

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 17, 2000, in Room 519-S of the Capitol.

All members were present except: Rep. Howell - excused
Rep. Johnston - 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 - Taxation Secretary

Conferees appearing before the committee: Jerry K. Levy of Jerry K. Levy Law Offices, Lawrence, Ks
Andrew W. Hutton of Hutton & Hutton, Wichita, Ks
Mark B. Hutton of Hutton & Hutton, Wichita, KS

The conferees were sworn in by the court reporter.

Speaking to the Committee first was Jerry Levy. (Attachment 1).

Next to appear before the Committee were Andrew and Mark Hutton. (Attachment 2).

The day's entire testimony was taken verbatim by a court reporter. These minutes are attached. (Attachment 3).

The meeting adjourned at 10:50 a.m. The next meeting is scheduled for Friday, February 18, 2000.

LAW OFFICES
OF
JERRY K. LEVY, P.A.

JERRY K. LEVY
RONALD L. SCHNEIDER
KATHERINE L. KIRK, OF COUNSEL

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Date: February 17, 2000

Members of the House Taxation Committee:

My name is Jerry Levy. I am a lawyer from Lawrence, Kansas, and for nearly 33 years have limited my practice to representing plaintiffs in personal injury cases in the areas of products liability, professional malpractice, automobile crashes, and civil rights. I am a past president of the Kansas Trial Lawyers Association, a past president of the Kansas Chapter of the American Board of Trial Advocates and am a founding member of Trial Lawyers for Public Justice. I have tried in excess of 150 jury trials in the aforementioned areas.

When I first started practicing law I worked for, and became a partner of, the best trial lawyer in the history of Kansas, and one of the best trial lawyers in the U.S.; Gerald Michaud. But for Gerry's health, he would be here today. While with Gerry Michaud, I worked on products liability cases involving the birth control pill, the Dalkon Shield, and other types of major litigation. I have taken on Ford Motor Company, General Motors and other such companies.

I would say that in Kansas there are less than fifty law firms who limit their practice to plaintiffs personal injury litigation. I am familiar with most of them as well as their counter-parts who do the defense work.

For my testimony today I am going to assume that I was asked the following hypothetical questions in 1996 or 1997 by the Attorney General:

Would you accept the job of acting as local counsel on behalf of the State of Kansas against "big tobacco" for the money they caused the state to incur in medical payments, for which you would be paid a contingent fee? In addition, you would not have to finance any of the costs of the litigation, and would not be required to keep track of your time in order to justify your fees. Would you accept the case?

My answer, in a New York minute, would be "unequivocally yes".

Out of curiosity, I asked three other prominent plaintiff lawyers in Kansas the exact question. Their response was "Are you kidding. Of course."

For those of you unfamiliar with the term local counsel, let me explain. Most courts in Kansas require that each party to a law suit have counsel from Kansas. Counsel from other states are admitted "pro hac vice", or for the one case only. Generally local counsel have little or no responsibility to investigate the case, prepare the case, argue the motions on the case nor to try

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the case. From my knowledge of the "big tobacco" cases, the spade work had already been done by firms like the Motley firm in South Carolina, the attorney general in Mississippi, and numerous other law firms including Hutton & Hutton in Wichita. I often use local counsel in cases I try in other states, or even other counties in Kansas. I usually pay them on an hourly basis for their time or for a small contingency of 10% of the total fee recovered.

Although local counsel's involvement in the case is usually limited, it does not mean they need not be familiar with the subject matter of the litigation and completely conversant with all local rules and statutes. Also of great import is to have local counsel that are respected as litigators by the judiciary and defense counsel.

Further, for my testimony, I am assuming being asked the following question:


Does the law firm of Entz and Chanay have the reputation of being qualified and competent to handle a major products liability case against "big tobacco"? I casually know Mr. Entz. I know Mr. Chanay because he sits behind me at KU football games. They hold themselves out to the public as lawyers in the fields of construction law, labor law and lobbying, and to my knowledge, are competent in those fields. Their firm definitely does not have the reputation of being a group of plaintiff trial lawyers. None of them are to my knowledge, members of the Kansas Trial Lawyers Association, the Association of Trial Lawyers of America, nor any other association of plaintiff lawyers. If I were asked to provide the names of the preeminent plaintiff lawyers in Kansas qualified and competent to assist lead counsel in the "big tobacco" case, Entz and Chanay would not be on my list.

I have personally spoken to many reputable plaintiffs lawyers in Kansas. None of them were given the opportunity to take this case. Not until the advertisement appeared in the Journal of the Kansas Bar Association in November of 1998 was I aware that the Attorney General was soliciting lawyers for the job. Within a day or two after the ad appeared, I was playing golf with my banker. I showed him the ad, and asked him how much of a line of credit he would extend to me if I had the job. His response was, "Jerry, I would give you a blank check."

It is my understanding that the Attorney General had originally agreed to retain the firm of Hutton & Hutton, then backed out of the agreement. Hutton & Hutton would have been at the top of my list of firms I would have recommended had I been asked.

Members of the committee, I would be pleased to answer any questions you have or to clarify any of my remarks in my prepared testimony.

Respectfully submitted,



JERRY K. LEVY

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Wichita, Kansas 67226
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About the Firm

Hutton & Hutton is a law firm comprised of partners, Andrew W. Hutton and Mark B. Hutton¹, five associate attorneys, one of-counsel attorney, and twenty support staff members. This law firm, which originated in 1979 under the name Michaud, Cordry, Michaud, Hutton & Hutton, handles primarily medical malpractice cases and products liability litigation, but also handles aircraft litigation, limited commercial litigation, Qui Tam and pharmaceutical litigation. Numerous verdicts and settlements in excess of \$1 million have been obtained, including numerous millions in settlements for brain-injured children from birth trauma and vaccines. Such cases have included the following:

Aves, et al v. Shah, 997 F.2d 762 (10th Cir. 1993) - Plaintiff: Darcy Aves, who was severely injured during birth resulting in severe mental and physical retardation. Darcy is also blind and suffers from seizures and Cerebral Palsy. Defendant: Nasreen Shah, M.D. Darcy's twin sister, Danna, was born healthy. Outcome: Jury awarded \$23.6 million in November of 1990, the largest jury verdict in Kansas and one of the largest personal injury verdicts in the nation.

Wooderson v. Ortho Pharmaceutical Corp., 681 P.2d 1038 (1984) - Plaintiff: Carol Wooderson, who lost both kidneys to a blood disorder caused by a contraceptive and underwent two kidney transplants. Defendant: Ortho Pharmaceuticals (Johnson & Johnson). Product: Birth control pills. Outcome: Jury awarded \$4.75 million in February 1983; manufacturers reduced level of estrogen in pills and added consumer information.

Johnson v. American Cyanamid Co., 239 Kan. 279 (1986), 718 P.2d 1318 (1986) - Plaintiff: Emil Johnson, who contracted polio from his newly vaccinated granddaughter and died from respiratory paralysis. Defendant: Lederle Labs (American Cyanamid). Product: Oral polio vaccine. Outcome: Jury awarded \$10 million in May 1984, but the Kansas Supreme Court overruled in a 4-3 decision and threw out the verdict; manufacturers began warning of potential for contracting polio through personal contact.

¹Mark Hutton was recently selected by his peers to be included in the 1999-2000 Edition of *The Best Lawyers in America*.

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Ogilvie v. International Playtex, 821 F.2d 1438 (1987), *cert. denied*, 108 S.Ct. 2014 (1988) - Plaintiff: Kelly Ogilvie, whose wife died from toxic shock syndrome. Defendant: International Playtex. Product: Super absorbent tampons. Outcome: Jury awarded \$11.2 million in February 1985; manufacturers took tampons off the market and added warnings.

Graham v. Wyeth Labs, 666 F.Supp. 1483 (D.Kan. 1987) - Plaintiff: Michelle Graham, who had a severe neurological reaction to a vaccine and suffered brain damage. Defendant: Wyeth Labs (American Home Products). Product: DPT vaccine. Outcome: Jury awarded \$15 million in October 1987; manufacturers purified vaccine.

Mason v. Texaco, 948 F.2d 1546 (10th Cir. 1991) - Plaintiff: Wife and children of Otis Mason, who died of leukemia caused by exposure to benzene. Defendant: Texaco. Product: Benzene, an industrial solvent and gasoline component. Outcome: Jury awarded \$34 million in January 1990.

Arvayo v. United States of America, 580 F.Supp. 753 (1984) - Plaintiff: Jose M. Arvayo, a minor, who contracted bacterial meningitis leading to severe brain damage as a result of failure to diagnose and treat by a family physician at McConnell Air Force Base. Defendant: United States of America. Outcome: The District Court awarded \$1.95 million, largest Federal Tort Claims Act medical negligence verdict in Kansas. Reversed 766 F.2d 1416 (1985).

Simmons v. Showa Denko - Plaintiff: Randy Simmons, who became a ventilator-dependent quadriplegic and died two months after settlement. Defendant: Showa Denko. Product: L-Tryptophan. Outcome: Settled for undisclosed amount in early 1992; L-tryptophan taken off the market.

Aldoroty v. HCA Health Services of Kansas, Inc. d/b/a Wesley Medical Center - Plaintiff: Neil Aldoroty, M.D., a Wichita psychiatrist. Failure by Wesley Medical Center to report/compare x-rays from 1991 and 1992 resulted in late diagnosis of lymphoma. Lymphoma would have been curable by radiation if diagnosed in 1991 or 1992. Outcome: Jury awarded \$1.245 million in November of 1996.

About the Partners

Mark B. Hutton, born Newton Kansas, December 31, 1953; admitted to bar, 1979, Kansas and U.S. District Court, District of Kansas; 1984, U.S. Court of Appeals, Tenth Circuit; 1986, U.S. Supreme Court; 1987, Oklahoma; 1990, U.S. Court of Federal Claims; 1991, U.S. Court of Appeals, Fifth Circuit; 1993, U.S. District Court, Western and Eastern Districts of Arkansas; 1993, U.S. District

Court, District of Arizona; 1997, U.S. District Court, Districts of Colorado and Hawaii; 1997, Creek Nation Tribal Court of the State of Oklahoma; 1997, Lower Brule Sioux Tribal Court; 1999, Supreme Court of Texas. **Education:** Washburn University of Topeka (B.B.A., 1976; J.D., 1979), Phi Kappa Phi. **Certified** in Civil Trial Advocacy by American Board of Trial Advocates, 1988. **Recipient:** Trial Lawyer of the Year Award, Trial Lawyers for Public Justice, 1986. **Author:** "Medical Malpractice Mediation Panels." Vol. 2, No. 1, Journal of the Kansas Trial Lawyers Association; **Co-Author:** "A Paradox -- The Kansas Collateral Source Rule." Vol. 2, No. 3, Journal of the Kansas Trial Lawyers Association; **Author:** "Substantial Possibility: A Doctrine of Causation." Vol. 3, No. 2, Journal of the Kansas Trial Lawyers Association; **Author:** "Motion in Limine: A Mandatory Pre-Trial Motion in Civil Litigation." Journal of the Kansas Trial Lawyers Association, Vol. 4, No. 5; **Author:** "Pharmaceutical Litigation-Drug Manufacturers Duty to Warn." Vol. 5, No. 5, Journal of the Kansas Trial Lawyers Association; **Author:** "Medical Tort Law: The Emergence of Specialty Standard of Care." Tulsa Law Journal, Vol. 16, 4, 1981; **Author:** "Intrusion into the Sanctimonious Physician-Patient Relationship." Journal of the Kansas Trial Lawyers Association, Vol. 7, No. 1, Aug. 1983; **Author:** "The Privilege Log: Where the Battle Can Be Won or Lost." Journal of the Kansas Trial Lawyers Association, Vol. 19, No. 6, July 1996; **Author:** "Genetic Susceptibility to Complications from Silicone Breast Implants." Vol. 4, No. 5, April 1996, Medical-Legal Aspects of Breast Implants Reporter; **Author:** "In Wake of *Medtronic*, Court Rejects Baxter's Preemption Claim." Vol. 5, No. 6, May 1997, Medical-Legal Aspects of Breast Implants Reporter; **Co-Author:** "Documenting the Neurological Impact of Exposure to Silicone." Vol. 6, No. 2, January 1998, Medical-Legal Aspects of Breast Implants Reporter; **Co-Author:** "Further Studies of Link Between Breast Implants and Disease." Vol. 6, No. 12, November 1998, Medical-Legal Aspects of Breast Implants Reporter; **Co-Author:** "Debate Rages On: Studies Link Breast Implants and Disease." Vol. 7, No. 1, December, 1998, Medical-Legal Aspects of Breast Implants Reporter; **Co-Author:** "Reye's Syndrome -- The Link Between Aspirin and Reye's." Trial, November 1987; **Author:** "Tampons and Toxic Shock Syndrome -- Failure in Corporate Risk Management." Trial, February 1988; **Author:** "Norplant Litigation: Creating an Exception to the Learned Intermediary Doctrine." Trial, July 1996; **Co-Author:** "Smokeless Tobacco: An Unrecognized Health Problem," The Advocate -- The Journal of the Oklahoma Trial Lawyers Association, Vol. 28, No. 2, 2nd Qtr 1997, Consumer Attorneys of California Forum, Vol. 27, No. 7, Sept. 1997; and Journal of the Kansas Trial Lawyers Association, Vol. 20, No. 5, May 1997; **Author:** "Alert to Plaintiffs: New Study Links Implants to Silicone in Liver," Medical-Legal Aspects of Breast Implants Reporter, Vol. 5, No. 3, February 1997. **Appointed** by the Honorable Samuel C. Pointer, Jr., Chief Judge of the Northern District of Alabama, to the Plaintiffs' Steering Committee (PSC) of MDL-926 In Re: Silicone Gel Breast Implant Litigation. **Appointed** by the Honorable Richard A. Schell, Chief Judge of the Eastern District of Texas, to the Plaintiffs' Steering Committee of the In Re: Norplant Contraceptive Products Liability Litigation of MDL 1038. **Member:** Wichita, Kansas, American and International Bar Associations; Kansas Trial Lawyers Association; Oklahoma Trial Lawyers Association; Trial Lawyers for Public Justice; American College of Legal Medicine; American Board of Trial Advocates; **Trial Counsel:** O'Gilvie v. International Playtex, 821 F.2d 1438 (1987), cert. denied, 108 S.Ct. 2014 (1988); Gregory v. Carey, 246 Kan. 504 (1990); Aves, et al. v. Shah, 997 F.2d 762 (10th Cir. 1993); Donnini v. Ouano, 810 P.2d 1163 (1991); Arvayo v. United States of America, 580 F.Supp. 753 (1984), 766 F.2d 1416

(1985); Johnson v. American Cyanamid Co., 239 Kan. 279 (1986), 718 P.2d 1318 (1986); Aldoroty v. HCA Health Services of Kansas, Inc. d/b/a Wesley Medical Center, Case No. 95 C 1790, 18th Judicial District Court of Kansas. *Practice Areas:* Medical Malpractice; Products Liability; Qui Tam; Commercial Litigation.

Andrew W. Hutton, born Newton, Kansas, December 31, 1953; admitted to bar 1979, Kansas and U.S. District Court, District of Kansas; 1982, U.S. Court of Appeals, Tenth Circuit; 1986, U.S. Supreme Court; 1988, U.S. Court of Federal Claims. *Education:* Washburn University of Topeka (B.B.A., 1976; J.D., 1979). Phi Kappa Phi; Phi Delta Phi. *Co-Author:* "A Paradox -- The Kansas Collateral Source Rule." Vol. 2, No. 3, Journal of the Kansas Trial Lawyers Association. *Co-Author:* "Delayed Diagnosis of Breast Cancer." Vol. 5, No. 2, Journal of the Kansas Trial Lawyers Association; *Author:* "Medical Malpractice Screening Panel Brief: Failure to Diagnose Appendicitis." Vol. 5, No. 4, Journal of the Kansas Trial Lawyers Association; *Co-Author:* "Smokeless Tobacco: An Unrecognized Health Problem," The Advocate -- The Journal of the Oklahoma Trial Lawyers Association, Vol. 28, No. 2, 2nd Qtr. 1997, Consumer Attorneys of California Forum, Vol. 27, No. 7, Sept. 1997, and Journal of the Kansas Trial Lawyers Association, Vol. 20, No. 5, May 1997. *Certified* in Civil Trial Advocacy by American Board of Trial Advocates, 1988. Member of the Plaintiffs' Steering Committee of MDL 1001, Temporomandibular Joint Litigation. *Member* of Plaintiffs' Class Committee on the Castano vs. The American Tobacco Company, et al. nationwide cigarette litigation against all cigarette manufacturers. *Member* of the Discovery Committee of Plaintiffs' Management Committee and State Liaison Counsel for the states of Kansas, Oklahoma, Missouri, Nebraska, Wyoming and Montana for *In Re:* Diet Drugs MDL Docket No. 1203. *Member:* Wichita, Kansas and American Bar Associations; Kansas Trial Lawyers Association; The Association of Trial Lawyers of America; Trial Lawyers for Public Justice; American Board of Trial Advocates; National Board of Trial Advocacy. *Trial Counsel:* Graham v. Wyeth Laboratories, 666 F.Supp. 1483 (D.Kan. 1987); Arvayo v. United States of America, 580 F.Supp. 753 (1984), 766 F.2d 1416 (1985); Wooderson v. Ortho Pharmaceutical Corp., 681 P.2d 1038 (1984); Weese v. Schukman, 148 F.R.D. 269 (D.Kan. 1993). *Practice Areas:* Medical Malpractice; Qui Tam; Products Liability.

About the Associates

Derek S. Casey, born Muskogee, Oklahoma, June 28, 1966; admitted to bar, 1991, Oklahoma, Kansas and U.S. District Court, District of Kansas and Eastern, Northern and Western Districts of Oklahoma; U.S. Court of Appeals, Third, Seventh and Tenth Circuits; U.S. Supreme Court. *Education:* University of Oklahoma (B.A., magna cum laude, in Letters with high honors, 1988; J.D., with distinction, 1991). *Recipient:* American College of Trial Lawyers Association Scholarship; American Jurisprudence Award for Constitutional Law and Conflict of Laws, 1991. *Author:* "Attacking the Peer-Review Privilege: Some Ideas," Journal of the Kansas Trial Lawyers Association, Vol. 17, July 1994. *Member:* Wichita, Oklahoma and Kansas Bar Associations; Kansas Trial Lawyers Association; Association of Trial Lawyers of America. *Reported Cases:* Smith v. Milfeld, 869 P.2d 748 (Kan.App.1995); In re General Motors Pick-up Truck Fuel Tank Products

Liability Litigation, 55 F.3d 768 (3d Cir. 1995). *Trial Counsel*: Taylor v. IUE, Case No. 94-CVC-160, 28th Judicial District Court of Kansas; In re Guardianship of Rapheal Nevin Pino, PG-95-27 (Canadian County, Oklahoma, 1996). *Practice Areas*: Products Liability; Consumer Fraud; Medical Malpractice; Qui Tam; Civil Litigation.

Anne H. Pankratz, born Kingman, Kansas, March 24, 1954; admitted to bar, 1986, Kansas and U.S. District Court, District of Kansas; U.S. Court of Appeals, Tenth Circuit; U.S. Supreme Court. *Education*: Wichita State University (B.S., Nursing, magna cum laude, 1975; M.A., Health Administration, magna cum laude, 1980); University of Kansas (J.D., 1986). Registered Nurse, Kansas. *Member*: Wichita, Kansas and American Bar Associations; Kansas Trial Lawyers Association; The Association of Trial Lawyers of America. *Trial Counsel*: Aldoroty v. HCA Health Services of Kansas, Inc. d/b/a Wesley Medical Center, Case No. 95 C 1790, 18th Judicial District Court of Kansas. *Practice Areas*: Medical Malpractice; Products Liability Law; Qui Tam; Personal Injury Law.

Christopher P. Christian, born Wichita, Kansas, May 21, 1949; admitted to bar, 1975, Kansas and U.S. District Court, District of Kansas. *Education*: Wichita State University (B.A., magna cum laude, 1971); Southern Methodist University (J.D., 1975). Phi Eta Sigma; Omicron Delta Kappa. Member: Jessup International; Moot Court Team, 1975. *Member*: Wichita, Kansas and American Bar Associations; The Association of Trial Lawyers of America; Kansas Trial Lawyers Association (Board of Governors). *Trial Counsel*: Byrd v. Wesley Medical Center, 237 Kan. 215 (1985), 699 P.2d 459 (1985); Scott v. Wolf Creek Nuclear Operating Corp., 23 Kan.App.2d 156, 928 P.2d 109; Kerns v. G.A.C., Inc., 255 Kan. 265, 875 P.2d 949; Mercer v. Aetna Life Insurance Company, 3 Kan.App.2d 257, 593 P.2d 23; Hays v. Farm Bureau Mutual Insurance Co., et al, 255 Kan. 205, 589 P.2d 579; Jones v. Hittle Service, Inc., 219 Kan. 627, 659 P.2d 1383; Gardner v. Chrysler Corporation, 89 F.3d 729; Taylor v. Bywater, 1994 WL 240768 (D.Kan.). *Practice Areas*: Products Liability; Environmental Law; Personal Injury Law; Qui Tam; Medical Malpractice.

Chan P. Townsley, born Great Bend, Kansas, October 28, 1955; admitted to bar, 1992, Kansas and U.S. District Court, District of Kansas; 1993, Missouri and U.S. District Court, Western District of Missouri, Tenth Circuit Court of Appeals. *Education*: University of Kansas (B.F.A., 1977; M.F.A., 1983); Washburn University (J.D., cum laude, 1992). Phi Kappa Phi; Phi Alpha Delta. Notes Editor, Washburn Law Journal, 1991-1992. *Recipient*: American Jurisprudence Awards in Advanced Torts, Torts II, Civil Procedure. Law Clerk to the Honorable Magistrate Judge John B. Wooley, U.S. District Court, Wichita, Kansas, 1992-1993. *Author*, Comment: "The Fifth Amendment Privilege Against Self-Incrimination: The Relationship Between State Regulatory Enforcement Authority and Compelled Testimonial Production," 30 Wash. L.J. 174, 1990. *Appellate Counsel*: Gardner v. Chrysler Corporation, 89 F.3d 729; Smith v. Massey-Ferguson, Inc., 256 Kan. 90, 883 P.2d 1120. *Member*: Wichita, Kansas and Missouri Bar Associations; Kansas Trial Lawyers Association; The Association of Trial Lawyers of America. *Practice Areas*: Personal Injury; Products Liability; Medical Malpractice; Civil Litigation; Consumer Fraud.

Deborah B. McIlhenny, born Sherman, Texas, October 21, 1956; admitted to bar 1999, Kansas and U.S. District Court, District of Kansas. **Education:** Valdosta State University (B.A., 1977); Valparaiso University School of Law (J.D., 1998). **Member:** Wichita and Kansas Bar Associations; Kansas Trial Lawyers Association; Association of Trial Lawyers of America. **Practice Areas:** Consumer Law; Environmental Law; Products Liability; Medical Malpractice

Of-Counsel

M. Prudence Hutton was born on December 17, 1950, in Newton, Kansas. Prudence graduated from the University of Virginia with a Bachelor of Arts in 1972. She attended law school at Washburn University of Topeka and graduated with her juris doctor in 1979. Prudence is admitted to practice before the District Courts of California, Nevada and Hawaii and is a member of the California Bar Association. Prudence practices in the firm's Fresno, California office. Her main emphasis of practice is medical malpractice and products liability litigation.

Representative Clients

Andrew Hutton has represented mainly victims of medical, hospital and pharmaceutical liability, which have resulted in over 20 verdicts in excess of \$1 million for individual plaintiffs, including record individual verdicts in Kansas and Oklahoma. Mark Hutton also has extensively represented victims of medical, hospital and pharmaceutical liability, and product liability litigation, including serving as lead counsel over 300 toxic shock syndrome cases against five different manufacturers. In the past, this firm has also represented individually both the Governor and Attorney General of Kansas. The following is an overview of the various types of other litigation in which this firm is involved:

CONSUMER LITIGATION. The following is representative of consumer litigation cases handled by Hutton & Hutton:

- *In Re Apple Juice Products Liability Litigation*, MDL No. 1113, Eastern District of Virginia. Plaintiffs: Consumers of adulterated apple juice packaged and/or marketed by the defendants. Defendants: Coca-Cola Enterprises, Inc; Coca-Cola Foods, a Division of the Coca-Cola Company; Motts U.S.A., a Division of Cadbury Beverages, Inc.; and Nestle Food Co. This action is ongoing.

INSURANCE LITIGATION. Litigation in the area of insurance includes the following case:

Olin Nelson, et al. v. St. Paul Fire & Marine Insurance Company, et al. District Court of Brazoria, Texas. Cause No. 95G1088. This case involves insurance fraud upon oil and gas limited partnership investments. This class action has just resulted in a settlement of \$25 million.

PRODUCT LIABILITY LITIGATION. Hutton & Hutton represents consumers in various product liability actions, including recipients of silicone breast implants and the Norplant contraceptive, and owners of defective cars and trucks manufactured by Chrysler, Ford, General Motors, Honda, Nissan and Volkswagen. The following is a representative list of the products liability suits in which Hutton & Hutton is currently involved:

In Re Silicone Breast Implants Products Liability Litigation, Northern District of Alabama, Southern Division, MDL 926. As well as representing hundreds of individual women, Mark Hutton serves as a member of the Plaintiffs' Steering Committee and has worked intensively on this litigation as a member of the Science, Expert and Deposition subcommittees. In addition, Hutton & Hutton has developed the medical articles database which is distributed on CD-Rom by the PSC Committee.

In Re Norplant Contraceptive Products Liability Litigation, Eastern District of Texas, Beaumont Division, MDL 1038. Mark Hutton is likewise a member of the Plaintiffs' Steering Committee in the Norplant litigation, concentrating his efforts on the Science, Expert and Deposition subcommittees. He recently filed cases on behalf of hundreds of his individual clients.

Castano v. The American Tobacco Company, et al., Eastern District of Louisiana, Case No. 94-1044. Andrew Hutton serves on the Plaintiffs' Liaison Counsel for this class action. He is the co-chair of the Science & Causation Committee among the 65-member consortium of lawyers. In addition to his work on the *Castano* case, he has been involved in litigation against manufacturers of smokeless tobacco and is currently involved in the investigation of tobacco addiction cases in Kansas, Oklahoma and Hawaii.

Mason, et al. v. The American Tobacco Company, et al., United States District Court Northern District of Texas, Wichita Falls Division, Case No. 7-97-CV-293-X. Mark Hutton, and his firm, is working with a group of other law firms to recover, on behalf of the Medicare system, health care costs expended by Medicare in the care

and treatment of its beneficiaries with smoking-related diseases. Plaintiffs seek in excess of \$750 Billion in this action.

In Re: Diet Drugs (Phentermine/Fenfluramine/Dexfenfluramine) Products Liability Litigation, Eastern District of Pennsylvania, MDL No. 98-20113. Andy Hutton was one of seven trial lawyers appointed to the Fen-Phen Discovery Committee. Andy Hutton was also appointed as the Kansas and Midwest Area State Liaison for the nationwide litigation.

WHISTLEBLOWER LITIGATION. Hutton & Hutton represents "whistleblowers" who are seeking to use the False Claims Act to recover damages suffered by the federal government arising from fraudulent billing practices made by health care providers.

Litigation Practice

Hutton & Hutton maintains 100 percent involvement in representing victims of medical negligence, hospital negligence, pharmaceutical liability, consumer fraud, toxic tort and personal injury cases.

CASTANO TOBACCO LITIGATION

PLAINTIFFS' LEGAL COMMITTEE
30TH FLOOR - ENERGY CENTRE
1100 POYDRAS STREET
NEW ORLEANS, LA 70163-3000

Chairman
Wendell H. Gauthier

William Baggett
Scott Baldwin
Don Barber
Daniel Beonel, Jr.
Donald Bernard
Jack M. Bailey, Jr.
Raul Bencomo
D. Richard Bounds

Martin Bracht
Turner Branch
Joseph M. Bruno
Elizabeth Cabraser
Alvaro R. Calderon
Kenneth M. Carter
David S. Casey, Jr.
Stanley M. Chestley

John R. Chmielec
John P. Coate
Paul Dine
Gary Eubank

Calvin C. Frazee
Gary Fine

Myer H. Gertler
Brother Hays

Russ M. Heimen
Don Hilde

Wayne Hogan
Melvin Holden

Don Howarth
Andrew Hutton

John S. Kehler
Donald G. Keith

Will Kemp
Ralph Knowles

J.D. Lee
Walter Lege

Arnold Levin
Steve Martino

Thomas Mellon
Les Mendlesohn

Edwin R. Murray
Stephen B. Murray

Dianne Nisi
John M. O'Quinn

Jorge Ortiz Brunet
Robert L. Reitearn

William N. Riley
Mark P. Robinson, Jr.

Michael X. St. Martin
Richard Szamman

Marc C. Saperstein
Stephen A. Sneller

W. Hugh Sintes
W. James Singleton

Evian F. Treisman
Gayle L. Trouwaine

Walter Umphrey
John Estelle Williams, Jr.

Charles Zimmerman

MEMORANDUM

DATE: August 8, 1997
TO: State Class Action Committee Members
FROM: Suzanne Foulds
RE: Recently Released Liggett Documents

Attached, please find recently released Liggett documents from the Florida Court for your review.

Suzanne Foulds

Classified Advertisements

POSITIONS AVAILABLE

THE U.S. COURT OF APPEALS-10th Circuit is accepting applications from qualified attorneys (including women, members of minority groups, and persons with disabilities) for a newly created position of Federal Public Defender-District of Utah and for the position of Federal Public Defender-District of New Mexico (incumbent plans to reapply and will be considered on same basis as all other applicants). Position terms are four years, and salary is \$118,000 per year. Applicants must have at least five years criminal practice experience.

Application materials are available on the court's web site at www.ck10.uscourts.gov, or may be requested from Circuit Executive for 10th Circuit, 1823 Stout Street, Denver, CO 80257, or may be obtained in the offices of circuit and district clerks in the 10th Circuit. Application deadline: Nov. 20, 1998. EOE

POSITIONS AVAILABLE

OVERLAND PARK OFFICE of mid-sized KAN/MO AV rated firm seeks one to two attorneys specializing in business law. Appropriate book of business desirable but not required. Confidential treatment of resumes. Send to KBA Box 1037-A67, Topeka, KS 66601.

NEED EXPERIENCED attorney desiring long-term employment, eventual partnership in established, busy Newton firm. Practice areas: municipal and business litigation, estate planning, real estate, corporate law. Talented support staff. Progressive computer technology. Submit resume to: PO Box 345, Newton, KS 67114.

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**More classifieds,
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EXPERT WITNESS-MANUFACTURING, PACKAGING, ENGINEERING. Product Liability covering: Pharmaceuticals, Foods, Medical Devices and Industrial Products. Product/Package Design and Development, Federal Agencies-Policies and Standards, Environmental Hazards. CONATECH CONSULTING GROUP, INC., 287 N. Lindbergh Blvd, Suite 208, Creve Coeur, Mo. 63141-7849. Phone (314) 995-9767. Fax (314) 995-9766.

NOTICE TO CIVIL LITIGATORS

The Office of the Kansas Attorney General, acting pursuant to 1998 Senate Substitute for House Bill 2895 50 (1998 Kan. Sess. Laws 202 50), is soliciting offers from attorneys to act as counsel in the *Kansas v. R.J. Reynolds Tobacco Company*, et al, Shawnee County Case No. 96-CV-919; and *State of Kansas v. Brooke Group, LTD., et al*, Kansas Supreme Court-Case No. 97-80451-AS.

This litigation is complex and may require a large expenditure of time and money. Expenses will need to be advanced by counsel and recoupment of the same will be contingent on securing money from either a judgment from the defendants, settlement of the cases or the approval of the Kansas Legislature's Joint Committee on Special Claims Against the State with a subsequent appropriation.

Attorneys interested in securing more information, may contact John W. Campbell, Senior Deputy Attorney General by Dec. 1, 1998, at the Office of the Kansas Attorney General, 301 SW 10th St., Topeka, KS 66612-1597. The State of Kansas is an equal opportunity employer.

