the settlement, but instead will come from a fund that is financed by the cigarette companies.

There are three law firms representing Kansas in its suit against the cigarette companies. They include a firm from Mississippi, another from South Carolina and the Topeka firm.

She said the two national law firms were used because her office didn't have the staff to tackle the case.

Stovall said she picked her former law firm because, "I wanted a law firm I knew and a law firm that I trusted."

She acknowledged Entz & Chanay doesn't have experience in tobacco litigation, but said the firm has 25 years of experience in Medicaid recovery.

by ROGER MYERS  
The Capital-Journal

TCS  
8-22-97

Attorney General Carla Stovall defended the tobacco settlement Thursday before a legislative committee that questioned her about how much Kansas, and her former law firm, would get out of the deal.

Stovall said information provided by the Legislative Research Department indicated the state could receive \$2 billion over 25 years

11-7

# County health coalition up for grant

## Money could mean improvement in health care for Reno County

Seltzer, director/health officer for the Reno County Health Department. Seltzer is acting as the coalition's contact person throughout the application process.

"In addition, the Kansas Health Foundation has offered an additional \$10,000 per year to those counties that are chosen for the program," Seltzer said.

The pot of gold at the end of the rainbow is \$100,000.

"If we write a good plan and accomplish some things in three years, we'll have the opportunity to receive up to \$100,000 at the end of that three years," Seltzer said.

Coalitions with successful health interventions will be invited to apply for grants from \$20,000 to \$100,000 from the Kellogg Foundation.

Turning Point: Collaborating for a New Century in Public Health is funded by the Kellogg

Foundation and Robert Woods Johnson Foundation. The process is coordinated by the National Association of County and City Health Officials in Washington, D.C.

The final phase of the grant application will be a joint site visit with the Turning Point team Sept. 4 in Topeka. Grant recipients will be announced in December.

The Reno County Health Coalition is one of 27 statewide partnerships that were invited to submit proposals. Other Kansas partnerships who are finalists include the Wyandotte County and Wichita-Sedgwick County coalitions.

The Reno County Community Health Coalition is made up of health care and recreation facilities and social agencies, schools, businesses, the faith community, foundations and local government and agricultural related agencies.

The goal of the Turning Point program is to find a way to transform and strengthen the public health infrastructure in the United States, Seltzer said. In light of recent abolishment of government programs, strategic planning is needed so that states, communities and public health agencies can improve the public's health in the 21st century, she said.

The Reno County Coalition is looking at ways to strengthen its health network and avoid duplication of services. Among its proposals are the formation of a Reno Community Health Planning Council by June of 1998 that would issue a Reno Community Health Report Card and a community health improvement plan home page on the Internet by July 1998.

## Stovall backs hiring of her old law firm

The Associated Press

TOPEKA — Attorney General Carla Stovall on Thursday defended her decision to choose her old law firm to handle Kansas' litigation against major tobacco companies.

"I make no apology for that," she told a legislative committee.

Stovall was questioned by the Legislative Budget Committee about her decision to hire Entz & Chanay of Topeka, where she practiced law before being elected attorney general in 1994.

She said she chose Entz & Chanay over the Wichita firm of Hutton & Hutton because her old firm had expertise in handling Medicaid reimbursement cases. She also thought Hutton & Hutton might have a conflict of interest because it is handling individual smokers' lawsuits against tobacco companies.

"I trusted them," Stovall said of Entz & Chanay. "It was obviously the right decision as far as I'm concerned. They have done a tremendous job."

She also said Hutton & Hutton wanted a larger contingency fee to take the state's case.

Asked why she didn't advertise the work so other law firms could have competed, Stovall replied, "I don't think the low bid is the way to choose your lawyers." State law does not require it, she added.

By Karen Gangwere  
The Hutchinson News

If the Reno County Community Health Coalition passes its next test, down the line it could receive up to \$100,000 in grant money to improve health care in the community.

The coalition and its partner, Kansas Department of Health and Environment, have made the final cut for the national Turning Point strategic grant program.

The initial grant gives health coalitions \$20,000 a year for three years to develop a plan to improve community health, said Judy

KC 12-4-91

# Newton kids will see ugly side of tobacco use

■ Health problems are featured in a new class for minors caught with tobacco.

**By Judy Jacobs**  
The Wichita Eagle

Youngsters caught with tobacco products in Newton schools this year may have to watch a gory movie instead of being suspended.

Harvey County has been awarded a \$5,900 tobacco-use-prevention grant for 1997 from the Kansas Department of Health and Environment.

About \$1,000 will be used to implement a "First Offender Program" in Harvey County to target students caught with tobacco products on school property for the first time.

"Usually, if students are caught in possession of tobacco, they are suspended for three days," said Suzette Kakar, Harvey County health director. "But this year, first-time offenders will be given an opportunity to substitute a Saturday morning class."

The students will be shown a film with graphic depictions of the cosmetic and health problems that result from smoking and chewing tobacco, Kakar said.

"Kids don't think they're going to die, so people who have cancer are not as effective ... as people who have yellow teeth and wrinkled skin," Kakar said.

At least two people featured in the movie died young.

"They started chewing tobacco at 12 and developed cancer and died at 18," she said. "They are in the movie, and at that age they make an im-

pression."  
Another way of relating to the youngsters is money, Kakar said. Instead of talking about medical costs, the teacher and the nurse directing the class will show how smoking burns up money that could be put toward something youngsters want to buy, such as a car.

"Buying cigarettes delays buying something they want," Kakar said. "It's burning up their money."

Despite laws against tobacco purchases by kids, minors take up smoking at the rate of 3,000 a day nationwide, according to the U.S. Public Health Service.

In Kansas, a new law went into effect July 1 to clamp down on underage smoking. The state now slaps a \$25 fine and court costs on minors caught with tobacco.

Kakar said she hopes the Newton program will be accepted in other school districts in Harvey County as well as in courtrooms. She said judges and prosecuting attorneys could demand that youngsters who get tickets from police for illegal possession of tobacco products attend the class instead of paying a fine.

There's no plan for spending the rest of the grant money — \$4,900 — but Kakar hopes a meeting Monday morning will produce strategies and volunteers.

"The public is invited, but I want people to show up who want to work," she said.

The planning session is set for 8 a.m. Monday at The Breadbasket, 219 N. Main in Newton.

**Judy Jacobs writes about suburban government. She can be reached at 268-6477.**

# Smoke Stovall right to take on the U.S. tobacco industry

... [T]he tobacco industry has engaged in unlawful conduct, including negligence, civil conspiracy and deceptive consumer practices.

— Carla Stovall  
Kansas attorney general

TW 8-23-96  
Those allegations will not be easy for Ms. Stovall to prove. She filed a lawsuit against five U.S. tobacco companies and their trade associations industry in Shawnee County District Court on Tuesday. One of the defendants, Philip Morris U.S.A., said Tuesday that it would "vigorously defend this copycat lawsuit, and the company firmly believes it will ultimately prevail."

If past behavior is any indication, the other defendants share Philip Morris' defiant attitude. Considering that the tobacco industry — using the best legal talent that money can buy — has prevailed in most of the lawsuits brought against it over the years, the company's pledge must be taken seriously.

This is not to suggest, however, that Ms. Stovall was wrong to file the lawsuit — which, like lawsuits filed against the tobacco industry by 12 other states, seeks recovery of Medicaid money that the state has spent to treat poor people's tobacco-related illnesses. Even if Kansas ultimately recovers none of that money, the lawsuit — along with those filed by the other states and the dozen or so more

state lawsuits expected to be filed by year's end — could still prove the tobacco industry's undoing.

That's because civil lawsuits are marvelous devices for ferreting out information and bringing it into public view. An important part of the process is called "discovery," the phase of a lawsuit where the opposing parties are compelled to furnish each other information about the issue in question.

In this instance, the tobacco companies and their two trade associations could be compelled to surrender proprietary information on such touchy questions as whether company executives deliberately rig cigarette nicotine levels to keep smokers "hooked," or whether they target young new smokers to replace older smokers who are dying off from lung cancer, emphysema, heart disease and other smoking-related illnesses.

The more such information comes to light, the more Kansans and other Americans will learn about a substance that kills hundreds of thousands of their fellow citizens every year. That, in turn, makes it more likely that smoking one day will become a social taboo because its evils are universally understood.

Ms. Stovall deserves credit for bringing this suit, even if the state's odds of winning are larger than they are in most other cases. Regardless of the outcome, Kansans will be healthier for it.

# Kansas to join assault on tobacco companies

Attorney general's lawsuit will seek recovery of state money spent on medical treatment.

The Associated Press

KCS 8/24/96

TOPEKA — Kansas is joining the great tobacco war.

After months of studying the issues and probability of success, Attorney General Carla Stovall is scheduled to announce today that Kansas is filing a lawsuit against six tobacco companies.

It is the 11th state to bring suit, along with Los Angeles County, the city of San Francisco and numerous individuals nationally.

In the lawsuit to be filed in

Shawnee County District Court, Stovall will seek recovery of money the state has spent on medical treatment for alleged victims of smoking.

Companies expected to be named in the lawsuit include R.J. Reynolds; Philip Morris; Brown & Williamson and its parent company, British American Tobacco Industries; Lorillard Tobacco Co.; and the American Tobacco Co.

The Kansas lawsuit will seek damages exceeding \$50,000, said Mary Horsch, Stovall's spokeswoman, "but we are talking about millions" the state eventually will ask if the litigation is successful.

The damages are to compensate the state for what it has spent in Medicaid for treatment of patients with alleged smoking-related illnesses, Horsch said.

Stovall also is expected to seek an injunction to forbid the tobacco industry from running advertising in the state designed to make smoking cigarettes attractive to young people.

The first state to sue the tobacco companies was Mississippi, which reached a settlement with Liggett & Myers.

Other states that have brought lawsuits are Connecticut, Florida, Louisiana, Maryland, Massachusetts, Minnesota, Texas, Washington and West Virginia.

Only Texas has filed its lawsuit in federal court; the rest were in state courts, Horsch said.

None of the state lawsuits has gone to trial.

A Florida jury recently awarded \$750,000 to a smoker who said he was addicted until he got lung cancer, and the cigarette makers face about 200 lawsuits alleging they hid tobacco's dangers from customers.

The next big court test is in Indiana. An Indianapolis trial is scheduled to go to the jury next month to see whether the Florida case — the first to unveil secret company documents indicating tobacco executives knew nicotine was addictive — is reinforced.

## Kansas to file suit against group of tobacco giants for Medicaid money

■ Stovall wants

compensation for

Medicaid spending on

smoking-related illnesses.

By Lew Ferguson

Associated Press

TOPEKA — Kansas is joining the great tobacco war.

After months of studying the issues and probability of success, Attorney General Carla Stovall is scheduled to announce today that Kansas is suing six large tobacco companies.

Kansas is the 11th state to bring a suit, along with Los Angeles County, the city of San Francisco and many individuals nationally.

In the lawsuit, to be filed in Shawnee County District Court, Stovall will seek recovery of money the state has spent on medical treatment for smokers.

Companies expected to be named in the lawsuit are R.J. Reynolds,

Philip Morris, Brown & Williamson and their parent companies British American Tobacco Industries, Lorillard Tobacco Co. and the American Tobacco Co.

The Kansas lawsuit will seek damages in excess of \$50,000, said Mary Horsch, Stovall's spokeswoman, "but we are talking about millions" the state eventually will ask if the litigation is successful.

The damages are to compensate the state for what it has spent in Medicaid money for treatment of patients with allegedly smoking-related illnesses, Horsch said.

Stovall is also expected to seek an injunction to forbid the tobacco industry from running advertising in the state designed to make smoking cigarettes attractive to young people, disclose what tobacco companies knew about nicotine addiction, publish corrective advertising and finance a public education campaign against smoking.

The first state to sue the tobacco

companies was Mississippi, which reached a settlement with Liggett & Myers.

Other states that have brought lawsuits are Connecticut, Florida, Louisiana, Maryland, Massachusetts, Minnesota, Texas, Washington and West Virginia.

Only Texas has filed its lawsuit in federal court; the rest have filed in state courts, Horsch said.

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The next big court test is in Indiana. An Indianapolis trial is due to go to the jury next month to see whether the Florida case — the first to unveil secret company documents indicating tobacco executives knew nicotine was addictive but hid it — is reinforced.

# Kansas in fight against tobacco

State joins nationwide effort to recoup losses from Medicare claims.

By JOHN PETTERSON  
Topeka Correspondent

TOPEKA — Kansas on Tuesday sued the tobacco industry in an attempt to recover Medicaid costs stemming from smoking-related illnesses and to eliminate cigarette marketing aimed at children.

Flanked by students who have pledged never to smoke, Attorney General Carla Stovall announced that Kansas has become the 12th state to sue six tobacco companies and related entities in individual state courts.

"Through a well-organized campaign of fraud, lies, intimidation and deception, the tobacco industry has avoided legal responsibility for manufacturing and selling the most deadly and harmful product in consumer history while reaping billions of dollars in profits," Stovall said at a press conference attended by members of many anti-smoking organizations.

The lawsuit was filed in Shawnee County District Court in Topeka. Stovall estimated that smoking-

The tobacco industry was quick to respond.

related illnesses treated under the Medicaid program cost taxpayers \$100 million a year. The state-federal medical program has been in operation for 31 years.

Kansas pays 43 percent of Medicaid costs, and the federal government picks up the remaining 57 percent. Any recovery would be returned in the same proportion, although there would be some federal bonuses to the state.

"Each year, more than 4,000 Kansans die from tobacco-related illnesses," Stovall said. "Despite this alarming statistic, each year 11,000 Kansas children are seduced into taking up smoking."

Named as defendants in the lawsuit were R.J. Reynolds Tobacco Co., Philip Morris Inc., Brown and Williamson Tobacco Corp., B.A.T. Industries, Lorillard Tobacco Co., The American Tobacco Co., Hill & Knowlton, The Council for Tobacco Research — U.S.A., and the Tobacco Institute.

expenses.

"What the tobacco industry fails to tell our young people, and in fact attempts to hide from them, is that smoking is addictive and leads to cardiovascular disease, lung cancer, emphysema and death," she said.

Stovall said very few people begin smoking after age 21.

Tobacco companies, she contended, target young people by widely advertising their products.

"The effect is to convey the message to young people that tobacco use is desirable, socially acceptable, safe, healthy and prevalent in society," the attorney general said.

Later Tuesday, Arizona became the 12th state to file its own lawsuit against the companies. Michigan plans to announce its lawsuit today.

