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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 legislators 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 fronted
24 here and submit themselves to an oath, I
25 would appreciate that

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

6

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

11

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

16

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

23 MR. LEVY: I'd be pleased to.
24 Let me preface my remarks about who I am
25 because of headlines in the Topeka paper

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1 this morning. First of all, I don't even
2 know whether except for representative
3 Wagle, I don't know your political
4 affiliations. It has been years since I
5 have testified in the legislature. And I
6 was commenting this morning the faces up
7 here have changed, but the faces back here,
8 Mr. Hawver, et al., are the same. I could
9 pick out the media, but I couldn't pick out
10 the legislators. Also, I'd like to set the
11 record straight as far as I'm concerned, I'm

12 probably what's known as a Kennedy Democrat.
13 The first time I ever voted for a president
14 was in 1960 when I voted for John Fitzgerald
15 Kennedy. My politics as far as the abortion
16 issue are far left of where Representative
17 Wagle's is. I have no dog in that hunt.
18 I'm not here, because that isn't in any way
19 an issue. I'm a trial lawyer. I've been
20 practicing law almost 33 years solely in the
21 area of plaintiffs personal litigation. I
22 only represent plaintiffs entirely on a
23 contingency fee basis. I am not a
24 timekeeper of records. I'm a plaintiff's
25 lawyer. I've been president of the Trial
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1 Lawyers Association, president of the Kansas
2 Chapter of the American Board of Trial
3 Advocates. I'm a founding member of Trial
4 Lawyers for Public Justice which is
5 sometimes known around the United States as
6 the Nader law firm. I have handled numerous
7 products liability cases against big drug
8 companies, Eli Lilly, such as that. I
9 represented plaintiffs against General
10 Motors and Ford Motor Company and other huge
11 corporations in major litigation. I am
12 familiar with the law of products liability.
13 I have tried in excess of 150 jury trials in
14 those areas. Those are my credentials as
15 far as a trial lawyer is concerned and what
16 I have done in the field.

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

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1 and what they are to be based upon. We have
2 a system in effect in Kansas which allows
3 the judge of the case to determine what fees
4 are reasonable. So when I saw what the fees

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

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

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

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

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

19 Then the other thing that really got to
20 me was when I saw the ad in the journal of
21 the Kansas Bar Association in November of
22 1988 advertising for Kansas counsel to
23 accept the tobacco case. And of course, I
24 guess what was really strange, when I saw
25 the ad, the case had already been settled.
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1 And I knew that. As I said in my testimony,
2 I was playing golf with my banker the day
3 after that ad came out. I said, less, look
4 at this, if I applied for that job and I
5 came to you and said I need a letter of
6 credit or line of credit to finance those
7 cases, what would you do. He said I'd give
8 you a blank check. Of course, I later found
9 out Entz and Chanay didn't even have to come
10 up with a nickel as far as advancing
11 expenses. When I was asked to testify
12 today.

13 I called up three major plaintiffs
14 firms in Kansas. I just gave them the
15 scenario which I've set forth in my
16 testimony which is if you would have been

17 offered the job on the terms that Entz and
18 Chanay got, would you have taken the job.
19 And they all said unequivocally yes,
20 absolutely, which flies in the face I think
21 of the attorney general's comments that she
22 said she couldn't find a Kansas firm other
23 than her old law firm to take this case.
24 She didn't try. There are 10, 15, 20 really
25 great plaintiffs law firms in this state
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1 qualified to handle this case. Probably
2 none more than the ones she was dealing
3 with, Andy and Mark Hutton. And I think if
4 you look at their qualifications and what
5 they had already done in the tobacco
6 litigation, their expertise is unimpeachable
7 in the area.

8 I've also been asked to talk to you
9 about what local counsel is. Local counsel
10 can be one of two things. They can be an
11 involved local counsel or a passive local
12 counsel. I have a feeling that Entz and
13 Chanay were nothing but passive local
14 counsel, because I don't think they had the
15 expertise or competency or qualifications to
16 be anything other than. This is a case that
17 needed qualified, competent local counsel to
18 actively pursue the case. And Andy Hutton
19 and Mark Hutton are going to tell you why it
20 would have been beneficial to the State of
21 Kansas and how this state lost a lot of
22 money because they didn't have aggressive
23 local counsel. When I say a lot of money, a
24 lot of money. But generally local counsel
25 is somebody who is on board solely to handle
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1 minor matters generally on an hourly basis
2 because they have no risk. That's what
3 bothers me about this case, is that a law
4 firm is getting \$27,000,000, and they were
5 never at risk. Never at risk. Every case I
6 try, I invest my own money, and I am at
7 risk. And there have been cases when I have
8 put in excess of \$100,000 of my own money
9 because I feel that strongly about my

10 client's case. These folks had nothing to
11 risk. Finally, let me comment about
12 statements.