WICHITA FULL SERVICE FIRM needs qualified and motivated litigation attorney with two to six years experience. Applicants should have strong academic credentials or tort litigation experience. Interested applicants should submit resume and references to: P.O. Box 3554, Wichita, Kansas 67201.

ATTORNEY JOBS — Harvard Law School calls our publications: "Probably the most comprehensive source of nationwide and international job openings received by our office and should be the starting point of any job search by lawyers looking to change jobs." Each monthly issue contains 500-600 current (public/private sector) jobs. \$45- three months. Contact: Legal Employment Report; 1010 Vermont Avenue NW, Ste 408-KBL; Washington, D.C. 20005. (800) 296-9611. Visa/MC/AMEX. www.attorneyjobs.com

EXPERT WITNESSES — Architectural, engineering, construction, pipelines, research, reports, testimony - JET & ASSOCIATES, L.C. 800 W. 47th, Kansas City, Mo. 64112. (816) 931-1993.

PSYCHOLOGICAL EVALUATIONS re: Personal Injury, Workers' Comp., Child Custody. Dr. Jeff Lane, Family Psychological Center, 804 South Oliver, Wichita, Kan. 67218, (316) 685-9311.

DO YOU HAVE A MEDICAL QUESTION? 1,000 new papers are indexed to Medline daily. Multi-published internist researcher, seven years experience with Medline, will search, \$150.00 hourly plus expenses. Call Michael E. Serjeant, MB ChB. Tel: (405) 789-6170. Fax: (405) 789-1587.

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The next Journal classified ad deadline is Nov. 25. Mailing date is Jan. 4. Mail your ad to the KBA, P.O. Box 1037, Topeka, Kan. 66601-1037, or fax to (785) 234-3813. For additional information, call Jerri Lopez at (785) 234-5696. Prepayment is required.

Mark B. Hutton · †
Andrew W. Hutton

Derek S. Casey ·
Anne H. Pankratz
Christopher P. Christian
Chan P. Townsley ··

· Also Admitted in Oklahoma
·· Also Admitted in Missouri
† Certified Trial Advocate
National Board of Trial Advocacy

HUTTON & HUTTON



Law Offices

8100 East Twenty-Second Street North, Building 1200
Wichita, Kansas 67226-2321
Mail: P.O. Box 638
Wichita, Kansas 67201-0638

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MAR 15 9 56 AM '96

Tobacco Litigation

General Office
(316) 688-1166
Facsimile
(316) 686-1077

Products Liability
(316) 686-1242
Facsimile
(316) 686-2049

Tax I.D.# 48-0966751

March 14, 1996

SENT VIA FACSIMILE
TO (913) 296-6296
AND VIA REGULAR MAIL

Ms. Carla Stovall
Attorney General
2nd Floor, Judicial Center
Topeka, KS 66612-1567

Re: Cigarette Litigation

Dear Attorney General Stovall:

I am a practicing lawyer in Wichita, Kansas, with emphasis in cigarette litigation. Our firm is part of the 65-member Castano Class Action Group that recently created a settlement with the Liggett Group and other states' attorney generals. I am the chairperson of the Science and Causation Subcommittee, as well as the Smokeless Tobacco Subcommittee within the Castano consortium of attorneys.

We would like Kansas to likewise participate in the Medicare reimbursement litigation that is now being done by five other states. I have talked to Attorney General Michael Moore from Mississippi regarding this matter, and he promised me that he was going to contact you regarding our potential involvement in Kansas. We would like to be able to participate in this litigation on behalf of the citizens of Kansas because of our expertise in cigarette litigation.

Please give this consideration and feel free to give me a call at any time.

Very truly yours,

Andrew W. Hutton

AWH/sm

KS Smoking

Mark B. Hutton - †
Andrew W. Hutton

HUTTON & HUTTON



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Tax I.D.# 48-0966751

April 10, 1996

**SENT VIA FACSIMILE
TO (913) 296-6296
AND VIA REGULAR MAIL**

Ms. Carla Stovall
Attorney General
2nd Floor, Judicial Center
Topeka, KS 66612-1567

Re: Cigarette Litigation

Dear Attorney General Stovall:

Mark and I would like to thank you for allowing us to meet with you on April 8, 1996. Consistent with our oral representation, we would like to head up a litigation team against the tobacco cartel in a state action for Medicaid reimbursement, similar to that which is being done in West Virginia, Minnesota, Florida, Mississippi, Massachusetts, Texas and Louisiana. We would bear all the litigation costs and expenses, and be paid on a 25 percent contingent fee basis. John Campbell mentioned possibly having Morrison & Hecker involved and we would welcome their assistance. Further, we would welcome your input in the selection of other lawyers to assist us in this major undertaking.

We are doing research on Kansas law to determine what particular cause of action exists, including any special violation of consumer protection statutes. We have found out that West Virginia seeks to hold cigarette manufacturers, cigarette distributors, public relation firms, cigarette component manufacturers, the Council for Tobacco Research, and the Tobacco Institute, Inc. liable for smoking-related diseases.

West Virginia seeks recovery under 10 theories: restitution/unjust enrichment; common-law public nuisance; negligent performance of a voluntary undertaking; fraud (intentional misrepresentation); conspiracy and concert of action; aiding and abetting liability; consumer protection violations; antitrust violations; injunctive relief; and declaratory judgment.

Attorney General Carla Stoval
April 10, 1996
Page Two

Mississippi states four theories for recovery: restitution/unjust enrichment; indemnity; public nuisance; and injunctive relief.

Minnesota claims 10 theories for recovery: undertaking a special duty; antitrust law (conspiracy to unreasonably restrain trade and commerce); antitrust law (monopoly); consumer fraud; unlawful trade practices; deceptive trade practices; false advertising; restitution (performance of another's duty to the public); restitution (unjust enrichment); and conspiracy.

Florida also claims 10 theories for recovery: restitution/unjust enrichment; indemnity; negligence; strict liability; breach of express and implied warranties; negligent performance of a voluntary undertaking; fraud and intentional misrepresentation; conspiracy and concert of action; aiding and abetting liability; and injunctive relief.

We are excited about working with you and the State of Kansas in an effort to provide reimbursement for tax monies spent due to the manufacture of a drug intentionally designed to cause addiction, disease and death. We are equally enthusiastic of the opportunity assist in the prevention of the targeting, marketing and sale of cigarettes to the children of Kansas.

Very truly yours,



Andrew W. Hutton

AWH/sm

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Tax I.D.# 48-0966751

FAXED

April 15, 1996

**SENT VIA FACSIMILE
TO (913) 296-6296
AND VIA REGULAR MAIL**

Ms. Carla Stovall
Attorney General
2nd Floor, Judicial Center
Topeka, KS 66612-1567

Re: Cigarette Litigation

Dear Attorney General Stovall:

It is my understanding that New Jersey Governor Christine Todd Whitman has decided to sue the tobacco companies to recover Medicaid costs. Please find enclosed a copy of a news report we got off the Internet. We will keep you posted with other developments on the state Attorney General actions when we learn them.

Very truly yours,

Andrew W. Hutton

AWH/sm

TRENTON, N.J. (Reuter) - New Jersey plans to join 14 other states that have sued tobacco companies to recover added burdens placed on taxpayer-supported health care, Governor Christine Todd Whitman said Thursday.

"The tobacco industry must be held accountable for allowing the public to consume a product it has known to be hazardous and addictive," the governor said.

The lawsuit will be filed in state Superior Court after the state finds a special counsel to take the case on a contingency-fee basis, a state official said.

Five states recently reached a \$10-million-dollar settlement with the nation's fifth largest tobacco company, the Liggett Group, a unit of Brooke Group Ltd (BGL.N).

New Jersey health officials estimated the total cost of treating smoking-related illness to be \$1.1 billion annually, of which the state pays around \$200 million in Medicaid benefits and around \$50 million in "charity care."

Medicaid is a federal-state partnership that provides health care for the poor in which New Jersey and Washington roughly share the costs.

The state's case against the tobacco industry is bolstered by its charity care program to repay hospitals that treat uninsured working poor people not covered by their employer, said Dr. Louis Keeler, president of the state Medical Society.

"Considering that the state is currently struggling to fund charity care and that Medicaid outlay for tobacco-related disease is so high, filing the suit is a logical course," Keeler said.

A tobacco industry spokesman called the suit a political maneuver doomed to fail and cost the taxpayers man, New Jersey public television reported.

20:51 04-11-96

TALLAHASSEE, Fla, April 11 (Reuter) - Florida received its first \$200,000 check Thursday after an out-of-court settlement between cigarette maker the Liggett Group and five of the states suing the tobacco industry, Gov. Lawton Chiles said.

The agreement could give Florida \$150 million over 25 years. Chiles, who has filed a \$1.4 billion suit against cigarette makers that is pending in West Palm Beach, said the settlement marks a turning point.

"The settlement is the first time that the tobacco industry has accepted responsibility. The first time they've paid a nickel," he said. "No longer will they be able to brag that they have never paid a nickel for smoking related damages."

Mississippi, Louisiana, West Virginia and Massachusetts are also receiving payments from Liggett, one of the smaller tobacco companies in the industry. Over 25 years, Liggett will make some flat payments and set aside 2.5 percent of pretax profits, up to \$30 million a year, to split among the five.

Florida is to receive \$1 million in flat \$200,000 annual payments in the first decade and up to \$6 million a year from Liggett's pretax profits. The company has also agreed to modify its marketing practices.

"I see this as an awful lot more than the payment of a check," Chiles said. "What's more important is that with the payment of the check, Liggett has agreed to stop advertising to children."

15:49 04-11-96

Mark Hutton †
Andrew W. Hutton

HUTTON & HUTTON



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Products Liability
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Facsimile
(316) 686-2049

Tax I.D.# 48-0966751



April 17, 1996

SENT VIA FACSIMILE
TO (913) 296-6296
AND VIA REGULAR MAIL

Mr. John Campbell
Assistant Attorney General
2nd Floor, Judicial Center
Topeka, KS 66612-1567

Re: Cigarette Litigation

Dear John:

Please find enclosed copies of the two most recent faxes sent to Attorney General Stovall. If the letter dated April 10, 1996, is not sufficient of an agreement between our offices regarding attorney fees, please let me know and I will redraft the same.

We are looking forward to working with you on this matter. Please keep us posted of the press conference of April 24, 1996.

Very truly yours,

Andrew W. Hutton

AWH/sm

Enclosure

Mr. J. Hutton †
Andrew W. Hutton

Derek S. Casey ·
Anne H. Pankratz
Christopher P. Christian
Chan P. Townsley ··
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Tax I.D.# 48-0966751

April 10, 1996

SENT VIA FACSIMILE
TO (913) 296-6296
AND VIA REGULAR MAIL

COPY

Ms. Carla Stovall
Attorney General
2nd Floor, Judicial Center
Topeka, KS 66612-1567

Re: Cigarette Litigation

Dear Attorney General Stovall:

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Attorney General Carla Stoval
April 10, 1996
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COPY

Andrew W. Hutton

AWH/sm

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Andrew W. Hutton

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Tax I.D.# 48-0966751

April 15, 1996

SENT VIA FACSIMILE
TO (913) 296-6296
AND VIA REGULAR MAIL

Ms. Carla Stovall
Attorney General
2nd Floor, Judicial Center
Topeka, KS 66612-1567

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AWH/sm

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15:49 04-11-96

! tobacco litigation

Mark B. Hutton · t
Andrew W. Hutton

HUTTON & HUTTON



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Tax I.D.# 48-0966751

FACSIMILE COVER SHEET

DATE: 04/19/96 TIME: _____

TO: JOHN W. CAMPBELL FAX NUMBER: (913) 296-6296

FROM: ANDREW W. HUTTON # OF PAGES TO FOLLOW: 2

RE: ATTORNEY-CLIENT AGREEMENT

SPECIAL MESSAGE AND/OR INSTRUCTIONS: _____

FAX COVER NOTICE OF CONFIDENTIALITY:

The information contained in this facsimile message is intended only for the personal and confidential use of the designated recipient named above. The message may be an attorney/client communication and, as such, is privileged and confidential. If the reader of this message is not the intended recipient or an agent responsible for delivering it to the same, you are hereby notified that you have received this document in error and that any review, dissemination, distribution or copying of this message is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original message to us by mail at our expense. Thank you.

Mark B. Hutton · †
Andrew W. Hutton

Derek S. Casey ·
Anne H. Pankraz
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Tax I.D.# 48-0966751

April 19, 1996

John W. Campbell
ATTORNEY GENERAL'S OFFICE
DEPARTMENT OF LITIGATION &
ANTITRUST
2nd Floor, 301 S.W. 10th Avenue
Topeka, KS 66612

Re: Litigation Against Cigarette Manufacturers

Dear John:

Please find enclosed a working rough draft of an Attorney-Client Agreement. Once you have reviewed same please give me a call.

Very truly yours,

Andrew W. Hutton

AWH/jjb
Enclosure

ATTORNEY - CLIENT AGREEMENT

STATE OF KANSAS -vs- CIGARETTE MANUFACTURERS

DRAFT

THIS AGREEMENT, by and between THE STATE OF KANSAS, and HUTTON & HUTTON, is made and entered into on this _____ day of _____, 1996. THE STATE OF KANSAS employs HUTTON & HUTTON to represent THE STATE OF KANSAS in its claims for reimbursement and costs expended by the State secondary to tobacco related health problems.

HUTTON & HUTTON will be designated as lead counsel. Lead counsel, HUTTON & HUTTON has the right to bring in additional counsel and said additional counsel will be paid under the terms of this contract. Even with additional counsel HUTTON & HUTTON will have control over the course and direction of the litigation with the consultation and advice of THE STATE OF KANSAS. Additional counsel has no right to any additional fees beyond the terms of this contract.

HUTTON & HUTTON is to make no settlement without THE STATE OF KANSAS' consent. HUTTON & HUTTON is to receive no fee if nothing is recovered.

HUTTON & HUTTON will be employed by THE STATE OF KANSAS on a contingent fee basis. HUTTON & HUTTON will not be paid unless there is a successful recovery by way of settlement and/or judgment. Attorney is to receive a fee of Twenty-Five Percent (25%) of whatever amounts are recovered either by way of settlement and/or judgment in this litigation. HUTTON & HUTTON will bear all the costs of litigation attributed to HUTTON & HUTTON and attorneys under their control and direction. If there is no recovery made by THE STATE OF KANSAS, HUTTON & HUTTON will not seek reimbursement from THE STATE OF KANSAS for expenses incurred. The fee applies to all actual damages, punitive damages and interest recovered in connection with a judgment. HUTTON & HUTTON will advance all expenses of the litigation. If a recovery is obtained, all expenses will be paid before computation of attorney fees.

This agreement is governed by Kansas law.

ATTORNEY

CLIENT

2-25

Mark B. Hutton · †
Andrew W. Hutton

Derek S. Casey ·
Anne H. Pankratz
Christopher P. Christian
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Tax I.D.# 48-0966751

April 24, 1996

SENT VIA FACSIMILE
TO (913) 296-6296
AND VIA REGULAR MAIL

Mr. John Campbell
Assistant Attorney General
2nd Floor, Judicial Center
Topeka, KS 66612-1567

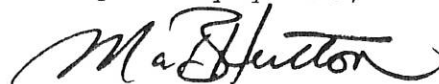
Re: Cigarette Litigation

Dear John:

I was surfing the Internet last night and discovered a Reuter Wire Service article wherein Mississippi Attorney General Mike Moore said he expects ten more states will sue the tobacco industry in the next 30 days seeking to recoup health care costs of smokers. The article mentions New Jersey, Maryland, Connecticut, Illinois, Kansas, Washington, Arizona, Oklahoma, Hawaii, Michigan and Arkansas.

You might be prepared for some inquiries from the press regarding this wire service article.

Very truly yours,



Mark B. Hutton

MBH/sm

Mark B. Hutton - †
Andrew W. Hutton

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May 2, 1996

SENT VIA FACSIMILE
TO (913) 296-6296
AND VIA REGULAR MAIL

Mr. John Campbell
Assistant Attorney General
2nd Floor, Judicial Center
Topeka, KS 66612-1567

Re: Cigarette Litigation

Dear John:

Please find enclosed a copy of an article in today's *Wall Street Journal* that you might find interesting.

Very truly yours,



Andrew W. Hutton

AWH/sm

Maryland Becomes Eighth State to Sue Tobacco Makers

By MILO GEYELIN

Staff Reporter of THE WALL STREET JOURNAL

Maryland became the eighth state to sue the tobacco industry to recover the public health-care cost of caring for residents with smoking-related illnesses.

The 161-page complaint, filed in Baltimore City Circuit Court, seeks \$3 billion in compensation and \$10 billion in punitive damages. Attorney General Joseph J. Curran Jr. announced the suit at a news conference outside the courthouse, near the Mercy Medical Center in downtown Baltimore.

the decline in their property values.

Mr. Altoonian alleged that his cancer was caused by two power lines owned by Atlantic City Electric. His cancer was diagnosed in 1990, two years after he moved in to the house he built with a deck over one of the lines. The line was moved after he complained and then deactivated in 1994.

Atlantic City Electric has asked the trial judge to set aside the verdict, arguing in part that the jury shouldn't have awarded lost wages to Mr. Altoonian. William Wolf, a Lakewood, N.J., lawyer who represents the Altoonians, said his clients haven't decided whether to appeal.

—Margaret A. Jacobs
contributed to this article.

"I ask the tobacco cartel to take note of the backdrops for today's announcement—a hospital and a courthouse," he said.

The suit is the first by a state to allege that tobacco companies targeted minorities, as well as children and women, with billboard advertising in Baltimore's inner city. It alleges conspiracy, fraud and violations of antitrust laws. The manufacturers named include Philip Morris Cos.; R.J. Reynolds Tobacco Co., a unit of RJR Nabisco Holdings Corp.; B.A.T Industries PLC; Lorillard Tobacco Co., a unit of Loews Corp.; and Liggett Group, a unit of Brooke Group Ltd.

In a statement, Philip Morris said it plans to vigorously defend itself against the suit and predicted it would prevail. "Maryland's attorney general has cast his lot with an unusual assortment of plaintiffs lawyers and politicians from other states who believe they can ignore established product-liability law and use courts to legislate public policy on tobacco," the company said.

Maryland is being represented by Peter Angelos, a highly successful asbestos litigator in Baltimore who will be paid nothing if he loses and 25% of the proceeds if he wins. Similar contingency-fee arrangements are in place in the other states that have sued: Florida, Mississippi, Massachusetts, West Virginia, Minnesota, Louisiana and Texas. Connecticut's attorney general announced yesterday that his state, too, plans to file suit.

Yesterday's action in Maryland had been anticipated by the tobacco companies. Earlier this year, Philip Morris sued to block the Maryland attorney general's office from hiring outside lawyers on grounds that only the state Legislature has that authority. That case is pending in Talbot County Circuit Court.



State of Kansas

Office of the Attorney General

301 S.W. 10TH AVENUE, TOPEKA 66612-1597

CARLA J. STOVALL
ATTORNEY GENERAL

TELECOPIER MESSAGE
COVER SHEET

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
FAX: 296-6296

Telecopier Number: (913) 296-6296

DATE: May 28, 1996

NUMBER OF PAGES INCLUDING COVER SHEET: 5

PLEASE DELIVER MESSAGE ASAP TO:

NAME: Andrew W. Hutton

LOCATION: Hutton & Hutton

TELECOPIER NUMBER: (316) 686-1077

MESSAGE FROM: John W. Campbell

This document and the information herein is protected by the attorney-client privilege. It shall not be disclosed except to the persons to whom it is addressed. Any other disclosure is inadvertent, unintentional and does not amount to any waiver of any applicable privilege. Any unauthorized use of this document or the information contained herein is prohibited. If you are an unintended recipient of this document, please return it immediately to Office of the Attorney General, 301 S.W. 10th Avenue, Topeka, Kansas 66612-1597.

If you experience any problems in receipt or transmission, please call (913) 296-2215 and ask for Jamie Bowser.



State of Kansas
Office of the Attorney General

301 S.W. 10TH AVENUE, TOPEKA 66612-1597

CARLA J. STOVALL
ATTORNEY GENERAL

May 28, 1996

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
FAX: 296-6296

Andrew W. Hutton
Hutton & Hutton
8100 E. 22 Street North, Building 1200
P.O. Box 638
Fax (316) 686-1077
Wichita, Kansas 67201-0638


RE: Litigation Against Cigarette Manufacturers

Dear Andy:

After consultation with other states the attached is a draft of an attorney- client agreement. Please review and call me. We would like to reach some agreement by June 5, 1996 at which time two other states will be announcing their filings.

Sincerely,

OFFICE OF THE ATTORNEY GENERAL
CARLA J. STOVALL


John W. Campbell
Senior Deputy Attorney General

JWC:jmb
Enclosures

f:\users\campbelj\public\letter\

NOT YET APPROVED BY CJS

STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL
CARLA J. STOVALL

ENGAGEMENT AND CONTINGENCY AGREEMENT

AGREEMENT as of this 5th day of June, 1996 by and between the State of Kansas by Carla J. Stovall, Attorney General, "Attorney General" and the law firm of Hutton & Hutton, "Hutton & Hutton".

Whereas, cigarette smoking kills approximately 400,000 individuals each year in the United States more than the number of deaths caused by guns, drug use and automobile accidents combined;

Whereas, the cost to the State of Kansas and its citizens of health care and related expenditures for smoking related diseases exceeds tens of millions of dollars per year;

Whereas, any litigation involving tobacco-related industries is likely to entail numerous complex factual and legal issues;

Whereas, any such litigation will require the expenditure of substantial resources and attorney time;

Whereas, the Attorney General seeks to avoid the expenditure of state resources of direct costs and attorney time in any such litigation; and

Whereas, the Attorney General plans to bring an action against cigarette companies and related entities pursuant to her authority under the Common Law and Kansas Statutes Annotated

NOW THEREFORE, IT IS AGREED BY AND BETWEEN THE ATTORNEY GENERAL AND HUTTON & HUTTON AS FOLLOWS:

1. Hutton & Hutton is retained to provide legal services to the State of Kansas for the purpose of seeking injunctive relief, monetary relief (including, without limitation, damages and civil penalties) and other relief against tobacco industry companies and related entities ("defendants") in litigation arising from the advertising, marketing, promotion, sale and/or distribution of cigarettes (hereinafter "the Litigation").

*add
? manufacture*

2. The Attorney General, as the chief legal officer of the State of Kansas, retains final authority over all aspects of the Litigation. As provided herein, Hutton & Hutton is authorized to take appropriate legal steps to prosecute the Litigation and participate in all settlement negotiations and the State of Kansas and the Attorney General hereby further agrees not to settle

this action without prior consultation with Hutton & Hutton.

3. The Attorney General may appoint members of her staff to monitor the prosecution of the Litigation. Hutton & Hutton shall consult in advance with and obtain the prior approval of the Attorney General, or her designee, concerning all substantive matters related to the Litigation. Regular status meetings shall be held as requested by either the Attorney General or Hutton & Hutton.

?

4. It is specifically agreed by the parties that neither Hutton & Hutton or any third party employed whose services or products are used by either the State of Kansas or Hutton & Hutton in furtherance of this agreement or its goals, is not considered, or paid as a state employee, but is an independent contractor.

5. It is specifically agreed by the parties that any documents or any other tangible objects produced or procured by Hutton & Hutton, or any third party employed pursuant to this agreement, which were produced or ~~procured~~ in the performance of this agreement, shall be the property of the State of Kansas.

? what abt
custans st

6. Hutton & Hutton shall communicate with state agencies through the Attorney General, unless alternative arrangements are made in advance with the Attorney General. Where written communications from Hutton & Hutton to state agencies are authorized, the Attorney General shall be provided with copies of those communications.

7. Hutton & Hutton shall provide sufficient resources, including attorney time, to prosecute the Litigation faithfully and with due diligence. Hutton & Hutton may, with the prior expressed approval of the Attorney General, bring in additional counsel. Said counsel, will be obligated to observe all of the provisions of this agreement unless explicitly excused by the Attorney General.

any \$
reimbursed
previous &
expenses

8. The Attorney General, by this agreement designates Hutton & Hutton as lead national counsel, lead local counsel and lead trial counsel in the Litigation. The Attorney General retains the right to revoke such designations and make new designations at any time. — *what's purpose of ~~designations~~*

after a showing of just + good cause

9. The compensation, if any, paid to third parties pursuant to this agreement shall be the responsibility of Hutton & Hutton.

10. It is anticipated that additional private legal firms shall be needed in the representation of the State of Kansas in the Litigation. The Attorney General ~~retains~~ the right to add firms to the group or firms participating in the Litigation. Hutton & Hutton agrees that any firms added to the group conducting the Litigation shall share in such compensation, if any, as ~~agreed upon by~~ *determined by* Hutton & Hutton and the new firm, ^{and} subject to the approval of the Attorney General. ~~In the event that Hutton & Hutton and new firm are unable to agree on the terms under which the new firms shall participate in the compensation, the Attorney General shall decide and such decisions shall be final and binding.~~

after consultation + agreement with H+H.

11. Hutton & Hutton agree to maintain contemporaneous time and expense records. Hutton & Hutton shall submit quarterly statements to the Attorney General setting forth for that period the hours and services devoted to the Litigation, and all disbursements.

12. Expense records and related documents maintained by Hutton & Hutton in connection with the Litigation shall be subject to audit by the Attorney General.

13. The State of Kansas is not liable to pay any of the expenses of the Litigation, whether such expenses are ~~attorneys' fees~~, costs or other amounts. Hutton & Hutton shall advance all expenses of the Litigation. If a recovery is obtained, all reasonable expenses will be paid before computation of attorneys' fees. If no recovery is made by the State of Kansas, Hutton & Hutton will not seek reimbursement from the State of Kansas for expenses incurred.

?

14. The sole contingency upon which compensation is to be paid is the recovery and collection by Hutton & Hutton, on behalf of the State of Kansas, of monies in the Litigation, whether by settlement or judgment.

15. Compensation on the foregoing contingency shall be 15% of any recovery collected by Hutton & Hutton on behalf of the State of Kansas plus Hutton & Hutton's reasonable disbursements in the Litigation. As used in this paragraph, the term "recovery" shall not include amounts awarded or ordered to be paid as attorneys' fees and costs. If Hutton & Hutton recover monies in the Litigation, but in an amount that does not exceed the disbursements in the Litigation, such monies shall be used to reimburse disbursements.

-20%

WHY NOT

See QT

16. As used in this Agreement, the term "disbursement" shall include travel expenses, telephone charges, copying charges, fax charges, deposition costs, investigator costs, messenger service costs, mediation expenses, computer research fees, medical or nursing consultation fees, expert fees, other consultation fees and all other reasonable out-of-pocket costs incurred in the Litigation.

17. The claims that the State of Kansas intends to assert in the Litigation provide for the payment of Attorneys' fees and costs to the State of Kansas. The State of Kansas intends to seek an order for payment of its attorneys' fees and costs should it prevail, in whole or in part, in the Litigation. If the Court in the Litigation awards attorneys' fees, such fees shall be paid to Hutton & Hutton to extent the award is based on services furnished by Hutton & Hutton and such an award shall be in place of and not in addition to the payment of a contingency fee to Hutton & Hutton.

WHY - OK
H+H get
whichever is
greater

18. In the event the Litigation is resolved, by settlement or judgment, under terms involving the provision of goods, services or any other "in-kind" payment, the parties hereto agree to seek, as part of any such settlement, compensation for Hutton & Hutton equivalent to the ~~15%~~ 20% contingency fee and expenses to which the HUTTON & HUTTON would be entitled under this Agreement. In the event the Attorney General is unable to secure such compensation. For Hutton & Hutton as part of any "in-kind" settlement, the Attorney General agrees to petition the Legislature to appropriate funds to reasonable compensate Hutton & Hutton.

OK as is

If you
get on
att. atty
for deal

May 29, 1996

SENT VIA FACSIMILE
TO (913) 296-6296
AND VIA REGULAR MAIL

Mr. John Campbell
Assistant Attorney General
2nd Floor, Judicial Center
Topeka, KS 66612-1567

Re: Cigarette Litigation

Dear John:

Thank you for your fax of May 28, 1996, setting forth your draft of an attorney-client agreement. While most of the drafted paragraphs are acceptable, we have some minor changes that we would like to propose. These changes include the following:

1. With respect to the first numbered paragraph, we need to add the word "manufacturing" after the word "marketing."
2. In paragraph number 3, we need to add the word "significant" before the word "substantive" on the third line.
3. In paragraph number 5, we would like the word "procured" omitted because we may be gaining access of documents outside of this Attorney General litigation.
4. In paragraph 8, after the phrase "retains the right," please add the phrase "after a showing of just and good cause . . ."
5. Please change paragraph number 10 to read as follows:

"10. It is anticipated that additional private legal firms shall be needed in the representation of the State of Kansas in this Litigation. The Attorney General, after consultation and agreement by Hutton & Hutton,

Mr. John Campbell
May 29, 1996
Page Two

retains the right to add firms to the group of firms participating in the Litigation. Hutton & Hutton agrees that any firms added to the group conducting the litigation shall share in such compensation, if any, as determined by Hutton & Hutton and the new firm, and subject to the approval of the Attorney General."

6. Paragraph number 13 should read:

"13. The State of Kansas is not liable to pay any of the expenses of the Litigation. Further, the State of Kansas is not liable to pay any attorneys fees in the event the litigation is unsuccessful. Hutton & Hutton's attorney fees, if recovered, are contingent upon a successful settlement and or judgment. Hutton & Hutton shall advance all expenses of the Litigation. If any recovery is obtained, all reasonable expenses will be paid before computation of attorneys' fees. If no recovery is made by the State of Kansas, Hutton & Hutton will not seek reimbursement from the State of Kansas for expenses incurred."

7. With regard to paragraph number 15, we would like a 25 percent contingency fee as that amount is being paid to private counsel in the states of Minnesota, Florida, Massachusetts and Maryland. Only Texas is paying a 15 percent attorney fee; however, Texas has nine times the population and at least double the per capita Medicaid population. The amount of time to be spent by counsel, the amount of costs to be advanced, and the amount of risk all are enormous. Further, any fee, if recovered, would be shared amongst numerous counsel. Therefore, we believe a 25 percent fee is fair and reasonable under these circumstances.

8. With regard to paragraphs 15 and 17, we suggest that the language be changed to allow us participate on a the same contingent percentage basis for any fees awarded or ordered by the Court, such as any statutory recovery. In no event, however, would the total attorney fee exceed the amount agreed to within the contract.

We hope the proposed changes are modest enough to allow us to establish our relationship. Let me know your thoughts and please call if you have any questions.

Very truly yours,

Andrew W. Hutton

AWH/sm

2-35



State of Kansas

Office of the Attorney General

301 S.W. 10TH AVENUE, TOPEKA 66612 1597

CARLA J. STOVALL
ATTORNEY GENERALTELECOPIER MESSAGE
COVER SHEETMAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
FAX: 296-6296

Telecopier Number: (913) 296-6296

DATE: May 31, 1996

NUMBER OF PAGES INCLUDING COVER SHEET: 2

PLEASE DELIVER MESSAGE ASAP TO:

NAME: Andrew W. Hutton

LOCATION: Hutton & Hutton

TELECOPIER NUMBER: (316) 686-1077

MESSAGE FROM: John W. Campbell

"This is a standard form normally added to all contracts in which the State of Kansas is a party. Please review the same and call if there is a problem. I am sorry that I did not include this form in the first fax."

This document and the information herein is protected by the attorney-client privilege. It shall not be disclosed except to the persons to whom it is addressed. Any other disclosure is inadvertent, unintentional and does not amount to any waiver of any applicable privilege. Any unauthorized use of this document or the information contained herein is prohibited. If you are an unintended recipient of this document, please return it immediately to Office of the Attorney General, 301 S.W. 10th Avenue, Topeka, Kansas 66612-1597.

If you experience any problems in receipt or transmission, please call (913) 296-2215 and ask for Jamie Bowser.

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision.

"The provisions found in Contractual Provisions Attachment (form DA-146a), which is attached hereto, are hereby incorporated in this contract and made a part hereof".

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 19_____.

1. TERMS HEREFIN CONTROLLING PROVISIONS

It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated.

2. AGREEMENT WITH KANSAS LAW

All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas.

3. TERMINATION DUE TO LACK OF FUNDING APPROPRIATION

If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.