Other states suing the industry are Connecticut, Florida, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, Texas, Washington and West Virginia.

**"... We will fully defend (these cases) and expect to prevail."**

— Peggy Carter, spokeswoman for R.J. Reynolds

ceive. The lawsuit alleges that the defendants:

- Engaged in a conspiracy of deception that cost lives and tax dollars.

- Conspired to hook children on tobacco through the use of targeted advertising.

- Suppressed internal research that nicotine is addictive and staged public campaigns to create doubts that smoking causes disease and premature death.

- Manipulated nicotine levels to increase smokers' addictions.

Stovall said the Kansas lawsuit is unique in that it is aimed at protecting children as well as recovering Medicaid

# Stovall defends contract decision

## Attorney general's former law firm could earn millions if Kansas wins \$2 billion suit against Big Tobacco

By Mike Shields  
Harris News Service

TOPEKA - An agreement approved by Attorney General Carla Stovall could deliver the biggest legal payoff in state history to her former law firm if Kansas wins its case against the tobacco industry.

The Topeka firm, Entz and Chanay, represents the state in the lawsuit against tobacco companies, including industry giants R.J. Reynolds Tobacco Co. and Philip Morris. Kansas is one of 40 states involved with the lawsuit that seeks reimbursement from tobacco companies for Medicaid costs of treating sick smokers.

Under the agreement Stovall reached with Entz and Chanay, the firm where she worked before becoming attorney general could receive as much as \$250 million for its secondary role in a successful lawsuit.

No one has questioned the contingency agreement's legality. However, some state legislators criticize the agreement, saying

the work should have been put up for a competitive bid.

In August 1996, Stovall signed the contingency agreement giving Entz and Chanay and two out-of-state law firms 25 percent of whatever Kansas collects from the tobacco companies as the result of either a settlement or successfully tried lawsuit.

In July, analysts in Stovall's office estimated Kansas would receive about \$2 billion over 25 years as its portion of the proposed \$368.5 billion national settlement. The agreement is stalled in Congress, with prospects dimming it will be approved.

The contingency accord signed by Stovall entitles Entz and Chanay to 12.5 percent of whatever the state receives after legal expenses other than fees that have been paid. If, for example, the state nets \$2 billion, the firm's percentage would equal

See STOVALL, Page 5A



Kansas Attorney General Carla Stovall said she wanted a law firm she knew she could trust 'because this was such tight-edge litigation.'



# Stovall

Continued from Page 1A

\$250 million.

Kansas court rules require that attorney fees be reasonable. It is unlikely, legal experts say, that any Kansas judge would consider \$250 million a reasonable fee for a firm that dealt the chores of local counsel in a lawsuit of national proportions and already well developed when the firm was signed. But even 1 percent of a \$2 billion settlement would be \$20 million.

The flip side of the contingency agreement is this: If there is no settlement and Kansas loses at trial, the state will owe the lawyers nothing.

But so far it has been city or state governments that have prevailed, either through trial or settlement.

Some states chose not to wait for congressional approval of the so-called global settlement.

Florida settled separately for \$11.3 billion. The first payment - \$750 million - is expected this month.

Lawyers there represented Florida on a 25 percent contingency basis and now insist their cut should be \$1.25 billion. Florida wants to pay them less. The lawyers have threatened to sue.

Mississippi, a state with a population comparable to Kansas, recently settled on its own for \$3.4 billion. Stovall's spokeswoman, Mary Horsch, said that if Kansas settles individually it could expect about the same.

With the agreement stalled, the tobacco companies have shown less willingness to settle. The case against them in Texas is to go to trial this month now that settlement negotiations there have collapsed.

Stovall's selection of Entz and Chanay was the result of an informal process. She didn't issue a request for proposals or advertise for firms that might want the work. Instead, she said, she assumed that interested firms would contact her after learning through press reports that she was considering a lawsuit.

"Newspaper stories carried the fact I was out and looking," Stovall said. "It was very public that we needed firms to carry it on."

Ultimately, Stovall heard from three firms. Of the three, Entz and Chanay had the least experience and resources for a product liability case, according to the legal industry's most widely used inde-

pendent rating service.

Of the other two firms that expressed interest, Hutton and Hutton of Wichita, probably the state's most successful product liability firm, had a conflict of interest, Stovall said. The firm already was suing tobacco companies on behalf of individual smokers.

Morrison and Hecker, with offices in Wichita, Overland Park, Kansas City, Washington, D.C., and Phoenix, also had a conflict. Nor was it willing to work on contingency, Stovall said.

Entz and Chanay's lack of product liability experience isn't a problem, Stovall said. The two national firms on the case are well experienced in that field.

Her old firm is "not a plaintiff-type firm," she said, "but they have 25 years' experience with Medicaid issues. I wanted somebody to look at it from a different perspective from the typical plaintiff's way."

Senate Democratic leader Anthony Hensley cites Stovall's selection of her old firm as a prime example of why Kansas law needs to be rewritten to require competitive bidding before the state contracts for legal or other professional services.

"It's a blatant example," he said. "Who's to say but that the attorney general didn't use that (contract award), if not to help herself, then to help her former law partners."

Hensley said Stovall might have chosen the firm to guarantee her employment there when she leaves political office, or simply to reward political allies.

Stovall was an associate at the firm from 1992 until becoming the state's top law enforcement officer in January 1995.

Partner Jeffrey Chanay was a member of Stovall's campaign advisory committee in 1994. The firm's office in Topeka was Stovall's campaign headquarters.

Stovall denies anything improper.

"I benefit in absolutely no way," she said. "I have no interest in returning to the private practice of law. My future is serving the state of Kansas as attorney general. The bottom line was I wanted a firm I knew and could trust because this was such a cutting-edge type of litigation."

Hensley has been a champion of changing the way state agencies contract for professional services. His most powerful ally has been House Speaker Tim Shallenburg.

(cont)  
4-23

(cont)



File photos

Attorney General Carla Stovall's former law firm, Entz and Chanay, represents the state of Kansas in the lawsuit against tobacco companies.

er, a Republican from Baxter Springs. Both say that state and local government contracts for professional services should result from a bidding process.

Competition, they say, would purge vestiges of political patronage and cronyism from a system that for the most part procures goods and services within civil service guidelines.

"I'm not trying to be accusatory to Carla," Shalenderger said. "We're just trying to prevent patronage, whether it's selling gravel to the state or doing legal work."

# Stovall says tobacco

## settlement outlook not good

By ROGER MYERS  
The Capital-Journal

T C J  
9-17-97

The national settlement negotiated with tobacco companies by the country's attorneys general may be going up in smoke, Kansas Attorney General Carla Stovall said on Tuesday.

She told a legislative committee the window of opportunity for congressional approval of the national settlement "is closing fast."

The attorneys general held a telephone conference call Thursday with their representatives who negotiated the settlement with the cigarette manufacturers.

President Clinton is expected to issue his long-awaited statement on the proposed agreement today.

"If the president only recommends a few changes in the settlement, it might be approved by Congress," she said after her appearance before the Legislative Budget Committee. "But if he wants to make a lot of major changes, most people agree the settlement probably won't be approved this year."

"We've been pretty disheartened by the president's lack of initiative on the agreement."

The president already has said publicly he wants at least one change in the agreement — the deal's restrictions on the regulation of nicotine by the federal Food and Drug

Administration.

The settlement forbids a ban on nicotine for 12 years and requires a lengthy court process if the agency even wants to lower levels.

Stovall told the budget committee that Florida, which settled its state lawsuit against the tobacco companies on Aug. 25 for \$11.3 billion, settled for far less than its suit had demanded.

She said Texas is gearing up to go to trial against the cigarette makers and commented, "Tobacco won't settle with Texas."

Stovall said the apparently diminishing chances the national settlement will be approved by Congress increases the chances Kansas will have to go to trial against the

tobacco companies.

"I'm not saying at this point there's a growing possibility that we'll have to go to trial," she said during an interview after her appearance before the committee on another issue.

"But, I'm an eternal optimist," Stovall said. "I think that, politically, Clinton will have a hard time walking away from the national settlement."

Stovall said that if Clinton lays down conditions for accepting the settlement that are too harsh on the tobacco companies, Congress might be able to walk away from the deal and blame the president for killing it.

Stovall was among the attorneys general of

39 states and one territory who announced June 20 they had hammered out an historic deal with the tobacco companies.

Under the agreement, the tobacco companies would pay \$368.5 billion to the states during 25 years. Kansas' share of the settlement has been estimated at roughly \$2 billion for those 25 years.

The agreement also would impose severe restrictions on the advertising of tobacco products, especially advertising that would appeal to young people.

In exchange for paying the settlement and accepting the restrictions on advertising and manufacturing of tobacco products, the companies would receive protection from liability in lawsuits.

# Lawyer fees for other states suing Big Tobacco

Hutch  
9/19/97  
By Mike Shields

Harris News Service

**TOPEKA** - On Aug. 20, 1996, Kansas Attorney General Carla Stovall became the first Republican to file a state's lawsuit against the tobacco industry.

But by the time Kansas joined the battle to make cigarette companies reimburse states for their Medicaid costs of treating sick smokers, 10 other states led by Democratic attorneys general already were in the thick of the legal struggle.

Mississippi, led by Democratic

Attorney General Mike Moore, was the first state to sue - in May 1994. Moore hired two outside firms to help: Scruggs, Millette, Lawson, Bozeman & Dent of Pascagoula, Miss.; and Ness, Motley, Loadholt, Richardson & Poole of Charleston, S.C.

Because of their early involvement, those firms went on to represent, together or separately, at least 12 of the 40 states that eventually joined in suing the tobacco companies. Among the states represented by both firms is Kansas.

Stovall also hired her former law firm, Entz and Chanay of Topeka, to act as local counsel. She signed a contingency agreement with the three firms giving them claim to 25 percent of whatever the state might ultimately gain from its tobacco action.

Stovall wasn't the first to agree to a 25-percent contingency. However, several states chose cheaper arrangements, managing somehow to recruit more firms while promising them less. At least one state found representation for free. California and Georgia, both of

which launched actions this summer, are using salaried state attorneys.

Here is a representative sampling of what other states were doing, according to a report by the Tobacco Control Institute, when Stovall signed the Kansas contingency agreement:

**Mississippi:** In addition to the Scruggs, Millette and Ness, Motley firms, the state hired nine other Mississippi law firms and Harvard Law School Professor Laurence Tribe. It was decided that the court would determine

attorney fees.

**Minnesota:** It filed suit in August 1994, hiring the Minneapolis, Minn., firm of Robins, Kaplan, Miller & Ciresi on a 25-percent contingency.

**West Virginia:** It filed suit in September 1994. Ness, Motley and two West Virginia firms agreed to take the case for free.

**Florida:** The state filed suit in February 1995. In addition to Scruggs, Millette and Ness, Motley, 10 Florida firms, along with Laurence Tribe, were hired on a 25-percent contingency.

**Massachusetts:** It filed suit in December 1995. Ness, Motley, along with Laurence Tribe and three local firms, were hired on a 25-percent contingency.

**Louisiana:** The state filed suit in March 1996. In addition to Scruggs, Millette, four other firms were hired for fees to be decided by the court.

**Texas:** It filed suit in March 1996. For a 15-percent contingency, the state hired five Texas firms.

**Maryland:** It filed suit in May 1996. A single Baltimore firm was hired for a 25-percent contingency.

# Committee says Stovall's former firm should have fee cap in tobacco suit

By ROGER MYERS  
The Capital-Journal

TCS  
11-21-97

**A** legislative committee signalled its intention Thursday to void the contract that Attorney General Carla Stovall signed with her former law firm to represent the state in its lawsuit against tobacco companies.

Members of the Legislative Budget Committee said the contract could pay Stovall's old law firm, Entz & Chanay, P.A., of Topeka, as much as \$250 million.

"I think there is a concern about the amount of the fee involved, and I think there is also a concern about the way the contract was negotiated and awarded," said Rep. Henry Helgerson, D-Wichita.

Sen. Dave Kerr, R-Hutchinson, said, "We need to put language in our report that we feel strongly there should be a modification of the contract."

In its report, the committee said it wants Stovall to renegotiate the contract so it contains a monetary cap on fees.

Helgerson suggested that the committee introduce legislation that would provide for no money from the Legislature to pay attorneys fees to firms representing the state in the tobacco case.

Most contracts entered into by the state contain a standard provision that payment of the contract is subject to appropriation by the Legislature.

As one of its study topics this summer and fall, the budget panel reviewed Stovall's decision to sue the tobacco companies. Recently, it received an update from her on the status of the litigation.

Kansas has filed suit against six major cigarette manufacturers and two of their trade association groups, seeking to recover unspecified damages as the result of smoking-related illnesses

suffered by Kansas Medicaid patients.

The state also is among 39 states and Puerto Rico that are part of a settlement reached by the state attorneys general and the tobacco companies under which the companies agreed to pay the states \$368.5 billion during 25 years to settle their lawsuits.

Stovall couldn't be reached for comment on the committee's action.

However, Jeff Chanay, a partner in her former law firm, said: "Without seeing what they have proposed and without seeing some written indications of their reasons, it's difficult to comment. But I think the Legislature would have difficulty abrogating a contract that was entered into freely by the attorney general."

Stovall signed contingency fee contracts with three law firms to represent the state in its suit against the tobacco companies. Besides Entz & Chanay, the firms of Scruggs, Millette, Lawson, Bozeman & Dent, P.A., of Pascagoula, Miss., and Ness, Motley, Loadholt, Richardson & Poole, P.A., of Charleston, S.C., also were hired because they were the lead firms in suing the tobacco companies nationally.

Stovall said she chose her old law firm because it has extensive experience in recovering on cases involving Medicaid reimbursement and because the firm had her utmost trust "in protecting the interests of Kansas taxpayers."

The contingency fee contract provides that counsel for the state could receive a fee of up to 25 percent of whatever amount the state receives from its own suit against the tobacco companies, or from the global settlement arranged by the state attorneys general in March. In a contingency fee arrangement, the lawyers receive a percentage of the settlement amount. If their side doesn't prevail in the law

suit, the lawyers receive nothing.

Kansas' share of the global settlement has been estimated at about \$2 billion.

# No violations found in Stovall contracts

## Audit report finds perceived favoritism

Hutch 10-8-97  
The Associated Press

TOPEKA — Attorney General Carla Stovall has not violated Kansas' conflict-of-interest law by awarding outside contracts for legal work to friends and political contributors, but it can be perceived as favoritism, the Legislative Post Audit Division said.