13 I have heard in which the law firm Entz
14 and Chanay said they didn't keep track of
15 their time, and when asked how many hours
16 they had in the case, they said they
17 couldn't say. Members of this committee,
18 that's preposterous. Any law firm such as
19 theirs, and they are a billable hour law
20 firm. They represent clients who pay them
21 by the hour. They keep track of their time.
22 Now, in this case they may not have kept
23 track of their time because they didn't have
24 to, but I can take every case I've got, and
25 if you say how many hours do you have in the
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1 case, I would say to you, I do not know, but
2 I can reconstruct my time and come to be
3 about 90 percent accurate in the time I have
4 in the case. It's very simple. I look at
5 the file. I have a pleading. I look at the
6 pleading. I can say that probably took an
7 hour to do. I have a letter in the file
8 that's a page long. That's a tenth or
9 two-tenths of an hour. Lawyers can
10 reconstruct their time very easily. Phone
11 logs are kept in the office. You know what
12 phone calls that pertain to every case. So
13 Entz and Chanay could come before you and
14 bring their records and reconstruct and tell
15 you how many hours they have in the case
16 that they say merited an attorney fee of
17 \$27,000,000. I have a feeling they are
18 getting paid about \$270,000 an hour. It's
19 just appalling to me. I think the State of
20 Kansas, citizens of the State of Kansas are
21 the ones who are on the short end of the
22 deal here. And I'm only here as an attorney
23 it bothers, not only that one of my brethren
24 is probably making a lot more money than
25 they deserve and that the State of Kansas is
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1 getting cheated. I'll answer any questions
2 you have.

3 REPRESENTATIVE WAGLE: Okay.
4 Representative Campbell.

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

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

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

17 MR. LEVY: Yes, sir.

18 REPRESENTATIVE CAMPBELL: So
19 you're saying they could reconstruct their
20 timely oh, yes.

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

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

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1 REPRESENTATIVE CAMPBELL: It's
2 not abnormal.

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

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

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

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

21 MR. LEVY: I've read their

22 contract.

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

25 REPRESENTATIVE CAMPBELL: Okay.

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

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

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

11 REPRESENTATIVE CAMPBELL: Thank
12 you.

13 REPRESENTATIVE WAGLE: Jerry, I
14 have copies of both the Hutton contract that

15 the attorney general was negotiating with
16 the Huttons. I have the final contract of
17 Entz and Chanay. In both of those contracts
18 when it discusses fee in the contract, it
19 says the fee shall be determined in
20 accordance with this MRPC 1.5.

21 MR. LEVY: Yes.

22 REPRESENTATIVE WAGLE: Could you
23 explain what that is to the committee.

24 MR. LEVY: Yes. MRPC standards
25 for Model Rules of Professional Conduct, I
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1 think. And the statute provides that if
2 anybody is -- wants to contest the fee, for
3 example, they can apply to the court who
4 tried the case or was in charge of the case.
5 I guess in Kansas that would be Judge
6 Jackson. You could say Judge Jackson, I
7 think this fee is not fair or whatever.
8 Then the lawyer has to show according to the
9 model rules how they qualify for the fee. I
10 think there are seven categories. One is
11 time spent. No. 2, is the case on a
12 contingency fee. It says a lawyer fee shall
13 be reasonable. That's why I am here. This
14 is not a reasonable fee. Time and labor
15 required. That's No. 1. No. 2, the
16 likelihood if apparent to the client that
17 the acceptance of the particular employment
18 will preclude other employment by the
19 lawyer. In other words, is this going to be
20 a case where you'll have to drop everything
21 else. No. 3, the fee customarily charged in
22 the locality for similar legal services.
23 The amount involved and the results
24 obtained. The time limitations imposed by
25 the client or the circumstances, nature and
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1 length of professional relationship with the
2 client. The experience, reputation, ability
3 of the lawyer or lawyers performing the
4 services. And last, whether the fee is
5 fixed or contingent. Those are the things a
6 court considers in determining whether or
7 not a fee is reasonable. That is MRPC 1.5.