4. DISCLAIMER OF LIABILITY

Neither the State of Kansas nor any agency thereof shall hold harmless or indemnify any contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).

5. ANTI-DISCRIMINATION CLAUSE

The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include these provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract; (f) if the contracting agency determines that the contractor has violated applicable provisions of ADA, that violation shall constitute a breach of contract; (g) if (c) or (f) occurs, the contract may be cancelled, terminated or suspended in whole or in part by the State Department of Administration.

Parties to this contract understand that subsections (b) through (e) of this paragraph number 5 are not applicable to a contractor who employs fewer than four employees or whose contracts with this agency of the Kansas state government total \$5,000 or less during this fiscal year.

6. ACCEPTANCE OF CONTRACT

This contract shall not be considered accepted, approved or otherwise effective until the statutory required approvals and certifications have been given.

7. ARBITRATION, DAMAGES, WARRANTIES

Notwithstanding any language to the contrary, no interpretation shall be allowed to find the State or any agency thereof has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Further, the State of Kansas shall not agree to pay attorney fees and late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.

8. REPRESENTATIVE'S AUTHORITY TO CONTRACT

By signing this document, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this document on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.

9. RESPONSIBILITY FOR TAXES

The State of Kansas shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.

10. INSURANCE

The State of Kansas shall not be required to purchase, any insurance against loss or damage to any personal property to which this contract relates, nor shall this contract require the State to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the vendor or lessor shall bear the risk of any loss or damage to any personal property in which vendor or lessor holds title.



State of Kansas

Office of the Attorney General

301 S.W. 10TH AVENUE, TOPEKA 66612-1597

CARLA J. STOVALL
ATTORNEY GENERAL

TELECOPIER MESSAGE
COVER SHEET

MAIN PHONE: (913) 296-2215
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DATE: May 31, 1996

NUMBER OF PAGES INCLUDING COVER SHEET: 9

PLEASE DELIVER MESSAGE ASAP TO:

NAME: Andrew W. Hutton

LOCATION: Hutton & Hutton

TELECOPIER NUMBER: (316) 686-1077

MESSAGE FROM: John W. Campbell

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State of Kansas

Office of the Attorney General

301 S.W. 10TH AVENUE, TOPEKA 66612-1597

CARLA J. STOVALL
ATTORNEY GENERAL

May 31, 1996

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
FAX: 296-6296

Andrew W. Hutton
Hutton & Hutton
8100 E. 22 Street North, Building 1200
P.O. Box 638
Fax (316) 686-1077
Wichita, Kansas 67201-0638

RE: Cigarette Litigation

Dear Andy:

I have prepared a version of the contract that I hope brings us very close to an agreement. New language is shown in bold and deleted language has strike overs.

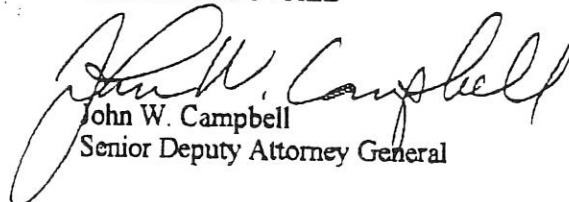
The new language incorporates both your suggested changes and mine. Please especially note the changes in paragraphs 15 and 17. I took the ideas from your letter of the 29th (including the 25%) and combined them with MRPC 1.5, which we have to follow anyway, and came up with new language. This new language is not carved in stone.

Please note also the additions of paragraphs 19 & 20. These are standard forms and language that we put in every contract. However please note that we very rarely do a contingency contract so if the language or form is the cause of concern please call me.

The Attorney General is reviewing this material. I hope to meet with her Saturday and get the word. If you have any questions or concerns, please call.

Sincerely,

OFFICE OF THE ATTORNEY GENERAL
CARLA J. STOVALL


John W. Campbell
Senior Deputy Attorney General

JWC:jmb
Enclosures

DRAFT 5/31/96
NOT YET APPROVED BY CJS

STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL
CARLA J. STOVALL

ENGAGEMENT AND CONTINGENCY AGREEMENT

AGREEMENT as of this 5th day of June, 1996 by and between the State of Kansas by Carla J. Stovall, Attorney General, "Attorney General" and the law firm of Hutton & Hutton, "Hutton & Hutton".

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Whereas, the cost to the State of Kansas and its citizens of health care and related expenditures for smoking related diseases exceeds tens of millions of dollars per year;

Whereas, any litigation involving tobacco-related industries is likely to entail numerous complex factual and legal issues;

Whereas, any such litigation will require the expenditure of substantial resources and attorney time;

Whereas, the Attorney General seeks to avoid the expenditure of state resources of direct costs and attorney time in any such litigation; and

Whereas, the Attorney General plans to bring an action against cigarette companies and related entities pursuant to her authority under the Common Law and Kansas Statutes Annotated

NOW THEREFORE, IT IS AGREED BY AND BETWEEN THE ATTORNEY GENERAL AND HUTTON & HUTTON AS FOLLOWS:

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2. The Attorney General, as the chief legal officer of the State of Kansas, retains final authority over all aspects of the Litigation. As provided herein, Hutton & Hutton is authorized to take appropriate legal steps to prosecute the Litigation and participate in all settlement

negotiations and the State of Kansas and the Attorney General hereby further agrees not to settle this action without prior consultation with Hutton & Hutton.

3. The Attorney General may appoint members of her staff to monitor the prosecution of the Litigation. Hutton & Hutton shall consult in advance with and obtain the prior approval of the Attorney General, or her designee, concerning all **significant, substantive** matters related to the Litigation. Regular status meetings shall be held as requested by either the Attorney General or Hutton & Hutton.

4. It is specifically agreed by the parties that neither Hutton & Hutton or any third party employed whose services or products are used by either the State of Kansas or Hutton & Hutton in furtherance of this agreement or its goals, is not considered, or paid as a state employee, but is an independent contractor.

5. It is specifically agreed by the parties that any documents or any other tangible objects produced ~~or procured~~ by Hutton & Hutton, or any third party employed pursuant to this agreement, which were produced or procured in the performance of this agreement, shall be the property of the State of Kansas.

6. Hutton & Hutton shall communicate with state agencies through the Attorney General, unless alternative arrangements are made in advance with the Attorney General. Where written communications from Hutton & Hutton to state agencies are authorized, the Attorney General shall be provided with copies of those communications.

7. Hutton & Hutton shall provide sufficient resources, including attorney time, to prosecute the Litigation faithfully and with due diligence. Hutton & Hutton may, with the prior expressed approval of the Attorney General, bring in additional counsel. Said counsel, will be obligated to observe all of the provisions of this agreement unless explicitly excused by the Attorney General.

8. The Attorney General, by this agreement designates Hutton & Hutton as lead national counsel, lead local counsel and lead trial counsel in the Litigation. The Attorney General retains the right, **after a showing of just and good cause** to revoke such designations and make new designations at any time.

9. The compensation, if any, paid to third parties pursuant to this agreement shall be the responsibility of Hutton & Hutton.

10. It is anticipated that additional private legal firms shall be needed in the representation of the State of Kansas in the Litigation. The Attorney General, **after consultation and agreement by Hutton & Hutton**, retains the right to add firms to the group of firms participating in the Litigation. Hutton & Hutton agrees that any firms added to the group conducting the Litigation shall share in such compensation, if any, as agreed upon by Hutton & Hutton and the new firm, subject to the approval of the Attorney General. ~~In the event that Hutton & Hutton and new firm are unable to agree on the terms under which the new firms shall~~

~~participate in the compensation, the Attorney General shall decide and such decisions shall be final and binding.~~

11. Hutton & Hutton agree to maintain contemporaneous time and expense records. Hutton & Hutton shall submit quarterly statements to the Attorney General setting forth for that period the hours and services devoted to the Litigation, and all disbursements.

12. Expense records and related documents maintained by Hutton & Hutton in connection with the Litigation shall be subject to audit by the Attorney General.

13. ~~The State of Kansas is not liable to pay any of the expenses of the Litigation, whether such expenses are attorneys' fees, costs or other amounts. Further, the State of Kansas is not liable to pay any attorney fees in the event the litigation is unsuccessful. Hutton & Hutton's attorney fees, if recovered, are contingent upon a successful settlement and or judgment.~~ Hutton & Hutton shall advance all expenses of the Litigation. If a any recovery is obtained, all reasonable expenses will be paid before computation of attorneys' fees. If no recovery is made by the State of Kansas, Hutton & Hutton will not seek reimbursement from the State of Kansas for expenses incurred.

14. The sole contingency upon which compensation is to be paid is the recovery and collection by Hutton & Hutton, on behalf of the State of Kansas, of monies in the Litigation, whether by settlement or judgment.

~~15. Compensation on the foregoing contingency shall be 15% 25% of any recovery collected by Hutton & Hutton on behalf of the State of Kansas plus Hutton & Hutton's reasonable disbursements in the Litigation. As used in this paragraph, the term "recovery" shall not include amounts awarded or ordered to be paid as attorneys' fees and costs. If Hutton & Hutton recover monies in the Litigation, but in an amount that does not exceed the disbursements in the Litigation, such monies shall be used to reimburse disbursements.~~

15. Compensation on the foregoing contingency shall be made in accordance with 1995 Kan. Ct. R. Annot. 226, MRPC 1.5 and shall not exceed 25% of the amount of money recovered by the State of Kansas in the Litigation. In accordance with 1995 Kan. Ct. R. Annot. 226, MRPC 1.5 (d) litigation and other expenses shall be deducted from the recovery before the contingency fee is calculated.

25% contingency fee is fair and reasonable.

Both parties concur and agree that said

16. As used in this Agreement, the term "disbursement" shall include travel expenses, telephone charges, copying charges, fax charges, deposition costs, investigator costs, messenger service costs, mediation expenses, computer research fees, medical or nursing consultation fees, expert fees, other consultation fees and all other reasonable out-of-pocket costs incurred in the Litigation.

~~17. The claims that the State of Kansas intends to assert in the Litigation provide for the payment of Attorneys' fees and costs to the State of Kansas. The State of Kansas intends to seek an order for payment of its attorneys' fees and costs should it prevail, in whole or in part, in the~~

~~Litigation. If the Court in the Litigation awards attorneys' fees, such fees shall be paid to Hutton & Hutton to extent the award is based on services furnished by Hutton & Hutton and such an award shall be in place of and not in addition to the payment of a contingency fee to Hutton & Hutton.~~

17. (a) Hutton & Hutton shall, to the extent allowed under the laws of the State of Kansas and subject to the approval of the Attorney General, attempt to recoup all expenses, costs and fees due them or the State of Kansas from the defendants in the Litigation.

(b) As to the court awarded or ordered expenses and costs, moneys actually recovered from the defendants for expenses and costs advanced by Hutton & Hutton shall be the property of Hutton & Hutton. It is the intent of the parties that such moneys recovered from the defendants be used to offset the expenses and costs due to Hutton & Hutton and that only such reasonable expenses and costs not recovered as such from the defendants be deducted by Hutton & Hutton from the recovery prior to the calculation of the contingency fee.

(c) As to ^{ANY} attorneys fees awarded or ordered by the court to Hutton & Hutton for their services in the Litigation, ~~shall be considered in the evaluation of the reasonableness of Hutton & Hutton's contingency fee.~~

Contingent fee award set out in P 18. However if there court awarded or ordered fees, Hutton & Hutton

(d) If for any reason the parties are unable to agree to the reasonableness of the contingency fee, the matter shall be referred to the appropriate court having jurisdiction of the matter for determination pursuant to 1995 Kan. Ct. R. Annot. 226, MRPC 1.5 (e). In no event, however, will the total attorneys' fees exceed 25% of the recovery.

18. In the event the Litigation is resolved, by settlement or judgment, under terms involving the provision of goods, services or any other "in-kind" payment, the parties hereto agree to seek, as part of any such settlement, compensation for Hutton & Hutton equivalent to the ~~15%~~ **25%** contingency fee and expenses to which the HUTTON & HUTTON would be entitled under this Agreement. In the event the Attorney General is unable to secure such compensation, ~~for~~ Hutton & Hutton as part of any "in-kind" settlement, the Attorney General agrees to petition the Legislature to appropriate funds to reasonably compensate Hutton & Hutton.

19. Provided, further, that the provisions found in the Contractual Provisions Attachment (form DA-146a) attached hereto, are hereby incorporated in this contract and made a part hereof. In addition, Second Party shall incorporate the provisions of Form DA-146a into any contract with any third party.

offer to settle said recovery with the State of Kansas in the sum of 25% / 25% per part

20. Second Party agrees to abide by the provisions of K.S.A. 46-239(c) which states:

Any individual within one year after the expiration of a term as a legislator, who contracts to perform any service for a state agency other than the legislature, shall not later than 10 days after the acceptance of such contract, file a disclosure statement as provided in this section. Any agency of the state of Kansas which enters into a contract with any legislator, or any member of a firm of which such legislator is a member, under which the legislator or the member of such firm is to perform services for such agency for compensation shall make a report on a form prescribed and provided by the commission giving the name of the state agency, the purpose of the employment and the method of determining and computing the compensation for such employment. All such forms shall be filed quarterly in the office of the secretary of state.

Further, Second Party agrees to notify First Party in the event K.S.A. 46-239(c) is applicable and assist First Party in fulfilling his/her reporting requirements.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first above written.

CARLA J. STOVALL
Attorney General of Kansas
Kansas Judicial Center, 2d Floor
Topeka, Kansas 66612
913/296-2215
913/296-6296 - Fax Number

First Party

Hutton & Hutton
8100 East 22nd Street North, Building 1200
P.O. Box 638
Wichita, Kansas 67226-2321
316/668-1166
316/686-1077 - Fax Number
Federal I.D. Number: _____

Second Party

APPROVED:

John W. Campbell
Sr. Deputy Attorney General

Neil A. Woerman
Director of Budget and Special Projects
Office of the Attorney General

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The provisions found in Contractual Provisions Attachment (form DA-146a), which is attached hereto, are hereby incorporated in this contract and made a part hereof".

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 19_____.

1. TERMS HEREIN CONTROLLING PROVISIONS
It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated.
2. AGREEMENT WITH KANSAS LAW
All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas.
3. TERMINATION DUE TO LACK OF FUNDING APPROPRIATION
If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. DISCLAIMER OF LIABILITY
Neither the State of Kansas nor any agency thereof shall hold harmless or indemnify any contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. ANTI-DISCRIMINATION CLAUSE
The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract; (f) if the contracting agency determines that the contractor has violated applicable provisions of ADA, that violation shall constitute a breach of contract; (g) if (e) or (f) occurs, the contract may be cancelled, terminated or suspended in whole or in part by the State Department of Administration.

Parties to this contract understand that subsections (b) through (e) of this paragraph number 5 are not applicable to a contractor who employs fewer than four employees or whose contracts with this agency of the Kansas state government total \$5,000 or less during this fiscal year.
6. ACCEPTANCE OF CONTRACT
This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. ARBITRATION, DAMAGES, WARRANTIES
Notwithstanding any language to the contrary, no interpretation shall be allowed to find the State or any agency thereof has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Further, the State of Kansas shall not agree to pay attorney fees and late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.
8. REPRESENTATIVE'S AUTHORITY TO CONTRACT
By signing this document, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this document on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. RESPONSIBILITY FOR TAXES
The State of Kansas shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. INSURANCE
The State of Kansas shall not be required to purchase, any insurance against loss or damage to any personal property to which this contract relates, nor shall this contract require the State to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the vendor or lessor shall bear the risk of any loss or damage to any personal property in which vendor or lessor holds title.

Mark L. Hutton · †
Andrew W. Hutton

Derek S. Casey ·
Anne H. Pankratz
Christopher P. Christian
Chan P. Townsley ··
· Also Admitted in Oklahoma
·· Also Admitted in Missouri
† Certified Trial Advocate
National Board of Trial Advocacy

HUTTON & HUTTON



Law Offices
8100 East Twenty-Second Street North, Building 1200
Wichita, Kansas 67226-2321
Mail: P.O. Box 638
Wichita, Kansas 67201-0638

★ General O.
(316) 688-1166
Facsimile
(316) 686-1077

Products Liability
(316) 686-1242
Facsimile
(316) 686-2049

Tax I.D.# 48-0966751

FACSIMILE COVER SHEET

DATE: 06/03/96
PAGES TO FOLLOW: 5
TO: John Campbell
FAX: (913) 296-6296
FROM: Andy Hutton
RE: Engagement and Contingency Agreement

FAXED

Please find enclosed our most recent edits to the contract.
Please call with any questions or comments.

FAX COVER NOTICE OF CONFIDENTIALITY:

The information contained in this facsimile message is intended only for the personal and confidential use of the designated recipients named above. The message may be an attorney-client communication, and as such is privileged and confidential. If the reader of this message is not the intended recipient or an agent responsible for delivering it to the same, you are hereby notified that you have received this document in error and that any review, dissemination, distribution or copying of this message is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original message to us by mail at our expense. Thank you.

DRAFT 06/03/96
NOT YET APPROVED BY CJS

STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL
CARLA J. STOVALL

ENGAGEMENT AND CONTINGENCY AGREEMENT

AGREEMENT as of this 5th day of June, 1996 by and between the State of Kansas by Carla J. Stovall, Attorney General, "Attorney General" and the law firm of Hutton & Hutton, "Hutton & Hutton."

Whereas, cigarette smoking kills approximately 400,000 individuals each year in the United States more than the number of deaths caused by guns, drug use and automobile accidents combined;

Whereas, the cost to the State of Kansas and its citizens of health care and related expenditures for smoking related diseases exceeds tens of millions of dollars per year;

Whereas, any litigation involving tobacco-related industries is likely to entail numerous complex factual and legal issues;

Whereas, any such litigation will require the expenditure of substantial resources and attorney time;

Whereas, the Attorney General seeks to avoid the expenditure of state resources of direct costs and attorney time in any such litigation; and

Whereas, the Attorney General plans to bring an action against cigarette companies and related entities pursuant to her authority under the Common Law and Kansas Statutes Annotated.

NOW THEREFORE, IT IS BY AND BETWEEN THE ATTORNEY GENERAL AND HUTTON & HUTTON AS FOLLOWS:

1. Hutton & Hutton is retained to provide legal services to the State of Kansas for the purpose of seeking injunctive relief, monetary relief (including, without limitation, damages and civil penalties) and other relief against tobacco industry companies and related entities ("defendants") in litigation arising from the advertising, marketing, manufacturing promotion, sale, and/or distribution of cigarettes (hereinafter "the Litigation").

2. The Attorney General, as chief legal officer of the State of Kansas, retains final authority over all aspects of the Litigation. As provided herein, Hutton & Hutton is

authorized to take appropriate legal steps to prosecute the Litigation and participate in all settlement negotiations and the State of Kansas and the Attorney General hereby further agrees not to settle this action without prior consultation with Hutton & Hutton.

3. The Attorney General may appoint members of her staff to monitor the prosecution of the Litigation. Hutton & Hutton shall consult in advance with and obtain the prior approval of the Attorney General, or her designee, concerning all significant matters related to the Litigation. Regular status meetings shall be held as requested by either the Attorney General or Hutton & Hutton.

4. It is specifically agreed by the parties that neither Hutton & Hutton or any third party employed whose services or products are used by either the State of Kansas or Hutton & Hutton in furtherance of this agreement or its goals, is not considered, or paid as a state employee, but is an independent contractor.

5. It is specifically agreed by the parties that any documents or any other tangible objects produced by Hutton & Hutton, or any third party employed pursuant to this agreement, which were produced ~~or procured~~ in the performance of this agreement, shall be property of the State of Kansas.

6. Hutton & Hutton shall communicate with state agencies through the Attorney General, unless alternative arrangements are made in advance with the Attorney General. Where written communications from Hutton & Hutton to state agencies are authorized, the Attorney General shall be provided with copies of those communications.

7. Hutton & Hutton shall provide sufficient resources, including attorney time, to prosecute the litigation faithfully and with due diligence. Hutton & Hutton may, with the prior expressed approval of the Attorney General, bring in additional counsel. Said counsel, will be obligated to observe all of the provisions of this agreement unless explicitly excused by the Attorney General.

8. The Attorney General, by this agreement designates Hutton & Hutton as lead national counsel, lead local counsel and lead trial counsel in this Litigation. The Attorney General retains the right, after a showing of just and good cause, to revoke such designations and made new designations at any time.

9. The compensation, if any, paid to third parties pursuant to this agreement shall be the responsibility of Hutton & Hutton.

10. It is anticipated that additional private legal firms shall be needed in the representation of the State of Kansas in the Litigation. The Attorney General, after consultation and agreement by Hutton & Hutton, retains the right to add firms to the group of firms participating in the Litigation. Hutton & Hutton agrees that any firms added to the group conducting the Litigation shall share in such compensation, if any, as agreed upon by Hutton & Hutton and the new firm, subject to the approval of the

Attorney General.

11. Hutton & Hutton agree to maintain contemporaneous time and expense records. Hutton & Hutton shall submit quarterly statements to the Attorney General setting forth for that period the hours and services devoted to the Litigation, and all disbursements.

12. Expense records and related documents maintained by Hutton & Hutton in connection with this Litigation shall be subject to audit by the Attorney General.

13. The State of Kansas is not liable to pay any of the expenses of the Litigation. Further, the State of Kansas is not liable to pay any attorney fees in the event the litigation is unsuccessful. Hutton & Hutton's attorney fees, if recovered, are contingent upon a successful settlement and or judgment. Hutton & Hutton shall advance all expenses of the Litigation. If any recovery is obtained, all reasonable expenses will be paid before computation of attorneys' fees. If no recovery is made by the State of Kansas, Hutton & Hutton will not seek reimbursement from the State of Kansas for expenses incurred.

14. The sole contingency upon which compensation is to be paid is the recovery and collection by Hutton & Hutton, on behalf of the State of Kansas, of monies in the Litigation, whether by settlement or judgment.

15. Compensation on the foregoing contingency shall be made in accordance with 1995 Kan. Ct. R. Annot. 226, MRPC 1.5 and shall not exceed 25% of the amount of money recovered by the State of Kansas in the Litigation. **Both parties concur and agree that said 25% contingency fee is fair and reasonable.** In accordance with 1995 Kan. Ct. R. Annot. 226, MRPC 1.5(d) litigation and other expenses shall be deducted from the recovery before the contingency fee is calculated.

16. As used in this Agreement, the term "disbursement" shall include travel expenses, telephone charges, copying charges, fax charges, deposition costs, investigator costs, messenger service costs, mediation expenses, computer research fees, medical or nursing consultation fees, expert fees, other consultation fees and all other reasonable out-of-pocket costs incurred in the Litigation.

17. (a) Hutton & Hutton shall, to the extent allowed under the laws of the State of Kansas and subject to the approval of the Attorney General, attempt to recoup all expenses, costs and fees due them or the State of Kansas from the defendants in the Litigation.

(b) As to the court awarded or ordered expenses and costs, moneys actually recovered from the defendants for expenses and costs ~~advance~~ **advanced** by Hutton & Hutton shall be the property of Hutton & Hutton. It is the intent of the parties that such moneys recovered from the defendants be used to offset the expenses and costs due to Hutton & Hutton and that only such reasonable expenses and costs not recovered as

such from the defendants be deducted by Hutton & Hutton from the recovery prior to the calculation of the contingency fee.

~~(c) As to attorney fees awarded or ordered by the court to Hutton & Hutton for their services in the Litigation shall be considered in the evaluation of the reasonableness of Hutton & Hutton's contingency fee.~~

(c) As to any attorneys fees awarded or ordered by the court to Hutton & Hutton for their services in the Litigation, said fees will be paid to Hutton & Hutton in addition to the 25% contingent fee award set out in Paragraph 15. However, of those court awarded or ordered fees, Hutton & Hutton agree to share said recovery with the State of Kansas in the same 25%/75% pro-rata arrangement as set out in Paragraph 15.

~~(d) If for any reason the parties are unable to agree to the reasonableness of the contingency fee, the matter shall be referred to the appropriate court having jurisdiction of the matter for determination pursuant to 1995 Kan. Ct. R. Annot. 226, MRPC 1.5(e). In no event, however, will the total attorneys' fees exceed 25% of the recovery.~~

18. In the event the Litigation is resolved, by settlement or judgment, under terms involving the provision of goods, services or any other "in-kind" payment, the parties hereto agree to seek, as part of any such settlement, compensation for Hutton & Hutton equivalent to the 25% contingency fee and expenses to which ~~the HUTTON & HUTTON~~ **Hutton & Hutton** would be entitled under this agreement. In the event the Attorney General is unable to secure such compensation, ~~For~~ **for** Hutton & Hutton as part of any "in-kind" settlement, the Attorney General agrees to petition the Legislature to appropriate funds to ~~reasonable~~ **reasonably** compensate Hutton & Hutton.

19. Provided, further, that the provisions found in the Contractual Provisions Attachment (form DA-146a) attached hereto, are hereby incorporated in this contract and made a part hereof. In addition, Second Party shall ~~incorporated~~ **incorporate** the provisions of Form DA-146a into any contract with any third party.

20. Second Party agrees to abide by the provisions of K.S.A. 46-239(c) which states:

Any individual within one year after the expiration of a term as a legislator, who contracts to perform any service for a state agency other than the legislature, shall not later than 10 days after acceptance of such contract, file a disclosure statement as provided in this section. Any agency of the state of Kansas which enters into a contract with any legislator, or any member of a firm of which such legislator is a member, under which the legislator or the member of such firm is to perform services for such agency for compensation shall make a report on a form prescribed and provided by the commission giving the name of the state agency, the purpose of the employment and the method of determining and computing the compensation for such employment. All such forms shall be filed quarterly

in the office of the secretary of state.

Further, Second Party agrees to notify First Party in the event K.S.A. 46-239(c) is applicable and assist First Party in fulfilling his/her reporting requirements.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first above written.

CARLA J. STOVALL
Attorney General of Kansas
Kansas Judicial Center, 2d Floor
Topeka, Kansas 66612
913/296-2215
913/296-6296 - Fax Number

First Party

Hutton & Hutton
8100 East 22nd Street North, Building 1200
P.O. Box 638
Wichita, Kansas 67226-2321
316/688-1166
316/686-1077 - Fax Number
Federal I.D. Number: _____

Second Party

APPROVED:

John W. Campbell
Sr. Deputy Attorney General

Neil A. Woerman
Director of Budget and Special Projects
Office of the Attorney General

FAX TRANSMISSION

OFFICE OF THE ATTORNEY GENERAL

301 WEST TENTH AVENUE
TOPEKA, KANSAS 66612
(913) 296-2215
FAX: (913) 296-6296

To: Andrew W. Hutton

Date: June 4, 1996

Fax #: (316) 686-1077

Pages: 9, including this cover sheet.

From: John W. Campbell

Subject: Cigarette Litigation

COMMENTS:

Problems in receipt, please contact Debbie Williams (913) 296-2215.

DRAFT 6/4/96
APPROVED BY CJS

STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL
CARLA J. STOVALL

ENGAGEMENT AND CONTINGENCY AGREEMENT

AGREEMENT as of this 5th day of June, 1996 by and between the State of Kansas by Carla J. Stovall, Attorney General, "Attorney General" and the law firm of Hutton & Hutton, "Hutton & Hutton".

Whereas, cigarette smoking kills approximately 400,000 individuals each year in the United States more than the number of deaths caused by guns, drug use and automobile accidents combined;

Whereas, the cost to the State of Kansas and its citizens of health care and related expenditures for smoking related diseases exceeds tens of millions of dollars per year;

Whereas, any litigation involving tobacco-related industries is likely to entail numerous complex factual and legal issues;

Whereas, any such litigation will require the expenditure of substantial resources and attorney time;

Whereas, the Attorney General seeks to avoid the expenditure of state resources of direct costs and attorney time in any such litigation; and

Whereas, the Attorney General plans to bring an action against cigarette companies and related entities pursuant to her authority under the Common Law and Kansas Statutes Annotated

NOW THEREFORE, IT IS AGREED BY AND BETWEEN THE ATTORNEY GENERAL AND HUTTON & HUTTON AS FOLLOWS:

1. Hutton & Hutton is retained to provide legal services to the State of Kansas for the purpose of seeking injunctive relief, monetary relief (including, without limitation, damages and civil penalties) and other relief against tobacco industry companies and related entities ("defendants") in litigation arising from the advertising, marketing, manufacturing promotion, sale and/or distribution of cigarettes (hereinafter "the Litigation").

2. The Attorney General, as the chief legal officer of the State of Kansas, retains final authority over all aspects of the Litigation. As provided herein, Hutton & Hutton is authorized to take appropriate legal steps to prosecute the Litigation and participate in all settlement

negotiations and the State of Kansas and the Attorney General hereby further agrees not to settle this action without prior consultation with Hutton & Hutton.

3. The Attorney General may appoint members of her staff to monitor the prosecution of the Litigation. Hutton & Hutton shall consult in advance with and obtain the prior approval of the Attorney General, or her designee, concerning all significant matters related to the Litigation. Regular status meetings shall be held as requested by either the Attorney General or Hutton & Hutton.

4. It is specifically agreed by the parties that neither Hutton & Hutton or any third party employed whose services or products are used by either the State of Kansas or Hutton & Hutton in furtherance of this agreement or its goals, is not considered, or paid as a state employee, but is an independent contractor.

5. It is specifically agreed by the parties that any documents or any other tangible objects produced by Hutton & Hutton, or any third party employed pursuant to this agreement, which were produced or procured in the performance of this agreement, shall be the property of the State of Kansas.

6. Hutton & Hutton shall communicate with state agencies through the Attorney General, unless alternative arrangements are made in advance with the Attorney General. Where written communications from Hutton & Hutton to state agencies are authorized, the Attorney General shall be provided with copies of those communications.

7. Hutton & Hutton shall provide sufficient resources, including attorney time, to prosecute the Litigation faithfully and with due diligence. Hutton & Hutton may, with the prior expressed approval of the Attorney General, bring in additional counsel. Said counsel, will be obligated to observe all of the provisions of this agreement unless explicitly excused by the Attorney General.

8. The Attorney General, by this agreement designates Hutton & Hutton as lead national counsel, lead local counsel and lead trial counsel in the Litigation. The Attorney General retains the right, after a showing of just and good cause to revoke such designations and make new designations at any time.

9. The compensation, if any, paid to third parties pursuant to this agreement shall be the responsibility of Hutton & Hutton.

10. It is anticipated that additional private legal firms shall be needed in the representation of the State of Kansas in the Litigation. The Attorney General, after consultation and agreement by Hutton & Hutton, retains the right to add firms to the group of firms participating in the Litigation. Hutton & Hutton agrees that any firms added to the group conducting the Litigation shall share in such compensation, if any, as agreed upon by Hutton & Hutton and the new firm, subject to the approval of the Attorney General.

11. Hutton & Hutton agree to maintain contemporaneous time and expense records. Hutton & Hutton shall submit quarterly statements to the Attorney General setting forth for that period the hours and services devoted to the Litigation, and all disbursements.

12. Expense records and related documents maintained by Hutton & Hutton in connection with the Litigation shall be subject to audit by the Attorney General.

13. (a) The State of Kansas is not liable to pay any attorney fees in the event the litigation is unsuccessful. Hutton & Hutton's attorney fees, if recovered, are contingent upon a successful settlement and or judgement.

(b) Hutton & Hutton shall advance all expenses of the litigation, except for those funds appropriated by the Legislature for that purpose.

(c) If any recovery is obtained, all reasonable expenses advanced by Hutton & Hutton will be paid to the firm before the computation of attorneys' fees. During the pendency of the Litigation, the Attorney General agrees to petition the Kansas Legislature the funds needed for expenses in the Litigation. If the event no recovery is made by the State of Kansas, Hutton & Hutton agree to waive any legal claims that it might have against the State of Kansas, or any of its officers or employees for reimbursement of costs, reasonable expenses and attorney fees and submit the same to the Joint Committee on Special Claims Against the State for determination by the Legislature. The Attorney General agrees to support Hutton & Hutton's claims.

if waive, no right to make claim

~

14. The sole contingency upon which compensation is to be paid is the recovery and collection by Hutton & Hutton, on behalf of the State of Kansas, of monies in the Litigation, whether by settlement or judgment.