"While such contract awards don't fall under the definition of conflict of interest contained in state law, they can create at least the appearance of favoritism," the auditors reported.

The Legislative Post Audit Committee received the report at a meeting Monday

in Ulysses.

In responding to the audit Tuesday, Stovall said it confirmed that contracts and payments for legal counsel in the Colorado water litigation "have been proper."

The attorney general said she rejects a suggestion by the post audit staff that she select outside counsel for litigation her office handles through a contract system she labeled as "expensive and bureaucratic."

Auditors recommended that the attorney general's office establish "reasonable procedures to ensure that its contracting process is as open as possible."

"The selection of outside attorneys has been and should remain a professional legal decision, not a bureaucratic process," Stovall said in a statement issued through her office.

"I believe the citizens of Kansas elect the attorney general to exercise professional legal judgment in determining who will defend and prosecute for the state."

Stovall said her duty is to taxpayers, not to attorneys who want state business. She said citizens would become suspicious of law firms that made campaign contributions, then were awarded state work.

She said her office contracts out less than 1 percent of the work it handles.

One of the firms Stovall hired to represent the state in the tobacco litigation is Entz & Chanay of Topeka, her former law firm. The firm and its members contributed \$6,442 to her campaign.

Stovall argued that the cases were awarded to outside counsel because they could best represent Kansas, not as polit-

ical payoffs.

"When selecting outside legal counsel for a person or agency, I think only of one thing, the client," she said in her audit response.

Auditors looked at 35 cases where Stovall had contracted with 29 private law firms to defend the state. In those cases, 20 of the 29 firms had made contributions to her campaign, ranging from \$50 to about \$6,500.

Those 20 firms received 27 of the 35 contracts.

Half of those firms also contributed to Stovall's opponent in either the primary or general election. Also, members of 75 other firms and about 140 other attorneys contributed to her 1994 campaign but got no business from her.

## Record privacy might require special committee

10-8-97  
Hays Daily News

TOPEKA (AP) — A legislative study committee may recommend that the Legislature create an oversight committee to keep a close eye on the growing problem of confidentiality of public records.

Sen. Janice Hardenburger, R-Haddam, said Tuesday the problem is becoming so pervasive that legislative intervention may be needed.

"It's been quite eye-opening to see what's available in the open record," she said as the interim Governmental Organization Committee, which she heads, took testimony on the scope of the problem.

Sen. Stan Clark, R-Oakley, who has dramatized the availability of personal information on the Internet by downloading data on legislators and reporters and showing it to them, urged the committee to recommend legislation to better protect confidential government data.

Hardenburger said the committee plans to make recommendations to the 1998 session opening in January.

"We just might consider establishing a joint oversight committee on government information," she said. "With the rapid development of technology, we need to get a handle on it."

There is a glut of government-generated information available on the Internet, Clark said, and many of those accessing the information cannot be trusted to use it in a positive way.

The committee heard from a wide range of state officials who deal with state records.

Fred Boesch, the state's chief information architect, said Kansas has received high marks nationally for the way it provides records data and "is a leader in applying technology to delivery of services to its citizens."

However, he said, making that information availability raises data quality and privacy issues.

"Much of the data in our repositories comes from other jurisdictions and private sources," he said. "As we make greater use of data, its accuracy becomes a greater issue..."

He recommended the state consider a code of principles similar to one developed by the state of Washington to provide the policy framework for dealing with the privacy and accuracy issues.

# Stovall, Legislature have rocky relationship

● In some cases, legislators' attitudes toward Atty. Gen. Carla Stovall border on contempt.

BY JOHN HANNA  
ASSOCIATED PRESS WRITER

4-5-98  
TOPEKA — House members wanted to send Atty. Gen. Carla Stovall a clear message: They were disgusted.

The stated issue was her office's contract with her former law firm to help handle lawsuits against tobacco companies, a contract worth hundreds of thousands — if not millions — of dollars in legal fees.

The House attached a rider to its version of the proposed budget that would require Stovall to terminate the contract, as well as another for legal services related to tobacco litigation. Stovall said it could destroy the state's efforts to obtain money from the companies.

But the issue was not so much about the tobacco litigation as it was about Stovall herself, Kansas' first female attorney general serving her first term.

In some cases, legislators' attitudes border on contempt.

"The Legislature does not have confidence in her abilities," said Rep. Tony Powell, R-Wichita, a critic who once considered running against Stovall in the GOP primary. "That's bipartisan."

Democrats so far have watched Stovall's situation with some amusement. Much of the criticism is coming from her fellow Republicans, albeit the more conservative ones.

"Democrats are supposed to bash Republicans," said House Minority Leader Tom Sawyer, D-Wichita. "It's interesting that she seems to have no defenders among Republicans in the House."

In the House, conservatives resented her 10-month investigation into the activities of BioCore Inc., a Topeka medical products company that employs conservative Rep. Greg Packer, R-Topeka, and once employed Speaker Tim Shallenburger, R-Baxter Springs.

Conservatives were upset that Stovall announced her investigation publicly in March. She filed no criminal charges against the company or its officers, including Packer, but raised questions publicly about whether the company tried to evade income taxes — something its officials strongly denied.

Packer wondered aloud recently to a reporter why Stovall's handling of the investigation wasn't the subject of more criticism.

Stovall also angered the House when she criticized a death penalty bill they approved. In a news conference, she said the bill would make it nearly impossible to get a death sentence in Kansas. She singled out one amendment as "clandestine" and even said it could "perpetrate a fraud."

House members demanded an apology. She did not give them one.

"I think her style is wearing thin," Powell said. "It's very ineffective."

But the hiring of her former law firm, Entz and Chaney of Topeka, to handle tobacco litigation is a real sore point for many legislators.

Stovall has said the firm was the best qualified in the state to help out-of-state law firms with tobacco litigation. She also dismisses as ridiculous the estimates that the firm could receive as much as \$325 million in fees from a settlement with tobacco companies.

But even her defenders acknowledge the hiring of her former firm has strained her relationship with legislators.

"They perceived that she used her office to direct contracts to her former firm and political colleagues, and because they're not politically aligned with her, they resent it," said Rep. David Adkins, R-Leawood, a supporter.

In the minds of many lawmakers the attorney general's hiring of her former law firm simply was improper.

"I think that damaged her credibility a lot," said Senate Minority Leader Anthony Hensley, D-Topeka. "It's at least perceived as a very big conflict of interest."

## AREAWIDE

### Five Kansas programs win Health fund grants

A \$38,600 grant will allow Southwestern College in Winfield to open an Early Care and Education Preschool Academy in the fall.

The grant is one of five totaling nearly \$84,000 awarded to local agencies by the United Methodist Health Ministry Fund in Hutchinson. The Breakthrough Club of Sedgwick County received \$4,693 to cover the costs of sending members to a conference in Wichita.

The Moundridge Council for Children and Youth received a \$28,000 grant to start a Big Brothers & Sisters program. The Ozawkie United Methodist Church will use \$11,589 to fix up a building for an after-school program. In Pratt, a \$1,000 grant will pay for a psychiatrist to conduct a one-day program, sponsored by Parents and Children Together.

### DENTAL DISPUTE

7-7-98  
► Legislators resolve dental dispute with bill to governor — Legislators have declared a three-year truce in the political fight between dentists and dental hygienists.

The House and Senate on Friday sent Gov. David Graves compromise legislation designed to settle, for now, the question of who should be allowed to clean teeth above the gum line.

The compromise was drafted by a conference committee of three senators and three House members. The Senate adopted it, 30-9, and the House, 93-29.

The new law would expire in 2001. The bill allows assistants — but only those with specialized training — to clean teeth, under the supervision of dentists. It requires educational institutions to report to legislators next year on efforts to train more hygienists, who are licensed by the state. It also expands the Kansas Dental Board from five members to seven members.

# ORIGINAL TRANSCRIPT

BEFORE THE HOUSE TAX COMMITTEE

IN THE MATTER OF

HB 2821 - Imposing a Tax Upon Income Derived  
From Certain State Controversy  
Settlement Agreements

TRANSCRIPT

OF

PROCEEDINGS

taken on the 16th day of February, 2000, beginning at  
9:00 a.m., at the State Capitol Room 519 South, in the  
City of Topeka, County of Shawnee, and State Kansas,  
before the House Tax Committee.

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House Taxation

Date: 2-16-00

Attachment #: 5-1



1                    REPRESENTATIVE WAGLE:     Good  
2 morning, Committee. Today we are going to  
3 begin our hearings on House Bill 2821 in  
4 your books. Before we start, yesterday the  
5 committee was inundated with paper, and I  
6 know how much time all of you have to be  
7 sorting through some of these. I wanted you  
8 to know that what I have done is I have  
9 taken all the information we have received  
10 thus far and I've cataloged it, so that if  
11 you don't want to have to sort through your  
12 papers, you can come to my office and look  
13 through anything and find anything that  
14 we've addressed so far in an organized  
15 fashion.

16                    Our first proponent of the bill is  
17 Representative Tony Powell. And Tony, we've  
18 been swearing in people. Would you mind  
19 taking an oath?

20                    REPRESENTATIVE POWELL:  
21 Absolutely.

22  
23                    TONY POWELL,  
24 called as a witness on behalf of the  
25 Committee, was sworn and testified as

1 follows:

2

3                   REPRESENTATIVE POWELL:     Thank  
4 you, Madam Chairman. I appreciate the  
5 committee's time to give me some time this  
6 morning to talk about this legislation and  
7 also to make a few remarks about what the  
8 committee has heard over the past couple of  
9 days.

10            At the outset, I want to make some  
11 personal comments about big tobacco and  
12 whether this is about defending big tobacco  
13 or attacking big tobacco. I had a press  
14 person make a suggestion that I was simply a  
15 defender of big tobacco, and that's not  
16 true. My father died of lung cancer and  
17 throat cancer. In fact, he had to have  
18 quadruple bypass surgery for his heart for  
19 heart disease. He had to have a  
20 tracheotomy. He couldn't talk in the last  
21 months of his life. My father was an avid  
22 singer throughout his life. He used to-- in  
23 fact, when he was in college, he went to  
24 Notre Dame, and he sang for the Notre Dame  
25 Glee Club. And I remember how heartbreaking

1 it was for my father to lose his voice. So  
2 I am one of the victims of smoking. So the  
3 suggestion that, well, somehow I'm just a  
4 shield to protect the tobacco industry  
5 couldn't be more false. I'm not. But I  
6 believe this whole debate is really about  
7 what's right, and I believe it's about  
8 personal choices. And we can get into -- I  
9 suppose some other day we can have a debate  
10 about the propriety of the whole tobacco  
11 settlement, whether it was good or whether  
12 it was bad, but that's not really what this  
13 debate is about today.

14 You know, there was one thing my father  
15 used to tell me. He used to tell me march  
16 to your own drummer. I think the reason he  
17 told that, he didn't want me to go with the  
18 flow. He wanted me to stand up and to do  
19 what's right. And that's what I'm doing  
20 today. In this whole effort, it's not about  
21 politics or about agendas or about ambition.  
22 It's about standing up to do what's right.  
23 Sometimes that can be very difficult when  
24 you do that. I mean all of you know, I'm  
25 looking at Lynn Jenkins. She and I had a

1 battle about campaign finance last year.  
2 You know, that got kind of tough at times.  
3 When we stand up and when we try to do what  
4 we think is right, you know, here in this  
5 body, that's where the clash of ideas hit.  
6 Sometimes it gets tough. But that's what  
7 making change, that's what challenging the  
8 status quo, that's what challenging the  
9 conventional wisdom is all about. That's  
10 what I'm trying to do with this bill and  
11 with my whole effort about questioning the  
12 propriety of the fees, the attorney fees in  
13 this case.

14 Before I talk about my bill, I want to  
15 talk about some of the issues you've been  
16 graveling about. You've gotten one side of  
17 the story. I'd like to suggest a different  
18 point of view or as they say the rest of the  
19 story. I'm an attorney as I think most of  
20 you. I'm a defense lawyer. I'm an attorney  
21 of counsel with the firm of Martin,  
22 Churchill in Wichita. We're a defense firm.  
23 I've been proud to practice in that firm for  
24 almost ten years. So I know a little bit  
25 about the legal process and how that works.

1 I know a little bit about the obligation of  
2 lawyers, I think, to act ethically. I think  
3 I know a little bit about the obligation of  
4 lawyers to act with a sense that what they  
5 do doesn't have an appearance of  
6 impropriety, and I have to tell you I'm very  
7 concerned about some of the things, with all  
8 due respect, that the General and her office  
9 has done in this whole affair.

10 Let me talk a little bit about the  
11 records issue, because I know that has been  
12 a source of contention in this committee  
13 about producing records, about whether  
14 certain records were available to this  
15 committee. I guess what bothered me the  
16 most yesterday and what I thought was really  
17 appalling was the fact that the General's  
18 office didn't maintain or discarded  
19 important correspondence and important  
20 records showing the discussions and drafts  
21 of contracts that her office had with the  
22 Hutton and Hutton law firm. Now, I could  
23 perhaps understand that if this case was not  
24 an important case, but by her own admission,  
25 this was the biggest case in Kansas history.

1 I mean probably the biggest case in the  
2 history of the world. She didn't keep all  
3 her documentation for this case? I find  
4 that very troubling. I think this committee  
5 should, too. Now, I can only conclude--  
6 since I don't think you can argue that it  
7 wasn't important, I can only conclude that  
8 they didn't want to keep those records.  
9 Now, there was some suggestion that, well,  
10 we just don't have room to keep all those  
11 records. Let me tell you something. Most  
12 law firms, you can go buy a scanner I think  
13 for 80 bucks, and you can scan documents  
14 onto CD's. You don't have to store the  
15 paper. You can put it on CD's and it  
16 doesn't take all that much space at all. So  
17 I just think it's irresponsible, I think  
18 it's negligent on the part of her office to  
19 not have kept those records, particularly  
20 someone who under the law is charged with  
21 enforcing our open records law. We are  
22 having a big debate about that this year. I  
23 think that ought to very much disturb this  
24 committee.