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

13 MR. LEVY: Right.

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

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

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

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

7 MR. LEVY: Well --

8 REPRESENTATIVE VICKERY: If it's
9 constitutional.

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

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

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

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

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

22 MR. HAYWARD: I think it is.

23 REPRESENTATIVE WAGLE:
24 Representative Wilk.

25 REPRESENTATIVE WILK: I'll hold.
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1 REPRESENTATIVE WAGLE:

2 Representative Ray.

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

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

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

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

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

18 MR. LEVY: Sometimes. I usually
19 give the referring counsel that I refer the

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

25 REPRESENTATIVE RAY: If she would
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1 have paid them 10 percent -- offered them 10
2 percent, it would be a bigger fee yet.

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

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

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

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

21 REPRESENTATIVE KIRK: Kirk I
22 heard you say something to the effect that
23 the Kansas taxpayers were injured by this.
24 It's my understanding that the decision as
25 to how much these people were entitled to

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

13 you thought the taxpayers were injured by
14 this process.

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

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1 REPRESENTATIVE KIRK: I think it
2 has something to do with the Medicaid rates
3 you have.

4 MR. LEVY: It could be.

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

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

20 REPRESENTATIVE WAGLE:
21 Representative sharp.

22 REPRESENTATIVE SHARP: Thank you
23 Madam Chairman and that you for being here
24 today.

25 MR. LEVY: You're welcome.

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1 REPRESENTATIVE SHARP: Faces do
2 change. I was wondering, certainly we are
3 struggling with this as a legislative body
4 and committee members. And according to
5 your testimony, I think you feel very

6 strongly there has been at least ethical
7 violations. Do you have anyway as attorneys
8 within your own field and certainly experts
9 in this area to sensor your own.

10 MR. LEVY: Oh, yeah.

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

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

25 REPRESENTATIVE WAGLE: Mr. Levy,
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1 in order to determine whether or not there
2 has been an ethical violation, would it help
3 you if you were able to see the testimony
4 that was given before the arbitration board
5 where tobacco argued with Entz and Chanay
6 over the attorney fees. Would that help you
7 in your --

8 MR. LEVY: I think so.

9 REPRESENTATIVE WAGLE: It would.

10 MR. LEVY: Yes.

11 REPRESENTATIVE WAGLE: Thank you
12 for your testimony.

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

15 REPRESENTATIVE WAGLE: Who goes
16 first.

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

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

25 MR. ANDY HUTTON: First of all, I
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1 want to state I do not want to be here. I'm
2 getting ready for a trial in Wyoming. Mark
3 flew in from Boston. He had depositions for
4 five days in Boston. I've been reading the
5 newspapers. The public needs to know the
6 facts of what happened.

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

23 MR. ANDY HUTTON: I'll start,
24 because I had most of the contact with the
25 Stovall office. First of all, you asked me
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1 for our experience. Well, Mark and I are
2 twins. He graduated a semester earlier from
3 Washburn Law School. Basically, we've both
4 been practicing in Wichita since 1979 doing
5 nothing but complex, serious personal injury
6 litigation, mainly in medical and
7 pharmaceutical cases.

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

16 MR. ANDY HUTTON: Okay. And you
17 were asking about our experience and

18 qualifications. We have probably settled or
19 reached to a verdict over 100 cases that
20 resulted in a million dollar victory or
21 more. Some cases over \$10,000,000. Mark
22 won't talk about this. He was voted trial
23 lawyer of the year in 1989 by the trial
24 lawyers for public justice as being the top
25 trial lawyer in America.

0029

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

16 MR. ANDY HUTTON: Because of what
17 we do, we have always wanted to take on the
18 tobacco industry, because they cause 455,000
19 Americans each year to die of a preventable
20 death. 3,000 kids start smoking every day
21 of which half of those will die of a
22 cigarette related illness. Our grandmother
23 died from secondhand smoke. So, you know,
24 we made the commitment to get involved in
25 tobacco litigation in 1994 two years before
0030

1 the Stovall controversy. And how we got
2 involved was Mark was a member of the breast
3 implant plaintiffs steering committee. It
4 was a 15 member group that was put together
5 by a federal judge in Alabama to handle all
6 the discovery on breast implant cases. They
7 had just reached a 6 billion dollar
8 settlement. One of Mark's team, Wendell
9 Bouchea (spelled phonetically) from New
10 Orleans, we took on breast implant, let's