15. Compensation on the foregoing contingency shall be made in accordance with 1995 Kan. Ct. R. Annot. 226, MRPC 1.5 and shall not exceed 25% of the amount of money recovered by the State of Kansas in the Litigation. In accordance with 1995 Kan. Ct. R. Annot. 226, MRPC 1.5 (d) litigation and other expenses shall be deducted from the recovery before the contingency fee is calculated.

16. As used in this Agreement, the term "disbursement" shall include travel expenses, telephone charges, copying charges, fax charges, deposition costs, investigator costs, messenger service costs, mediation expenses, computer research fees, medical or nursing consultation fees, expert fees, other consultation fees and all other reasonable out-of-pocket costs incurred in the Litigation.

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(c) As to attorneys fees awarded or ordered by the court to Hutton & Hutton for their services in the Litigation shall be considered in the evaluation of the reasonableness of Hutton & Hutton's contingency fee. In addition, as to evaluation of the fee, both parties concur and agree that the Litigation is novel and extremely difficult; the skills requisite to perform the legal service in the Litigation are extraordinary; the 25% fee is customarily charged in similar litigation in other states; the experience, reputation and ability of Hutton & Hutton is extraordinary.

(d) If for any reason the parties are unable to agree to the reasonableness of the contingency fee, the matter shall be referred to the appropriate court having jurisdiction of the matter for determination pursuant to 1995 Kan. Ct. R. Annot. 226, MRPC 1.5 (e). In no event, however, will the total attorneys' fees exceed 25% of the recovery.

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19. Provided, further, that the provisions found in the Contractual Provisions Attachment (form DA-146a) attached hereto, are hereby incorporated in this contract and made a part hereof. In addition, Second Party shall incorporated the provisions of Form DA-146a into any contract with any third party.

20. Second Party agrees to abide by the provisions of K.S.A. 46-239(c) which states:

Any individual within one year after the expiration of a term as a legislator, who contracts to perform any service for a state agency other than the legislature, shall not later than 10 days after the acceptance of such contract, file a disclosure statement as provided in this section. Any agency of the state of Kansas which enters into a contract with any legislator, or any member of a firm of which such legislator is a member, under which the legislator or the member of such firm is to perform services for such agency for compensation shall make a report on a form prescribed and provided by the commission giving the name of the state agency, the purpose of the employment and the method of determining and computing the compensation for such employment. All such forms shall be filed quarterly in the office of the secretary of state.

Further, Second Party agrees to notify First Party in the event K.S.A. 46-239(c) is applicable and assist First Party in fulfilling his/her reporting requirements.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first above written.

CARLA J. STOVALL
Attorney General of Kansas
Kansas Judicial Center, 2d Floor
Topeka, Kansas 66612
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First Party

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8100 East 22nd Street North, Building 1200
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316/668-1166
316/686-1077 - Fax Number
Federal I.D. Number: _____

Second Party

APPROVED:

John W. Campbell
Sr. Deputy Attorney General

Neil A. Woerman
Director of Budget and Special Projects
Office of the Attorney General

2-59



State of Kansas

Office of the Attorney General

301 S.W. 10TH AVENUE, TOPEKA 66612-1597

CARLA J. STOVALL
ATTORNEY GENERAL

June 4, 1996

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
FAX: 296-6296

Andrew W. Hutton
Hutton & Hutton
8100 E. 22nd St. North, Building 1200
P.O. Box 638
Wichita, Kansas 67201-0638

RE: Cigarette Litigation

Dear Andy:

I have your edits of June 3, 1996 and have reviewed the same with the Attorney General. Attached is our response, but before you review the same please know that the Attorney General wants to come to an agreement. She has a tremendous respect for you and your brother. Also know that if it would help for me to come to Wichita and meet with you and/ or Mark I would be more than willing to do so.

As to our response, I believe that we agree on paragraphs 1-12, 14, 16, and 18-20. I have made the corrections suggested by Mark and have removed all overstrikes and bold print.

As to the remainder of the agreement, before preceding please be advised that today we received a confidential preliminary unofficial report that indicates that in 1993, Kansas spent \$335,663,374 in Medicaid medical costs for persons 19-64 and \$209,197,728 for persons over age 64. If one accepts a national estimate of 7.1% of total medical expenditures attributable to smoking that could mean that Medicaid costs due to smoking in Kansas in 1993 were more than \$39 million. For 1994, the costs could be more than \$43 million.

With the possibility of recovery in the tens or even hundreds of millions of dollars of money, which if recovered would become public funds, the Attorney General simply cannot make an agreement that might preclude a court's ability to determine the reasonableness of attorneys' fees. In all candor if a recovery is obtained in the tens of millions or higher the State would in all probability seek a MRPC review of the fee, either on the initiative of the Attorney General or on the initiative of the Governor or either branch of the Legislature. See K.S.A. 75-702. This review would not be

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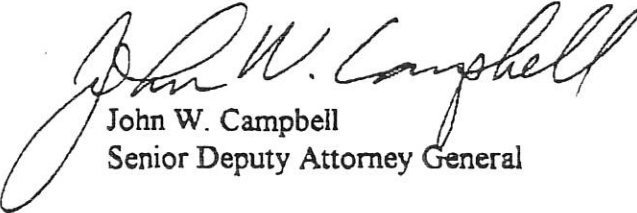
Andrew W. Hutton
June 4, 1996
Page 2

the result of any disrespect for the firm, but would be the result of a public's demand for accountability.

With the above in mind, I have proposed paragraphs 13, 15, and 17. Please review them and remember if it would help to have a face to face in Wichita I would like very much like to come and meet with you and/or Mark. Please call if you have any questions.

Sincerely,

OFFICE OF THE ATTORNEY GENERAL
CARLA J. STOVALL



John W. Campbell
Senior Deputy Attorney General

JWC:jmb
Enclosures

f:\users\campbelj\public\letter\

Mark Hutton †
Andrew W. Hutton

HUTTON & HUTTON



General C. ...
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Tax I.D.# 48-0966751



June 5, 1996

SENT VIA FACSIMILE
TO (913) 296-6296
AND VIA REGULAR MAIL

Mr. John Campbell
Assistant Attorney General
2nd Floor, Judicial Center
Topeka, KS 66612-1567

Re: Cigarette Litigation

Dear John:

Thank you for your latest fee contract draft of June 4, 1996. Admittedly, we would rather work on the case than work on drafting the language of a contingent fee contract, but nevertheless please find enclosed our latest draft. The way the contract is being proposed by your office could lead to an open issue as to whether the contract is a contingent fee contract or a contract where a ceiling has been placed with no certainty as to what the fee may be. In other words, the proposed contract is one where the fee is uncertain and we would run the risk of not knowing what the percentage fee might be.

Due to the complexity, the high risk, and the necessity of getting other attorneys involved in this litigation, it may be difficult to encourage other stellar risk-takers to get involved without some certainty as to what the contingent fee really is. The total man-hours to be expended, the total cost to be expended, and the forbearance of other high risk opportunities in the successful prosecution of this matter really necessitates some certainty as to what the contingent fee would be. We are result-oriented and will make the sacrifices necessary to assemble the appropriate team to ensure that we give the tobacco cartel a hell of a fight. As Arlen Specter, the fine U.S. Senator from Pennsylvania and born and raised in Russell, Kansas, once said, "Hell hath no fury like a lawyer with a contingent fee contract."

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Mr. John Campbell
June 5, 1996
Page Two

We agree that MRPC 1.5(e) permits all fee contracts to be reviewed by the appropriate court and expect the same to apply in this instance. We would, however, like to start our relationship having the client agree that the proposed 25% fee is fair and reasonable.

We understand that the potential recovery in this litigation could be enormous. The risks, however, are likewise as enormous. We are willing to bear that risk whether this case takes a few years or a few decades. We are duty-bound to maximize the State's recovery of taxpayer dollars expended for smoking-related diseases and recognize the fee, like the recovery for the State, could be quite large. The more we recover for the State, the more we get paid as fee. That's the value of a contingent fee contract. The contingent fee is balanced against the attorney bearing the entire risk and, in our particular case, potentially spending millions and millions of dollars of time and money to maximize the client's recovery.

With that said, we would like some certainty that the State agrees that a contingent fee of 25% is fair and reasonable. We have made some changes to your latest draft, which I would encourage you to review and to discuss with us.

Very truly yours,



Mark B. Hutton

MBH/sm

Enclosure

DRAFT 06/05/96
NOT YET APPROVED BY CJS

STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL
CARLA J. STOVALL

ENGAGEMENT AND CONTINGENCY AGREEMENT

AGREEMENT as of this 5th day of June, 1996 by and between the State of Kansas by Carla J. Stovall, Attorney General, "Attorney General" and the law firm of Hutton & Hutton, "Hutton & Hutton."

Whereas, cigarette smoking kills approximately 400,000 individuals each year in the United States more than the number of deaths caused by guns, drug use and automobile accidents combined;

Whereas, the cost to the State of Kansas and its citizens of health care and related expenditures for smoking related diseases exceeds tens of millions of dollars per year;

Whereas, any litigation involving tobacco-related industries is likely to entail numerous complex factual and legal issues;

Whereas, any such litigation will require the expenditure of substantial resources and attorney time;

Whereas, the Attorney General seeks to avoid the expenditure of state resources of direct costs and attorney time in any such litigation; and

Whereas, the Attorney General plans to bring an action against cigarette companies and related entities pursuant to her authority under the Common Law and Kansas Statutes Annotated.

NOW THEREFORE, IT IS BY AND BETWEEN THE ATTORNEY GENERAL AND HUTTON & HUTTON AS FOLLOWS:

1. Hutton & Hutton is retained to provide legal services to the State of Kansas for the purpose of seeking injunctive relief, monetary relief (including, without limitation, damages and civil penalties) and other relief against tobacco industry companies and related entities ("defendants") in litigation arising from the advertising, marketing, manufacturing promotion, sale, and/or distribution of cigarettes (hereinafter "the Litigation").

2. The Attorney General, as chief legal officer of the State of Kansas, retains final authority over all aspects of the Litigation. As provided herein, Hutton & Hutton is authorized to take appropriate legal steps to prosecute the Litigation and participate in all settlement negotiations and the State of Kansas and the Attorney General hereby further agrees not to settle this action without prior consultation with Hutton & Hutton.

3. The Attorney General may appoint members of her staff to monitor the prosecution of the Litigation. Hutton & Hutton shall consult in advance with and obtain the prior approval of the Attorney General, or her designee, concerning all significant matters related to the Litigation. Regular status meetings shall be held as requested by either the Attorney General or Hutton & Hutton.

4. It is specifically agreed by the parties that neither Hutton & Hutton or any third party employed whose services or products are used by either the State of Kansas or Hutton & Hutton in furtherance of this agreement or its goals, is not considered, or paid as a state employee, but is an independent contractor.

5. It is specifically agreed by the parties that any documents or any other tangible objects produced by Hutton & Hutton, or any third party employed pursuant to this agreement, which were produced ~~or procured~~ in the performance of this agreement, shall be property of the State of Kansas.

6. Hutton & Hutton shall communicate with state agencies through the Attorney General, unless alternative arrangements are made in advance with the Attorney General. Where written communications from Hutton & Hutton to state agencies are authorized, the Attorney General shall be provided with copies of those communications.

7. Hutton & Hutton shall provide sufficient resources, including attorney time, to prosecute the litigation faithfully and with due diligence. Hutton & Hutton may, with the prior expressed approval of the Attorney General, bring in additional counsel. Said counsel, will be obligated to observe all of the provisions of this agreement unless explicitly excused by the Attorney General.

8. The Attorney General, by this agreement designates Hutton & Hutton as lead national counsel, lead local counsel and lead trial counsel in this Litigation. The Attorney General retains the right, after a showing of just and good cause, to revoke such designations and made new designations at any time.

9. The compensation, if any, paid to third parties pursuant to this agreement shall be the responsibility of Hutton & Hutton.

10. It is anticipated that additional private legal firms shall be needed in the representation of the State of Kansas in the Litigation. The Attorney General, after consultation and agreement by Hutton & Hutton, retains the right to add firms to the group of firms participating in the Litigation. Hutton & Hutton agrees that any firms added to the group conducting the Litigation shall share in such compensation, if any, as agreed upon by Hutton & Hutton and the new firm, subject to the approval of the Attorney General. **The responsibility of the expenses divided amongst counsel will be determined by Hutton & Hutton, subject to the approval of the Attorney General.**

11. Hutton & Hutton agree to maintain contemporaneous time and expense records. Hutton & Hutton shall submit quarterly statements to the Attorney General setting forth for that period the hours and services devoted to the Litigation, and all disbursements.

12. Expense records and related documents maintained by Hutton & Hutton in connection with this Litigation shall be subject to audit by the Attorney General.

13. (a) The State of Kansas is not liable to pay any attorney fees in the event the litigation is unsuccessful. Hutton & Hutton's attorney fees, if recovered, are contingent upon a successful settlement and or judgment.

(b) Hutton & Hutton shall advance all expenses of the Litigation, except for those funds appropriated by the Legislature for that purpose.

(c) If any recovery is obtained, all reasonable expenses advanced by Hutton & Hutton will be paid to the firm before computation of attorneys' fees. ~~During the pendency of the litigation, the Attorney General agrees to petition the Kansas Legislature the funds needed for expenses in the Litigation.~~ If the event no recover is made by the State of Kansas, Hutton & Hutton agree to waive any legal claims that it might have against the State of Kansas, or any of its officers or employees for reimbursement of costs, reasonable expenses and attorney fees. ~~and submit the same to the Joint Committee on Special Claims Against the State for determination by the Legislature. The Attorney General agrees to support Hutton & Hutton's claims.~~

14. The sole contingency upon which compensation is to be paid is the recovery and collection by Hutton & Hutton, on behalf of the State of Kansas, of monies in the Litigation, whether by settlement or judgment.

15. Compensation on the foregoing contingency shall be made in accordance with 1995 Kan. Ct. R. Annot. 226, MRPC 1.5 and shall ~~not exceed~~ **be 25%** of the amount of money recovered by the State of Kansas in the Litigation. **Both parties concur and agree that said 25% contingency fee is fair and reasonable.** In accordance with 1995 Kan. Ct. R. Annot. 226, MRPC 1.5(d) litigation and other expenses shall be deducted from the recovery before the contingency fee is calculated.

16. As used in this Agreement, the term "disbursement" shall include travel expenses, telephone charges, copying charges, fax charges, deposition costs, investigator costs, messenger service costs, mediation expenses, computer research fees, medical or nursing consultation fees, expert fees, other consultation fees and all other reasonable out-of-pocket costs incurred in the Litigation.

17. (a) Hutton & Hutton shall, to the extent allowed under the laws of the State of Kansas and subject to the approval of the Attorney General, attempt to recoup all expenses, costs and fees due them or the State of Kansas from the defendants in the Litigation.

(b) As to the court awarded or ordered expenses and costs, moneys actually recovered from the defendants for expenses and costs **advanced** by Hutton & Hutton shall be the property of Hutton & Hutton. It is the intent of the parties that such moneys recovered from the defendants be used to offset the expenses and costs due to Hutton & Hutton and that only such reasonable expenses and costs not recovered as such from the defendants be deducted by Hutton & Hutton from the recovery prior to the calculation of the contingency fee.

(c) In the event the Court awards statutory attorney fees, Hutton & Hutton and the State agree that the division of these attorney fees, which will be in addition to the 25% contingent fee from any settlement or recovery, will be divided by agreement of the parties or as determined by the Court consistent with 1995 Kan. Ct. R. Annot. 226 MRCP 1.5. As to attorney fees awarded or ordered by the court to Hutton & Hutton for their services in the Litigation shall be considered in the evaluation of the reasonableness of Hutton & Hutton's contingency fee. In addition, as to evaluation of the fee, both parties concur and agree that the Litigation is novel and extremely difficult; the skills requisite to perform the legal service in the Litigation are extraordinary; the 25% fee is customarily charged in similar litigation in other states; the experience, reputation and ability of Hutton & Hutton is extraordinary; and the prosecution of this case will result in the forbearance of other significant litigation opportunities which would have been available to the firm of Hutton & Hutton.

~~(d) If for any reason the parties are unable to agree to the reasonableness of the contingency fee, the matter shall be referred to the appropriate court having jurisdiction of the matter for determination pursuant to 1995 Kan. Ct. R. Annot. 226 MRCP 1.5(e). In no event, however, will the total attorneys' fees exceed 25% of the recovery.~~

(d) The State reserves the right to have this fee contract reviewed by the appropriate court having jurisdiction over the matter to determine whether the contract is reasonable. In no event, however, will the total attorneys' fees exceed 25% of the recovery.

18. In the event the Litigation is resolved, by settlement or judgment, under terms involving the provision of goods, services or any other "in-kind" payment, the parties hereto agree to seek, as part of any such settlement, compensation for Hutton & Hutton equivalent to the 25% contingency fee and expenses to which Hutton & Hutton would be entitled under this agreement. In the event the Attorney General is unable to secure such compensation. ~~For~~ **for** Hutton & Hutton as part of any "in-kind" settlement, the Attorney General agrees to petition the Legislature to appropriate funds to ~~reasonable~~ **reasonably** compensate Hutton & Hutton.

19. Provided, further, that the provisions found in the Contractual Provisions Attachment (form DA-146a) attached hereto, are hereby incorporated in this contract and made a part hereof. In addition, Second Party shall ~~incorporated~~ **incorporate** the provisions of Form DA-146a into any contract with any third party.

20. Second Party agrees to abide by the provisions of K.S.A. 46-239(c) which states:

Any individual within one year after the expiration of a term as a legislator, who contracts to perform any service for a state agency other than the legislature, shall not later than 10 days after acceptance of such contract, file a disclosure statement as provided in this section. Any agency of the state of Kansas which enters into a contract with any legislator, or any member of a firm of which such legislator is a member, under which the legislator or the member of such firm is to perform services for such agency for compensation shall make a report on a form prescribed and provided by the commission giving the name of the state agency, the purpose of the employment and the method of determining and computing the compensation for such employment. All such forms shall be filed quarterly in the office of the secretary of state.

Further, Second Party agrees to notify First Party in the event K.S.A. 46-239(c) is applicable and assist First Party in fulfilling his/her reporting requirements.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first above written.

CARLA J. STOVALL
Attorney General of Kansas
Kansas Judicial Center, 2d Floor
Topeka, Kansas 66612
913/296-2215
913/296-6296 - Fax Number
First Party

Hutton & Hutton
8100 East 22nd Street North, Building 1200
P.O. Box 638
Wichita, Kansas 67226-2321
316/688-1166
316/686-1077 - Fax Number
Federal I.D. Number: _____

Second Party

APPROVED:

John W. Campbell
Sr. Deputy Attorney General

Neil A. Woerman
Director of Budget and Special Projects
Office of the Attorney General

Malcolm W. Hutton · †
Andrew W. Hutton

Derek S. Casey ·
Anne H. Pankratz
Christopher P. Christian
Chan P. Townsley ··
· Also Admitted in Oklahoma
·· Also Admitted in Missouri
† Certified Trial Advocate
National Board of Trial Advocacy

HUTTON & HUTTON



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Products Liability
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Facsimile
(316) 686-2049

Tax I.D.# 48-0966751

June 10, 1996

**SENT VIA FACSIMILE
TO (913) 296-6296
AND VIA REGULAR MAIL**

Mr. John Campbell
Assistant Attorney General
2nd Floor, Judicial Center
Topeka, KS 66612-1567

Re: Cigarette Litigation
John Campbell

Dear John:

Just for your information, when a private attorney in Kansas is responsible for recoveries of money in an action where Medicaid is reimbursed, there is statutory authority that the attorneys' fees be one-third for cases settled prior to trial or 40 percent when the trial is convened. See K.S.A. 39-719a and b. We encounter this section quite frequently in our medical malpractice actions in which we are successful in recovering money on behalf of the State of Kansas against a negligent tort-feasor. I thought you might find this interesting.

Very truly yours,

A handwritten signature in black ink, appearing to read "AWH", with a long, sweeping horizontal stroke extending to the right.

Andrew W. Hutton

AWH/sm

AWH/sm

CASE ANNOTATIONS

1. Parent released by court order from contributing to support could not be sued for reimbursement for aid to dependent children. *Harder v. Towns*, 1 K.A.2d 667, 669, 573 P.2d 625.

2. Absent parent defined; statute constitutional since defenses may be asserted before judgment. State ex rel. Secretary of SRS v. *Castro*, 235 K. 704, 714, 715, 684 P.2d 379 (1984).

39-718b. Liability of parent or guardian for assistance provided child, exceptions. (a) Except as provided in subsection (b), a child's parent, parents or guardian shall be liable to repay to the secretary of social and rehabilitation services any assistance expended on the child's behalf, regardless of the specific program under which the assistance is or has been provided. When more than one person is legally obligated to support the child, liability to the secretary shall be joint and several. The secretary shall have the power and authority to file a civil action in the name of the secretary for repayment of the assistance, regardless of the existence of any other action involving the support of the child.

(b) With respect to an individual parent or guardian, the provisions of subsection (a) shall not apply to:

(1) Assistance provided on behalf of any person other than the child of the parent or guardian;

(2) assistance provided during a month in which the needs of the parent or guardian were included in the assistance provided to the child; or

(3) assistance provided during a month in which the parent or guardian has fully complied with the terms of an order of support for the child, if a court of competent jurisdiction has considered the issue of support. For the purposes of this subsection, if an order is silent on the issue of support, it shall not be presumed that the court has considered the issue of support. Amounts paid for a particular month pursuant to a judgment under this act shall be credited against the amount accruing for the same month under any other order of support for the child, up to the amount of the current support obligation for that month.

(c) When the assistance provided during a month is on behalf of more than one person, the amount of assistance provided on behalf of one person for that month shall be determined by dividing the total assistance by the number of people on whose behalf assistance was provided.

(d) Except as provided in subsection (b), a child's parent, parents or guardian shall be liable to repay to an agency or subdivision of another state any assistance substantially similar to that defined in subsection (d) of K.S.A. 39-702 and amendments thereto which has been expended in the other state on the child's behalf, regardless of the specific program under which the assistance is or has been provided. When more than one person is legally obligated to support the child, liability to the agency or subdivision shall be joint and several.

(e) Actions authorized herein are in addition to and not in substitution for any other remedies.

History: L. 1988, ch. 218, § 5; July 1.

CASE ANNOTATIONS

1. Parent's obligation to repay SRS for assistance noted; obligation held ended when parental rights voluntarily terminated (38-125 et seq.). State ex rel. Secretary of SRS v. *Clear*, 248 K. 109, 116, 804 P.2d 961 (1991).

2. Fact that conception results from violation of 21-3503 does not relieve victim of duty of support. State ex rel. *Hermesmann v. Seyer*, 252 K. 646, 648, 655, 847 P.2d 1273 (1993).

39-719.

History: L. 1937, ch. 327, § 17; Repealed, L. 1939, ch. 203, § 1; April 4.

Revisor's Note:

L. 1939, ch. 203, § 2 reads as follows: "All liens heretofore taken under the provision of section 39-719 of the General Statutes Supplement of 1937 are hereby discharged and canceled: Provided, The repealing of this section shall not affect any judgment rendered at the time this act becomes effective."

CASE ANNOTATIONS

1. Lien provision held constitutional. *Hawkins v. Social Welfare Board*, 148 K. 760, 761, 762, 764, 84 P.2d 930.

2. History of section and similar sections discussed in construing 39-713. In re *Estate of Butler*, 159 K. 144, 147, 152 P.2d 815.

39-719a. Recovery of medical assistance paid; obligation of third party; payment by secretary secondary costs paid proportionately by parties as determined by court. (a) Where medical assistance has been paid by the secretary and a third party has a legal obligation to pay such medical expenses to or on behalf of the recipient, the secretary may recover the same from the recipient or from the third party and shall be in all respects subrogated to the rights of the recipient in such cases except as provided under K.S.A. 39-786 and 39-787, and amendments thereto, or under section 303 and amendments thereto of the federal medicare catastrophic coverage act of 1988, whichever is applicable. Payment of medical assistance by

2-71

the secretary shall be secondary to any other insurance coverage or third party with a legal obligation to pay such medical expenses to or on behalf of the recipient.

(b) Pursuant to this section unless otherwise agreed, the court shall fix attorney fees, which shall be paid proportionately by the secretary and the injured person, such person's dependents or personal representatives, in the amounts determined by the court. Attorney fees to be paid by the secretary shall be fixed by the court in an amount not to exceed 1/3 of the medical assistance recovered pursuant to subsection (a) for cases settled prior to trial, or in an amount not to exceed 2/5 of the medical assistance recovered pursuant to subsection (a) in cases when a trial is convened.

(c) In the event of a recovery pursuant to K.S.A. 60-258a, and amendments thereto, the secretary's right of subrogation shall be reduced by the percentage of negligence attributable to the injured person.

History: L. 1953, ch. 224, § 1; L. 1967, ch. 245, § 7; L. 1969, ch. 226, § 6; L. 1970, ch. 168, § 1; L. 1973, ch. 186, § 12; L. 1988, ch. 143, § 9; L. 1989, ch. 124, § 3; L. 1991, ch. 119, § 1; July 1.

Cross References to Related Sections:

Duty to support certain patients, see 59-2006, 76-1936.

Research and Practice Aids:

Social welfare assistance as demands, Kansas Probate Law and Practice § 801.

Law Review and Bar Journal References:

Nature, determination and effect upon homestead law of claim considered, opinion of attorney general, 2 K.L.R. 212, 213 (1953).

Retrospective operation of statute considered, opinion of attorney general, 2 K.L.R. 215 (1953).

"More Goo for Our Tort Stew: Implementing the Kansas Collateral Source Rule," James Concannon and Ron Smith, 58 J.K.B.A. No. 2, 19, 23, 28 (1989).

"Medicaid Eligibility For Nursing Home Care: Understanding The New Eligibility Rules," Patrick H. Donahue, 59 J.K.B.A. No. 4, 26, 27 (1990).

CASE ANNOTATIONS

1. Claim for assistance supplied previously deceased spouse is a demand against estate of surviving spouse; not barred by nonclaim statute. In re Estate of Schwarz, 197 K. 267, 268, 269, 270, 271, 272, 273, 416 P.2d 760.

2. Section construed; amount recoverable hereunder limited to the assistance furnished to either or both of a married couple during the marriage relationship. State Department of Social Welfare v. Dye, 204 K. 760, 761, 762, 763, 764, 466 P.2d 354.

3. Mentioned in case holding that probate court may charge the cost of administering a no-asset estate to the creditor who petitioned for administration of the estate. State Department of Social Welfare v. Emert, 205 K. 393, 394, 469 P.2d 435.

39-719b. Duty of recipient to report changes which affect eligibility; actions by secretary; recovery of assistance obtained by ineligible recipient. If at any time during the continuance of assistance to any person, the recipient thereof becomes possessed of any property or income in excess of the amount ascertained at the time of granting assistance, or if any of the recipient's circumstances which affect eligibility to receive assistance change from the time of determination of eligibility, it shall be the duty of the recipient to notify the secretary immediately of the receipt or possession of such property, income, or of such change in circumstances affecting eligibility and said secretary may, after investigation, cancel or modify the assistance payment in accordance with the circumstances.

Any assistance paid shall be recoverable by the secretary as a debt due to the state. If during the life or on the death of any person receiving assistance, it is found that the recipient was possessed of income or property in excess of the amount reported or ascertained at the time of granting assistance, and if it be shown that such assistance was obtained by an ineligible recipient, the total amount of the assistance may be recovered by the secretary as a fourth class claim from the estate of the recipient or in an action brought against the recipient while living.

History: L. 1953, ch. 224, § 2; L. 1973, ch. 186, § 13; L. 1977, ch. 151, § 1; July 1.

CASE ANNOTATIONS

1. Cited; in absence of specific statutory authority the S.R.S. cannot maintain action for punitive damages. State ex rel. Secretary of S.R.S. v. Fomby, 11 K.A.2d 138, 144, 715 P.2d 1045 (1986).

2. Funds from discretionary trust for nongrantor beneficiary not a resource for purpose of eligibility. State ex rel. Secretary of SRS v. Jackson, 15 K.A.2d 126, 128, 130, 803 P.2d 1045 (1991).

3. Action for recovery of public assistance benefits; net income from trust was an available resource. State ex rel. Secretary of SRS v. Jackson, 249 K. 635, 636, 822 P.2d 1033 (1991).

39-719c. Proof deemed prima facie evidence assistance unlawfully received. In any action or proceeding for the recovery of assistance paid to an alleged ineligible recipient of assistance, proof that the recipient of assistance possesses or did possess property or income which does or would have rendered him ineligible to receive such assistance shall be deemed prima facie evidence that such assistance was unlawfully received.

History: L. 1953, ch. 224, § 3; June 30.

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ASSISTANT
★
FAXED

August 7, 1996

**SENT VIA FACSIMILE
TO (913) 296-6296
AND VIA REGULAR MAIL**

Ms. Carla Stovall
Attorney General
2nd Floor, Judicial Center
Topeka, KS 66612-1567

Re: Cigarette Litigation

Dear Attorney General Stovall:

I had a nice talk with John Campbell this morning and understand you have selected someone else to represent the State of Kansas in the Cigarette Litigation. Of course we are disappointed, but we will be working on other cigarette litigation as well. We wholeheartedly support your cause in this matter and if we can ever be of any help in the future please feel free to give us a call.

Incidentally, we will also be involved in a Smokeless Tobacco class action out of state which seems to be very promising litigation. Unfortunately, the children seem to be the primary targets of the smokeless tobacco advertisements.

Best regards, I am

Very truly yours,

Andrew W. Hutton

AWH/jjb

KSAGC

September 16, 1996

Ms. Carla Stovall
Attorney General
2nd Floor, Judicial Center
Topeka, KS 66612-1567

Dear Attorney General Stovall:

Please find enclosed a copy of an article from *The Wichita Eagle*, "Nicotine Is, Too, Addictive," which I thought you might enjoy reading.

Very truly yours,

Andrew W. Hutton

AWH/sm

Enclosure

2-74

Nicotine is, too, addictive

Next month it will be five years since I smoked my last cigarette. Some of my friends still smoke, not to mention my son. Since it is a trip to hell and back to quit, I try not to be terribly harsh with those who still smoke.

My harshness is reserved for those fools who say that nicotine isn't addictive. For a two-pack-a-day, 35-year smoker like me, addiction was what it was all about. Cigarettes controlled me. Depressed? Curl up in my favorite chair and smoke. Happy? Have a cigarette to celebrate. Angry? Whip out that pack and reach for the lighter. Anxious? Quick, where are the cigarettes? Bored? Smoke. Deep in concentration? Smoke.



MYRNE ROE

EDITORIAL
WRITER

Any nicotine addict remembers putting on a coat over pajamas and heading out in the dead of night and in the middle of a blizzard to buy cigarettes. Or spending half an hour looking through drawers, pockets, purses and, yes, trash cans and ashtrays to find a stray cigarette or a butt long enough to get a couple of drags.

When I finally said no more to smoking, it wasn't heroics, it was a necessity. I no longer could smoke while I worked. The thought of not being able to reach for a cigarette when the phone rang, when I was sitting down to write, when a friend stopped by for a quick chat and any of the other times my brain sent the time-to-light-up message made me frantic. Might as well face it. I had to quit unless I wanted to get up from my desk every five minutes and head out to the deck in rain, sleet, snow or broiling Kansas heat.

Quitting hurt. It felt awful. Head ached. Legs twitched. Couldn't sit still. Sleep came in fits and starts. Stomach in knots. Cried. Got angry. Drank gallons of fruit juice, chewed stick after stick of Juicy Fruit and consumed enough chocolate to make Willie Wonka sick. My story is pretty much the same as anyone who wants to quit, tries to quit, fails to quit and then starts the same process over and over again.

A recent article in The Eagle talked about new sci-

entific findings showing nicotine's ability to hook people. The headline proclaimed: "Nicotine's pull as powerful as heroin's." So what else is new? The officials at RJR Nabisco, Philip Morris, US Tobacco, Brown and Williamson and all the rest of the tobacco purveyors are telling whoppers when they say, "There is no evidence that nicotine is addictive."

They are wrong. Laughably so. They might as well be proclaiming that all the tobacco companies are as concerned about the health of children as St. Jude's Hospital is. They might as well say that all tobacco company CEOs are in line to be the next pope, if not the next messiah. That Joe Camel conveys the same message to kids as Barney the purple dinosaur. That the Marlboro man is a gold-medal Olympian.