25 Let me talk a little bit about the

1 choice of Entz and Chanay. You heard all  
2 the arguments. I'd like to make a few  
3 comments about that. First of all, I don't  
4 want to run down that law firm. They are a  
5 good law firm. In fact, some of the work  
6 that they do is actually very similar to the  
7 work that our law firm does. We've had  
8 association with them in terms of  
9 representing nursing homes around the state.  
10 We represent -- our law firm represents some  
11 of the largest nursing homes in the State of  
12 Kansas, and we do some health care law. My  
13 particular specialty is employment law which  
14 I know Jeff Chanay does some of and so does  
15 Stu Entz. I don't want to degrade them as  
16 attorneys, but our law firm would never hold  
17 ourselves out to be experts nor do I think  
18 we would think it wise to undertake a case  
19 such as this on behalf of the state, because  
20 we would know that we wouldn't be the best  
21 choice for that job. And I can understand  
22 with a lot of money, the possibility of a  
23 huge fee might cloud your judgment, but I  
24 think the suggestion that this firm, this  
25 local counsel and this firm was somehow the

1 best firm for the job, I'm sorry, I can't  
2 agree with that.

3 I want to address this point about,  
4 well, this was a risky venture. You know,  
5 they were doing me a favor, according to the  
6 General. I think it's interesting back in  
7 '97 Jeff Chanay himself was quoted by the  
8 Harris News Service when they decided to  
9 take the case, he said he thought the state  
10 would make a recovery in nine figures, in  
11 the hundreds of millions of dollars when  
12 they took the case. That doesn't sound to  
13 me like they thought it was a risky venture.  
14 In addition, and I've talked to a number of  
15 trial attorneys, plaintiff's lawyers, and  
16 not just the Hutton firm, I've talked to  
17 others and I know as an attorney that I've  
18 encountered in my professional life, they  
19 will tell you the biggest risk any  
20 plaintiff's firm takes in any contingency  
21 fee case is the payment of the expenses.  
22 It's fronting the expenses. That's where  
23 the cost, the immediate cost of a case  
24 that's taken under contingency is borne by a  
25 law firm. When they start that lawsuit,



1 there is all the costs associated with the  
2 discovery, with the travel, with deposing  
3 witnesses, Interrogatories, all those kind  
4 of things. That's where the cost of a  
5 lawsuit comes in. But the fact is the Entz  
6 and Chanay firm never had to bear those  
7 expenses. The national lawyers in this case  
8 bore the expenses. They had no risk in this  
9 case. There was no risk. In addition,  
10 their role as local counsel, and again, I'll  
11 quote Jeff Chanay in his statements that he  
12 made to the post audit, normally local  
13 counsel simply makes sure that out of state  
14 lead counsel complies with Kansas law and  
15 gives the judge a chance to see a familiar  
16 face in the courtroom and simply files the  
17 pleadings as they come in from the lead  
18 counsel. So there is no -- they weren't  
19 looking at a huge investment when they took  
20 this case in terms of time and resources to  
21 have to do the research in this case to  
22 discover the theories of the claim. That  
23 was done for them by national counsel in  
24 this case. And so with all due respect, I  
25 think their risk was incredibly, incredibly

1 small in this case.

2           The other thing I want to respond to is  
3 the argument by the General that says the  
4 post audit committee looked at this and they  
5 said I didn't violate the law. You know  
6 what folks? You know why she didn't violate  
7 the law? There was no law to break. There  
8 is no law governing the hiring of outside  
9 counsel. She could have hired her brother.  
10 There is simply no law on that. I find that  
11 appalling. I know there is an effort among  
12 myself and many others in this committee to  
13 require the competitive bidding of  
14 professional services like lawyers, because  
15 I think it's important for the credibility  
16 and for the appearance of acting properly  
17 when we hire counsel. I think it's  
18 significant, though, that the post audit,  
19 they didn't have to say this, but they did  
20 say that her actions created the appearance  
21 of favoritism. When you look at it  
22 honestly, it certainly looks that way,  
23 regardless of what spin after the fact you  
24 want to put on it. I think everyone clearly  
25 sees it that way. I think any fair reading

1 of the General's decision is that it is  
2 exactly what we suspect it was. She was  
3 doing a favor for political supporters of  
4 hers. She hired a firm, though a reputable  
5 firm, clearly had experience in this area,  
6 and she turned down the services of another  
7 law firm from Kansas that was nationally  
8 known in this area.

9 The other point I want to make. I  
10 personally reviewed the pleadings in the  
11 three cases that were filed here in Kansas  
12 on tobacco. There has been a suggestion,  
13 and she's repeated it, made the repeated  
14 statement that this was a Medicaid  
15 reimbursement case. Now, I invite you  
16 yourselves to read the petition. I've read  
17 the petition. I read it again this morning.  
18 It over and over and over again talks about  
19 fraud, about the failure to warn, about how  
20 the tobacco companies lied to the public  
21 about the safety and the dangers of their  
22 product. Now, folks, in a products  
23 liability case, that's what we call a tort.  
24 That's an injury that someone causes to you.  
25 And in products liability law, a tort can be

1 a product injures you by it was either  
2 defectively designed, it was defectively  
3 manufactured or they failed to warn you  
4 properly about the risk of using that  
5 product. Really when you boil it all down,  
6 yes, they cite consumer protection, a number  
7 of other things, but you read through that  
8 pleading, and it's unmistakable that the  
9 kernel of this case, the kernel of this case  
10 was about a failure to warn, a failure to  
11 tell the public about the real dangers  
12 associated with tobacco. The whole  
13 controversy about this joint defense thing  
14 that you've probably heard about and the  
15 Liggett lawsuit, it was the fight over  
16 documents that would have revealed what the  
17 tobacco companies were saying internally  
18 about that issue. They were very damaging  
19 because they revealed the tobacco companies  
20 knew about the dangers of their product and  
21 tried to hide them. So that is the kernel,  
22 is that the crux, that is the baseline,  
23 that's where this whole thing comes down to  
24 the point. That's what it was about. Now,  
25 the Medicaid claim theory part of this case

1 was the theory used to allow the state to  
2 recover. See, the claim of injury in this  
3 case is not normally held by the state.  
4 It's held by individuals. But in order for  
5 the state to boot strap itself into this  
6 case, they had to argue a theory of, well,  
7 because the state incurred costs through  
8 Medicare because of sicknesses and illnesses  
9 resulting from tobacco by Kansans,  
10 therefore, that's how the state should  
11 recover. That was not the basic thrust of  
12 this case. So I just think the committee  
13 needs to hear that side of the story.

14 Let me talk about the fees, because  
15 that's what this is really all about. Was  
16 it right? Was it fair? Do you think it was  
17 appropriate? Now, you have in front of you  
18 here, here are all the boxes, these are all  
19 the pleadings in the three cases that the  
20 State of Kansas filed. These were provided  
21 to us. I had the research department get  
22 these from the attorney general's office.  
23 These are four boxes right here. I have  
24 personally gone through the pleadings  
25 personally. I've reviewed all the pleadings

1 in this case personally. I've pulled out  
2 what I regard as the substantive pleadings  
3 in the file filed by the plaintiff's in this  
4 case. That would be, for example, the  
5 memorandum of law and opposition to the  
6 defendant's motion to dismiss, the  
7 memorandums of law dealing with whether the  
8 tobacco companies in the Liggett case should  
9 produce the documents they didn't want to in  
10 this case. Those are the serious issues in  
11 the case. By way of disclosure, I didn't  
12 put in some of the procedural motions, like  
13 motions for continuances, motions to admit  
14 counsel, just the substantive work that  
15 would really take an effort for any lawyer  
16 producing that pleading to put some serious  
17 work in there. I also didn't include some  
18 of the attachments to some of those  
19 pleadings where they were just copies of the  
20 settlement agreement that was very thick.  
21 What we came up with is this right here.  
22 These are the plaintiff's pleadings in the  
23 case. So I ask you, you know, I trust your  
24 judgment in this case. I guess I can blow  
25 hot air up here. It's really up to you. I

1 ask you is this worth \$54,000,000. I have a  
2 hard time with that. By way of comparison,  
3 the KPERS case, I've talked to the lawyers  
4 in KPERS. The pleadings in that case would  
5 fill a room, would fill a room. Let me tell  
6 you something else about what didn't happen  
7 in the tobacco cases. There was no  
8 discovery. There was no document  
9 production. The tobacco companies never  
10 produced any of these infamous records as a  
11 result of what the general claims to be a  
12 big victory on this joint defense. They  
13 didn't produce a single document. There was  
14 no trial date ever set. No witnesses were  
15 ever deposed by our state. That, again, is  
16 in marked contrast to what happened in the  
17 KPERS litigation. Hundreds of witnesses  
18 were deposed. Hundreds of witnesses were  
19 deposed. Boo koo discovery was done in that  
20 case. 14 lawsuits were filed in the KPERS  
21 case. The attorneys in that case are  
22 getting far less money than the attorneys in  
23 this case are getting. In fact, I talked to  
24 one of the lawyers last night who said, you  
25 know, Tony, we did so much work that our

1 hourly rate when we look at, and they kept  
2 records of how much time they spent, all the  
3 time they spent, they said, you know, our  
4 hourly rate is not going to be that good.  
5 We are probably going to break even on those  
6 cases. Now, to me, that's a plaintiff's  
7 attorney doing contingency work earning  
8 their fee. With all due respect, I don't  
9 think the lawyers in this case earned that  
10 fee. You don't have to take my word for it.  
11 I invite you to review the arbitration award  
12 and what they say about what local counsel  
13 did in this case. That arbitration decision  
14 said this whole case was dominated by  
15 national counsel. They say in their  
16 decision that no documents were ever  
17 produced, no discovery was ever undertaken.  
18 That's the work in any lawsuit. It's the  
19 discovery that's the bulk of the work in a  
20 case. That wasn't done.

21 In talking with some of the tobacco  
22 lawyers, and I have talked to some of them,  
23 they characterize the Kansas case as a side  
24 show. They would tell you their side of the  
25 story is that the Kansas lawsuit had no



1 impact on the settlement. I guess we can  
2 probably debate that ad nauseam about  
3 whether it did or whether it didn't. It's  
4 hard to know for sure. The fact is it  
5 settled before, you know, any of those  
6 documents were produced. But I would call  
7 your attention to one document, and I'll  
8 have this distributed to you. I just got it  
9 this morning. It's called the Strategic  
10 Contribution Fund Allocation Committee  
11 Report. There are two basic ways the states  
12 were paid in the settlement. One was a  
13 percentage of what the Medicare expenses  
14 were of each state. Every state that was  
15 part of the national settlement received a  
16 percentage based upon that. Then there was  
17 another fund called the Strategic  
18 Contribution Fund that awarded states  
19 additional money based upon the work they  
20 did in litigating the case against tobacco  
21 companies. Let me just read what their  
22 criteria was that they used. They said the  
23 criteria to be considered by the allocation  
24 committee in its allocation decision include  
25 each settling state's contribution to the

1 litigation or resolution of state tobacco  
2 litigation including but not limited to  
3 litigation and/or settlement with tobacco  
4 product manufacturers including Liggett,  
5 Myers and its entities. Now, when I talked  
6 to the tobacco companies. They said in  
7 addition to the four lead states such as  
8 Mississippi, Florida, Texas and Minnesota, I  
9 believe are the four, they received a huge  
10 amount of money from the settlement.  
11 Mississippi, a state roughly the size of  
12 Kansas, I believe their recovery was several  
13 times what Kansas received. Why? They  
14 aggressively pursued the litigation in that  
15 state. As part of the national settlement,  
16 the tobacco lawyers indicated to me the  
17 state of Washington was also very aggressive  
18 in their pursuit of the tobacco companies.  
19 They received -- I'll give this to you, and  
20 I invite you to look at it. The State of  
21 Washington received \$496,000,000 in extra  
22 money because of their work pursuing the  
23 tobacco companies. Kansas, on the other  
24 hand, received \$159,000,000. What's  
25 significant also is the State of Colorado

1 which did not hire local counsel in this  
2 case, they received more money than we did.  
3 They received \$202,000,000 extra. So you  
4 may not want to take my word for it. I  
5 think the numbers say a lot about what was  
6 the so-called worth about what Entz and  
7 Chanay provided to this state. I don't  
8 think it was much. I'm sorry. I don't  
9 think it was much. Now, should they get  
10 paid, maybe get paid handsomely for what  
11 they did, sure. But \$27,000,000, no way.  
12 No way.

13 Also maybe the secretary could pass  
14 this out for me. I want you to be the judge  
15 of whether you think these are fair. I  
16 think that is what the bill is all about.  
17 That's what you have to come to a judgment  
18 on, is whether you believe the fees in this  
19 case are right. What I'm handing out to you  
20 is K.S.A. 7-121(B). The factors used to  
21 determined fees for lawyers in certain  
22 health care cases, like medical malpractice  
23 cases. It's based upon the Supreme Court  
24 decision talking about what fees are  
25 reasonable. Look at those factors and judge

1 for yourself whether you think Entz and  
2 Chanay meets the condition set out here and  
3 whether \$27,000,000 really comports with  
4 this. I don't think it does. I don't think  
5 it does.

6 Now, you've heard this figure that Entz  
7 and Chanay spent 10,000 hours doing work in  
8 this case. That's a figure that has no  
9 basis in fact. When I talked to the lead  
10 counsel for Philip Morris who represented  
11 them here in Topeka, he said that just in a  
12 guesstimate that he gave me over the phone,  
13 it was highly unlikely he would have spent  
14 half as much time, half as much time on the  
15 case. Yet, I will tell you the bulk of the  
16 pleadings in this file right here comes from  
17 the defendants in the case. They were the  
18 ones producing the paper. They were the  
19 ones producing the motions to dismiss, for  
20 the motions to intervene. They were working  
21 hard.

22 The other thing that I might suggest to  
23 you is I would go back -- I would encourage  
24 you to go back and look at what the  
25 legislature did, not me, this is not me

1 talking, what the legislature did in 1998.  
2 That's when this story first broke was back  
3 in 1998. What did the legislature do in  
4 response to when they heard the Entz and  
5 Chanay firm and the lawyers could get 25  
6 percent of our settlement. The legislature  
7 back then, and I think it was unanimous,  
8 said we think that's an outrage. They in  
9 that proviso, and that appropriations  
10 proviso capped the attorneys fees  
11 representing all counsel at \$20,000,000. So  
12 if you want, I think, well, 50 percent of  
13 54,000,000, that's probably even a little  
14 more generous. So we are not going back on  
15 whatever word or whatever commitments we  
16 might have made by doing that. We made a  
17 statement back then that said, you know, at  
18 the very most, that was a figure they  
19 thought, give the skies a limit kind of a  
20 figure and came up with \$20,000,000. So I'd  
21 ask you again, does 54,000,000 sound right  
22 to you. I've talked to so many people.  
23 I've had so many people call me. They are  
24 talking about this at the rotary clubs.  
25 They are talking about this at the Qawanis

1 clubs. I've got ladies in my church calling  
2 me. I've got good Republican business  
3 people calling me and saying they are  
4 outraged. I have smokers calling me. They  
5 have said what have we gotten out of this  
6 deal? You know, the price of cigarettes has  
7 gone up. They are paying more money as a  
8 result of this whole settlement. But  
9 profits for the tobacco companies, I  
10 understand they are up. I guess big  
11 business, big government, they are winning.  
12 I don't know about the real -- the supposed  
13 victims in this thing, I'm not sure they are  
14 winning. We've got a lot of good intentions  
15 and we're going to spend some money to try  
16 to do some things. I've got to be honest  
17 with you, I'm skeptical. I'm skeptical. I  
18 can't help wonder -- and I have four kids of  
19 my own, by the way. I can't help but think  
20 but this is cash over kids. I can't help  
21 wondering that.