11 take on big tobacco. He assembled a team of
12 lawyers called the Castano lawyers in early
13 1994. And there was a news article in the
14 National Law Journal that talks about the
15 coalition. It says -- this was early on.
16 26 plaintiff's law firms including class,
17 and mass disaster specialists never before
18 in tobacco litigation but prominent in
19 breast implant asbestos cases joined
20 together suing the tobacco industry
21 regarding nicotine addiction. This joint
22 efforts marks the first time the industry
23 and may give the companies a run for their
24 money in court observers say. And then they
25 talk about the law firms who have joined
0031

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

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

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

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

0032

1 Mark and Andy Hutton are fine lawyers, but
2 we didn't have experience in tobacco
3 litigation except for one case. That is

4 absolutely not true. As a matter of fact,
5 when I wrote to her in my first letter, I
6 had told her that we had already settled the
7 Liggett litigation which gave rise to all
8 the hot documents.

9 REPRESENTATIVE WAGLE: Do you
10 have a copy of that letter.

11 MR. ANDY HUTTON: Yes. I'm kind
12 of jumping ahead. How I got involved in the
13 Stovall litigation, I was asked in January
14 of 1994 by -- I'm sorry, January of 1996.
15 You're correct, by Ron Motley who later
16 becomes the national counsel for Kansas to
17 come to New Orleans for a meeting among key
18 tobacco lawyers. We were conspiring against
19 the industry. Here is a copy of the letter
20 Ron Motley sent to me on January 5, '96
21 saying that we invite you to join this
22 tobacco litigation group involving key
23 lawyers presently involved in tobacco
24 litigation. So this was January of '96. I
25 went to New Orleans. And keeping in mind
0033

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

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

9 MR. ANDY HUTTON: Down there in
10 New Orleans, we had access to over 2,000,000
11 pages of documents and 1200 deposition.

12 REPRESENTATIVE WAGLE: Was that
13 from Liggett, the settlement of Liggett.

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

17 REPRESENTATIVE WAGLE: You had
18 access to documents.

19 MR. MARK HUTTON: Absolutely.

20 MR. ANDY HUTTON: I'll get to
21 Liggett later. Ron Motley invites me to New
22 Orleans on January 5 -- in January. So I

23 went and in that meeting, Michael Moore, the
24 active AG from Mississippi who filed the
25 first Medicaid reimbursement case gave a
0034

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

22 REPRESENTATIVE WAGLE: What year
23 was this?

24 MR. ANDY HUTTON: I'm sorry,
25 1996. This was two years after we were
0035

1 deeply involved in Castano litigation. And
2 we were handling several cases at that time.
3 But these were state class actions. It's
4 important to remember that when we talked to
5 Carla Stovall, Ness Motley, Ron Motley was
6 also a member of Castano. There is a
7 document I've got, not only was Ron Motley a
8 member of Castano, he was on the executive
9 committee in May of 1996. The reason I
10 bring that up, because Carla has mentioned
11 in testimony that she didn't want to hire us
12 because we were involved with Castano.
13 Later she hires Ron Motley. He's part of
14 Castano. Going back to this meeting with
15 Carla Stovall and John Campbell, they asked

16 us about some of our qualifications. We
17 told them. And during that interview, Mark
18 mentioned that he used to work for Stu Entz
19 when Mark was in law school as a law 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

0036

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

0037

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 on
6 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 creates
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
0038

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 up
13 \$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 felt
18 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
0039

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 I
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
0040

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 was
7 kind of troubled when he said this. Andy,
8 we've decided to hire other counsel in this
9 case. I said okay. He said we decided to
10 hire Dickie Skruggs and Ron Motley. I said
11 to myself, that's fine. Those guys are good
12 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
0041

1 do delicate cardiovascular surgery. I mean
2 I'm not offended she didn't hire us. There
3 are ten, 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.