Smoking is a nasty, dangerous and, for some, impossible addiction to kick. I'm fortunate I could quit. No longer do I cough myself to sleep. Or suck on a cough drop so I can smoke without coughing. No panic attacks from discovering I just got on the turnpike and forgot my cigarettes. No more spending time wishing for an intermission smoke-break rather than enjoying the music. No more staying home from long trips to interesting places, because I can't smoke on the plane.

No more taking a cigarette-burned jacket to be re-woven or being late to an appointment because I had to go back home to see for sure that all the butts were out when I tossed them in the kitchen trash. No more headaches from smoking too much or colds that go into bronchitis because of tar-coated lungs.

Cigarette addiction leads to all that. It's an uncontrollable and life-defining chemical dependency that, even though it causes health and social problems, takes more than some folks have to quit.

Nicotine is addictive, folks. It is. For the few who can take or leave a smoke here and there, fine. But for most of us, once we inhale that stuff, that's all there is to it. It takes years to stop. My wish is that it were easier. My wish is that everyone who smokes could quit if they want without the agony of withdrawal from the powerful drug nicotine.

My wish is that all those tobacco company flacks and flackettes who deny that nicotine is addictive will spend eternity in a futile search for one long butt to hold them over until they can get their hands on a pack of their favorite brand.

Myrne Roe can be reached at (316) 268-6264.

2-75

November 17, 1998

**Sent Via Facsimile to (913) 296-6296
and Via Regular Mail**

Ms. Carla Stovall
Attorney General
2nd Floor, Judicial Center
Topeka, KS 66612-1567

Re: State Tobacco Lawsuit

Dear Carla:

I read this morning in the *Wichita Eagle* that you are leaning toward accepting the latest settlement offer made by the tobacco industry. I am writing this letter to urge you to reject the offer on behalf of Kansas and to have Kansas opt out of the settlement. I sincerely believe that by rejecting the offer and opting out, industry will further negotiate with that handful of states that choose to stay the course and to continue with the litigation. Further negotiations with those opt-out states will only lead to Kansas receiving a better settlement.

I know that it is difficult for out-of-state counsel to advise you as to whether to accept or reject the offer on behalf of Kansas. Because out-of-state counsel represents so many states, and because of the enormous magnitude of the attorney fees to be realized by out-of-state counsel in the representation of so many different states, it obviously creates a conflict of interest for out-of-state counsel to give you honest and independent legal advice. The absence of any meaningful activity by out-of-state counsel in the Kansas tobacco litigation further evidences the conflict of interest of the out-of-state counsel representing so many different states. Obviously, out-of-state counsel has devoted its time and attention to the representation of those states with significantly larger populations than Kansas. Kansas deserves better and I believe that opting out of the settlement will be an act of courage on your part and will put substantially more money into the state coffers.

Best regards.

Very truly yours,

Andrew W. Hutton

AWH/sm

2-76



Mark B. Hutton - †
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Tax I.D.# 48-0966751

April 10, 1996

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West Virginia seeks recovery under 10 theories: restitution/unjust enrichment; common-law public nuisance; negligent performance of a voluntary undertaking; fraud (intentional misrepresentation); conspiracy and concert of action; aiding and abetting liability; consumer protection violations; antitrust violations; injunctive relief; and declaratory judgment.

Attorney General Carla Stoval
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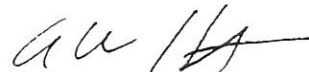
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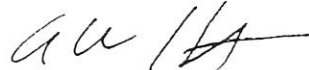
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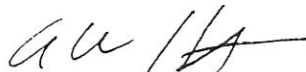
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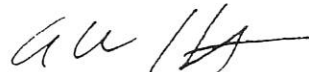
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We are excited about working with you and the State of Kansas in an effort to provide reimbursement for tax monies spent due to the manufacture of a drug intentionally designed to cause addiction, disease and death. We are equally enthusiastic of the opportunity assist in the prevention of the targeting, marketing and sale of cigarettes to the children of Kansas.

Very truly yours,



Andrew W. Hutton

AWH/sm



Mark B. Hutton - †
Andrew W. Hutton

HUTTON & HUTTON



General Office
(316) 688-1166
Facsimile
(316) 686-1077

Derek S. Casey -
Anne H. Pankratz
Christopher P. Christian
Chan P. Townsley -
- Also Admitted in Oklahoma
- Also Admitted in Missouri
† Certified Trial Advocate
National Board of Trial Advocacy

Law Offices
8100 East Twenty-Second Street North, Building 1200
Wichita, Kansas 67226-2321
Mail: P.O. Box 638
Wichita, Kansas 67201-0638

Products Liability
(316) 686-1242
Facsimile
(316) 686-2049

Tax I.D.# 48-0966751

April 10, 1996

**SENT VIA FACSIMILE
TO (913) 296-6296
AND VIA REGULAR MAIL**

Ms. Carla Stovall
Attorney General
2nd Floor, Judicial Center
Topeka, KS 66612-1567

Re: Cigarette Litigation

Dear Attorney General Stovall:

Mark and I would like to thank you for allowing us to meet with you on April 8, 1996. Consistent with our oral representation, we would like to head up a litigation team against the tobacco cartel in a state action for Medicaid reimbursement, similar to that which is being done in West Virginia, Minnesota, Florida, Mississippi, Massachusetts, Texas and Louisiana. We would bear all the litigation costs and expenses, and be paid on a 25 percent contingent fee basis. John Campbell mentioned possibly having Morrison & Hecker involved and we would welcome their assistance. Further, we would welcome your input in the selection of other lawyers to assist us in this major undertaking.

We are doing research on Kansas law to determine what particular cause of action exists, including any special violation of consumer protection statutes. We have found out that West Virginia seeks to hold cigarette manufacturers, cigarette distributors, public relation firms, cigarette component manufacturers, the Council for Tobacco Research, and the Tobacco Institute, Inc. liable for smoking-related diseases.

West Virginia seeks recovery under 10 theories: restitution/unjust enrichment; common-law public nuisance; negligent performance of a voluntary undertaking; fraud (intentional misrepresentation); conspiracy and concert of action; aiding and abetting liability; consumer protection violations; antitrust violations; injunctive relief; and declaratory judgment.

Attorney General Carla Stoval
April 10, 1996
Page Two

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Andrew W. Hutton

AWH/sm

KS Smoking



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Andrew W. Hutton

HUTTON & HUTTON



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Attorney General Carla Stoval
April 10, 1996
Page Two

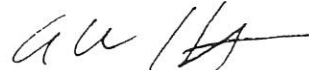
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AWH/sm

DB

BROSNAHAN, JOSEPH, LOCKHART & SUGGS

PROFESSIONAL ASSOCIATION

ROGER P. BROSNAHAN
DAVID L. SUGGS
JANE E. JOSEPH
KRISTIN NERING LOCKHART

700 PILLSBURY CENTER
200 SOUTH SIXTH STREET
MINNEAPOLIS, MINNESOTA 55402

612.339.9930 • FAX 612.373.3207

January 13, 1995

LEGAL ASSISTANTS
SUSAN A. LAHTI
KIM ANDERSON OCEL
KATLYN M. SARSLAND

OFFICE MANAGER
LINDA M. SCHWARZ

<u>Janet G. Abaray</u>	513-621-0262	<u>Dianne Nast</u>	215-238-1968
<u>Daniel E. Becnel, Jr.</u>	504-536-6445	<u>Christopher M. Parks/</u>	409-985-2833
<u>Turner Branch</u>	505-243-3534	<u>Carl A. Parker</u>	
<u>William Hersh/</u>		<u>Thomas D. Rogers</u>	803-577-7513
<u>Elizabeth J. Cabraser</u>	415-956-1008	<u>Sybil Shainwald</u>	212-269-6032
<u>Harold D. Dampier, Jr.</u>	713-651-1001	<u>Arthur Sherman</u>	310-276-5871
<u>Michael Gallagher</u>	713-654-5070	<u>Michael L. Slack</u>	512-795-8787
<u>Mark B. Hutton</u>	316-686-1077	<u>Jay H. Waller/</u>	205-933-9150
<u>Jewel N. Klein</u>	312-362-9887	<u>Don Springmeyer</u>	
<u>Arnold Levin</u>	215-592-4663	<u>Michael L. Williams</u>	503-295-3720
		<u>Charles S. Zimmerman</u>	612-341-0844

Ness matter

Re: Norplant Litigation

Dear Plaintiffs Steering Committee Nominees:

My notes of Wednesday's meeting in Atlanta indicate that the following members have been charged with the following responsibilities:

1. Bill Hersh, Arthur Sherman and Chris Parks will redraft the Court's requested proposed Case Management Order for filing today. I have spoken with Chris and those three have completed their charge, the order will be filed and copies will be distributed to each of the others of us.
2. Each of us was directed to compose and send by federal express to Chris for delivery at his office on next Monday or Tuesday a curriculum vitae limited to three pages for Chris' use if requested by Judge Schell..
3. Arnold Levin, Janet Abaray, Bill Hersh, Arthur Sherman and Jewel Klein will draft a master Class Action Complaint for circulation prior to and action by the committee at the January 24 meeting in Beaumont.

Bill will circulate a profile form for each of us to complete concerning the respective class representatives in our individual class actions and return to him so that the Master Complaint Committee can review and make recommendations for designation of class representatives in the master

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BROSNAHAN, JOSEPH, LOCKHART & SUGGS

Plaintiffs Steering Committee Nominees

January 13, 1995

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complaint. Again, we hope that this decision can be made at or shortly after the Beaumont meeting so that the complaint can be served as soon as possible.

The master complaint committee will address the issue of class certification discovery and recommend whether, what and when such discovery should be served.

4. Danny Becnel agreed to obtain a continuance of the scheduled hearing concerning certification of his class action until after the Beaumont hearing and Jewel Klein agreed likewise to defer her decision concerning the remand of her state class action until after that time.
5. At the meeting in Atlanta I distributed lists of the composition of our existing committees and attach herewith a list of lawyers who have indicated a willingness to work in any or several specific work areas. Please give Chris, Turner and me your suggestions for additions to the existing committees, composition of a Discovery Committee as well as creation of any other committees deemed necessary at this time and we will develop recommendations for the entire group's consideration at the meeting in Beaumont.
6. Danny Becnel, Jewel Klein and Bucky Zimmerman were asked to investigate the matter of the Wyeth advertisements and to recommend to the group appropriate action to take.
7. Chris, Turner and I were asked to consider and be prepared to make recommendations prior to or at the committee meeting in Beaumont concerning the following:
 - a. Committee member assessments;
 - b. State case assessments;
 - c. Location of depository;
 - d. Internal rules governing committee activities including assignments, attendance, time keeping and expenses.

BROSNAHAN, JOSEPH, LOCKHART & SUGGS

Plaintiffs Steering Committee Nominees
January 13, 1995
Page 3

8. The next Plaintiff Steering Committee meeting will be at 4:30 p.m., Tuesday, January 24, at Patrizi's Other Place, which is the restaurant where Chris Parks has arranged for our cocktails and dinner beginning at 6:00 p.m. that evening. (This is also a reminder that if you are attending the dinner you should be sure to advise Chris' office and remember that the cost is \$22.00 per person.)

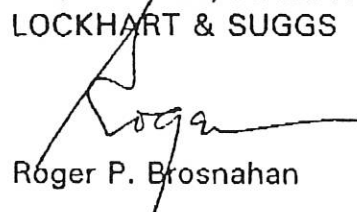
I believe that the above exhausts the "to do" list from our meeting but recognizing that my notes may be incomplete, I would welcome any of you reminding me of matters assigned which do not appear on my list.

Also, each of you should be advised that yesterday Howard Spector called me to say that under the circumstances he did not wish to serve on the Plaintiff Steering Committee and that his name should be withdrawn from the proposed Case Management Order to be filed with the Court today. I communicated Howard's wishes to Chris and the Order as filed will not include Howard's name among the proposed Plaintiff Steering Committee nominees.

You will recall that in Atlanta Howard articulated his concerns with regard to the size and composition of both the PSC and its leadership positions. I was pleased to learn in the course of our conversation that while Howard's concerns prevented him in good conscience from serving as a member of the committee, he will remain available to lend his expertise and carry out such charges as the committee may request. On behalf of the committee I thanked Howard for his counsel and contributions to this point as well as his agreement to remain involved in the successful pursuit of this litigation.

Yours very truly,

BROSNAHAN, JOSEPH
LOCKHART & SUGGS



Roger P. Brosnahan

RPB/lms

cc: Howard A. Spector, Esq.

**NORPLANT MDL
PLAINTIFFS STEERING COMMITTEE ("PSC")
AUDIT SUBCOMMITTEE GUIDELINES**

1. PURPOSE - The purpose of the Audit Subcommittee of the PSC ("Audit Subcommittee") is to safeguard the effective and efficient working of the PSC, by auditing the time and money spent by individual lawyers in pursuit of this goal. This committee shall assist in expediting matters of funding so that all necessary work can be accomplished. Although it is necessary to establish guidelines, the underlying premise is that attorneys are experienced and are working in good faith for the common benefit of all Norplant users. The successful functioning of the PSC and the audit function requires everyone's involvement. It is anticipated that subcommittee chairs will be actively involved in this process to see that the guidelines are followed.

2. COMPOSITION OF AUDIT SUBCOMMITTEE - Initially there will be three (3) members of the Audit Subcommittee. The size and composition may be changed in accordance with the provisions specified below for modifications. Co-chairs and liaison counsel shall oversee activities of the Audit Subcommittee.

3. DUTIES

- To create a litigation management fund;
- To collect and monitor all amounts due to the fund;
- To set standards for reimbursable expenses;
- To oversee, review and approve expenses to be paid from the fund;
- To account for all income and expenses from the fund;
- To create and monitor a system of submitting time records;
- To implement systems which will avoid duplication of efforts and ensure efficiency and cost effectiveness in preparing the Norplant cases;
- To suggest a system for payment of fees which is fair and equitable to clients, the PSC members and attorneys representing clients individually;
- To recommend procedures to the Court for payment of attorneys' fees and costs to PSC members, subcommittee members, and other attorneys consistent with tort litigation guidelines.

4. LITIGATION MANAGEMENT FUND ("the Fund")

A. CREATION OF FUND

Each firm member of the PSC shall be assessed \$25,000 as an initial contribution to the Fund. This amount shall be payable in five monthly installments commencing March 1, 1995. PSC members shall also be assessed \$1,000 each for creation and maintenance of a document depository. This amount will be due March 1, 1995. The Fund will be maintained in a separate account under the control of Turner Branch, co-chair of the PSC.

Anyone who fails to make their contributions on a timely basis can be removed from the PSC.

Any new members of the PSC shall make the same contributions upon joining the PSC. No members shall be entitled to any refund upon leaving the PSC.

All funds received shall be held in an interest-bearing trust account, with the interest accruing to the benefit of the PSC. Co-chair Turner Branch will act as trustee to account for the money in the Fund and make disbursements in accordance with these and other guidelines established by the Co-chairs, Liaison Counsel and the Audit Subcommittee and approved by the PSC.

If the Fund falls below a \$100,000 balance, the Audit Subcommittee may recommend an additional assessment against individual PSC members.

B. EXPENSES TO BE PAID FROM FUND

Generally, discovery, experts and certain miscellaneous items will be reimbursed from the Fund upon proper submission to the Audit Subcommittee of a standard expense form which shall be distributed. Lawyer expenses for travel and office expenses as well as lawyer time and paralegal time shall not be reimbursed from the Fund but shall be deferred and paid from any settlement/expense fund upon the successful conclusion of the litigation; except, the out of pocket expenses incurred by liaison counsel in the performance of their duties will be reimbursed on a quarterly basis.

The following guidelines shall apply to expenses which will be considered as reimbursable from the Fund.

1. Discovery:

- (a) Initial transcripts and subpoena costs for depositions shall be reimbursed. (The PSC depository shall obtain copies of all depositions taken from the court reporter; additional copies needed by individual attorneys to further prepare the case shall be obtained from the depository.);
- (b) Copying costs for document productions;
- (c) Computer charges and other pre-approved expenses to index documents; and
- (d) Pre-approved costs associated with making exhibits shall all be reimbursable.

2. Experts:

Expenses associated with retention and use of experts by the PSC or a subcommittee on generic issues will be reimbursable. All expert expenses must be pre-approved as to retention, retainer amounts, rates and scope of work.

3. Miscellaneous:

- (a) Miscellaneous expenses of non PSC members for work done on behalf of the PSC shall be reimbursed upon the same terms and conditions as PSC members;
- (b) Document coding and computerization (if pre-approved as to scope and rate).
- (c) Trial expenses paid to third parties will be reimbursed.

C. EXPENSES SUBJECT TO DEFERRED REIMBURSEMENT

The following cotillions shall apply to expenses which will be considered for deferred reimbursement.

1. Travel Expenses:

- (a) Travel must be for an approved purpose;
- (b) Reimbursable travel will be limited to one (1) lawyer per firm unless otherwise pre-approved;
- (c) Travel expenses will not be allowed for paralegal (except for liaison counsel paralegal or those otherwise pre-approved for a specific purpose);
- (d) Reimbursable air travel shall be limited to full fare coach; discount fares are encouraged if possible;
- (e) Reasonable ground transportation, hotel and meals shall be reimbursable;

- (f) Not every member of the PSC or subcommittee is required to attend every hearing or meeting; specific lawyers will be assigned specific hearings or tasks; any other PSC or subcommittee member not essential to a particular hearing or meeting who desires to attend shall do so at their own cost unless otherwise pre-approved.
2. **Office Expenses:**
- (a) Telephone, conference calls, facsimile charges, copying and computer costs are reimbursable; PSC members should segregate Norplant charges from others and accurately account for them;
 - (b) No general overhead will be allowed;
 - (c) Salaries or expenses for employees at individual firms shall be reimbursable according to guidelines to be developed;
 - (d) Mail and overnight courier services will be reimbursable; PSC members are encouraged to use the mail or facsimile for short documents and avoid overnight courier charges except when necessary.
3. **Subcommittee Expenses:**
Conference calls and other communications shall be reimbursable. Although in person meetings are discouraged unless absolutely necessary, expenses for pre-approved meetings shall be reimbursable.
4. **Prior Expenses:**
Expenses prior to January 25, 1995, shall be limited to bills submitted by the co-chairs and liaison counsel, bills associated with establishing the depository, PSC members, various committee members and attorneys contributing to the Norplant litigation.

D. METHOD OF REVIEW

All bills for reimbursement of expenses shall be submitted on a monthly basis on a standard form to be supplied, accompanied by a computer disk containing the information in a format to be determined. Any bills not submitted within 3 months of being incurred shall be disallowed absent special circumstances.

All bills will be specific as to date, description and amount of each type of expense to be reimbursed.

To the extent an expense benefitted an attorneys' individual cases, the bill must include the extent of individual case benefit and the reasonable and good faith amount of appropriate adjustment.

The Audit Subcommittee shall promptly review all bills submitted for payment and shall approve or disapprove payment within the guidelines established. The Audit Subcommittee shall submit a monthly report to the co-chairs and liaison counsel detailing expenses incurred, expenses approved and expenses denied, along with copies of bills approved for payment. Co-chairs and liaison counsel shall review the items on the report. If co-chairs and liaison counsel agree with the Audit Subcommittee report, within ten days they shall so notify the Audit Subcommittee chair who will then submit it to the trustee for payment and shall maintain a log of expenses subject to deferred reimbursement..

E. DISPUTE RESOLUTION

If co-chairs and liaison counsel disagree with any recommendation or disapproval of full payment made by the Audit Subcommittee, they shall meet to discuss the item at issue to attempt to resolve the matter. This may involve personal contact with the person seeking reimbursement, with the goal of resolving all disputes voluntarily and informally. In extraordinary or unusual circumstances, any unresolved issue between the co-chairs, liaison counsel and the Audit Subcommittee may be submitted to the full PSC.

If less than full payment is recommended and if the matter cannot be resolved informally, the person seeking reimbursement may present the issue of payment of expenses to the full PSC, in writing, by making it an agenda item at a regularly scheduled meeting. Provided a quorum exists, a majority vote of the full PSC can either affirm or overrule the decision of the Audit Subcommittee, the co-chairs, and liaison counsel.

F. TIMING OF PAYMENT

After approval, the trustee shall be directed to reimburse expenses within 30 days of receipt of bills approved for payment

G. PRE-APPROVAL PROCESS

An attorney who anticipates incurring an expense of significance under these guidelines or an expense which requires pre-approval, on behalf of a subcommittee, shall submit the proposed expense to the chairman of that subcommittee for pre-approval. The chairman of the subcommittee should consult with the co-chairs and liaison counsel.

All expenses requiring pre-approval on behalf of the PSC shall be submitted to the co-chairs and liaison counsel. A simple, written form shall be provided for use in the pre-approval process.

5. COMPENSATION FOR ATTORNEY WORK

- A. The co-chairs and liaison counsel shall:
 - 1. assign specific tasks of the PSC to individual attorneys and shall define the scope of the task, maintain a master list of the assignments, and maintain a master calendar;
 - 2. create subcommittees, appoint chairpersons of each of the subcommittees, and assign tasks to each of the subcommittee chairs. The subcommittee chairs shall be responsible to assign those tasks to their members and maintain a master calendar designating what assignments have been undertaken. The subcommittee chairs shall keep co-chairs and liaison counsel fully informed. All attorneys shall use efforts to network and coordinate with each other to use existing research, briefs, or other materials (in this or from other mass tort cases) to avoid unnecessary and duplicative work.
- B. Lawyers shall be allowed to claim compensation for work which has been assigned and approved as to scope in accordance with these guidelines.
- C. Time records:
 - 1. All lawyers shall keep detailed time records;
 - 2. The time records shall specify date, type of work performed and the amount of time spent on each task pursuant to guidelines which will be distributed.
 - 3. Lawyers shall submit hourly reports to the co-chairs, liaison counsel and the Audit Subcommittee on a monthly basis;
 - 4. Co-chairs, liaison and Audit Subcommittee shall review, comment and recommend approval or disapproval of all or a portion of the hours submitted within 45 days after receipt. Liaison counsel, co-chairs and the Audit Subcommittee shall attempt to resolve any disputes with the person submitting the hours on an informal basis.

6. ASSESSMENTS FOR COSTS AGAINST NON-PSC COUNSEL

These guidelines take no position at this time on assessing payment for funding with respect to counsel who are not on the PSC. Subsequent guidelines and recommendations will be presented at a later time for approval.

7. MODIFICATIONS TO THESE GUIDELINES

After consulting with liaison counsel and co-chairs, the Audit Subcommittee may make minor modifications or additions to these guidelines without PSC approval. Any material change, such as future assessments, shall be subject to approval by a vote of the majority of the full PSC.

8. CONFIDENTIALITY

All matters involved with the Audit Subcommittee shall remain confidential and shall be discussed only with liaison counsel and co-chairs, except as otherwise provided herein.

9. WORK PRODUCT

Any reports generated, forms or submissions of hours or expenses shall remain the work product of the PSC and shall not be disclosed to defendants or the Court, unless required by Court order or agreed by the PSC. These reports are being generated for purposes of this litigation and the Audit Subcommittee's work, but are not necessarily reflective of ultimate compensation, which can only be determined upon settlement or other final resolution of this case.

In re: Norplant Contraceptive Products Liability Litigation
MDL - 1038

Expense Report

Attorney: _____
Firm: _____

Date: _____

Current Expenses (to be submitted monthly):

DATE	AMOUNT	CODE	DETAILS

Code:

- | | |
|---|--|
| 1. Cost of original deposition transcript. | 5. Copying costs related to document production. |
| 2. Deposition subpoena costs. | 6. Pre-approved expert witness fees. |
| 3. Pre-approved expenses to index documents. | 7. Pre-approved trial exhibit expense. |
| 4. Pre-approved document coding and computerization expenses. | 8. Trial expenses paid to third parties. |
| | 9. Other expenses approved by the committee. |

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**In re: Norplant Contraceptive Products Liability
Litigation
MDL - 1038**

Please refer to PSC Audit Subcommittee Guidelines

Request for pre-approval of expenses

To: PLAINTIFFS' STEERING COMMITTEE/SUBCOMMITTEE CHAIRMAN

Request is hereby made for pre-approval of the following expenses in connection with the above litigation:

Expense to be incurred: _____

Reason for expense: _____

Approximate amount of expense: _____

When expense will be incurred: _____

Attorney: _____	Firm: _____
Address: _____	Phone: _____
_____	Fax: _____

The request is (approved) (deferred) this _____ day of _____ 199____.

Plaintiffs' Steering Committee by _____

Pre-approval is required for expenses of significance (over \$1,000) or those requiring pre-approval under the Guidelines.

Requests should be submitted to Roger Brosnahan, Turner Branch and Chris Parks. For subcommittee expenses, the request should first be submitted to the chairman of the subcommittee. A written estimate of the proposed expense is requested whenever possible.

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**In Re: Norplant Contraceptive Products Liability Litigation
MDL - 1038**

Timesheet

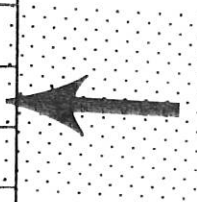
Name: _____

DATE: _____

Firm: _____

Status: Partner ()
 Associate ()
 Paralegal ()
 Other ()

DATE	HOURS (.25 Increments)	CODE	DETAILS



CODE:

- | | | |
|--------------------|-----------------------|-------------------------|
| 1. Tel conf w/ | 6. Attend depo of: | 11. Review of: |
| 2. Meeting w/ | 7. Preparation for: | 12. Attend Ct. hearing: |
| 3. Letter to: | 8. Preparation of: | 13. Legal research re: |
| 4. Memo re: | 9. Travel to/from: | 14. Misc. |
| 5. Document review | 10. Prepare draft of: | 15. Medical Research |

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State	Population	(AG Statement) Settlement
Texas	7,059,805	17.365
Minnesota	4,387,029	6.1
Mississippi	2,586,443	4.1
Florida	13,003,362	13.2
Wisconsin	4,906,745	5.9
Kansas	2,485,600	1.793

**CASTANO TOBACCO LITIGATION
 1100 POYDRAS STREET, 30TH FLOOR
 NEW ORLEANS, LA 70163
 TEL: (504) 585-7929
 FAX: (504) 585-7925**

TELECOPIER INFORMATION SHEET

TO: Andy Hutton

FROM: Suzie Foulds

NUMBER OF PAGES: _____

DATE: February 16, 2000

DESCRIPTION OF MATERIAL OR MESSAGE:

IF YOU DO NOT RECEIVE ALL OF THE PAGES INDICATED, PLEASE CALL ME AT (504) 585-7929. THANK YOU.

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2-111

2-16-0 10:10AM PLC OFFICE- 3166862049: # 2/ 6

TOBACCO LITIGATION TIME-LINE

3/29/94	<i>NATIONAL CLASS ACTION</i>	CASTANO
3/30/94	CASTANO OBTAINS FEDERAL RESTRAINING ORDER TO STOP DOCUMENT DESTRUCTION	CASTANO
4/12/94	FIRST CASTANO MEETING HELD IN NEW ORLEANS - ATTENDED BY CABRASER, BARRETT, MOTLEY & SCRUGGS	CASTANO
4/28/94	VICTOR DE NOBLE TESTIFIES BEFORE CONGRESS ABOUT THE ADDICTIVE NATURE OF NICOTINE	CASTANO
4/29/94	CASTANO MEETING IN MIAMI - ATTENDED BY CABRASER, BARRETT, MOTLEY & SCRUGGS - B&W DOCUMENTS BROUGHT IN BY BARRETT	CASTANO
5/7/94	CASTANO RELEASES DAMAGING MERRIL WILLIAMS B&W DOCUMENTS	CASTANO
5/23/94	MISSISSIPPI AG CASE FLIED	FILED BY CASTANO MEMBERS: DON BARRETT, RON MOTLEY
5/26/94	CASTANO MEETING IN NEW ORLEANS - ATTENDED BY CABRASER, BARRETT, MOTLEY & SCRUGGS	CASTANO
7/14/97	CASTANO MEETING IN DENVER - ATTENDED BY CABRASER, BARRETT, MOTLEY & SCRUGGS (BOZEMAN)	CASTANO
8/17/94	MINNESOTA AG CASE FLIED	
8/31/94	CASTANO MEETING IN NEW ORLEANS - ATTENDED BY CABRASER, BARRETT, MOTLEY, SCRUGGS & DREW RANIER	CASTANO
9/20/94	WEST VIRGINIA AG CASE FLIED	FILED BY CASTANO MEMBER: RON MOTLEY
2/17/95	CASTANO NATIONAL CLASS CERTIFIED	CASTANO

SENT BY:

2-112

2/21/95	FLORIDA AG CASE FLIED	FILED BY CASTANO MEMBERS: RON MOTLEY, WAYNE HOGAN
12/5/95	SETTLEMENT TALKS BEGIN BETWEEN CASTANO AND LIGGETT	CASTANO
12/6/95	CASTANO BEGINS INSPECTIONS OF AMMONIA PROCESSING IN MANUFACTURING FACILITIES	CASTANO
12/19/95	MASSACHUSETTS AG CASE	FILED BY CASTANO MEMBERS: RON MOTLEY, ELIZABETH CABRASER
3/12/96	CASTANO SETTLES WITH LIGGETT	CASTANO
3/13/96	LOUISIANA AG CASE FLIED	FILED BY CASTANO MEMBERS: WILLIAM BAGGETT, DON BARRETT, RAUL BENCOMO, KEN CARTER, PAUL DUE, RUSS HERMAN, DON KELLEY, WALTER LEGER, ELIZABETH CABRASER, RON MOTLEY, MIKE ST. MARTIN, ED MURRAY
3/15/96	MISSISSIPPI, WEST VIRGINIA, FLORIDA, MASSACHUSETTS & LOUISIANA SETTLE WITH LIGGETT	
3/28/96	TEXAS AG CASE FLIED	FILED BY CASTANO MEMBERS: WALTER UMPHREY, JOHN O'QUINN, JOHN EDDIE WILLIAMS, RON MOTLEY
4/3/96	DOCUMENTS FROM FORMER PHILIP MORRIS SCIENTIST UNCOVERED IN HIS EX-FIANCEE'S BASEMENT	CASTANO
5/1/96	MARYLAND AG CASE FLIED	FILED BY CASTANO MEMBER: PETER ANGELOS
5/3/96	<u>INDIANA CLASS ACTION</u>	CASTANO
5/23/96	5th CIRCUIT DE-CERTIFIES NATIONAL CLASS ACTION	
5/24/96	<u>LOUISIANA CLASS ACTION</u>	CASTANO
6/5/96	WASHINGTON AG CASE FLIED	FILED BY CASTANO MEMBER: DON BARRETT
6/6/96	CITY & COUNTY OF SAN FRANCISCO CASE FILED - LATER DISMISSED WITHOUT PREJUDICE 2/26/97, THEN RE-FILED IN MARCH, 1997	FILED BY CASTANO MEMBER: ELIZABETH CABRASER

SENT BY:

2-113

6/12/96	<u>OHIO CLASS ACTION</u>	CASTANO
7/24/96	<u>CALIFORNIA - PRIVATE AG CASE GRAY DAVIS & JAMES ELLIS</u>	CASTANO
8/5/96	LOS ANGELES COUNTY CASE FILED	FILED BY CASTANO MEMBERS: RON MOTLEY, MARK ROBINSON
8/6/96	<u>ALABAMA CLASS ACTION</u>	CASTANO
8/8/96	<u>PENNSYLVANIA CLASS ACTION</u>	CASTANO
8/20/96	ARIZONA AG CASE FLIED	FILED BY CASTANO MEMBER: DON BARRETT
8/20/96	KANSAS AG CASE FLIED	FILED BY CASTANO MEMBER: RON MOTLEY
8/21/96	MICHIGAN AG CASE FLIED	FILED BY CASTANO MEMBER: RON MOTLEY
8/22/96	OKLAHOMA AG CASE FLIED	FILED BY CASTANO MEMBER: RON MOTLEY
9/4/96	<u>MINNESOTA CLASS ACTION</u>	CASTANO
9/9/96	NEW JERSEY AG CASE FLIED	FILED BY CASTANO MEMBER: RON MOTLEY
9/10/96	<u>NEW MEXICO CLASS ACTION</u>	CASTANO
9/19/96	<u>NEW YORK CLASS ACTION</u>	CASTANO
9/30/96	UTAH AG CASE FLIED	FILED BY CASTANO MEMBER: RON MOTLEY
10/23/96	<u>PUERTO RICO CLASS ACTION</u>	CASTANO
11/4/96	<u>ARKANSAS CLASS ACTION</u>	CASTANO
11/15/96	SECRET SETTLEMENT TALKS BEGIN THAT LEAD TO JUNE 20TH MEMORANDUM OF UNDERSTANDING	CASTANO
11/12/96	ILLINOIS AG CASE FLIED	FILED BY CASTANO MEMBERS: DON BARRETT, ELIZABETH CABRASER
11/27/96	IOWA AG CASE FLIED	FILED BY CASTANO MEMBER: RON MOTLEY
1/27/97	NEW YORK STATE AG CASE FLIED	FILED BY CASTANO MEMBERS: RON MOTLEY
2/3/97	HAWAII AG CASE FLIED	FILED BY CASTANO MEMBER: RON MOTLEY
2/5/97	WISCONSIN AG CASE FLIED	