22 Let's finally talk about the bill.  
23 It's kind of an afterthought in all the  
24 discussion we've had. It's really very  
25 simple. I think what they are getting is

1 too much. So when I was looking at this  
2 issue, the first time I heard about this  
3 whole settlement and what had gone on in the  
4 settlement is last year when we received a  
5 briefing from the attorney general about the  
6 settlement. What really disturbed me in the  
7 part of the settlement is the way the deal  
8 was structured. It was structured in such a  
9 way so the General could come to you and say  
10 the state isn't paying a dime. The tobacco  
11 companies are paying all the money. Let me  
12 tell you something, as a defense lawyer,  
13 that's maybe technically true, but in  
14 practical terms, it's not true. As a  
15 defendant in a case, when you represent a  
16 client, you have a pot of money that you  
17 make a business decision to say this is how  
18 much we can afford to pay. Sometimes what  
19 you do is you bribe the lawyers on the other  
20 side. You know what you do, you give them  
21 -- throw some money at them to get them to  
22 settle the case. That's what was done here.  
23 They set aside a separate pot of money  
24 totally unaccountable to the legislature,  
25 can't get at it through open records or

1 anything like that and say we're going to  
2 set aside a pot of money, and we'll pay the  
3 lawyers directly. Everyone will say, hey,  
4 the state ain't paying a dime. That's how  
5 they helped get this thing settled to do  
6 that. The attorneys in this case could get  
7 paid free from interference from us because  
8 they know darn good and well what would have  
9 happened. Can you imagine if they had not  
10 done this and we had gotten our money, we  
11 would be in court right now fighting them  
12 over the attorney fees. Because we'd be  
13 outraged over the fact the amount of money  
14 they were going to get. We would have  
15 rightly said it's not right. It's not  
16 right. So when I looked at this, I said,  
17 gosh, the way they have structured this  
18 deal, we can't get at it. I don't know how  
19 we can get at this money. This is not  
20 right. The other interesting thing is they  
21 have a confidentiality provision in there.  
22 We can't find out the truth. We can only  
23 get what they are willing to tell us or by  
24 subpoena, which I think this committee or  
25 some other committee ought to get to find



1 out what was the record in front of the  
2 arbitration panel. What did the General  
3 say? What did the other witnesses in the  
4 arbitration panel have to say about this  
5 fee? Obviously, the arbitration panel has  
6 an opinion. I think this committee, I think  
7 this legislature, we're the only ones that  
8 represent the public in this thing, not the  
9 arbitration panel. We ought to have a say  
10 in whether that is right or not. So as I  
11 looked at it, the only way I could see to  
12 get this money is through the tax code. I  
13 will tell you, I'll be honest with you, I'm  
14 not entirely comfortable with that approach,  
15 but I see no other way that we can get at  
16 this money. So we're using the tax code,  
17 but I'll tell you it is not a tax bill in  
18 the true sense of the word. This is a  
19 recoupment bill. This is getting the  
20 taxpayer's money back so we as their  
21 representatives can make better judgments  
22 about what that money should go for, to  
23 either give it back to them, to help fund  
24 some of the other initiatives that I know  
25 many people care about. That's whose money

1 it is. It's the taxpayer's money. What my  
2 bill simply does is tax the attorney's fees  
3 at 50 percent. According to the adviser's  
4 office, that's the most we can do and be  
5 constitutional. The advisor assured me, and  
6 I talked to other people, this bill is  
7 constitutional. It wouldn't shock me next  
8 week we'll get an attorney general's opinion  
9 saying it's not constitutional. That's  
10 okay. The other assurance I want to give  
11 you, this is part of the conversation I had  
12 with the KPERs lawyer, my intent is not to  
13 tax the KPERs attorneys in this matter.  
14 We've tried to set the date at such a place  
15 where they would not be affected. If we  
16 have to make another change to that, I  
17 certainly would urge this committee to do  
18 that. It's not my intent to do that.  
19 That's really what this is all about. I  
20 will get to you the strategic contribution  
21 fund. I also have a stack here of just  
22 press clippings about this whole issue that  
23 occurred over the past couple of years. I'd  
24 invite you to review those pleadings and see  
25 what the newspapers are saying about all

1 this issue in the past. Don't just take my  
2 word for it. Madam Chairman, I'll be happy  
3 to stand for questions.

4 REPRESENTATIVE WAGLE: Are there  
5 questions of Representative Powell?  
6 Representative Gatewood.

7 REPRESENTATIVE GATEWOOD: Thank  
8 you, Madam Chairman. Representative Powell,  
9 you asked us to be the judge and stated the  
10 bill is kind of an afterthought. The courts  
11 have already decided who is liable in this  
12 tobacco case. An arbitrary board has  
13 decided the fees that the counsel would  
14 receive. Are we here as an appellate to  
15 those decisions, or are we hear to listen to  
16 a tax bill?

17 REPRESENTATIVE POWELL: I think  
18 when you make your decision about whether  
19 you agree with my tax bill or whether you  
20 think it's good policy to pass that tax  
21 bill, I think as part of your judgment, you  
22 need to make a decision in your own mind  
23 about whether you think the attorney fees  
24 received by Entz and Chanay is right. I  
25 think that's the basis by which you should

1 make your decision. I've given you  
2 guidelines from the statute that can help  
3 you make that decision. I'm not satisfied  
4 with what I would call a private star  
5 chamber making this decision. I'm not. I  
6 think the people ought to decide.  
7 Ultimately, that's who the client is. We're  
8 the client. We ought to have the right to  
9 decide whether that is fair or not, not some  
10 private star chamber.

11 REPRESENTATIVE GATEWOOD: So the  
12 answer would be more as an appellate to  
13 those decisions?

14 REPRESENTATIVE POWELL: Sure, if  
15 you want to phrase it that way.

16 REPRESENTATIVE GATEWOOD: Will  
17 the national counsel's settlement be  
18 affected by this bill?

19 REPRESENTATIVE POWELL: I don't  
20 know the answer to that question. Possibly.

21 REPRESENTATIVE GATEWOOD: Why is  
22 it so relevant who received the case in  
23 regards to the tax bill?

24 REPRESENTATIVE POWELL: It is  
25 relevant because as you look at the figures

1 -- as the factors there, it relates to the  
2 abilities of the firm and whether they have  
3 expertise in this area. That's why I think  
4 that's relevant.

5 REPRESENTATIVE GATEWOOD: So if  
6 Hutton and Hutton had received the case,  
7 would we still be hearing this tax bill?

8 REPRESENTATIVE POWELL: It would  
9 depend on how much work they had done. They  
10 told me if they had gotten in on the case,  
11 they could have gotten a lot more money for  
12 the state. After meeting them and talking  
13 with them, they would have pursued this case  
14 with far greater vigor than what the counsel  
15 in this case actually did.

16 REPRESENTATIVE GATEWOOD: That's  
17 what you perceive. That's not a fact.

18 REPRESENTATIVE POWELL: That's my  
19 opinion.

20 REPRESENTATIVE WAGLE:  
21 Representative Ray.

22 REPRESENTATIVE RAY: Will this  
23 bill apply to everyone after the effective  
24 date?

25 REPRESENTATIVE POWELL: Yes.

1           REPRESENTATIVE RAY:     Maybe I just  
2 didn't read it.  Is there a threshold amount  
3 that it kicks in, a certain amount of  
4 dollars or a percentage?

5           REPRESENTATIVE POWELL:   No.  The  
6 reason I didn't do that, if I could have  
7 done that, if the committee wants to  
8 approach it that way we can.  You could  
9 approach it from, well, any amount under  
10 let's say 500,000 or a million, for example,  
11 is not taxed at a higher rate and everything  
12 above that is taxed at a 99 percent rate  
13 perhaps.  I'm not sure that is  
14 constitutional.  I don't know.  I haven't  
15 talked about that approach.  I approached it  
16 from a 50 percent overall figure as a  
17 constitutional way to try to get some of  
18 this money back.  But I'm not whetted to the  
19 particulars of the language that's drafted  
20 in the bill.  It's just one way to get at  
21 it.  If you guys look at it more carefully  
22 and study it more and come up with a better  
23 formula to do it, I am all ears.  I'm  
24 perfectly willing to support a different  
25 approach to that.

1           REPRESENTATIVE RAY:     Under the  
2 bill, if an attorney's fee was \$1,000, they  
3 would have to pay a 50 percent tax.

4           REPRESENTATIVE POWELL:   That's  
5 correct.

6           REPRESENTATIVE RAY:     You  
7 mentioned that you would be basing a lot on  
8 whether they earned the money. Who makes  
9 the judgment on whether or not they earned  
10 it?

11           REPRESENTATIVE POWELL:   I think  
12 as I stated to Representative Gatewood, you  
13 need to make that judgment.

14           REPRESENTATIVE RAY:     You mean  
15 every attorney's fee will have to run  
16 through the tax committee?

17           REPRESENTATIVE POWELL:   No. I'm  
18 saying in this case I think you should make  
19 the judgment about whether it's fair or not.  
20 You see, part of the difficulty in writing  
21 this bill is you can't write a tax bill that  
22 applies just to Entz and Chanay. That's not  
23 constitutional. So you've got to write a  
24 bill that technically would apply to a  
25 broader class though in actuality would not.

1 That's the nuances of drafting the bill and  
2 the difficulty in drafting a bill. That's  
3 why I'm saying to you I'm not whetted to the  
4 particulars of the draft of the bill. If  
5 you can come up with a better way to do it,  
6 I would invite you to do that. I don't want  
7 to be hemmed in on my particular approach.  
8 I'm just saying I think we should get a lot  
9 of this money back. The only way I can  
10 figure out how to do it is through the tax  
11 code. How we specifically do that, I leave  
12 that up to you.

13 REPRESENTATIVE RAY: Well, I was  
14 just trying to understand the bill itself.  
15 I didn't quite understand the answer. If it  
16 would pass, then every attorney's fee that  
17 Kansas pays would have to come through this  
18 committee for a judgment on whether or not  
19 50 percent --

20 REPRESENTATIVE POWELL: No.

21 REPRESENTATIVE WAGLE: Let's look  
22 at the language for just a minute. I think  
23 we're having confusion. Look at line 11,  
24 folks, on the back page of the draft. It  
25 says there is hereby imposed a tax upon the



1 gross income of a taxpayer derived. Okay.  
2 The tobacco settlement was unique in that  
3 all the money in this case came from  
4 taxpayers. I know of no other legal  
5 situation where the money paid to attorneys  
6 is derived from taxpayers, is there? Do  
7 you know of any, Tony? This is a taxpayer  
8 derived from attorneys fees for  
9 representation of a state awarded pursuant  
10 to the provisions of any settlement  
11 agreement. So you have to have arrived at a  
12 settlement --

13 REPRESENTATIVE POWELL: Madam  
14 Chairman, I would invite the advisor. He  
15 can probably explain it the best since he  
16 drafted it as to what it does.

17 REPRESENTATIVE WAGLE: Okay.  
18 Don.

19 MR. HAYWARD: What this bill does  
20 -- what this bill does very simply is impose  
21 a 50 percent tax on the gross income of any  
22 taxpayer derived from a settlement agreement  
23 entered into with this state and any private  
24 entity as a result of representation of the  
25 state by an attorney. That's what it does.

1 REPRESENTATIVE WAGLE: You have  
2 to have represented the state.

3 MR. HAYWARD: Right. As an  
4 attorney, and 50 percent of the fees will be  
5 taxed.

6 REPRESENTATIVE WAGLE: On  
7 taxpayer derived. I was wrong.

8 MR. HAYWARD: The taxpayer is the  
9 attorney.

10 REPRESENTATIVE WAGLE: Okay. Of  
11 any settlement agreement entered into, and  
12 then there's a date certain. Tony, do you  
13 have any opposition to on line 13 putting in  
14 after the words provision of any settlement,  
15 can we put in there the words national which  
16 means it would have to be a national --

17 REPRESENTATIVE POWELL: That  
18 would narrow the focus of the bill even  
19 further. That would even more definitely  
20 exclude KPERS, the KPERS litigation. It was  
21 not a national undertaking. If you did  
22 that, that would further narrow the scope.

23 REPRESENTATIVE WAGLE: Don, would  
24 you speak to the fact of putting in the word  
25 national settlement.

1 MR. HAYWARD: I think that's  
2 possible. The caveat is the narrower the  
3 application, a greater likelihood exists we  
4 may have an equal protection problem. So  
5 everytime you narrow it, that likelihood  
6 increases. The same thing with regard to  
7 thresholds. In line 11 after gross income,  
8 you could put in a threshold, you know,  
9 gross income exceeding \$1,000,000 or  
10 whatever you wanted to do.

11 REPRESENTATIVE WAGLE: There's a  
12 lot of questions. Representative Aurand.

13 REPRESENTATIVE AURAND: Yeah,  
14 just on this. Is it bad or good or  
15 indifferent to make the charge on attorneys  
16 fees? Could a guy make them on contingent  
17 attorney fees instead of just straight  
18 contracting?

19 REPRESENTATIVE WAGLE: Does that  
20 further narrow the scope, Don, to make it on  
21 contingency fees.

22 MR. HAYWARD: You mean the income  
23 derived must be based on a contingency fee  
24 rather than a flat?

25 REPRESENTATIVE WAGLE: We call it

1 attorney fees. Would it further narrow the  
2 scope, would it questionably be  
3 constitutional if you put it on contingency  
4 derived fees.

5 MR. HAYWARD: No, but no more  
6 than any other limitation you put on here.

7 REPRESENTATIVE WAGLE: But we do  
8 want to be careful if we pass a bill, it  
9 will be held up in a court of law.

10 MR. HAYWARD: I would think you  
11 would.

12 REPRESENTATIVE WAGLE: Okay.  
13 Representative Ray, you were asking  
14 questions. Did you get your questions  
15 answered?

16 REPRESENTATIVE RAY: I just have  
17 one more, if I may. It says on line 17 and  
18 18 of page 2, derived from sources in  
19 Kansas. Can we say that this money was  
20 derived from sources in Kansas? I thought  
21 it came out of tobacco companies.

22 THE SPEAKER: I think the  
23 settlement agreement with the state was  
24 consummated finally in this state. I think  
25 everything that arises from that is Kansas

1 sourced income.

2 REPRESENTATIVE RAY: Okay. Thank  
3 you. Thank you, Madam Chairman.

4 REPRESENTATIVE WAGLE: Okay.  
5 Representative Sharp.

6 REPRESENTATIVE SHARP: Thank you.  
7 Representative Powell, I know you've sat on  
8 tax committees many more years than I have.  
9 Certainly, I don't know all that there is to  
10 know. I would like to either ask you or  
11 Shirley to explain something to me about  
12 taxation as this bill would apply. If  
13 attorneys were going to get a settlement,  
14 they are taxed at a certain percent anyway,  
15 correct? Some of this taxation would be not  
16 on gross but actually after expenses,  
17 correct? So before they are even taxed that  
18 way, they are going to be taxed gross 50  
19 percent, then taxed again?

20 MR. HAYWARD: This is in addition  
21 to the ordinary income.

22 REPRESENTATIVE SHARP: So we are  
23 taxing and taxing?

24 THE SPEAKER: This is a surtax.

25 REPRESENTATIVE SHARP: A surtax.

1 MR. HAYWARD: In line 10, it says  
2 in addition to the tax otherwise imposed  
3 pursuant to this section, which is the  
4 ordinary income tax which is a net income  
5 tax.

6 REPRESENTATIVE SHARP: Right.  
7 Okay. Thank you for that clarification.

8 MR. HAYWARD: Double taxation is  
9 avoided by giving a credit to this gross  
10 income tax of the amount of tax you paid  
11 under the ordinary income tax.

12 REPRESENTATIVE SHARP: Okay.  
13 That's how I wondered. Thank you. Thank  
14 you Don. Thank you Tony.

15 REPRESENTATIVE WAGLE: Now, you  
16 pay under ordinary income taxes deducted in  
17 order to arrive at the gross 50 percent.

18 MR. HAYWARD: You determine your  
19 tax on your gross income and subtract dollar  
20 for dollar the ordinary income tax. That  
21 will be your tax bill.

22 REPRESENTATIVE WAGLE: It would  
23 not be more than 50 percent.

24 MR. HAYWARD: 50 percent of your  
25 gross income is taxed. A credit to that is

1 whatever you paid under the ordinary income  
2 tax law on your net income.

3 REPRESENTATIVE WAGLE: Okay.  
4 Representative Flora.

5 REPRESENTATIVE FLORA: Thank  
6 you, Madam Chair. And what is the tax--  
7 just for clarification, what is the rate on  
8 the ordinary tax that they would be taxed?

9 THE SPEAKER: The rate would be  
10 -- it depends on the filing status. On page  
11 1 there, you can see what the rates are  
12 probably be 7.75 percent on the ordinary  
13 income. That is net income, after all  
14 deductions, personal exemption, et cetera.

15 REPRESENTATIVE FLORA: So do we  
16 have an estimation of how much money this  
17 would bring in to the state, Tony, Shirley?

18 MS. SICILIAN: Yes, we do. We do  
19 have a fiscal note. We've estimated that  
20 assuming that the KPERS settlement is  
21 captured under the bill, the fiscal impact  
22 is at least 8.4 million in fiscal year 2001.  
23 .9 million would be due to the terms of the  
24 tobacco litigation. Nearly every state  
25 agency does hire outside counsel at one time

1 or another. We have not tried to estimate  
2 that. We can continue to work on that.  
3 That's why we consider the 8.4 to be a  
4 minimum number.

5 REPRESENTATIVE WAGLE: Now,  
6 Shirley, why did you include KPERS in here  
7 when the date specific is arrived at after  
8 December 31st -- entered into after January  
9 1st of '97?

10 MS. SICILIAN: I understand.  
11 That would be the key date. If the KPERS  
12 settlement agreement were entered into  
13 before that date, then we need to take it  
14 out, and the fiscal impacted would be a  
15 minimum of .9. Our understanding was the  
16 settlement agreement could be considered to  
17 be entered into after that. Just to be  
18 clear, I understand you've been in contact  
19 with KPERS. We will try to make sure that  
20 we're correct about this.

21 REPRESENTATIVE WAGLE:  
22 Representative Powell, do you understand  
23 that this agreement was entered into on the  
24 date that the arbitration panel gave us this  
25 decision which was -- is there anyway --



1                   REPRESENTATIVE POWELL:     The  
2 national tobacco settlement agreement was  
3 entered into in I think November of '99 --  
4 98, excuse me. The award, of course, of the  
5 panel was in November of '99. So it's  
6 clearly after the effective date that's in  
7 the bill. KPERS, it was my intent to do a  
8 date that would not affect KPERS, but soon  
9 enough it would impact the tobacco. I may  
10 be off on the date. But that was my intent.  
11 If that date is not right, I would certainly  
12 encourage the committee to change that date.

13                   REPRESENTATIVE WAGLE:     Okay.  
14 We'll need to look into that.  
15 Representative Edmonds.

16                   REPRESENTATIVE EDMONDS:     No thank  
17 you.

18                   REPRESENTATIVE WAGLE:  
19 Representative Tomlinson.

20                   REPRESENTATIVE TOMLINSON:  
21 Counselor, I like that word. Better than  
22 representative. I do have a couple  
23 questions that are legal in nature, and I  
24 plead ignorance because I am not an  
25 attorney. The first one is I actually

1 thought I understood the bill better before  
2 people started explaining it. My problem  
3 now is wouldn't an attorney representing the  
4 state even with the word national in there  
5 that was maybe representing the state in a  
6 workers' comp claim or case with a national  
7 company, wouldn't they have some difficulty?

8           REPRESENTATIVE POWELL: It's hard  
9 to see -- it's hard to imagine that  
10 particular instance that you're talking  
11 about. It would affect, with the suggestion  
12 that the Chairman has made, any national  
13 settlement that the state would hire  
14 attorneys for contingency fee, on a  
15 contingency basis is the other change that  
16 the Chairman suggested, any case in the  
17 future would be taxed.

18           REPRESENTATIVE TOMLINSON: How  
19 about a firearm's settlement?

20           REPRESENTATIVE POWELL: If the  
21 State of Kansas undergoes a national case  
22 against the gun manufacturers and does  
23 similar to what the tobacco case did, those  
24 attorney fees hired by the state would be  
25 impacted by the bill. That's correct.

1                    REPRESENTATIVE TOMLINSON:     My  
2 understanding of the equal protection  
3 clause, now, I'm going to test my school  
4 teacher knowledge against the attorney.

5                    REPRESENTATIVE POWELL:     You  
6 probably know it better than me.

7                    REPRESENTATIVE TOMLINSON:     I  
8 don't. My understanding is the reason we  
9 have to be careful here is because under the  
10 equal protection clause, we can't pass a tax  
11 law that taxes me specifically, my  
12 crankiness or any other reason.

13                   REPRESENTATIVE POWELL:     That's  
14 right.

15                   REPRESENTATIVE TOMLINSON:     I have  
16 equal protection. If we pass this  
17 legislation, we're going to wind up in  
18 federal court, aren't we?

19                   REPRESENTATIVE POWELL:     You bet.

20                   REPRESENTATIVE TOMLINSON:     When  
21 we do wind up in federal court, legislative  
22 intent will be part of the issue with equal  
23 protection.

24                   REPRESENTATIVE POWELL:     Sure, but  
25 legislative intent is primarily derived from

1 the words in the statute. That's where the  
2 courts look first.

3 REPRESENTATIVE TOMLINSON: I  
4 understand that. You're a smart attorney.  
5 Wouldn't you if you were on the other side  
6 subpoena the proceedings in this committee  
7 to deal with legislative intent?

8 REPRESENTATIVE POWELL: Sure.  
9 You know, the lawyers for Entz and Chanay  
10 would probably go to court to strike this  
11 law down if we pass it, would argue this  
12 bill -- this legislation was designed to get  
13 us. Therefore, it's a violation of the  
14 equal protection clause and the court, you  
15 ought to throw it out. That will be the  
16 argument. I think we've tried to word it in  
17 a way that's not going to hold water, but  
18 that will be the argument, absolutely.  
19 You're right on point.

20 REPRESENTATIVE TOMLINSON: And  
21 these proceedings will be a part of that.

22 REPRESENTATIVE POWELL: That's  
23 correct.

24 REPRESENTATIVE TOMLINSON: Okay.

25 REPRESENTATIVE WAGLE:

1 Representative Wilk.

2           REPRESENTATIVE WILK:     Thank you,  
3 Madam Chair. Representative Tomlinson, if  
4 it happens to end up in court, you will be  
5 on record. My question is for Advisor  
6 Hayward. I share some of Representative  
7 Tomlinson's confusion. Ask you to brush off  
8 your history book. I believe I worked with  
9 you back in 1993 when we did the -- or '94  
10 when we did the military retirement  
11 settlement issue. The way this bill is  
12 drafted today, won't those attorney fees --  
13 this bill would apply to those fees?

14           MR. HAYWARD:     I believe we would  
15 have captured 50 percent of them.

16           REPRESENTATIVE POWELL:     Not if we  
17 added the words national settlement.

18           THE SPEAKER:     That's presuming  
19 the present language.

20           REPRESENTATIVE WILK:     I wanted to  
21 get a handle on that. What about, again,  
22 under the current language, the lawsuit we  
23 have with Colorado? I don't know if there  
24 is any money involved in that or not.  
25 Certainly the state has paid, that's a

1 contract, so would those fees also fall  
2 under the jurisdiction of this bill?

3 MR. HAYWARD: If that settlement  
4 occurs after this particular date, the  
5 attorney fees involved would be, again,  
6 subject to this. I'd like to say one other  
7 thing with regard to equal protection.  
8 States are granted great latitude by U.S.  
9 Supreme Court with regard to discriminating  
10 in the tax code. The test is if there is a  
11 rational basis for that discrimination.

12 REPRESENTATIVE WILK: Thank you.

13 REPRESENTATIVE WAGLE: Don, if we  
14 added the word national, the retiree's and  
15 the water would not be taxed under this  
16 language.

17 MR. HAYWARD: That's correct.

18 REPRESENTATIVE WAGLE: Water  
19 would not be taxed.

20 MR. HAYWARD: The water is a  
21 Kansas suit. That's correct.

22 REPRESENTATIVE WAGLE:  
23 Representative Howell.

24 REPRESENTATIVE HOWELL: Thank  
25 you, Madam Chairman. Tony, I'm trying to

1 understand a little bit about how this  
2 lawsuit was put together and who represented  
3 who. Am I correct in my assumption that the  
4 attorneys were representing all citizens of  
5 Kansas?

6 REPRESENTATIVE POWELL: State of  
7 Kansas was the client. That's correct. We  
8 were the client. The public was the client.

9 REPRESENTATIVE HOWELL: What good  
10 does it do for members of the public to call  
11 up a lawyer and ask them to proceed in a  
12 particular way? Does that not occur?  
13 What if I'm a member of the public and I  
14 don't like how the suit is going? Can I  
15 call the law firm up and ask them to  
16 represent me differently as a taxpayer?

17 REPRESENTATIVE POWELL: I guess  
18 you could. Quite practically speaking  
19 there, probably not likely to happen to take  
20 that call too seriously. They really know  
21 who their bread is buttered by. That is  
22 usually the person in government who hired  
23 them.

24 REPRESENTATIVE WAGLE:  
25 Representative Aurand.

1                    REPRESENTATIVE AURAND:        Thank  
2 you, Chairman.    With regard to  
3 Representative Tomlinson's question, these  
4 will only show up in federal court if we can  
5 file them so people can find them in three  
6 years.    Apparently, that hasn't happened.  
7 Tony, I know one of the things you're trying  
8 to get at most is the ethical side of the  
9 payment.    I hear -- things I've heard about  
10 as far as payment lawyers receive on  
11 contingency as compared to what they charge  
12 normally, three, four, five times as much as  
13 they would on an hourly rate.    If I divide  
14 it right, assuming generously I guess 10,000  
15 hours put in, it would be about \$2,700 an  
16 hour.    The attorney general's office charged  
17 150 and 165 which would be 18 times as much.  
18 I was wondering if you think the Entz and  
19 Chanay firm are 18 times as good lawyers as  
20 the attorney general and her staff?

21                    REPRESENTATIVE POWELL:        Well, I  
22 can't say.    I would say I wouldn't say even  
23 Entz and Chanay is worth than much more than  
24 the general's legal abilities.

25                    REPRESENTATIVE AURAND:        Are you



1 familiar with anything in general practice  
2 when people keep track of their hours, is  
3 there a certain part where lawyers in  
4 general tend to think, okay, this is beyond  
5 what is some of the listings here as far as  
6 what is ethical? Is there a general rule  
7 of thumb or something out there?

8           REPRESENTATIVE POWELL:     There is  
9 no set number in terms of an hourly rate or  
10 even a total amount of money that is  
11 reasonable or not reasonable. It really  
12 depends upon the circumstances of each case  
13 and the statute that I gave you really is  
14 the guideline that would be used by a court  
15 to determine whether a particular fee is  
16 reasonable. I will tell you the range for  
17 lawyers in the State of Kansas at an hourly  
18 rate would range probably from \$100 to --  
19 actually a lot of work for the state is at  
20 \$85 an hour up to around \$300 an hour for a  
21 quality firm doing hourly work. So \$2,700  
22 certainly on its face would certainly have  
23 to make you question whether that's a  
24 reasonable fee.

25           REPRESENTATIVE AURAND:     One other

1 question I was wondering, the whole idea of  
2 kind of the separate pool of money, if you  
3 as a defense lawyer have someone suing your  
4 client for a million dollars and you know  
5 somehow they are probably getting 30 percent  
6 contingency or something like that, you said  
7 something about bribing or encouraging the  
8 lawyers to try to get to settle. Do you  
9 know cases -- have you been able to set up  
10 cases where you can pay the other attorneys  
11 a separate pot of money? Has that happened  
12 in other cases?