SENT BY:

2-114

2/6/97	<u>OKLAHOMA CLASS ACTION</u>	CASTANO
2/6/97	<u>KANSAS CLASS ACTION</u>	CASTANO
2/19/97	INDIANA AG CASE FLIED	FILED BY CASTANO MEMBERS: DON BARRETT, ELIZABETH CABRASER
4/14/97	ALASKA AG CASE FLIED	FILED BY CASTANO MEMBERS: RON MOTLEY
4/22/97	PENNSYLVANIA AG CASE FLIED	
5/5/97	MONTANA AG CASE FLIED	FILED BY CASTANO MEMBER: RON MOTLEY
5/5/97	ARKANSAS AG CASE FLIED	
5/5/97	<u>TEXAS CLASS ACTION</u>	CASTANO
5/6/97	<u>HAWAII CLASS ACTION</u>	CASTANO
5/8/97	OHIO AG CASE FLIED	FILED BY CASTANO MEMBERS: RON MOTLEY, DON BARRETT
5/10/97	SOUTH CAROLINA AG CASE FLIED	FILED BY CASTANO MEMBER: RON MOTLEY
5/10/97	MISSOURI AG CASE FLIED	
5/21/97	NEVADA AG CASE FLIED	
5/22/97	<u>NATIONAL CLASS ACTION (CLAY)</u>	CASTANO
5/23/97	<u>TENNESSEE CLASS ACTION</u>	CASTANO
5/27/97	NEW MEXICO AG CASE FLIED	FILED BY CASTANO MEMBER: TURNER BRANCH
5/27/97	<u>GEORGIA CLASS ACTION</u>	CASTANO
5/28/97	<u>NEW JERSEY CLASS ACTION</u>	CASTANO
5/29/97	VERMONT AG CASE FLIED	FILED BY CASTANO MEMBER: RON MOTLEY
6/4/97	NEW HAMPSHIRE AG CASE FLIED	FILED BY CASTANO MEMBER: ELIZABETH CABRASER
6/5/97	COLORADO AG CASE FLIED	
6/10/97	OREGON AG CASE FLIED	FILED BY CASTANO MEMBER: RON MOTLEY
6/10/97	<u>CALIFORNIA CLASS ACTION</u>	CASTANO
6/12/97	CALIFORNIA AG CASE FLIED	
6/16/97	PUERTO RICO AG CASE FLIED	FILED BY CASTANO MEMBER: RON MOTLEY

SENT BY:

2-115

6/18/97	MAINE AG CASE FLIED	
6/18/97	RHODE ISLAND AG CASE FLIED	FILED BY CASTANO MEMBERS: ELIZABETH CABRASER, RON MOTLEY
6/20/97	MEMORANDUM OF UNDERSTANDING SIGNED BETWEEN TOBACCO AND CASTANO (CLASS ACTIONS & DAVIS/ELLIS FOR CALIFORNIA), ARIZONA, CONNECTICUT, FLORIDA, MISSISSIPPI, NEW YORK AND WASHINGTON	
7/2/97	MISSISSIPPI AG SETTLEMENT	
7/9/97	IDAHO AG CASE FLIED	FILED BY CASTANO MEMBERS: RON MOTLEY
7/18/97	CONNECTICUT AG CASE FLIED	
8/25/97	FLORIDA AG SETTLEMENT	
8/29/97	GEORGIA AG CASE FLIED	
9/8/97	MANGINI CASE SETTLED (FILED 12/17/91)	
10/9/97	BROIN CASE SETTLED	
1/16/98	TEXAS AG SETTLEMENT	
2/13/98	<u>UTAH CLASS ACTION</u>	CASTANO
2/23/98	SOUTH DAKOTA AG CASE FLIED	
5/8/98	MINNESOTA AG SETTLEMENT	
8/21/98	NEBRASKA AG CASE FLIED	
11/23/98	AG MASTER SETTLEMENT AGREEMENT	

November 17, 1998

**Sent Via Facsimile to (913) 296-6296
and Via Regular Mail**

Ms. Carla Stovall
Attorney General
2nd Floor, Judicial Center
Topeka, KS 66612-1567

Re: State Tobacco Lawsuit

Dear Carla:

I read this morning in the *Wichita Eagle* that you are leaning toward accepting the latest settlement offer made by the tobacco industry. I am writing this letter to urge you to reject the offer on behalf of Kansas and to have Kansas opt out of the settlement. I sincerely believe that by rejecting the offer and opting out, industry will further negotiate with that handful of states that choose to stay the course and to continue with the litigation. Further negotiations with those opt-out states will only lead to Kansas receiving a better settlement.

I know that it is difficult for out-of-state counsel to advise you as to whether to accept or reject the offer on behalf of Kansas. Because out-of-state counsel represents so many states, and because of the enormous magnitude of the attorney fees to be realized by out-of-state counsel in the representation of so many different states, it obviously creates a conflict of interest for out-of-state counsel to give you honest and independent legal advice. The absence of any meaningful activity by out-of-state counsel in the Kansas tobacco litigation further evidences the conflict of interest of the out-of-state counsel representing so many different states. Obviously, out-of-state counsel has devoted its time and attention to the representation of those states with significantly larger populations than Kansas. Kansas deserves better and I believe that opting out of the settlement will be an act of courage on your part and will put substantially more money into the state coffers.

Best regards.

Very truly yours,

Andrew W. Hutton

AWH/sm

2-117

Tobacco Fight Grows Hotter

An alliance of plaintiffs' firms tries new tactics to battle Big Tobacco.

BY ANDREW BLUM
NATIONAL LAW JOURNAL STAFF REPORTER

TWENTY-SIX plaintiffs' law firms, including class action and mass disaster specialists never before in tobacco litigation but prominent in breast implant and asbestos cases, have joined together in suing the tobacco industry regarding nicotine addiction. The joint effort marks the first against the industry and may give the companies a run for their money in court, observers say.

Until now, the industry never has had a class action filed against it directly over smoking and has yet to pay out a cent in tobacco litigation, though a \$400,000 losing verdict was overturned on appeal, and it partially lost another case but escaped without damages.

Previously, heavy-weight plaintiffs' attorneys, noting huge litigation expenses and no recovery, saw no point in taking tobacco cases—in which jurors found for the defense based on a "smoking is a choice" argument. The new suit, a class action filed March 29 in New Orleans, comes amid a flurry of legal activity surrounding tobacco and zeroes in on addiction and alleged manipulation of nicotine levels. The industry has denied the charges. *Castano v. American Tobacco Co.*, 94-1044.

U.S. District Chief Judge Frederick J.R. Heebe granted a temporary restraining order sought by the plaintiffs, which blocked the companies from destroying or altering any evidence in their possession. A hearing on a preliminary injunction was set for April 13.

In other recent tobacco action:

The New Jersey Supreme Court ruled March 31 that a municipality has the right to ban cigarette vending machines. *C.I.C. Corp. v. Township of East Brunswick*, A-109-93.

A Florida appeals court ruled March 15, in a second-hand smoking case, that airline flight attendants have a right to bring a class action. *Broin v. Philip Morris*, 91-49738 (Fla. Dist. Ct. of Appeal).

Philip Morris filed a \$10 billion libel suit March 24 against ABC for a "Day One" report that tobacco companies have manipulated nicotine levels in cigarettes. *Philip Morris v. ABC*, 760 CL 94 X00816-00 (Cir. Ct., Richmond, Va.).

Heavy Hitters Line Up

Soon afterwards, plaintiffs' firms felt it was time for a class action.

Among those on the team are Melvin M. Belli Sr. of San Francisco's Belli Law Offices, Wendell Gauthier of Metairie, La.'s Gauthier & Murphy, and San Francisco's Loeff, Cabraser & Heimann. Mr. Belli called the case a \$5 billion suit, with a possible class of 500,000.

Others include Ralph I. Knowles Jr. of Atlanta's Doffermyre, Shields, Canfield & Knowles; Stanley M. Chesley of Cincinnati's Waite, Schneider, Bayless & Chesley Co. L.P.A.; Perry Weitz of New York's Weitz & Lexenberg; Wichita, Kan.'s Michaud, Hutton & Bradshaw; Albuquerque, N.M.'s Branch Law Firm; Gayle L. Troutwine of Portland, Ore.'s Williams and Troutwine; John P. Coale of Washington, D.C.'s Coale, Allen and Van Sus-

Barrett of Lexington, Miss. Barrett Law Offices, Charleston, S.C.'s Ness, Motley, Loadholt, Richardson & Poole is said to be joining the case.

Messrs. Chesley and Coale said previously that they were uninterested in tobacco litigation, and for good reason: three New Jersey firms that handled tobacco cases, including the *Cipollone* case, said they spent \$6.2 million over 10 years in a losing effort. Although they won a \$400,000 verdict, it was overturned. *Cipollone v. Liggett Group Inc.*, 893 F.2d 541. (NLJ, 2-15-93.)

Mr. Barrett, the only one with recent tobacco experience, said he welcomes the help. "The fact that so many of the important plaintiffs' firms nationally have now joined this fight in my opinion tips the scales in favor of the plaintiffs in cigarette litigation."

Lieff Cabraser's Richard M. Heimann said it was no surprise that the firms had teamed up. "No single firm can afford to take on the industry," he said. "They simply are too intractable and too well-financed, and too well-connected politically, to be taken on by any single law firm." He said the idea was "almost like spontaneous combustion," coming to several firms at about the same time and arising out of the ABC report and recent comments on nicotine by Food and Drug Administration Commissioner David A. Kessler.

Noting that attorneys talk among themselves, Mr. Heimann said, "The possibility of a class action suit or suits against one or more of the major players in the tobacco industry has been the subject [of discussions] among class action specialists for years." But, he added, with class requirements and the industry's toughness, there was no way to overcome the problems associated with such suits.

Wider Attack Predicted

Northeastern University School of Law Prof. Richard A. Daynard, chairman of the Boston-based Tobacco Products Liability Project, who has predicted a wider attack on the industry, said, "I think the moment has come." He said that with such firepower against it, the industry faces trouble in court. Professor Daynard, who said he had no role in bringing the firms together, noted that he has been in contact with them about what help his group might provide.

Philip Morris Associate General Counsel Charles R. Wall, who often acts as an industry spokesman, was unavailable for comment. But outside counsel Gary R. Long of Kansas City, Mo.'s Shook, Hardy & Bacon said the team of plaintiffs' lawyers does not signify anything new. "This seems to be a direct reaction to a program run several weeks ago by ABC," he said. "I think this reaction by lawyers is really jumping on this publicity bandwagon created by that." Philip Morris, he noted, says the case has no merit. Also sued were American Tobacco, Lorillard Inc., R.J. Reynolds Tobacco Co. and Liggett.

Torts expert Victor E. Schwartz of Washington, D.C.'s Crowell & Moring, who advises clients on tobacco-related legal developments, said it was noteworthy the heavy hitters had teamed up, but suggested that beating the industry remains daunting. Noting that the addiction argument was used unsuccessfully in *Cipollone*, he said that juries have not bought it.

Alleged manipulation also will be hard to prove because nicotine levels have decreased, Mr. Schwartz said: He predicted that plaintiffs' lawyers will get a lot of publicity but that the issue still comes down to smokers and choice. "It's *deja vu*, except for very powerful attor-



Stan Chesley



Wendell H. Gauthier

National Law Journal
4-18-94

2-118

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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 17th 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: 2/17/00

Attachment #: 3-1

appinobiggs@msn.com

1 REPRESENTATIVE WAGLE: Good
2 morning committee. Okay. Today we continue
3 hearings on House Bill 2821. I just wanted
4 to inform the committee this morning I read
5 in the Topeka Capital-Journal that I believe
6 it was Stu Entz or maybe his partner said
7 that they have notified the legislature they
8 want to address them. They wanted to
9 address the legislature about the whole
10 issue about contracting, about tobacco
11 litigation. I just wanted you all to know
12 on February 9th, I sent them a letter and
13 asked them to come to committee, and I did
14 not get a response. I just wanted to set
15 the record straight.

16 Okay. This morning, we have three
17 attorneys here. One is Jerry Levy from a
18 Lawrence firm. One is Andy Hutton and Mark
19 Hutton who have another firm in Wichita,
20 Kansas. What I would like to do to save
21 time, I would like to request that they
22 would all take an oath together to save
23 time. If they would approach the front here
24 and submit themselves to an oath, I would
25 appreciate that.

1 JERRY LEVY,
2 called as a witness on behalf of the
3 Committee, was sworn and testified as
4 follows:

5
6 MARK HUTTON,
7 called as a witness on behalf of the
8 Committee, was sworn and testified as
9 follows:

10
11 ANDY HUTTON,
12 called as a witness on behalf of the
13 Committee, was sworn and testified as
14 follows:

15
16 REPRESENTATIVE WAGLE: Okay.
17 We're going to start with Jerry Levy.
18 Jerry, your testimony has been handed out.
19 Tell us a little bit about yourself, who you
20 are and what your credentials are as an
21 attorney.

22 MR. LEVY: I'd be pleased to.
23 Let me preface my remarks about who I am
24 because of headlines in the Topeka paper
25 this morning. First of all, I don't even

1 know whether-- except for Representative
2 Wagle, I don't know your political
3 affiliations. It has been years since I
4 have testified in the legislature. And I
5 was commenting this morning the faces up
6 here have changed, but the faces back here,
7 Mr. Hawver, et al., are the same. I could
8 pick out the media, but I couldn't pick out
9 the legislators. Also, I'd like to set the
10 record straight as far as I'm concerned, I'm
11 probably what's known as a Kennedy Democrat.
12 The first time I ever voted for a president
13 was in 1960 when I voted for John Fitzgerald
14 Kennedy. My politics as far as the abortion
15 issue are far left of where Representative
16 Wagle's is. I have no dog in that hunt.
17 I'm not here, because that isn't in any way
18 an issue. I'm a trial lawyer. I've been
19 practicing law almost 33 years solely in the
20 area of plaintiffs personal litigation. I
21 only represent plaintiffs entirely on a
22 contingency fee basis. I am not a
23 timekeeper of records. I'm a plaintiff's
24 lawyer. I've been president of the Trial
25 Lawyers Association, president of the Kansas

1 Chapter of the American Board of Trial
 2 Advocates. I'm a founding member of Trial
 3 Lawyers for Public Justice which is
 4 sometimes known around the United States as
 5 the Nader law firm. I have handled numerous
 6 products liability cases against big drug
 7 companies, Eli Lilly, such as that. I
 8 represented plaintiffs against General
 9 Motors and Ford Motor Company and other huge
 10 corporations in major litigation. I am
 11 familiar with the law of products liability.
 12 I have tried in excess of 150 jury trials in
 13 those areas. Those are my credentials as
 14 far as a trial lawyer is concerned and what
 15 I have done in the field.

16 I'm here today because I am a trial
 17 lawyer and I'm proud of it. I'm here today
 18 because when I read about what happened in
 19 this case as far as distribution of fees is
 20 concerned, it appalled me as a trial lawyer.
 21 We have in Kansas methods to determine fees.
 22 We have our standard of professionalism
 23 which sets forth how fees are to be
 24 generated and how they are to be collected
 25 and what they are to be based upon. We have

1 a system in effect in Kansas which allows
2 the judge of the case to determine what fees
3 are reasonable. So when I saw what the fees
4 were in this case and had some knowledge of
5 what was going on just because I know most
6 of the lawyers involved in these cases, I
7 knew something was rotten in Denmark. So
8 those are my credentials, those are my
9 reasons that I'm here. If you have
10 questions about my testimony which I've
11 prepared, I can go through it and talk to
12 you about it, or I can answer questions or I
13 can just -- Representative Wagle, if you
14 want me to --

15 REPRESENTATIVE WAGLE: Why don't
16 you just give us a Readers Digest version of
17 what you have to say here.

18 MR. LEVY: Okay. The tobacco
19 litigation was not something that did not go
20 unnoticed by lawyers of my ilk. We saw it
21 coming, and long before Attorney General
22 Moore in Mississippi and others had a way to
23 get to big tobacco. It was only a matter of
24 time before big tobacco was going to fall.
25 So we became familiar with what was going

1 on. And I became familiar when the Kansas
 2 case came about and knew that my friends,
 3 Mark and Andy Hutton, were interested in the
 4 case. And the thing that struck me among
 5 other things was how important it was going
 6 to be to have Kansas counsel who was
 7 competent and qualified to try such a case
 8 be on board, because the Skruggs folks and
 9 the Motley folks were not just going to be
 10 involved in Kansas. They were going to be
 11 involved in 30 or 40 or 50 other cases.
 12 They couldn't be everywhere at once. If
 13 cases got tried and got double booked and
 14 suppose a case got set for trial in
 15 Mississippi the same time the Kansas case
 16 got set for trial, somebody in Kansas is
 17 going to have to try that case. With all
 18 due respect to Stu Entz and Jeff Chanay, it
 19 ain't them. They could never have tried
 20 this case. Never. Their field is my
 21 understanding is in the field of labor law
 22 and contract law and corporate law, not
 23 products liability. And when I read the
 24 statement of the attorney general that they
 25 were hired because they were experts in

1 Medicaid law, I had to chuckle a little bit
2 to myself, because this is not a Medicaid
3 case. This is a huge, major products
4 liability case. You have a cigarette. It
5 is a product that caused harm to many
6 people. That's what the case was about, not
7 about Medicaid reimbursement. So when I
8 found out who was hired as local counsel --
9 I want to be polite about all of this, but
10 among the circles of plaintiffs lawyers, it
11 was a joke. As I've said in my testimony,
12 there are about 50 or less firms in the
13 State of Kansas who limit their practice as
14 I do and as the Hutton folks do, and Entz
15 and Chanay is not in that circle. So that
16 bothered me a lot. And I thought it's just
17 strange.

18 Then the other thing that really got to
19 me was when I saw the ad in the journal of
20 the Kansas Bar Association in November of
21 1998 advertising for Kansas counsel to
22 accept the tobacco case. And of course, I
23 guess what was really strange, when I saw
24 the ad, the case had already been settled.
25 And I knew that. As I said in my testimony,

1 I was playing golf with my banker the day
2 after that ad came out. I said, Les, look
3 at this. If I applied for that job and I
4 came to you and said I need a letter of
5 credit or line of credit to finance those
6 cases, what would you do? He said I'd give
7 you a blank check. Of course, I later found
8 out Entz and Chanay didn't even have to come
9 up with a nickel as far as advancing
10 expenses. When I was asked to testify
11 today, I called up three major plaintiffs
12 firms in Kansas. I just gave them the
13 scenario which I've set forth in my
14 testimony which is if you would have been
15 offered the job on the terms that Entz and
16 Chanay got, would you have taken the job.
17 And they all said unequivocally yes,
18 absolutely, which flies in the face I think
19 of the attorney general's comments that she
20 said she couldn't find a Kansas firm other
21 than her old law firm to take this case.
22 She didn't try. There are 10, 15, 20 really
23 great plaintiffs law firms in this state
24 qualified to handle this case. Probably
25 none more than the ones she was dealing

1 with, Andy and Mark Hutton. And I think if
2 you look at their qualifications and what
3 they had already done in the tobacco
4 litigation, their expertise is unimpeachable
5 in the area.

6 I've also been asked to talk to you
7 about what local counsel is. Local counsel
8 can be one of two things. They can be an
9 involved local counsel or a passive local
10 counsel. I have a feeling that Entz and
11 Chanay were nothing but passive local
12 counsel, because I don't think they had the
13 expertise or competency or qualifications to
14 be anything other than. This is a case that
15 needed qualified, competent local counsel to
16 actively pursue the case. And Andy Hutton
17 and Mark Hutton are going to tell you why it
18 would have been beneficial to the State of
19 Kansas and how this state lost a lot of
20 money because they didn't have aggressive
21 local counsel. When I say a lot of money, a
22 lot of money. But generally local counsel
23 is somebody who is on board solely to handle
24 minor matters generally on an hourly basis
25 because they have no risk. That's what

1 bothers me about this case, is that a law
2 firm is getting \$27,000,000, and they were
3 never at risk. Never at risk. Every case I
4 try, I invest my own money, and I am at
5 risk. And there have been cases when I have
6 put in excess of \$100,000 of my own money
7 because I feel that strongly about my
8 client's case. These folks had nothing to
9 risk.

10 Finally, let me comment about
11 statements I have heard in which the law
12 firm Entz and Chanay said they didn't keep
13 track of their time, and when asked how many
14 hours they had in the case, they said they
15 couldn't say. Members of this committee,
16 that's preposterous. Any law firm such as
17 theirs-- and they are a billable hour law
18 firm. They represent clients who pay them
19 by the hour. They keep track of their time.
20 Now, in this case they may not have kept
21 track of their time because they didn't have
22 to, but I can take every case I've got, and
23 if you say how many hours do you have in the
24 case, I would say to you, I do not know, but
25 I can reconstruct my time and come to be

1 about 90 percent accurate in the time I have
2 in the case. It's very simple. I look at
3 the file. I have a pleading. I look at the
4 pleading. I can say that probably took an
5 hour to do. I have a letter in the file
6 that's a page long. That's a tenth or
7 two-tenths of an hour. Lawyers can
8 reconstruct their time very easily. Phone
9 logs are kept in the office. You know what
10 phone calls that pertain to every case. So
11 Entz and Chanay could come before you and
12 bring their records and reconstruct and tell
13 you how many hours they have in the case
14 that they say merited an attorney fee of
15 \$27,000,000. I have a feeling they are
16 getting paid about \$270,000 an hour. It's
17 just appalling to me. I think the State of
18 Kansas, citizens of the State of Kansas are
19 the ones who are on the short end of the
20 deal here. And I'm only here as an attorney
21 it bothers, not only that one of my brethren
22 is probably making a lot more money than
23 they deserve, and that the State of Kansas
24 is getting cheated. I'll answer any
25 questions you have.

1 REPRESENTATIVE WAGLE: Okay.
2 Representative Campbell.

3 REPRESENTATIVE CAMPBELL: Thank
4 you. A couple items. You mentioned the
5 date of the ad that was placed. What date
6 was that?

7 MR. LEVY: It was in the journal
8 of the Kansas Bar Association. The issue
9 was November, 1998. Here it is.

10 REPRESENTATIVE CAMPBELL: Okay.
11 At the very, very beginning of your
12 testimony, you said that you're not a
13 timekeeper, you're a contingency plaintiff's
14 lawyer.

15 MR. LEVY: Yes, sir.

16 REPRESENTATIVE CAMPBELL: So
17 you're saying they could reconstruct their
18 time.

19 MR. LEVY: Oh, yes.

20 REPRESENTATIVE CAMPBELL: Is it
21 standard practice not to keep time in a
22 contingency case?

23 MR. LEVY: Different law firms do
24 it different ways.

25 REPRESENTATIVE CAMPBELL: It's

1 not abnormal.

2 MR. LEVY: It's not abnormal not
3 to keep time. I think the older lawyers--
4 and I have to say it seems like everytime I
5 go into a room full of lawyers, I'm now the
6 oldest. I just turned 60 last August. I
7 think persons of my generation do not keep
8 track of time. Andy and Mark, do, I think.

9 REPRESENTATIVE CAMPBELL: Next,
10 I'm a little curious and concerned. I think
11 I heard somewhere or even read it in the
12 paper where Entz and Chanay advanced money
13 for this. You've said no money was advanced
14 in expenses. Can you elaborate a little
15 more?

16 MR. LEVY: Their contract
17 provided they had to advance no expenses.

18 REPRESENTATIVE WAGLE: We have a
19 copy of the contract.

20 MR. LEVY: I've read their
21 contract.

22 REPRESENTATIVE WAGLE: It says
23 they did not have to advance any money.

24 REPRESENTATIVE CAMPBELL: Okay.
25 Thanks for clarifying that. Next question,

1 you said there were 10 to 15 to 20 law firms
2 that could have accepted the case. Would
3 you agree that statement is true under the
4 one and a half percent fee? There might
5 have been 10, 15, 20. Do you feel like the
6 fee would have eliminated some of those?

7 MR. LEVY: Well, of course, the
8 one and a half percent fee is an after the
9 fact thing. Would I have accepted the case
10 on a one and a half percent fee, I probably
11 would have not. In other words, I would not
12 have a contingency fee contract that said
13 one and a half percent. But I would have
14 probably insisted on something in a contract
15 that was so that everybody would know where
16 we were. It's kind of like if you go out
17 and hire a contractor to build your house.
18 Okay. How much is it going to cost me to
19 build this house, and he says up to a
20 million dollars. That's not a very good
21 contract. That's not something you can rely
22 on because you know the contract will be
23 999,000. Plaintiff's lawyers adjust fees
24 all the time. Yesterday, an associate in my
25 office came to me and announced he had

1 settled a case of ours in the six figure
2 area. Our fee contract in that case was for
3 one-third. And I said to my associate, Ron,
4 we haven't spent all that much time on that
5 case, have we? He said, no, we got it
6 settled pretty efficiently. I said reduce
7 the fee to 15 percent. So it happens. We
8 reduce our fees all the time if we get a
9 good result quickly.

10 REPRESENTATIVE CAMPBELL: Thank
11 you.

12 REPRESENTATIVE WAGLE: Jerry, I
13 have copies of both the Hutton contract that
14 the attorney general was negotiating with
15 the Huttons. I have the final contract of
16 Entz and Chanay. In both of those contracts
17 when it discusses fee in the contract, it
18 says the fee shall be determined in
19 accordance with this MRPC 1.5.

20 MR. LEVY: Yes.

21 REPRESENTATIVE WAGLE: Could you
22 explain what that is to the committee?

23 MR. LEVY: Yes. MRPC stands for
24 Model Rules of Professional Conduct, I
25 think. And the statute provides that if

1 anybody is -- wants to contest the fee, for
2 example, they can apply to the court who
3 tried the case or was in charge of the case.
4 I guess in Kansas that would be Judge
5 Jackson. You could say Judge Jackson, I
6 think this fee is not fair or whatever.
7 Then the lawyer has to show according to the
8 model rules how they qualify for the fee. I
9 think there are seven categories. One is
10 time spent. No. 2, is the case on a
11 contingency fee. It says a lawyer fee shall
12 be reasonable. That's why I am here. This
13 is not a reasonable fee. Time and labor
14 required. That's No. 1. No. 2, the
15 likelihood if apparent to the client that
16 the acceptance of the particular employment
17 will preclude other employment by the
18 lawyer. In other words, is this going to be
19 a case where you'll have to drop everything
20 else. No. 3, the fee customarily charged in
21 the locality for similar legal services.
22 The amount involved and the results
23 obtained. The time limitations imposed by
24 the client or the circumstances, nature and
25 length of professional relationship with the

1 client. The experience, reputation, ability
2 of the lawyer or lawyers performing the
3 services. And last, whether the fee is
4 fixed or contingent. Those are the things a
5 court considers in determining whether or
6 not a fee is reasonable. That is MRPC 1.5.

7 REPRESENTATIVE WAGLE: Even
8 though the contract reads you are entitled
9 to a certain percentage, that percentage is
10 held up to the scrutiny of these ethical
11 standards.

12 MR. LEVY: Right.

13 REPRESENTATIVE WAGLE: Committee,
14 that wasn't in both the contracts.
15 Representative Vickery.

16 REPRESENTATIVE VICKERY: Mr.
17 Levy, I was just curious, are you a
18 proponent of the bill we have?

19 MR. LEVY: You know, I would be a
20 proponent, I suppose, if I was convinced it
21 was constitutional. I anticipated being
22 asked that question. I really couldn't, you
23 know, say one way or the other. It
24 obviously has to pass constitutional muster,
25 and I'm not a constitutional lawyer. All I

1 know about taxes is I pay a lot of them.

2 REPRESENTATIVE VICKERY: If it is
3 constitutional, we should charge a 50
4 percent fee for attorneys that represent our
5 state.

6 MR. LEVY: Well --

7 REPRESENTATIVE VICKERY: If it's
8 constitutional.

9 MR. LEVY: If it's
10 constitutional. I think it limits it to
11 certain kinds of cases.

12 REPRESENTATIVE VICKERY: Not as
13 the bill is --

14 REPRESENTATIVE WAGLE: We were
15 working on limiting it to a national case
16 from trial.

17 MR. LEVY: I don't know whether
18 it's constitutional or not.

19 REPRESENTATIVE VICKERY: I think
20 it is as its written.

21 MR. HAYWARD: I think it is.

22 REPRESENTATIVE WAGLE:
23 Representative Wilk.

24 REPRESENTATIVE WILK: I'll hold.

25 REPRESENTATIVE WAGLE:

1 Representative Ray.

2 REPRESENTATIVE RAY: Thank you,
3 Madam Chairman. You said you would adjust
4 your fee if you felt it was excessive.
5 Based on what you feel this group did
6 hourwise or workwise, do you have any idea
7 what your fee would have been adjusted to
8 from the 27,000,000?

9 MR. LEVY: Let me take Entz and
10 Chanay's side. I'll take both sides. Okay.
11 If I were them, I would argue most of all
12 result obtained. Hey, we got the state 1.6
13 billion. Great. Folks, I know Entz and
14 Chanay didn't do anything in getting that
15 money. That was done by Motley's firm and
16 Skruggs' firm and folks like Andy and Mark
17 Hutton who have been laboring in the
18 vineyard for many, many months before
19 Attorney General Stovall and Entz and Chanay
20 got involved. So the result obtained may
21 have been good, but let's look at who
22 obtained it, really. I don't know how many
23 hours these folks have in the case. That's
24 what I would really like to know.

25 REPRESENTATIVE RAY: Well, given

1 what they produced, if you felt you produced
2 this much and you say they really didn't do
3 -- they didn't really obtain the results, I
4 was just curious where you would go with
5 that?

6 MR. LEVY: I would take the model
7 rule. But since they were local counsel and
8 they were not the laboring firm handling
9 this case, I would really scrutinize their
10 -- what they did, and I would base their fee
11 on an hourly basis, and I would pay them by
12 the hour. Because that's what I do when I
13 hire local counsel.

14 REPRESENTATIVE RAY: You
15 mentioned in your testimony that you would
16 go to 10 percent.

17 MR. LEVY: Sometimes. I usually
18 give the referring counsel that I refer the
19 case to as local counsel, I often give them
20 the option, and a lot of times the lawyers,
21 they didn't want to take any risk, so
22 they'll say pay me by the hour, because that
23 way they know they are going to get paid.

24 REPRESENTATIVE RAY: If she would
25 have paid them 10 percent -- offered them 10

1 percent, it would be a bigger fee yet.

2 MR. LEVY: No, 10 percent of
3 54,000,000. That was the total fee awarded.
4 When I said I offer my referring counsel,
5 local counsel 10 percent, 10 percent of the
6 total fee obtained. Not 10 percent of the
7 total award.

8 REPRESENTATIVE RAY: I thought
9 the contingency was based upon award.

10 MR. LEVY: No, the fee obtained.
11 In other words, if I obtain a \$10,000 fee on
12 a \$30,000 case, my local counsel would get a
13 thousand. In this case, apply the scenario
14 in this case, Entz and Chanay would get 5.4.

15 REPRESENTATIVE WAGLE: I'm going
16 to allow three more questions from people
17 who have raised their hands. I really want
18 you to hear from the Huttons.
19 Representative Kirk.