13 REPRESENTATIVE POWELL: Yeah,  
14 we'll do that. We'll do that because the  
15 lawyer -- we know that lawyer is on a  
16 contingency fee basis. We will know, also,  
17 the lawyer can make the most money on the  
18 case if they don't have to go through all  
19 the discovery, take it to trial. That costs  
20 them money to do all that work, to front the  
21 expenses. So, in essence, we throw some  
22 money at the lawyer to give an incentive for  
23 that lawyer to then settle the case and  
24 persuade his client to settle the case.

25 REPRESENTATIVE AURAND: That's

1 what I don't understand. On the other side,  
2 what is the ethical obligation of a lawyer  
3 that is suing as far as saying, all of a  
4 sudden, instead of taking a pot out of the  
5 whole thing and this is as much as I can  
6 get, all of a sudden saying the pot might be  
7 this big, if I can get so much on this side,  
8 we'll set up two accounts.

9 REPRESENTATIVE POWELL:

10 Personally, I think they are obligated to  
11 tell their client how much they are going to  
12 get. If they were offered such an  
13 arrangement by the opposing side, I think a  
14 lawyer would be ethically obligated to tell  
15 their client what the offer from the  
16 defendant would be. That's what's  
17 interesting about this case. In essence,  
18 the lawyers are saying we don't have to tell  
19 you what we're getting paid by the  
20 defendants in the case, because we've got a  
21 confidentiality agreement. I think that is  
22 kind of amazing myself.

23 REPRESENTATIVE AURAND: Thank  
24 you.

25 REPRESENTATIVE WAGLE:

1 Representative Edmonds.

2                   REPRESENTATIVE EDMONDS:     Thank  
3 you, Madam Chair. This subject of hours  
4 cropped up earlier this week. I thought  
5 about it at the time and went on. I'll  
6 start with the usual caveat. I'm not an  
7 attorney, but I am a CPA. We do keep track  
8 pretty closely in practice of the time spent  
9 on various times of work because that's how  
10 we bill for it. You've got an hour and 45  
11 minutes in a tax return. You're going to  
12 end up putting that on a time sheet some  
13 place and some client is going to get billed  
14 for that time. The only client I have that  
15 is a law firm uses software that does that  
16 sort of thing for their practice, but they  
17 are not involved in any way, shape or form  
18 in this situation. I don't know whether to  
19 extrapolate from that. You've worked with  
20 at least a couple law firms in your  
21 experience. Is it the practice in most  
22 firms to have their partners and employees  
23 and associates keep track of their time for  
24 what they do as it would be in a CPA firm?  
25 We account literally for every minute.

1                    REPRESENTATIVE POWELL:  
2 Absolutely. It is a common practice in most  
3 law firms, including, I might add,  
4 plaintiff's firms who take cases on a  
5 contingency basis will keep their time.  
6 Now, when you're a defense lawyer like me  
7 and you are used to billing your client on  
8 an hourly basis, the reason you keep track  
9 of your time is obvious. You have to keep  
10 track of your time in order to give you an  
11 idea of what you need to bill your client.  
12 I keep track of my time. In fact, we have  
13 paralegals and sometimes our legal  
14 secretaries will also keep track of some  
15 time on that case. We determine how much  
16 work has been done on that case in order to  
17 present a reasonable and fair bill to our  
18 client. A plaintiff's firm will also  
19 oftentimes keep time records internally of a  
20 case to help them determine, for a couple  
21 reasons, are they making money on the case.  
22 A lot of times if a plaintiff's firm is  
23 spending so many hours on the case, their  
24 hourly rate will dip so low, they'll see  
25 they are losing money on a case. They also

1 will do it internally to determine how to  
2 divide up the pot, for example. When the  
3 fee comes in, how much will a particular  
4 lawyer in that firm be entitled to versus  
5 another depending on how much work they do  
6 on the case. So it's very common even among  
7 plaintiff's attorneys, and they have told me  
8 this, they also keep hours.

9           REPRESENTATIVE EDMONDS: Well, if  
10 I were asked to tell you how many hours I  
11 spent on a particular client in the last  
12 year, it would be a matter of basically  
13 footing a column to tell you that. I assume  
14 if I had a reason to ask you how much time  
15 you spent on a particular client, you could  
16 do something similar in your medical  
17 practice.

18           REPRESENTATIVE POWELL: Our staff  
19 and our law firm can produce pretty easily  
20 an entire list of the work I've done on  
21 every single case for every different client  
22 over the past year, in fact, over the past  
23 previous years. It's all done by computer.  
24 We enter our time in a computer. It's all  
25 kept very simply. It's very easy to produce

1 those records, and any quality law firm  
2 could do that.

3 REPRESENTATIVE EDMONDS: Is this  
4 true whether you're defending the client or  
5 whether you're the plaintiff in the case?

6 REPRESENTATIVE POWELL:  
7 Absolutely.

8 REPRESENTATIVE EDMONDS:  
9 Realistically, if that's the practice, what  
10 I'm hearing you say that is the standard of  
11 practice, then I would expect any firm to be  
12 able to do that if they were sufficiently  
13 inclined?

14 REPRESENTATIVE POWELL: I would  
15 strongly suspect Entz and Chanay has such a  
16 system and could easily produce the time  
17 that they spent in this case if they had  
18 simply chosen to do so.

19 REPRESENTATIVE EDMONDS: That was  
20 the topic that came up. I found it  
21 interesting. I appreciate your  
22 observations. Thank you very much. Thank  
23 you, Madam Chair.

24 REPRESENTATIVE WAGLE:  
25 Representative Gregory.

1           REPRESENTATIVE GREGORY:     Thank  
2 you, Madam Chairman.   Tony, in the -- the  
3 figure we're talking about here at one point  
4 in time, we were talking about limiting this  
5 by having the word national in there.   I'm  
6 wondering if it would make some sense to  
7 also plug the word contingency in there.

8           REPRESENTATIVE POWELL:     I think  
9 that was mentioned before.   I certainly  
10 wouldn't have any objection to doing that.

11          REPRESENTATIVE GREGORY:     Okay.  
12 In the water litigation that we're in --

13          REPRESENTATIVE POWELL:     They are  
14 paid by an hourly basis.

15          REPRESENTATIVE GREGORY:     That's  
16 what I thought.   Thank you.

17          REPRESENTATIVE WAGLE:  
18 Representative Long.

19          REPRESENTATIVE LONG:     Thank you.  
20 I found the hours to be very interesting.  
21 That was a question I was very curious  
22 about.   Also, I don't have any knowledge  
23 about the attorney general's office or  
24 anything.   But I notice when she was  
25 testifying the other day, it sounded like it



1 was just her and John and a couple  
2 secretaries from the office. I was a little  
3 bit shocked by their lack of staff over  
4 there. Can anyone inform me as to how many  
5 people actually work for the AG's office?  
6 Would it not be possible for them to have  
7 pursued this in-house?

8 REPRESENTATIVE POWELL: Well, I  
9 can only tell you what I think, my opinion.  
10 Obviously, she's giving her opinion on that.  
11 I do know a number of other states did do  
12 this in-house. I think the results that we  
13 obtained by hiring private counsel, local  
14 counsel, I don't think the results are  
15 justified doing that. I think we could have  
16 received more money for the state had we not  
17 done that and done it in-house. I think the  
18 figures I've recited would suggest we didn't  
19 get our money's worth hiring outside  
20 counsel.

21 REPRESENTATIVE LONG: Tony, how  
22 many hours would it take you to compile the  
23 data you had in that folder?

24 REPRESENTATIVE POWELL: It's hard  
25 to say. I made the statement before. I

1 still stick with it, I don't think this work  
2 here with the research behind it probably  
3 went into it writing and drafting it is  
4 worth more than a couple hundred thousand  
5 dollars. I don't see how it could be worth  
6 more than that myself. I just don't.  
7 That's my opinion. It's hard to totally  
8 judge that. I mean our law firm to bill  
9 \$200,000 on a case for the work we'd do,  
10 we'd be doing a lot more than this. I'm  
11 trying to give them at least some benefit of  
12 the doubt.

13 REPRESENTATIVE WAGLE: I have  
14 four more committee members that want to ask  
15 questions, and I want to get them in the  
16 next few minutes if we can, and we do have  
17 an opponent that wants to testify.  
18 Representative Johnston.

19 REPRESENTATIVE JOHNSTON: Thank  
20 you, Madam Chair. Thank you, Representative  
21 Powell, for being here. I wanted to ask you  
22 a couple questions real quick. You said at  
23 the beginning of your testimony this morning  
24 that you referred to the attorney general's  
25 office by saying that they did not maintain

1 records or presumably enough records. You  
2 mentioned that they discarded records. Is  
3 that a matter of fact?

4 REPRESENTATIVE POWELL: I believe  
5 their testimony yesterday was they either  
6 lost them or they threw them away. I recall  
7 John Campbell saying they threw away drafts.

8 REPRESENTATIVE JOHNSTON: Rough  
9 drafts.

10 REPRESENTATIVE POWELL: Rough  
11 drafts, previous drafts.

12 REPRESENTATIVE JOHNSTON: I  
13 wanted to clarify that. Another issue,  
14 you've been talking about the amount of the  
15 award that Kansas received compared with  
16 other states. I would presume that the  
17 decision-making process of which state would  
18 get how much surely included a reflection of  
19 population, and surely Kansas doesn't have  
20 quite the population of Colorado. Could you  
21 tell me what some of those criteria were  
22 that the decision-making process included?

23 REPRESENTATIVE POWELL: I'm not  
24 sure that I'm capable of giving you all  
25 that. My understanding in talking with

1 tobacco counsel is that the biggest criteria  
2 they used was percentage of Medicaid  
3 expenditures. Medicaid expenditures is  
4 probably in many respects a function of  
5 population depending on how many people you  
6 have. It will have a great influence on  
7 what your expenditures was. A good part of  
8 that settlement they got was determined by a  
9 raw formula. Irrespective if we had gone  
10 down to the courthouse three days before the  
11 case had been settled, we probably would  
12 have received the bulk of the money in the  
13 case. The other part I talked about the  
14 strategic contribution, the additional money  
15 they gave to the state in their actual  
16 contribution to the case.

17 REPRESENTATIVE JOHNSTON: Is  
18 there anyway to break that down?

19 REPRESENTATIVE POWELL: I'll give  
20 you the Strategic Contribution Fund. That  
21 breaks it down. It goes through all the  
22 settlements, and I'd invited you to look at  
23 it.

24 REPRESENTATIVE JOHNSTON: Last,  
25 my interest in this is not political. My

1 interest is as I mentioned previously, the  
2 need to find a solution. One of the  
3 solutions might be your bill. I think it  
4 clearly needs some work. Another solution  
5 I'm particularly interested in is a law that  
6 would require competitive bidding on  
7 professional contracts. I have to be honest  
8 with you. I've considered myself a Stovall  
9 supporter even though I'm a Democrat. I  
10 made a contribution to her first campaign.  
11 I want to thank you and the Chairman for  
12 having these hearings. My eyes are opened.  
13 I'm disturbed with the decision-making  
14 process used by the attorney general. My  
15 question to you is what decision-making  
16 process would you recommend an attorney  
17 general use to hire outside counsel? What  
18 would you have done if you had been attorney  
19 general, the first question being would you  
20 have joined the lawsuit? I hope the answer  
21 is yes. The second question, what process  
22 would you establish for hiring outside  
23 counsel? My concern, it's a Republican  
24 attorney general or a Democratic insurance  
25 commissioner, hiring outside counsel should

1 not be a partisan decision, and clearly it  
2 was. I find that appalling.

3 REPRESENTATIVE POWELL: I  
4 appreciate that question. Let me make a  
5 couple other points about that. The post  
6 audit report also stated, and I think you  
7 hinted at it in your comments, that when  
8 they reviewed some 35 cases where the  
9 general had hired outside counsel, she had  
10 hired 29 firms. In 20 of those cases, the  
11 firms had contributed to her campaign. So,  
12 to me, I think that certainly gives a  
13 suggestion that the attorney general is  
14 predisposed towards doling out legal work to  
15 political supporters of hers. I think  
16 that's wrong. My process would be a  
17 two-step process. I don't think you should  
18 hire a lawyer based solely upon the price  
19 they are willing to perform the services for  
20 you. You have to approach it from a  
21 two-step process. No. 1, you need to for  
22 every piece of work or class of work that  
23 you need done, you should select the most  
24 qualified firms that are able to do that  
25 work. That should be based upon the size of

1 the firm, the expertise of that firm, the  
2 credentials of the particular lawyers in  
3 terms of the work they have done, where they  
4 went to school, the experience they have.  
5 Once you get a list of firms that are  
6 qualified, the best qualified to do that  
7 piece of work, then I think you should let  
8 them bid on that work based on price. That  
9 price could be based on either an hourly  
10 rate or on the total costs they are willing  
11 to do the work for. In fact, I'm actually  
12 working on a bill called the Private  
13 Attorney Retention Sunshine Act that would  
14 require that very thing. It would also --  
15 the bill I'm going to introduce would  
16 require legislative oversight over large  
17 attorney fee contracts of a million dollars  
18 or more. So whenever the state wants to  
19 hire lawyers where those attorneys could  
20 earn more than a million dollars, shouldn't  
21 be making that decision themselves. They  
22 should come to the legislature, and the  
23 legislature should have the opportunity to  
24 review that contract. I think those are  
25 some important things that we ought to do to

1 change the way to do that.

2 REPRESENTATIVE JOHNSTON: Thank  
3 you. I look forward to seeing the bill.

4 REPRESENTATIVE WAGLE:  
5 Representative Ray and Representative  
6 Tedder, and we'll go to our opponent.

7 REPRESENTATIVE RAY: I want to  
8 ask on the open records law, are you  
9 required to keep all your drafts?

10 REPRESENTATIVE POWELL: I don't  
11 know. I don't know the answer to that.  
12 Probably not.

13 REPRESENTATIVE RAY: Do you think  
14 we should have?

15 REPRESENTATIVE POWELL: Well,  
16 it's hard to say because it's not always a  
17 black and white thing. I think in fairness  
18 to the general's office, it's not always a  
19 black and white thing. I just think my  
20 comment about these particular drafts, this  
21 was not your garden variety case. This was  
22 a politically very sensitive case by her own  
23 admission. It's the biggest case in the  
24 history. Obviously, you had to know there  
25 were going to be questions about who you



1 hired to do this work. So I think any  
2 documents relating to that case should have  
3 been kept. That's really all I'm saying. I  
4 can't tell you in every matter should every  
5 single record be kept, because not every  
6 single record is important. In this case, I  
7 think it's a fair statement it should have  
8 been.