20 REPRESENTATIVE KIRK: I heard you
21 say something to the effect that the Kansas
22 taxpayers were injured by this. It's my
23 understanding that the decision as to how
24 much these people were entitled to was not
25 decided by anybody here in Kansas but

1 decided by a board outside of our group or
2 whatever you want to call them, outside of
3 this case, and they decide this for
4 everybody who was on a contingency basis.
5 And by taking it -- by waiting to hear what
6 the board had to say about what would be an
7 appropriate amount to give them, the amount
8 of money they argued does not come out of
9 our settlement. If they had gone with a
10 percentage, that would have come out of our
11 settlement. So I guess I was wondering why
12 you thought the taxpayers were injured by
13 this process?

14 MR. LEVY: Okay. I think Andy
15 and/or Mark Hutton will respond to that more
16 thoroughly. What I was really getting at is
17 by the fact of not having aggressive,
18 qualified, competent local counsel to pursue
19 the case and to work up the case, the
20 settlement in Kansas was a lot less than it
21 could have been. I assume all you realize
22 that Colorado didn't even have local
23 counsel, and Colorado got a lot more money
24 than Kansas.

25 REPRESENTATIVE KIRK: I think it

1 has something to do with the Medicaid rates
2 you have.

3 MR. LEVY: It could be.

4 REPRESENTATIVE KIRK: My
5 understanding was it was related to your
6 Medicaid expenditures. I'm not sure. We
7 would have much less than Colorado because
8 they are bigger than we are, and they also
9 waited till the end. We were like the 11th
10 state to get involved in this. If you are
11 the 11th state and everybody else has local
12 counsel, also, are we not to the point where
13 our involvement and justification for what
14 we might get would be different than say the
15 guys who were first, second, third and
16 fourth.

17 MR. LEVY: I can't answer that.
18 I think Andy or Mark could answer that.

19 REPRESENTATIVE WAGLE:

20 Representative Sharp.

21 REPRESENTATIVE SHARP: Thank you,
22 Madam Chairman. And thank you for being here
23 today.

24 MR. LEVY: You're welcome.

25 REPRESENTATIVE SHARP: Faces do

1 change. I was wondering, certainly we are
2 struggling with this as a legislative body
3 and committee members. And according to
4 your testimony, I think you feel very
5 strongly there has been at least ethical
6 violations. Do you have anyway as attorneys
7 within your own field and certainly experts
8 in this area to sensor your own?

9 MR. LEVY: Oh, yeah.

10 REPRESENTATIVE SHARP: Are you
11 going to proceed with that since you feel so
12 strongly about this.

13 MR. LEVY: You know what. I have
14 to really examine my conscience. I
15 appreciate your question. By Supreme Court
16 rule if I believe a lawyer has committed an
17 unethical violation, I must report it to the
18 disciplinary administrator just like anybody
19 on this committee if they feel it and they
20 are a lawyer, they have an obligation to
21 report it. I'm struggling. I probably need
22 a few more facts to decide whether or not it
23 should be done. Your question is very good.

24 REPRESENTATIVE WAGLE: Mr. Levy,
25 in order to determine whether or not there

1 has been an ethical violation, would it help
2 you if you were able to see the testimony
3 that was given before the arbitration board
4 where tobacco argued with Entz and Chanay
5 over the attorney fees? Would that help you
6 in your --

7 MR. LEVY: I think so.

8 REPRESENTATIVE WAGLE: It would?

9 MR. LEVY: Yes.

10 REPRESENTATIVE WAGLE: Thank you
11 for your testimony.

12 MR. LEVY: Thank you for allowing
13 me to be here.

14 REPRESENTATIVE WAGLE: Who goes
15 first?

16 MR. ANDY HUTTON: If you don't
17 mind, can Mark come up with me? We may go
18 back and forth.

19 REPRESENTATIVE WAGLE: I want to
20 ask you the same question I asked Mr. Levy.
21 Tell us about yourselves. Tell us about
22 your credentials. Tell us about your
23 involvement.

24 MR. ANDY HUTTON: First of all, I
25 want to state I do not want to be here. I'm

1 getting ready for a trial in Wyoming. Mark
2 flew in from Boston. He had depositions for
3 five days in Boston. I've been reading the
4 newspapers. The public needs to know the
5 facts of what happened.

6 MR. MARK HUTTON: Let me expand
7 on that. I'm not exactly a willing
8 participant. You know, we're burning a
9 bridge here. Carla Stovall has referred
10 business to our office. She has referred
11 people to our office. After today, I doubt
12 that that will happen again. So it's not
13 easy being here, and I appreciate people
14 referring business to us, judges, lawyers,
15 doctors. Even doctors refer medical cases
16 to us. I'm not really excited about being
17 here, but I'm here because I have read our
18 name in the newspaper, and certain
19 statements were being made that simply
20 amazed me. I want to set the record
21 straight.

22 MR. ANDY HUTTON: I'll start,
23 because I had most of the contact with the
24 Stovall office. First of all, you asked me
25 for our experience. Well, Mark and I are

1 twins. He graduated a semester earlier from
2 Washburn Law School. Basically, we've both
3 been practicing in Wichita since 1979 doing
4 nothing but complex, serious personal injury
5 litigation, mainly in medical and
6 pharmaceutical cases.

7 MR. MARK HUTTON: Let me add one
8 more thing here. Our mentor, our mentor was
9 Gerald Michaud. Some of you know Gerald
10 Michaud. Gerald Michaud, perhaps, is singly
11 responsible for this legislature passing
12 tort reform. So we were well taught by the
13 master. He has been the king of torts
14 through 25 years.

15 MR. ANDY HUTTON: Okay. And you
16 were asking about our experience and
17 qualifications. We have probably settled or
18 reached a verdict in over 100 cases that
19 resulted in a million dollar victory or
20 more. Some cases over \$10,000,000. Mark
21 won't talk about this. He was voted trial
22 lawyer of the year in 1989 by the Trial
23 lawyers For Public Justice as being the top
24 trial lawyer in America.

25 MR. MARK HUTTON: I was lucky.

1 We tried a toxic shock syndrome case. I
2 don't know if you remember back in the
3 '80's. Unfortunately, the manufacturers
4 were putting high absorbent fibers in their
5 tampons. Took them to trial in Wichita.
6 Got a verdict for 11.5 million. Soon
7 thereafter, that particular tampon was taken
8 off the market. We did some social good.
9 We eradicated from the marketplace a
10 dangerous and defective tampon. I guess my
11 peers thought it was a good job. I take
12 pride in that. Sometimes trial lawyers get
13 a bad wrap. I think the point I'm making
14 here is sometimes we do some good, too.

15 MR. ANDY HUTTON: Because of what
16 we do, we have always wanted to take on the
17 tobacco industry, because they cause 455,000
18 Americans each year to die of a preventable
19 death. 3,000 kids start smoking every day
20 of which half of those will die of a
21 cigarette related illness. Our grandmother
22 died from secondhand smoke. So, you know,
23 we made the commitment to get involved in
24 tobacco litigation in 1994 two years before
25 the Stovall controversy. And how we got

1 involved was Mark was a member of the breast
 2 implant plaintiffs steering committee. It
 3 was a 15-member group that was put together
 4 by a federal judge in Alabama to handle all
 5 the discovery on breast implant cases. They
 6 had just reached a \$6,000,000,000
 7 settlement. One of Mark's team, Wendell
 8 Bouchea (spelled phonetically) from New
 9 Orleans, we took on breast implant. Let's
 10 take on big tobacco. He assembled a team of
 11 lawyers called the Castano lawyers in early
 12 1994. And there was a news article in the
 13 National Law Journal that talks about the
 14 coalition. It says -- this was early on.
 15 26 plaintiff's law firms including class
 16 action and mass disaster specialists never
 17 before in tobacco litigation but prominent
 18 in breast implant, asbestos cases joined
 19 together suing the tobacco industry
 20 regarding nicotine addiction. This joint
 21 efforts marks the first time the industry
 22 and may give the companies a run for their
 23 money in court observers say. And then they
 24 talk about the law firms who have joined
 25 together. And we were asked to join. It

3-30

1 says the heavy hitters were lined up, Mel
2 Belli from San Francisco, Mark and I from
3 Wichita, and Ness Motley from South
4 Carolina. We were honored to be selected.
5 There was an entry fee. We all had to come
6 up with \$100,000 to argue the tobacco
7 documents and work on the case.

8 MR. MARK HUTTON: 100,000 times
9 65 firms. We told the industry we have a
10 war chest. You can take on one firm and
11 bankrupt that firm, but you are going to
12 have a run for your money when you take on
13 65 law firms, because each law firm brings
14 to the table multiple lawyers. That was
15 really the first strong challenge to the
16 tobacco industry. We're talking about 1994.

17 REPRESENTATIVE WAGLE: I'm going
18 to want a copy of that article for the
19 record. We are developing a record here for
20 the tax committee.

21 MR. ANDY HUTTON: One reason I
22 have to bring this out, I have read Carla
23 Stovall's prepared statement and her
24 transcribed testimony, and she stated that
25 Mark and Andy Hutton are fine lawyers, but

1 we didn't have experience in tobacco
2 litigation except for one case. That is
3 absolutely not true. As a matter of fact,
4 when I wrote to her in my first letter, I
5 had told her that we had already settled the
6 Liggett litigation which gave rise to all
7 the hot documents.

8 REPRESENTATIVE WAGLE: Do you
9 have a copy of that letter?

10 MR. ANDY HUTTON: Yes. I'm kind
11 of jumping ahead. How I got involved in the
12 Stovall litigation, I was asked in January
13 of 1994 by -- I'm sorry, January of 1996,
14 you're correct, by Ron Motley who later
15 becomes the national counsel for Kansas to
16 come to New Orleans for a meeting among key
17 tobacco lawyers. We were conspiring against
18 the industry. Here is a copy of the letter
19 Ron Motley sent to me on January 5, '96
20 saying that we invite you to join this
21 tobacco litigation group involving key
22 lawyers presently involved in tobacco
23 litigation. So this was January of '96. I
24 went to New Orleans. And keeping in mind
25 New Orleans was the headquarters of our

1 tobacco litigation team. Mark and I
2 financed -- we hired two individuals, a
3 lawyer and a paralegal, for four years in
4 New Orleans to do nothing but organize and
5 catalog tobacco documents.

6 MR. MARK HUTTON: And find hot
7 documents.

8 MR. ANDY HUTTON: Down there in
9 New Orleans, we had access to over 2,000,000
10 pages of documents and 1,200 depositions.

11 REPRESENTATIVE WAGLE: Was that
12 from Liggett, the settlement of Liggett?

13 MR. ANDY HUTTON: Both.
14 Settlement of Liggett and prior litigation
15 work.

16 REPRESENTATIVE WAGLE: You had
17 access to documents.

18 MR. MARK HUTTON: Absolutely.

19 MR. ANDY HUTTON: I'll get to
20 Liggett later. Ron Motley invites me to New
21 Orleans on January 5 -- in January. So I
22 went, and in that meeting, Michael Moore,
23 the acting AG from Mississippi who filed the
24 first Medicaid reimbursement case gave a
25 presentation. I had a discussion with him

1 in the bathroom that day at the Windsor
2 Court Hotel about being from Kansas, and I
3 told him I wish he would get Carla Stovall
4 to file a Medicaid reimbursement case in
5 Kansas. He said give her a call. Write her
6 a letter, encourage her. So I did that. So
7 I wrote a letter to Carla Stovall on March
8 14th, 1996 saying that I'm a practicing
9 lawyer from Wichita. And here is a copy.
10 I'll let you have all this. I'm a member of
11 the Castano team, and we have settled with
12 Liggett. We have access to the Liggett
13 documents. We would like Kansas to
14 participate in the Medicaid reimbursement
15 litigation. We would like an opportunity to
16 be involved. I then got a phone call asking
17 Mark and I to come up and meet with her and
18 John Campbell. Mark and I went up on April
19 8th and met with John Campbell and Carla
20 Stovall.

21 REPRESENTATIVE WAGLE: What year
22 was this?

23 MR. ANDY HUTTON: I'm sorry,
24 1996. This was two years after we were
25 deeply involved in Castano litigation. And

1 we were handling several cases at that time.
2 But these were state class actions. It's
3 important to remember at this time when we
4 talked to Carla Stovall, Ness Motley, Ron
5 Motley was also a member of Castano. There
6 is a document I've got, not only was Ron
7 Motley a member of Castano, he was on the
8 executive committee in May of 1996. The
9 reason I bring that up, because Carla has
10 mentioned in testimony that she didn't want
11 to hire us because we were involved with
12 Castano. Later, she hires Ron Motley. He's
13 part of Castano. Going back to this meeting
14 with Carla Stovall and John Campbell, they
15 asked us about some of our qualifications.
16 We told them. And during that interview,
17 Mark mentioned that he used to work for Stu
18 Entz when Mark was in law school as a law
19 clerk.

20 MR. MARK HUTTON: I went to
21 Washburn Law School. I was a law clerk for
22 Colmery, Letourneau --

23 MR. ANDY HUTTON: Wilkinson--

24 MR. MARK HUTTON: -- and Entz.

25 That firm broke up and went different

1 directions. Stu did contract work and labor
2 work. I met him. I liked him. After I
3 became a lawyer in Wichita, Kansas, he
4 referred down some business to us, some
5 serious, complex business. We knew he
6 thought well of us. He sent down some
7 business. I told Carla that if you want to
8 check me out, call Stu Entz. That might
9 have been the kiss of death.

10 MR. ANDY HUTTON: So Mark
11 mentioned he worked for Stu Entz knowing
12 that Stu had sent to us complex litigation.
13 We knew Carla had worked for Stu Entz at
14 that time.

15 REPRESENTATIVE WAGLE: I think
16 that document is available from post audit,
17 the notes on that conversation.

18 MR. ANDY HUTTON: Yes.

19 REPRESENTATIVE WAGLE: Okay.

20 MR. ANDY HUTTON: Okay. We at
21 that initial meeting told Ms. Stovall that
22 we would totally finance the litigation.
23 The State of Kansas bore no expense risk.
24 The next day, I got a call from John
25 Campbell saying Carla wants to hire you

1 guys. Draw up a contract. So you'll see
2 there's several correspondence we sent to
3 the AG's office back and forth fine tuning
4 the contract. We suggested the contingent
5 fee would be 25 percent, and we based that
6 on other state attorney general litigation.
7 For example, Massachusetts and Minnesota had
8 a straight 25 percent contingency. Texas
9 had 15. There was some discussion in
10 correspondence and with John Campbell
11 regarding the language of the 25 percent.
12 He suggested language like up to 25 percent,
13 and we suggested that's a little ambiguous
14 because up to 25 percent could mean .01
15 percent up to 25 percent. Under contract
16 law, I learned contracts are supposed to be
17 not ambiguous. Ambiguous contracts create
18 litigation.

19 MR. MARK HUTTON: Bearing in mind
20 too, we were proposing the 25 percent fee
21 contract knowing all along that a judge
22 would review the contract. That's always in
23 the back of our mind, that ultimately we
24 have to, you know, justify our fee. And if
25 we get an astonishing result and 25 percent

1 is way too much, we're either going to
2 voluntarily reduce our fee or the judge will
3 reduce your fee.

4 MR. ANDY HUTTON: Yes. As a
5 matter of fact, we probably reduce our fee
6 in more than 50 percent of our cases. And
7 the reason you have a straight contingency
8 is because that has to apply to a situation
9 where you would file a lawsuit, settle the
10 next day or go through ten years of
11 litigation, which we have. In some of our
12 cases, we have to have tried twice and put
13 up \$500,000. So you start at 25 percent and
14 work down according to the work done. For
15 example, I settled a case recently in
16 Nebraska where I took 44 depositions, spent
17 \$300,000, and I reduced my fee because I
18 felt sorry for my client because she needs a
19 heart transplant. It's routine for us to
20 reduce our fee. The 25 percent was just the
21 max. Depending on the work done, we would
22 have reduced our fee as we do in most of our
23 cases.

24 So there was some letters and
25 correspondence going back and forth with

1 John Campbell regarding the 25 percent. In
2 the meantime, there was language in the
3 contract to keep track of our time, so I
4 carefully kept track of my time. I even
5 brought the time records that were created
6 in this situation. If you want to look at
7 the time records, here is the time records
8 that I kept when we had discussions with
9 Carla Stovall regarding the AG
10 representation. We do not maintain or
11 contend that we had a binding contract with
12 Carla Stovall. All she said is that you
13 guys -- we want you guys. Just draw up a
14 contract, just an oral commitment to hire
15 our firm. Based on that oral commitment, we
16 then started working on the Kansas case.
17 And you can see through my detailed time
18 records from April until August, we did a
19 lot of work on this case. My paralegal
20 added up the hours. 156 hours working on
21 the Kansas AG case. And what we did is some
22 of our friends were representing other
23 states like Texas, Maryland. So we gave
24 them a call and said can we see your
25 petition and your lawsuit papers. So we

1 were looking at other state AG litigation at
2 that time.

3 You'll see in the time records that I
4 got a phone call from John Campbell on
5 August 8th. Now, I'll never forgot this
6 phone call, because he said, Andy, and he
7 was kind of troubled when he said this.
8 Andy, we've decided to hire other counsel in
9 this case. I said okay. He said we decided
10 to hire Dickie Skruggs and Ron Motley. I
11 said to myself, that's fine. Those guys are
12 good lawyers. We have dealt with Ron Motley
13 since 1979. We have several cases with him.
14 As a matter of fact, I was on a plaintiffs
15 steering committee in the jaw implant
16 litigation in Minnesota with Ron Motley's
17 firm. I'm working with them on diet drug
18 litigation, asbestos litigation. I thought
19 Carla did a good job in hiring Motley and
20 Skruggs. Then John Campbell said and we'll
21 be using Entz and Chanay as local counsel.
22 And I said to myself, Entz and Chanay. They
23 are construction labor lawyers. I said to
24 myself, that's your old law firm. You know,
25 it's kind of like hiring a chiropractor to

1 do delicate cardiovascular surgery. I mean
2 I'm not offended she didn't hire us. There
3 are 10, 15 good law firms in Kansas she
4 could have hired. Maybe it won't matter,
5 Ness Motley and Dickie Skruggs will do most
6 of the work. And we had other tobacco
7 business going on. And we still do.

8 Then after that time, Carla Stovall
9 referred tobacco cases to us, individual
10 tobacco cases. She referred malpractice
11 cases to us, diet drug litigation to us. So
12 I had no ax to grind against Carla Stovall.
13 She was referring cases to us. But then I
14 have read some of the testimony that she has
15 said, and it's just not factually accurate.
16 For example, she talks about in her
17 testimony that the Huttons were involved in
18 only one tobacco case, the Castano case.
19 That case was tried and lost. This is her
20 sworn testimony. Tried and lost. That is
21 just not true. The Castano case was never
22 tried. It was successfully settled out of
23 court. And then she has stated that she
24 didn't want to hire us because we were
25 involved in individual tobacco cases.

1 Again, that is not true. We are involved in
2 class action cases, not individual cases.
3 As a matter of fact, her counsel Ron Motley
4 tried two individual cases.

5 MR. MARK HUTTON: And lost them.

6 MR. ANDY HUTTON: I have to give
7 him credit. He tried. He tried two
8 individual smoking cases during the time he
9 represented Kansas. Yet Miss Stovall said
10 in her testimony she didn't want to hire us
11 because we were involved in individual
12 cases. I guess she didn't realize Ron
13 Motley, her counsel, was trying individual
14 cases.

15 MR. MARK HUTTON: I got to say
16 this. The one reason we weren't taking
17 individual cases, because the laws in Kansas
18 are so conservative because of tort reform,
19 we couldn't take them.

20 MR. ANDY HUTTON: And then Ms.
21 Stovall has stated the Hutton and Hutton --
22 I guess she's trying to imply we were
23 greedy, have never submitted to arbitration
24 over the fee. In fact, right now, we are
25 involved in an arbitration fee matter in a

1 tobacco case, the same thing that happened
2 in Kansas.

3 MR. MARK HUTTON: Something else
4 that needs to be clarified is when we were
5 exchanging drafts with John Campbell, you
6 know, John told us we were the only game in
7 town. Okay. We were the only law firm they
8 are doing business with. I think I read
9 somewhere there was a question regarding
10 whether the up to versus the guaranteed
11 percentage was a deal breaker. It was never
12 presented to us that unless you agree to up
13 to, you don't have the contract. All we
14 were doing was trying to make the contract
15 less ambiguous. It was never presented take
16 it or leave it or it was a deal breaker.

17 MR. ANDY HUTTON: Yeah. And in
18 our proposed contract, we said we would
19 follow the model rules of ethical procedure.
20 And we knew this was going to be the largest
21 tort case in Kansas history representing the
22 State of Kansas, and this would be highly
23 scrutinized by everybody. That's why I kept
24 hours. That's why we put that in the
25 contract, that we would follow the Kansas

1 rules of ethical procedure in the case, and
2 the fees would be reviewed by the judge.

3 MR. MARK HUTTON: Yes, Mr.
4 Campbell said we are contingency fee lawyers
5 and do we routinely keep track of our hours.
6 We don't. Certain cases we do. You know
7 which cases you must. I was involved in the
8 breast implant litigation. I did some work
9 for a federal judge that empowered me to do
10 common work for a bunch of cases. I had to
11 keep track of my hours. I didn't like it,
12 but I did it. We are involved in Castano.
13 We keep track of hours. I knew if there was
14 ever a case to keep track of my hours, it
15 was going to be the Kansas case, because we
16 had never represented a public entity, and I
17 knew there would be close scrutiny, and
18 there should be. So if there ever was a
19 situation where a lawyer would keep track of
20 their hours, it would be in the
21 representation of a taxpayer entity, the
22 State of Kansas.

23 MR. ANDY HUTTON: And I want to
24 make the statement, and I hate to criticize
25 Entz and Chanay, because Mark and I took

1 labor law from Stu Entz when we were in
2 college. They had referred cases to us in
3 the past. But I have reviewed the docket
4 sheet for the work they did on the Kansas AG
5 case. They didn't do anything. All they
6 did was respond to the aggressive attack by
7 big tobacco that's just the opposite. When
8 you take on big tobacco, you have to take
9 the attack. You have to be aggressive. I
10 brought examples of how we have taken the
11 attack against big tobacco in other cases
12 that we're handling. You file numerous
13 requests for admissions, numerous requests
14 for production of documents, numerous
15 Interrogatories. And there is even an
16 example how Mark has been trying to take the
17 deposition of all the CEO's of big tobacco.
18 They hate it. Well, in the Kansas AG
19 litigation, there was not one deposition
20 taken. I mean that's shocking. This is a
21 huge case not to take any depositions.
22 Likewise, there was just no attempted
23 discovery of the documents by Entz and
24 Chanay in the Kansas case. And Ms. Stovall
25 makes quite a case about how they brought

1 the Liggett documents. I brought the
2 Liggett documents. We had the Liggett
3 documents in 1997. They were so public,
4 part of them were in the Journal of the
5 American Medical Association and on the
6 Internet.

7 MR. MARK HUTTON: In fact, I went
8 to, I think, Raleigh, North Carolina, and
9 big tobacco had some expert trying to
10 suggest that nicotine is not addictive. I
11 took the Journal of the American Medical
12 Association that published these Brannon,
13 Williamson (spelled phonetically) documents.
14 I used those on cross-examination of a
15 tobacco expert. And we had the Liggett
16 documents before this brew haw haw in
17 Shawnee County. What's shocking for me, if
18 you read the arbitration award, it says the
19 underlying case was stayed. Stayed means
20 put on hold. It means it was iced. I can't
21 believe anyone would want to represent the
22 State of Kansas and agree to a stay. That's
23 like filing a lawsuit and bailing out.

24 MR. ANDY HUTTON: Okay. And Ms.
25 Stovall says we didn't have any experience,

1 and we didn't know what we were doing. I
2 just brought, for example, a couple of
3 items. I was asked to talk to educate the
4 lawyers on the East Coast, in Florida on
5 tobacco litigation. Here is a seminar
6 brochure. I was invited by the Western
7 Trial Lawyers Association to educate them on
8 tobacco litigation in 1997. I published an
9 article about tobacco litigation in the
10 Kansas Trial Lawyers Journal. More
11 importantly, in the California Trial Lawyers
12 Journal. We were deeply involved in tobacco
13 litigation and still are.

14 MR. MARK HUTTON: I went to
15 Boston and spoke to an international group
16 of lawyers. There is some litigation going
17 on in foreign countries. They asked me to
18 come back and speak to a group of plaintiffs
19 lawyers about tobacco litigation.

20 MR. ANDY HUTTON: You may say so
21 what. How has Kansas been damaged? Well,
22 we'll tell you. We can say with confidence
23 that the taxpayers of Kansas probably lost a
24 billion dollars because of the selection of
25 Carla Stovall in Entz and Chanay. It sounds

1 great that Kansas got 1.6 to 1.7 billion
2 dollars. They should have gotten more. As
3 a matter of fact, we even sent Miss Stovall
4 a letter telling her-- on November 18th
5 telling her to turn down the settlement.
6 I'll read that letter to you. Let's see.
7 Where is that? I'm sorry. Okay. During
8 the time there was this big national
9 settlement, it was coming out that Kansas
10 may get 1.6 billion. We wrote to her on
11 November 17th, 1998. I'll just read it to
12 you. "I read this morning in the Wichita
13 Eagle that you are leaning toward accepting
14 the latest settlement offer made by the
15 tobacco industry. I am writing this letter
16 to you to reject the offer on behalf of
17 Kansas and to have Kansas opt out of the
18 settlement. I sincerely believe that by
19 rejecting the offer and opting out, industry
20 will further negotiate with the handful of
21 states that choose to stay the course and
22 continue with the litigation. Further
23 negotiations with those opted out states
24 will only lead Kansas to receiving a better
25 settlement. I know that is difficult for

1 out-of-state counsel," that's Ness Motley
2 and Dickie Skruggs, "to advise you whether
3 or not to accept or reject the offer on
4 behalf of Kansas. Because out of state
5 counsel represents so many states and
6 because of the enormous magnitude of the
7 attorneys fees to be realized by out of
8 state counsel in the representation of so
9 many different states, it obviously creates
10 a conflict of interest for out-of-state
11 counsel to give you the honest and
12 independent legal advice. The absence of
13 any meaningful activity by out-of-state
14 counsel in the Kansas tobacco litigation
15 further evidences the conflict of interest
16 of the out-of-state counsel representing so
17 many different states. Obviously,
18 out-of-state counsel has devoted its time
19 and attention to the representation of those
20 states with significantly larger populations
21 than Kansas. Kansas deserves better, and I
22 believe opting out of the settlement will be
23 an act of courage on your part and will put
24 substantially more money in the state
25 coffers." Well, we sent the letter to Ms.

1 Stovall, and we never got a response. The
2 funny thing, those states that opted out and
3 fought longer got a lot more money. Yes,
4 Kansas got \$1.7 billion. That's a lot of
5 money. But I'll tell you a comparable state
6 with comparable state population is
7 Mississippi. Mississippi has a few hundred
8 thousand more people. Mississippi got 4.1
9 billion. Kansas got 1.7. Why? The
10 Mississippi case was pushed. It was
11 litigated. They had good Mississippi
12 counsel. That was not done in Kansas.

13 MR. MARK HUTTON: The same degree
14 of the activity, lawyers working hard,
15 taking depositions, putting the fear of God
16 into the tobacco companies, that should have
17 been done in Kansas. When lawyers do that,
18 you increase the value of your client's
19 settlement.

20 MR. ANDY HUTTON: And I have
21 brought other state examples like Texas has
22 -- Texas got 17 billion. Probably on a per
23 capita basis, maybe three to four times what
24 Kansas got because the Texas case was
25 litigated by good, tough Texas lawyers, John

1 O. Quinn (spelled phonetically) a friend of
2 ours. Maryland, Washington State, they got
3 a lot more money on a per capita basis than
4 Kansas because they had tough in-house state
5 lawyers that litigated the case.

6 MR. MARK HUTTON: We're not
7 faulting the out-of-state counsel. They
8 were working very hard. Ness Motley, Dickie
9 Skruggs, they were involved in Texas. They
10 were pushing Texas, Florida, of course
11 Mississippi, their home state. They did a
12 nice job for those states. Out-of-state
13 counsel was busy, busy elsewhere. We are
14 not faulting them. There was no one home
15 here in Kansas. There was no one pushing
16 the Kansas case.

17 MR. ANDY HUTTON: That's why you
18 needed good, competent Kansas counsel. It
19 didn't have to be us. It could be a
20 consortium, Jerry Levy, Jerry Palmer,
21 Shamberg Johnson. A lot of good lawyers
22 working like a team. Louisiana lawyers,
23 they had a team of 11 Louisiana lawyers and
24 two out-of-state lawyers. They got a lot of
25 money because that case was litigated by

1 tough lawyers. Any questions?

2 MR. MARK HUTTON: I think we
3 maybe said enough.

4 REPRESENTATIVE WAGLE: There is a
5 few questions. Representative Campbell.

6 REPRESENTATIVE CAMPBELL: Thank
7 you. The most important question I have is
8 if I were to hire your firm, would I get
9 both of you to present --

10 MR. ANDY HUTTON: As a matter of
11 fact --

12 REPRESENTATIVE CAMPBELL: Is this
13 a tag team? It's pretty effective.

14 MR. ANDY HUTTON: Let me tell you
15 something, being identical twins we fought
16 all our life. The last time we tried a case
17 together was 19 -- I'm sorry, 1983 because
18 of this very reason. Mark was
19 cross-examining a doctor. I said, Mark, be
20 more aggressive. It's difficult for us to
21 do things together in the courtroom. I'm
22 sorry.

23 REPRESENTATIVE CAMPBELL: Here's
24 my question. Would you have accepted this
25 case for in the languages the MRPC of 1.5

1 only? Would you have accepted that case,
2 and do you feel like that's a fair contract?
3 Hindsight is 20/20. But based on the
4 contract --

5 MR. MARK HUTTON: If we knew the
6 end result. But if you don't know the end
7 result, we would have like Entz and Chanay,
8 they had up to and we had 25 percent.

9 REPRESENTATIVE CAMPBELL: Unless
10 maybe I have the wrong copy. It looks like
11 it's MRPC 1.5, period.

12 MR. MARK HUTTON: Would we have
13 accepted the contract with no contingency?

14 REPRESENTATIVE CAMPBELL: That's
15 what it looks like.

16 REPRESENTATIVE WAGLE: We've got
17 a lot of contracts.

18 REPRESENTATIVE CAMPBELL: I know
19 we have a lot of contracts.

20 REPRESENTATIVE WAGLE: Is that
21 the Hutton or Entz and Motley?

22 REPRESENTATIVE CAMPBELL: Entz
23 and Chanay.

24 REPRESENTATIVE WAGLE: Theirs was
25 subject to the same ethical rules.

1 REPRESENTATIVE CAMPBELL: But
2 your contract, the one that was negotiated
3 started with the MRPC 1.5. Then it went up
4 to 25 percent contingency, and you were
5 negotiating or working on the up to. You
6 didn't like that vagueness. Their contract
7 was MRPC 1.5, period.

8 REPRESENTATIVE WAGLE: And up to
9 25 percent.

10 REPRESENTATIVE CAMPBELL: It
11 doesn't say that.

12 MR. MARK HUTTON: It says up to.

13 MR. ANDY HUTTON: It says up to.

14 REPRESENTATIVE CAMPBELL: I've
15 got the wrong one.

16 MR. ANDY HUTTON: Had that
17 contract been presented to us and said this
18 is the way it's going to be, we would have
19 said yes.

20 REPRESENTATIVE CAMPBELL: Still
21 got a question. That's a fair --

22 MR. ANDY HUTTON: We were trying
23 to eliminate an ambiguity when you have up
24 to. As a matter of fact, the documents we
25 got from Stovall's office had copies of the

1 contract from Massachusetts, Minnesota and
2 Texas, and their contracts are just like
3 ours. They just say a straight contingency
4 of, none of this up to ambiguity stuff.

5 REPRESENTATIVE CAMPBELL: Okay.
6 I think you've answered my question. My
7 second question is you heard Representative
8 Sharp's question earlier. At this point in
9 time -- I'm asking the same question. At
10 this point in time, is there remedy if we
11 were strictly focusing on the fact --
12 strictly focusing on the fact you feel like
13 the existing law firm didn't earn the
14 dollars they are getting, is there remedy at
15 this point?