9 REPRESENTATIVE RAY: Could I have  
10 a clarification for my own personal  
11 information. Did I understand correctly  
12 that defense attorneys can get together with  
13 plaintiff's attorneys and give the money --

14 REPRESENTATIVE POWELL: Well,  
15 what we do as part of the settlement in  
16 essence --

17 REPRESENTATIVE RAY: You are  
18 paying them personally?

19 REPRESENTATIVE POWELL: It's not  
20 like it's this little bribe on the side kind  
21 of thing. What it is as part of the  
22 settlement you'll say we're structuring this  
23 pot of money here. Part of that is going to  
24 go to your client, and here, we're going to  
25 pay you this much in attorney fees. That is

1 sometimes done.

2 REPRESENTATIVE RAY: So the  
3 opposing attorney is paid, the other one.

4 REPRESENTATIVE POWELL: No. It's  
5 our client that would pay. I'm representing  
6 company X. I've got Joe Blow here. He's  
7 suing company X for discrimination. Many  
8 cases it's a contingency fee. Early on in  
9 that case, we'll look at it and kind of get  
10 a sense. We have usually a pretty good idea  
11 of how much work we think that attorney  
12 might have done in the case. As an  
13 inducement to settle, we'll offer some money  
14 to the client. We'll offer a greater sum  
15 that he might not normally receive as a  
16 contingency percentage and give him a chunk  
17 of money to get him to settle the case.

18 REPRESENTATIVE RAY: So the  
19 client is paying, too. Thank you.

20 REPRESENTATIVE POWELL: That's  
21 part of the overall pot of money that the  
22 company is willing to pay.

23 REPRESENTATIVE WAGLE:  
24 Representative Tedder.

25 REPRESENTATIVE TEDDER: Thank

1 you, Madam Chairman. With this bill, will  
2 it put the State of Kansas at a disadvantage  
3 in the future in trying to contract services  
4 with attorneys.

5 REPRESENTATIVE POWELL: Yeah, in  
6 those particular cases where you've got  
7 national settlements involving contingency  
8 fees, yes, it might. I have to be honest  
9 about that.

10 REPRESENTATIVE TEDDER: Okay.  
11 Thank you.

12 REPRESENTATIVE WAGLE: Okay.  
13 Thank you Representative Powell. Our next  
14 conferee on the bill is Terri Roberts.  
15 Terri, do you mind taking an oath?

16 MS. ROBERTS: No, ma'am. The  
17 last time I did this was graduation from  
18 nursing school.

19  
20 TERRI ROBERTS,  
21 called as a witness on behalf of the  
22 Committee, was sworn and testified as  
23 follows:

24  
25 REPRESENTATIVE WAGLE: Terri,

1 are you representing yourself or the--

2 MS. ROBERTS: I am. I've got  
3 written testimony. Good morning. My name  
4 is Terri Roberts. I'm here as a private  
5 citizen addressing the issue of taxing the  
6 attorney fees for those that represented  
7 Kansas in the tobacco litigation.

8 First of all, I want to say I'm one of  
9 those individuals that has a passion about  
10 seeing a world that is less harmed by  
11 addiction to nicotine, clean air in the work  
12 place and public places is an exception, not  
13 a hard won battle. Among friends and  
14 colleagues that share this same passion, we  
15 often refer to ourselves as anti-smoking  
16 activists or zealots. Since December of  
17 1995, I have personally invested time and  
18 money to educate myself about smoking as a  
19 habit and what public policies could best  
20 facilitate a world with less nicotine  
21 addiction. I, too, like Representative  
22 Powell have reviewed the three sets, the  
23 Kansas pleadings only addendum as they are  
24 filed. I was in the courtroom for several  
25 of the court appearances. I've read the

1 master settlement agreement, some sections  
2 several time. I provided analysis of the  
3 various versions that went before Congress  
4 to those interested in this issue. Having  
5 said this, I want to add that I have only a  
6 professional relationship with Attorney  
7 General Carla Stovall and any of her staff.  
8 I have met Stu Entz only once during a  
9 presentation he did for the Kansas Smokeless  
10 Kids Program, and I have talked with Jeff  
11 Chanay approximately five times, and two of  
12 those were about a nursing client he was  
13 representing. I know none of these  
14 individuals personally, nor have I shared a  
15 meal with them or ever discussed my family  
16 or my day with them. I'm here because I  
17 have a sign on my door which reads and  
18 quotes Abraham Lincoln and says, "To sin  
19 with silence, when they should protest,  
20 makes cowards of men." Diane Graham, a CEO  
21 in Kansas City, wrote and women, too, so I  
22 add that. I do try to speak out when I  
23 think I might be able to make a difference.

24 Like Representative Powell, I'm not  
25 comfortable with this proposal. In fact, I

1 disagree with it. The bill as introduced  
2 retroactively will impose a tax on specific  
3 proceeds that the attorneys received as  
4 compensation for representing the State of  
5 Kansas presumably in the tobacco litigation.  
6 I'm not sure it will necessarily be limited  
7 to just those who represented Kansas in the  
8 tobacco settlement. You've had that  
9 discussion. What about the attorneys that  
10 represent KU hospital authority in  
11 collections? What about KPERs and the other  
12 areas where attorneys are engaged to  
13 represent the state. Might this have a  
14 chilling effect on attorneys considering  
15 representing our state. I'm not a  
16 practicing attorney nor an expert in  
17 constitutional law. However, one basic  
18 premise of our constitution is  
19 representation and fair taxation. And I  
20 remember several years ago when Kansas was  
21 sued on behalf of the military retirees that  
22 were disenfranchised by a revised tax code,  
23 and Kansas lost that legal battle and  
24 settled. And to the best of my recollection  
25 it was about 57,000,000 with the court

1 awarding approximately 10,000,000 to the  
2 attorneys that represented the Kansas  
3 military retirees. Certainly, the  
4 constitutionality of any provision of this  
5 nature will be evaluated prior to its  
6 implementation. Why is the legislature  
7 seeking a portion of the attorney fees in  
8 this case? After two days of hearings on  
9 the related issue of why Entz and Chanay  
10 were selected, I'm not clear of the public  
11 policy behind the tax proposal. I do know  
12 one thing, though, for sure. The tobacco  
13 industry is a formidable opponent. Every  
14 hour of every day. And what Representative  
15 Powell said I do agree with. I think they  
16 won this week. This week they are winning.  
17 Okay. I strongly suspect that they like  
18 seeing all of you in this much conflict,  
19 this much anguish, this much time spent on  
20 this issue, because it's not about how we  
21 can prevent tobacco addiction and prevent  
22 our youth from getting access to tobacco.  
23 It's a distraction, and they are masters at  
24 distraction and misrepresentation. I was  
25 disappointed that John Campbell was not

1 afforded the opportunity to review in detail  
2 the MSA. That stands for the master  
3 settlement agreement. That agreement as you  
4 know made history, the largest civil  
5 settlement in the history of the world and,  
6 as you know, the largest payout to attorneys  
7 in the history of the world. The details of  
8 the MSA are important, and the restrictions  
9 on the tobacco industry significant. As a  
10 matter of public policy, I do believe you  
11 would have benefited greatly from hearing  
12 about them.

13 I'm confident that the greater wisdom  
14 will prevail and this tax proposal will not  
15 be enacted. My hope is that it dies  
16 swiftly. Tax code revision should be fair  
17 and purposeful. They should not be  
18 retaliatory or punitive.

19 REPRESENTATIVE WAGLE: Are there  
20 questions of Terri Roberts? Representative  
21 Long.

22 REPRESENTATIVE LONG: Thank you.  
23 Terri, I think you and I have a lot in  
24 common. We both care a lot about health  
25 issues, and that's why I asked to be on the



1 health and human services committee. I  
2 guess my rationale is a little different  
3 than yours, though, in justifying a lawsuit  
4 against the tobacco company. Recently I was  
5 talking to another representative, and  
6 there's a great concern about obesity in  
7 women. We all know that chocolate, you  
8 know, creates obesity. We have problems  
9 with our weight, but I couldn't justify  
10 going after the chocolate company, you know,  
11 for my lack of discipline in staying away  
12 from something that I know can be harmful to  
13 me and to my health. I guess that's where  
14 I'm looking at an immense lawsuit against a  
15 tobacco industry who we all know, we've all  
16 been educated about the harm it does to us  
17 and to families and everything. So I guess  
18 I just wanted to make a statement that the  
19 action that's taken to control the amount of  
20 profit, you know, to a law firm, I guess  
21 it's just a different way of thinking  
22 possibly.

23 MS. ROBERTS: I understand.  
24 There will be up to 500,000,000 paid in  
25 attorneys fees every year as a result of the

1 master settlement agreement. The percentage  
2 that was paid out to the Kansas is -- was  
3 determined to be \$54,000,000. That was part  
4 of the settlement. That's how our legal  
5 system operates.

6 REPRESENTATIVE WAGLE:  
7 Representative Aurand.

8 REPRESENTATIVE AURAND: Thank  
9 you, Madam. The thing I learned this  
10 morning, the thing that bothered me, setting  
11 up the separate account that pays the thing.  
12 When you're talking about health issues, it  
13 started out as a Medicare system. I'm not  
14 sure there is a whole lot of money going  
15 back to medical --

16 MS. ROBERTS: Medicaid, Medicaid  
17 recoupment.

18 REPRESENTATIVE AURAND: What I  
19 don't understand as far as the tax bill, and  
20 Representative Powell tried to make it  
21 clear, this money, if all in one pot, would  
22 have been part of the Kansas pot of money.  
23 What he's trying to go after is that money  
24 that's out there that didn't come back to  
25 the State of Kansas. Now, from a health

1 perspective or children's programs or  
2 programs for smokers, would it make some  
3 sense as far as the tax policy or policy  
4 trying to get more of that money, and don't  
5 you have any problem with all the lawyers  
6 setting aside this separate fund over here  
7 which basically subtracts from the amount  
8 that we get back to work with health issues?  
9 Isn't that troubling?

10 MS. ROBERTS: I think about it.  
11 I think about the hundreds of attorneys that  
12 worked on this and all the attorney  
13 generals. Actually, one attorney general  
14 whose state had not even filed a lawsuit was  
15 allowed to negotiate the settlement. Okay.  
16 I won't go there. There is a number of  
17 issues related to the actual settlement.  
18 Think about it. That's somewhat  
19 self-serving in a sense, but it's what they  
20 did. It's what they did in the best  
21 interest of getting this issue settled. In  
22 the four states that actually ended up going  
23 to court or settling right before they did  
24 go to court, everybody prepared for trial  
25 and got ready. Spent an enormous amount of

1 money and time and they settled. We could  
2 see the wave of settlement coming through.  
3 Those are the things I monitored on behalf  
4 of my colleagues that do what we do in our  
5 state every day, five and ten e-mails every  
6 hour about what was coming down. Do I like  
7 it? I don't know if I like it or not. But  
8 that's what we ended up with. I never  
9 thought we'd get the concessions from the  
10 industry that we did. If I was negotiating  
11 it, there would have been more. But I can't  
12 in hindsight say what they did was bad or  
13 wrong. It's what we did. It's what we  
14 signed and everybody knew at the press  
15 conference on November 20th, we'd gone  
16 through 18 months, gone to Congress with  
17 another package that didn't get passed. We  
18 knew what was being asked. At least I, as a  
19 person informed about this, knew what was  
20 going to happen. They didn't go into it  
21 blindly. Everybody was well versed on where  
22 these pots of money were and what was going  
23 to happen and what the fallout was going to  
24 be. It was well debated for 18 months.

25 REPRESENTATIVE AURAND: I guess

1 in the sense you said, that might have been  
2 self-serving for them.

3 MS. ROBERTS: Both sides.

4 REPRESENTATIVE AURAND: This is  
5 what the legislature is doing to be  
6 self-serving ourselves, and people in the  
7 legislature thinks more of this money should  
8 be going to the program.

9 MS. ROBERTS: Yeah. I'd have to  
10 follow up on what Mr. Hayward says. It has  
11 to have a rational basis, and it has to be  
12 fair and equitable, constitutional. Don't  
13 want to end up in federal court arguing with  
14 with your attorney general and attorneys  
15 over attorney fees.

16 REPRESENTATIVE AURAND: I think  
17 all of us agree it needs to be  
18 constitutional. Thanks.

19 REPRESENTATIVE WAGLE: Terri, as  
20 a matter of record, I want you to be made  
21 aware the leadership of this tax committee,  
22 two republicans, two Democrats, met with  
23 John Campbell, asked him some tough  
24 questions several weeks ago. We asked him  
25 to appear before the committee to give the

1 committee a briefing on the history and the  
2 master settlement. And in addition to that,  
3 I understood last Friday when I left I had  
4 communications from the AG's office saying  
5 she would be here on Wednesday because we  
6 were going to give the opportunity for Tony  
7 to share his testimony first, and we were  
8 going to allow her to counter that which  
9 they agreed to. Instead, on Monday morning,  
10 the attorney general came in, and I was not  
11 forewarned that was going to happen. She  
12 chose to pick up the matters rather -- of  
13 how Entz and Chanay was hired rather than  
14 brief the committee on the history and the  
15 settlement.

16 MS. ROBERTS: Okay.

17 REPRESENTATIVE WAGLE: With her  
18 being a statewide elected official, I felt  
19 like I should give her the courtesy to  
20 present the information as she wanted on her  
21 time line. She really overruled the  
22 committee chair and said this is how I want  
23 to do it. I said okay. I want you to know  
24 we did offer them that.

25 MS. ROBERTS: Great. I was not

1 aware of that. Like I said, I'm not in  
2 those circles.

3 REPRESENTATIVE WAGLE: Further  
4 questions of Terri Roberts? I see none. We  
5 will continue the hearing tomorrow,  
6 committee. Nine o'clock or shortly after.

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C E R T I F I C A T E

STATE OF KANSAS

ss.

COUNTY OF SHAWNEE

I, Sandra S. Biggs, a Certified Shorthand Reporter, commissioned as such by the Supreme Court of the State of Kansas, and authorized to take depositions and administer oaths within said State pursuant to K.S.A. 60-228, certify that the foregoing was reported by stenographic means, which matter was held on the date, and the time and place set out on the title page hereof and that the foregoing constitutes a true and accurate transcript of the same.

I further certify that I am not related to any of the parties, nor am I an employee of or related to any of the attorneys representing the parties, and I have no financial interest in the outcome of this matter.

Given under my hand and seal this 22nd day of February, 2000.

Sandra S. Biggs  
Sandra S. Biggs, C.S.R.



COSTS: \_\_\_\_\_