16 MR. MARK HUTTON: A remedy at this
17 point?

18 REPRESENTATIVE SHARP: Censoring.

19 REPRESENTATIVE CAMPBELL:
20 Censoring and there can be a complaint
21 lodged to the local ethics committee. We've
22 both been on local ethics committee. They
23 will then do an investigation.

24 MR. MARK HUTTON: Jerry Levy
25 answered that question appropriately. I'd

1 like to see their hours.

2 REPRESENTATIVE CAMPBELL: You'd
3 almost have to have that?

4 MR. MARK HUTTON: You do.

5 REPRESENTATIVE WAGLE: What about
6 the statements made before the arbitration
7 board down in Texas? Would that be critical
8 to determining the fees?

9 MR. ANDY HUTTON: Yes. That
10 greatly concerned me. I read the
11 arbitration opinion, and it said by the
12 opinion that "after several Kansas law firms
13 turned down the case."

14 MR. MARK HUTTON: Refused to take
15 it.

16 REPRESENTATIVE WAGLE: Who said
17 that?

18 MR. ANDY HUTTON: That was the
19 opinion by the arbitration committee. They
20 got the factual data from Carla Stovall. So
21 somehow someone told them, and it must have
22 been Ms. Stovall, that several Kansas law
23 firms turned down the case.

24 MR. MARK HUTTON: Refused to take
25 the case.

1 MR. ANDY HUTTON: So we need two
2 items which is very important, her testimony
3 that she gave to the arbitration panel, and
4 No. 2, the written submission briefs,
5 information submitted by Entz and Chanay and
6 Motley and Skruggs to justify their fee.
7 There is written information that is
8 submitted.

9 MR. MARK HUTTON: Those two items
10 should be readily available if asked. I
11 mean I can't get them.

12 REPRESENTATIVE WAGLE: I did send
13 a letter yesterday, and I asked John
14 Campbell if he could deliver to us that
15 testimony. Yesterday Representative Powell
16 testified that big tobacco would consent to
17 the release of the testimony. So we have
18 sent out letters requesting --

19 MR. MARK HUTTON: Requesting the
20 transcript.

21 REPRESENTATIVE WAGLE: -- a
22 transcript.

23 MR. ANDY HUTTON: That statement
24 in there that several Kansas cases -- law
25 firms turned down the case, that is kind of

1 consistent with what I heard on the radio.
2 I was driving one time. This is during the
3 campaign of Ms. Stovall. She was asked by
4 Nick Haynes, a state house reporter, like on
5 the Kansas Public Radio. He was
6 interviewing her. She said in response, why
7 did you hire your old law firm. She said no
8 Kansas lawyer would take this case.
9 Everyone turned it down. I had to beg my
10 old law firm. I heard that, and I was just
11 shocked. How could she say that? She knew
12 we wanted the case, because we were deeply
13 involved in tobacco litigation.

14 MR. MARK HUTTON: We've recovered
15 from all this. We've been pretty busy.
16 I've settled a thousand breast implant
17 cases. I'm not going to miss a meal or
18 anything. Philosophically, it would be nice
19 to represent the State of Kansas.

20 MR. ANDY HUTTON: The bottom line
21 is because of the lack of effective counsel
22 in Kansas, we probably -- the taxpayers
23 probably lost over a billion dollars.

24 MR. MARK HUTTON: Again, we've
25 got nothing to gain by being here. We'll be

1 bashed and everything, but, you know, I
2 guess that's the reason I don't have much
3 hair. I'm thick skinned.

4 REPRESENTATIVE CAMPBELL: My
5 final question is I want to clarify another
6 point. Prior to 1996 which is the meeting
7 you came up and that was the first meeting I
8 guess you said you had your first meeting
9 and introduced yourself.

10 MR. ANDY HUTTON: April 8th.

11 REPRESENTATIVE CAMPBELL: April
12 8th. You had to introduce yourself to them.
13 Prior to that, obviously you had no
14 referrals from the attorney general.

15 MR. ANDY HUTTON: That's correct.

16 REPRESENTATIVE CAMPBELL: After
17 losing or not getting the contract, you've
18 gotten numerous referrals from the attorney
19 general.

20 MR. ANDY HUTTON: That's correct.
21 Attempted referrals. I turned down the
22 cases, but she told them to give us a call.

23 MR. MARK HUTTON: We get
24 criticized because we won't take someone's
25 cases. Medical malpractice, we take one of

1 every 30. If we get criticized, it's
2 because we're not taking someone's case.

3 REPRESENTATIVE WAGLE: We have a
4 lot of questions. Representative Ray.

5 REPRESENTATIVE RAY: Thank you.
6 Is there a process that at the time this
7 contract was awarded to be Entz and Chanay
8 that you could have used? You obviously
9 really objected to it and felt it was wrong.
10 Is there no process you could have lodged a
11 complaint at that time?

12 MR. MARK HUTTON: That's a good
13 question. Let me answer that. We didn't
14 get the business. I was disappointed. I
15 told my brother, let's take the high road
16 and not say anything. We'll just march
17 forward and work on other cases. I'm not
18 sure if there was any way for us to try to
19 enforce the contract or anything like that.
20 We're busy. We decided to take the high
21 road and move on to something else.

22 MR. ANDY HUTTON: As a matter of
23 fact, when I got the phone call from John
24 Campbell, I wrote her a letter saying-- this
25 is August 7th. This is-- in talking with

1 John Campbell this morning and understand
2 you have selected someone else to represent
3 the State of Kansas in the cigarette
4 litigation. Of course, we are disappointed,
5 but we will be working on other cigarette
6 litigation as well. We wholeheartedly
7 support your cause in this matter, and if we
8 can ever be of any help in the future,
9 please feel free to give us a call.
10 Incidentally, we will be also involved in
11 some smokeless tobacco class action out of
12 state, which was Louisiana, which seems to
13 be very promising litigation.
14 Unfortunately, the children seem to be the
15 primary targets of the smokeless tobacco
16 advertisements.

17 REPRESENTATIVE RAY: You
18 obviously don't support her decision now.
19 When did you change from supporting to not
20 supporting

21 MR. MARK HUTTON: That's a good
22 question. I heard on the radio no one else
23 wanted this, and she had to beg her old law
24 firm. I said to myself, wow. How can
25 someone say that. And then I was reading in

1 the newspaper, I guess the reporters had
2 maybe asked her some tough questions. I was
3 reading in the newspaper how we had a
4 conflict and we're going to charge too much.
5 What else? We kept hearing this. And then
6 reporters would call us. And then I'm not
7 sure it was somebody on the committee had
8 asked that we come and testify. Susan Wagle
9 or someone had asked that we testify. This
10 is not like a light bulb that turned on and
11 off.

12 MR. ANDY HUTTON: You're asking a
13 good question. When did we make the
14 decision she hired the wrong law firm. The
15 day I got a phone call from John Campbell
16 when they decided to hire Entz and Chanay,
17 that day.

18 MR. MARK HUTTON: If that's your
19 question, that's --

20 REPRESENTATIVE RAY: I was going
21 by the letter you read.

22 MR. ANDY HUTTON: We support the
23 litigation, the fact AGs took on big
24 tobacco. We supported that litigation, the
25 concept of the litigation, not her selection

1 of local counsel.

2 MR. MARK HUTTON: Yeah. We
3 thought it was important to put pressure on
4 the tobacco industry from every direction
5 possible.

6 REPRESENTATIVE RAY: I have just
7 one more. Have you experienced over the
8 years other oral agreements that fell
9 through before you had a contract?

10 MR. MARK HUTTON: Well,
11 ethically, you're encouraged -- you're
12 supposed to have a written contract.

13 MR. ANDY HUTTON: You're asking
14 whether we ever faced a situation before. I
15 can't recall there was a situation where a
16 client said you're hired and they didn't
17 sign the contract. I can't recall.

18 REPRESENTATIVE RAY: That's why
19 you feel comfortable in putting in all these
20 hours.

21 MR. ANDY HUTTON: We were fine
22 tuning the contract. We knew it was with
23 the State of Kansas that maybe had to have
24 some special stuff.

25 MR. MARK HUTTON: When John

1 Campbell said we were the only game in town.

2 MR. ANDY HUTTON: John sent me
3 some stuff from the state, a form contract.

4 REPRESENTATIVE RAY: Thank you.

5 REPRESENTATIVE WAGLE:

6 Representative Aurand.

7 REPRESENTATIVE AURAND: Thank
8 you, Madam Chairman. I was wondering on the
9 time sheets you kept, were you doing the 156
10 hours, was some of that going on in the last
11 week of June and early July.

12 MR. ANDY HUTTON: Oh, yeah.

13 I'll --

14 MR. MARK HUTTON: We're not going
15 to submit that bill.

16 MR. ANDY HUTTON: No.

17 REPRESENTATIVE AURAND: I'm
18 looking out for the taxpayers.

19 MR. ANDY HUTTON: The time
20 records go from when I first wrote my letter
21 to Ms. Stovall until --

22 REPRESENTATIVE AURAND: A number
23 of things in July then.

24 MR. ANDY HUTTON: Oh, yes, yeah,
25 July, yes.

1 REPRESENTATIVE AURAND: Have you
2 seen we had I guess the crawdad memo where
3 the attorney general wrote --

4 MR. MARK HUTTON: I heard about
5 it.

6 MR. ANDY HUTTON: I heard about
7 it in the newspaper.

8 REPRESENTATIVE AURAND: It was
9 dated I believe the 26th of June of when
10 they had decided to crawdad out of the
11 agreement with you.

12 MR. MARK HUTTON: Yeah.

13 MR. ANDY HUTTON: Yeah.

14 REPRESENTATIVE AURAND: It only
15 me that strikes completely strange it took
16 five or six weeks -- are crawdads that slow?

17 MR. ANDY HUTTON: I was kind --

18 MR. MARK HUTTON: That's a good
19 question.

20 MR. ANDY HUTTON: That was a good
21 point. I was surprised, too.

22 REPRESENTATIVE AURAND: June 28th
23 is what we have that happened. You were at
24 least under the impression there is enough
25 of an agreement there you continued to work

1 in July.

2 MR. ANDY HUTTON: We had an oral
3 commitment. You'll see the time records.
4 Oh, yes. In --

5 REPRESENTATIVE AURAND: That's
6 the part that strikes me the oddest about
7 the failure to inform you.

8 MR. ANDY HUTTON: And then
9 speaking of time records.

10 REPRESENTATIVE AURAND: One quick
11 thing, did you ask John Campbell in that
12 conversation you had in August when the
13 decision had been made?

14 MR. ANDY HUTTON: No. I was
15 shocked. I was speechless when he said
16 about Entz and Chanay. But speaking of time
17 records, Miss Stovall testified under oath
18 that Ness Motley had no mechanism by which
19 they could keep time records. That is just
20 not true. And here is an example. Mark was
21 a member of a 15-member steering committee
22 to handle all the Norplant litigation in
23 America along with Ness Motley. In doing
24 that, the federal judge from Corpus
25 Christi --

1 MR. MARK HUTTON: Beaumont.

2 MR. ANDY HUTTON: -- Beaumont,
3 Texas, required all PSC's to keep time
4 records. Here is the protocol with Ness
5 Motley and Hutton and Hutton by which they
6 had to keep time records in the Norplant
7 litigation. So for her to say Ness Motley
8 had no mechanism just doesn't make sense
9 when we've seen time records with that same
10 firm in other cases.

11 MR. MARK HUTTON: I'm sure they
12 don't like to keep them.

13 MR. ANDY HUTTON: When you have
14 to, you have to.

15 MR. MARK HUTTON: When you have
16 to, you have to if you want paid.

17 MR. ANDY HUTTON: Yeah.

18 REPRESENTATIVE WAGLE:
19 Representative Gregory.

20 REPRESENTATIVE GREGORY: Thank
21 you, Madam Chairman. You read the testimony
22 that the Attorney General Stovall gave here
23 the other day in how she phrased the deal
24 she made with Entz and Chanay, the verbal
25 agreement that she originally called them up

1 and asked them if they wanted to accept. My
2 question is this. If you had been called in
3 that same mode and offered the same exact
4 deal, would you gentlemen have taken that?

5 MR. ANDY HUTTON: Yes.

6 MR. MARK HUTTON: Oh, sure.

7 MR. ANDY HUTTON: Oh, yeah. And
8 speaking of that, I saw the contract that
9 Entz and Chanay and Ness Motley and Dickie
10 Skruggs signed with the State of Kansas. It
11 said that local counsel, Stu Entz, did not
12 have to finance litigation. What is so
13 surprising is the KBA ad that she sent out
14 after the case had settled said and here's
15 the ad, notice to civil litigators. This
16 litigation is complex and may require large
17 expenditure of time and money. Expenses
18 will need to be advanced by counsel. Why
19 did she say this in an advertisement, yet
20 she had signed a contract with Entz and
21 Chanay that they did not have to finance
22 litigation.

23 MR. MARK HUTTON: That would
24 scare lawyers off.

25 MR. ANDY HUTTON: This was done

1 to deter lawyers to apply for this job.

2 Here's copies.

3 REPRESENTATIVE WAGLE: We're
4 going to get copies of everything, right?

5 MR. ANDY HUTTON: Yes.

6 REPRESENTATIVE WAGLE:
7 Representative Vickery.

8 REPRESENTATIVE VICKERY: Were you
9 offered a contract that you could have
10 accepted?

11 MR. ANDY HUTTON: Yes. The
12 contract that we were going back and forth,
13 we would have signed it. We were just fine
14 tuning the details of it. That's the reason
15 we were still working on the Kansas case at
16 that time, because the contract they had
17 proposed did not deter us. We just wanted
18 to take any ambiguity out of the contract.

19 MR. MARK HUTTON: It was never
20 presented to us on a take it or leave it
21 basis. I keep saying this, but John said
22 you were the only game in town.

23 MR. ANDY HUTTON: We would have
24 worked on the same contract that was signed
25 by Entz and Chanay.

1 REPRESENTATIVE VICKERY: I guess
2 are you proponents of this bill?

3 MR. MARK HUTTON: This is where
4 you may get a different answer. I don't
5 know what to say.

6 MR. ANDY HUTTON: From what I
7 hear of the bill, I'm for it.

8 REPRESENTATIVE WAGLE: Do you
9 feel Entz and Chanay received a windfall
10 profit at \$27,000,000?

11 MR. ANDY HUTTON: Yes, yes.

12 MR. MARK HUTTON: Absolutely.

13 REPRESENTATIVE VICKERY: You
14 mentioned Mississippi. I understood they
15 were one of the first four states to enter
16 into the lawsuit.

17 MR. MARK HUTTON: Yes.

18 MR. ANDY HUTTON: Yes.

19 REPRESENTATIVE VICKERY: Would
20 that be maybe a reason that they received so
21 much more than we did?

22 MR. MARK HUTTON: That was one
23 factor. Kansas was one of the early states.
24 There was multiple factors. One factor when
25 in the time line did you enter the

1 litigation. More importantly how far the
2 case was advanced, how far the case was
3 pushed. Did you advance the litigation
4 ball? Were your actions responsible for
5 bringing tobacco to the negotiating table.
6 And these Liggett documents that she
7 keeps --

8 MR. ANDY HUTTON: Keeps bragging
9 about, they were on the Internet. The only
10 issue that Judge Jackson ruled upon is to
11 whether or not those documents would be
12 admissible in Kansas because of the
13 so-called joint prosecution privilege
14 defense.

15 REPRESENTATIVE WAGLE: She called
16 it the joint defense argument.

17 MR. ANDY HUTTON: Okay. The
18 bottom line is the judge just said the only
19 privileges in Kansas are set forth by
20 statute. That is not listed in the statute.
21 Therefore, that won't apply. The documents
22 go in. It was a very simple ruling.

23 REPRESENTATIVE WAGLE: Did that
24 break the case?

25 MR. ANDY HUTTON: No.

1 REPRESENTATIVE WAGLE: When Judge
2 Jackson said -- when he ruled on the joint
3 defense, did that make the national case
4 come tumbling down?

5 MR. ANDY HUTTON: The reason it
6 didn't, that was a state-by-state issue as
7 to whether or not this privilege would
8 apply. Had only application in Kansas, not
9 on a nationwide basis.

10 MR. MARK HUTTON: What helped is
11 when the CEO for Liggett, his name was Labo
12 -- Liggett, when he was willing to testify
13 for the plaintiffs.

14 MR. ANDY HUTTON: Yeah.

15 MR. MARK HUTTON: When you have a
16 manufacturer of tobacco cigarettes turn on
17 their co-conspirators, then you're in
18 trouble.

19 MR. ANDY HUTTON: Yeah. In my
20 initial letter to Ms. Stovall, we told her
21 we had settled the Liggett case. We had all
22 the documents.

23 REPRESENTATIVE VICKERY: How long
24 was Mississippi in the suit before we
25 entered?

1 MR. ANDY HUTTON: I don't know.
2 I could find out. But there were other
3 states like Wisconsin and Washington that
4 got a premium, a lot more money on a per
5 capita basis than Kansas because they had
6 tougher lawyers who fought the settlement
7 agreement.

8 MR. MARK HUTTON: That came in
9 after Kansas.

10 REPRESENTATIVE VICKERY: After we
11 did.

12 MR. MARK HUTTON: I know who the
13 lawyers are in Wisconsin, they are wonderful
14 lawyers. Bob Haybush (spelled
15 phonetically).

16 MR. ANDY HUTTON: He fought for
17 Wisconsin. He held out. He got a lot more
18 money.

19 MR. MARK HUTTON: They didn't
20 want to face him in the court. They had to
21 get the checkbook out and write more 0s to
22 him.

23 REPRESENTATIVE WAGLE:
24 Representative Osborne.

25 REPRESENTATIVE OSBORNE: Thank

1 you. I agree with Representative Campbell.
2 This tag team presentation is impressive.

3 REPRESENTATIVE CAMPBELL: I
4 didn't use the word impressive.

5 REPRESENTATIVE OSBORNE: I'll
6 qualify.

7 REPRESENTATIVE CAMPBELL: I said
8 effective.

9 MR. ANDY HUTTON: I feel you're
10 being nice to me. I feel we are not doing a
11 very good job.

12 REPRESENTATIVE OSBORNE: Mark,
13 you've indicated several times the only game
14 in town.

15 MR. MARK HUTTON: Yes.

16 REPRESENTATIVE OSBORNE: Andrew,
17 would you make that statement, also?

18 MR. ANDY HUTTON: That was the
19 words of John Campbell. He told us we were,
20 quote, the only game in town.

21 REPRESENTATIVE OSBORNE: Was that
22 a day or so after you had an interview? You
23 mentioned early on you had an interview with
24 the attorney general. What date was that
25 again?

1 MR. ANDY HUTTON: I'm sorry. The
2 interview was April the 8th. We got a phone
3 call like the next day. The time records
4 reflect several phone calls to John
5 Campbell. It was during one of those phone
6 calls I think maybe in early June when he
7 said you guys are the only game in town.
8 Another point Ms. Stovall testified to, we
9 didn't want to work with Ness Motley or any
10 other law firms. My letter dated 4/10/96
11 said we welcome the assistance of any other
12 law firm. And in our proposed contract, we
13 said we anticipate other law firms joining
14 us in this litigation. We had no problems
15 working with anybody.

16 REPRESENTATIVE OSBORNE: Okay.

17 MR. ANDY HUTTON: We do that on
18 kind of a routine basis on big, complex
19 litigation.

20 MR. MARK HUTTON: I've got a
21 tobacco case going on in Texas, and I'm
22 working with six other law firms. So we're
23 used to particularly when you take on big
24 tobacco, you've got to have a consortium of
25 lawyers.

1 REPRESENTATIVE OSBORNE: Okay.
2 Now, April 8th and soon after that -- or in
3 June, you said you were informed by John
4 Campbell you were the only game in town.

5 MR. ANDY HUTTON: Yes.

6 REPRESENTATIVE OSBORNE: And I'm
7 pleased we are going to get copies of this
8 time sheet situation, but would you point
9 out roughly the date that was indicated?
10 Then I would like -- I'd like to see the
11 numbers of contacts that you had from that
12 date.

13 MR. ANDY HUTTON: You'll see that
14 in here.

15 REPRESENTATIVE OSBORNE: All the
16 way to the August date?

17 MR. ANDY HUTTON: I have the
18 letters sent to us and back to them, and TC
19 stands for telephone call. It's all in
20 here.

21 REPRESENTATIVE OSBORNE: We'll
22 get the state examples of settlements -- of
23 the states that settled early on and then
24 the states and the amounts afterwards. Is
25 that correct?

1 MR. ANDY HUTTON: I'll give you
2 examples. I just did this yesterday quickly
3 what other states got. I feel like they got
4 a lot more because they had tough
5 litigators.

6 REPRESENTATIVE OSBORNE: Make
7 sure that we get -- every one of us.

8 MR. MARK HUTTON: You've got to
9 give it to somebody.

10 REPRESENTATIVE WAGLE: We'll
11 Xerox it and pass it out.

12 MR. ANDY HUTTON: There's two
13 states I didn't look up. Wisconsin and
14 Washington State. We can find that out.

15 REPRESENTATIVE OSBORNE: I want a
16 good, clear idea of the amount of
17 communication that occurred between this
18 April 8th date all the way to the August 7th
19 date where you got the --

20 MR. ANDY HUTTON: It's all right
21 here.

22 REPRESENTATIVE OSBORNE: Got the
23 information from John Campbell.

24 MR. MARK HUTTON: It may be hard
25 to believe, conversations with John Campbell

1 was not a tag team.

2 MR. ANDY HUTTON: It was mainly
3 me.

4 MR. MARK HUTTON: It was mainly
5 Andy.

6 REPRESENTATIVE WAGLE:
7 Representative Wilk.

8 REPRESENTATIVE WILK: In
9 fairness, I ask Representative Aurand to
10 join me in the questioning here since there
11 are two of you.

12 MR. ANDY HUTTON: I want to know
13 which one of us has more hair.

14 REPRESENTATIVE WILK: I won't
15 speak to that. I don't have any. You
16 mentioned John Campbell called you on August
17 8th.

18 MR. ANDY HUTTON: Yes.

19 REPRESENTATIVE WILK: Your letter
20 is dated August 7th.

21 MR. ANDY HUTTON: I misspoke. I
22 said that before I looked -- yes.

23 REPRESENTATIVE WILK: He called
24 you on August 7th.

25 MR. ANDY HUTTON: Yes.

1 REPRESENTATIVE WILK: You stated
2 you started working in April and through
3 August on the case. I'm a little confused
4 in regard to the work you've done, because
5 you've done work for the Castillo case?

6 MR. ANDY HUTTON: Castano.

7 REPRESENTATIVE WILK: Were you
8 working for the state or working for Castano
9 or kind of one and the same.

10 MR. ANDY HUTTON: Very good
11 question. They were detailed, separated
12 time sheets. These are -- this is the time
13 records only for the Kansas AG.

14 REPRESENTATIVE WILK: I'm not
15 interested in the time sheets. I'm
16 interested in the legal work.

17 MR. ANDY HUTTON: Yes. At the
18 same time I was doing some legal work on
19 behalf of the Castano cases and doing this
20 investigation on behalf of Kansas.

21 MR. MARK HUTTON: You have to
22 understand by doing one, it benefits the
23 other.

24 REPRESENTATIVE WILK: You can see
25 where I'm going. The work -- it's not like

1 you were working from April to August
2 thinking you had a contract with the state
3 and it was just totally wasted. You had
4 some other things going on an.

5 MR. ANDY HUTTON: Exactly. I was
6 working on other tobacco litigation. These
7 time records only reflect the work on the
8 Kansas AG anticipated litigation.

9 MR. MARK HUTTON: We made no
10 claim, make sure --

11 MR. ANDY HUTTON: We're not
12 making any claim for a portion of the fee in
13 this case or anything.

14 REPRESENTATIVE WILK: Okay.
15 We've heard some talk about it being a
16 products liability versus Medicaid
17 reimbursement case. Which is it?

18 MR. MARK HUTTON: Let me explain.

19 MR. ANDY HUTTON: I saw this in
20 the testimony.

21 MR. MARK HUTTON: Start with the
22 basics. This is a civil case, not a
23 criminal case. Okay. Then you go down the
24 ladder here. It's a civil case that's a
25 tort case, a tort as opposed to a contract

1 case, a tort case as opposed to a domestic
2 relations case. It's a tort case. Once you
3 have a tort case, is it a medical negligence
4 case, is it a slip and fall case or a
5 products liability case? This was a
6 products liability case involving a product,
7 a product that caused disease. I have read
8 comments this is not a products liability
9 case. This was a Medicaid reimbursement
10 subrogation case. Medicaid subrogation,
11 Medicaid reimbursement, those are the
12 damages. The products liability gets you
13 to.

14 REPRESENTATIVE WILK: We
15 established in your view it's a product
16 liability case.

17 MR. ANDY HUTTON: Yes.

18 MR. MARK HUTTON: It is.

19 MR. ANDY HUTTON: One of theories
20 of recovery is Medicaid reimbursement, but
21 there were other theories of recovery
22 sounding in products liability. This was a
23 dangerous and defective product.

24 REPRESENTATIVE WILK: Okay. Is
25 it not typical in a products liability case

1 if you take something to court, certainly
2 this big, why would the product remain on
3 the market today in basically the same form
4 today that it was before the case was
5 settled? I thought in a products liability
6 case, you used an example of the successful
7 case where you actually had the product
8 completely removed from the product -- from
9 the marketplace. I guess making the
10 distinction if this was a products liability
11 case, I would think cigarettes would be off
12 the market.

13 MR. MARK HUTTON: Unfortunately,
14 even when we are successful in other
15 products liability cases, it remains on the
16 market.

17 REPRESENTATIVE WILK: Doesn't it
18 get altered?

19 MR. MARK HUTTON: You hope.
20 Sometimes the warnings get better.

21 REPRESENTATIVE WILK: In my mind,
22 that's the reason why I thought this was
23 more about a medical reimbursement more than
24 products liability.

25 MR. MARK HUTTON: No. This is

1 products liability based upon many theories
2 of recovery, including Medicaid
3 reimbursement, and the Medicaid expenditures
4 was the element of damage which is how much
5 Medicaid money was attributed to smoking
6 health care related costs. That is a
7 computation that is done probably by SRS or
8 whoever is responsible for that.

9 MR. ANDY HUTTON: You're asking a
10 good question. In my letter dated April
11 10th, '96 to Ms. Stovall, I told her of
12 different statutory violations, different
13 causes of action that Kansas could have
14 proceeded against big tobacco.

15 REPRESENTATIVE WILK: My last
16 question, Madam Chair, on the joint defense,
17 as I recall, I don't recall the General
18 claiming the Liggett documents were
19 confidential and they opened them up. I
20 thought she said Entz and Chanay through
21 making the joint defense argument, making
22 that successful then caused other documents
23 to be accessible in other states. And I
24 believe that the national counsel, there's
25 some record that says that decision was

1 paramount in breaking the whole case loose.
2 I'd like to hear your opinion.

3 MR. ANDY HUTTON: The national
4 counsel is supporting a colleague, Entz and
5 Chanay. They are trying to help justify
6 this large fee for Entz and Chanay. These
7 documents were out there. We had them in
8 1997. The only issue --

9 REPRESENTATIVE WILK: I didn't
10 hear the argument those were sealed. I
11 heard they were used in part of the joint
12 defense strategy that made other documents
13 become available.

14 MR. MARK HUTTON: There wasn't a
15 relationship between that court's ruling and
16 additional documents becoming available.

17 MR. ANDY HUTTON: No, no.

18 MR. MARK HUTTON: They were out
19 in the public domain and whether they were
20 admissible in Kansas.

21 REPRESENTATIVE WILK: Thank you.

22 REPRESENTATIVE WAGLE: We have a
23 number of questions. I'm not sure what we
24 want to do. We have to give the room over
25 to the senators. If Mark and Andy and Jerry

1 would be here, would you want to adjourn
2 until noon and get back together after the
3 house adjourns? Do you have more
4 questions. I've got three people here. I'm
5 running out of time. Do you want to meet
6 again? Jenkins is quick.

7 REPRESENTATIVE SHARP: I'll ask
8 after we adjourn.

9 REPRESENTATIVE WAGLE: We'll be
10 quick. Representative Jenkins.

11 REPRESENTATIVE JENKINS: Thank
12 you. You indicated in a letter to the
13 General that you didn't want her to settle,
14 that we should take it to court.

15 MR. ANDY HUTTON: Yes.

16 REPRESENTATIVE JENKINS: You
17 indicated you have a lot of tobacco
18 experience. So I was just curious how much
19 money have you guys won going -- taking
20 tobacco cases to court.

21 MR. ANDY HUTTON: Well,
22 unfortunately, those are under confidential
23 orders that we can't disclose that amount.

24 REPRESENTATIVE JENKINS: How many
25 cases have you won?

1 MR. ANDY HUTTON: Won myself
2 through Castano?

3 REPRESENTATIVE JENKINS: Out of
4 all the tobacco history you've done, and it
5 would be two cases that you won?

6 MR. MARK HUTTON: Successfully
7 resolved.

8 REPRESENTATIVE JENKINS: How many
9 have gone to court and won?

10 MR. ANDY HUTTON: Zero.

11 MR. MARK HUTTON: In tobacco.

12 MR. ANDY HUTTON: Zero. We have
13 not had a case gone to trial yet. There's
14 been two successful out of court
15 settlements.

16 MR. MARK HUTTON: And we've been
17 told not to talk about those. I wish we
18 could tell you more, but they are
19 confidential.

20 REPRESENTATIVE WAGLE:
21 Representative Long.

22 REPRESENTATIVE LONG: Thank you.
23 I don't know if mine is a question or
24 statement. I notice you guys keep pretty
25 detailed documentation of everything you do.

1 Is that pretty typical?

2 MR. ANDY HUTTON: Yes. But, you
3 know, what also surprises me, is when I sent
4 a letter to Ms. Stovall and John Campbell, I
5 sent them a faxed copy and by regular mail.
6 They would have two copies of everything.
7 When I review the documents that Ms. Stovall
8 produced, she had maybe one-fourth of the
9 correspondence. She maintained she lost
10 them. I sent two copies of everything.

11 REPRESENTATIVE LONG: Do you feel
12 that is important or is that strategy for
13 shredding documents has a good purpose
14 because they said they didn't want it to
15 fall in the wrong hands or something.

16 MR. MARK HUTTON: I'm going to
17 answer that question. What she did or did
18 not do, we better not speculate.

19 MR. ANDY HUTTON: Yeah. Most
20 people --

21 MR. MARK HUTTON: Don't speculate
22 what happened here.

23 MR. ANDY HUTTON: Do most people
24 -- I mean most lawyers keep track of letters
25 sent from other lawyers.

1 REPRESENTATIVE LONG: In a case
2 as important as the tobacco case, you would
3 see that keeping track of all of the paper
4 would be pretty crucial.

5 MR. MARK HUTTON: That, it's
6 pretty routine. We could have a small car
7 wreck, and we keep track of everything
8 because we may be sued. A client may not be
9 happy with the result. They have the right
10 to review the file. Clients -- these are
11 client papers. We're obligated to keep
12 custody and control of them, but the clients
13 have the right to read our papers.

14 REPRESENTATIVE LONG: It sounds
15 like you're very busy, too. You handle a
16 lot of different cases. Do you have a lot
17 of staff in your office?

18 REPRESENTATIVE WAGLE: We have to
19 adjourn. We have to give the room to
20 somebody else. You're close friends of
21 Gerry Michaud?

22 MR. MARK HUTTON: Yes.

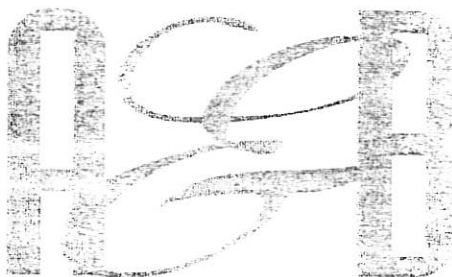
23 REPRESENTATIVE WAGLE: He lives
24 in my district. He holds fund-raisers
25 against me every other year. I imagine you

1 attend those for my opponent.

2 MR. ANDY HUTTON: Who is your
3 opponents?

4 REPRESENTATIVE WAGLE: I have had
5 a number of opponents over the years.

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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, RTR



COSTS: _____