0042

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 them 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
0043

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 exchanged 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 fall
19 the model rules of ethical procedure. And
20 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
0044

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 implanted litigation. I did some
9 work for a federal judge that empowered me
10 to do common work for a bunch of cases. I
11 had to keep track of my hours. I didn't
12 like it, but I did it. We are involved in
13 Castano. We keep track of hours. I knew if
14 there was ever a case to keep track of my
15 hours, it was going to be the Kansas case
16 because we had never represented a public
17 entity, and I knew there would be close
18 scrutiny, and there should be. So if there
19 ever was a situation where a lawyer would
20 keep track of their hours, it would be in
21 the 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
0045

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

0046

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

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

0047

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 sound
0048

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
0049

1 out of state counsel, that's Ness Motley and
2 Dickie Skruggs to advise you whether or not
3 to accept or reject the offer on behalf of
4 Kansas, because out of state counsel
5 represents so many states and because of the
6 enormous magnitude of the attorneys fees to
7 be realized by out of state counsel in the
8 representation of so many different states,
9 it obviously creates a conflict of interest
10 for out of state counsel to give you the
11 honest and independent legal advice. The

12 absence of any meaningful activity by out of
13 state counsel in the Kansas tobacco
14 litigation further evidences the conflict of
15 interest of the out of state counsel
16 representing so many different states.
17 Obviously, out of state counsel has devoted
18 its time and attention to the representation
19 of those states with significantly larger
20 populations than Kansas. Kansas deserves
21 better, and I believe opting out of the
22 settlement will be an act of courage on your
23 part and will put substantially more money
24 in the state coffers. Well, we sent the
25 letter to Ms. Stovall, and we never got a
0050

1 response. The funny thing, those states
2 that opted out and fought longer got a lot
3 more money. Yes, Kansas got 1.7 billion
4 dollars. That's a lot of money. But I'll
5 tell you a comparable state with comparable
6 state population is Mississippi.
7 Mississippi has a few00,000 more people.
8 Miss sip got 4.1 billion. Kansas got 1.7.
9 Why? The Mississippi case was pushed. It
10 was litigated. They had good Mississippi
11 counsel. That was not done in Kansas.

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

19 MR. ANDY HUTTON: And I have
20 brought other state examples like Texas has
21 -- Texas got 17 billion. Probably on a per
22 capita basis, maybe three to four times what
23 Kansas got because the Texas case was
24 litigated by good, tough Texas lawyers.
25 John O. Quinn (spelled phonetically) a
0051

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

5 case.

6 MR. MARK HUTTON: We're not
7 faulting the out of state counsel, they were
8 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
0052

1 tough lawyers. Any questions?

2 MR. MARK HUTTON: I think we
3 maybe said a 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 got
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
0053

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 gut
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: There's
25 was subject to the same ethical rules.

0054

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 MR P 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
0055

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 this
10 point in time, is there remedy if we were
11 strictly focusing on the fact, strictly
12 focusing on the fact you feel like the
13 existing law firm didn't earn the dollars
14 they are getting, is there remedy at this
15 point.

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

18 REPRESENTATIVE SHARP: Censoring.

19 REPRESENTATIVE CAMPBELL:
20 Censoring an 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
0056

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 great leap 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 and must have been Ms.
22 Stovall, that several Kansas law firms
23 turned down the case.

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

0057

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

0058

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 the
5 Kansas Public Radio. He was interviewing
6 her. She said in response, why did you hire
7 your old law firm. She said no Kansas
8 lawyer would take this case. Everyone
9 turned it down. I had to beg my old law
10 firm. I heard that, and I was just shocked.
11 How could she say that. She knew we wanted
12 the case, because we were deeply involved in
13 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
0059

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 them us a
23 call.

24 MR. MARK HUTTON: We get
25 criticized because we won't take someone's
0060

1 cases. Medical malpractice, we take one of
2 every 30. If we get criticized, it's
3 because we're not taking someone's case.

4 REPRESENTATIVE WAGLE: We have a
5 lot of questions. Representative ray.

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

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

23 MR. ANDY HUTTON: As a matter of
24 fact, when I got the phone call from John
25 Campbell, I wrote her a letter saying, this
0061

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

15 Unfortunately, the children seem to be the
16 primary targets of the smokeless tobacco
17 advertisements.

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

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

0062

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

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

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

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

23 MR. ANDY HUTTON: We support the
24 litigation. The fact AGs took on big
25 tobacco. We supported that litigation. The

0063

1 concept of the litigation, not her selection
2 of local counsel.

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

7 REPRESENTATIVE RAY: I have just

8 one more. Have you experienced over the
9 years other oral agreements that fell
10 through before you had a contract.

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

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

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

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

0064

1 MR. MARK HUTTON: When John
2 Campbell said we were the only game in town.

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

5 REPRESENTATIVE RAY: Thank you.

6 REPRESENTATIVE WAGLE:
7 Representative Aurand.

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

13 MR. ANDY HUTTON: Oh, yeah.
14 I'll.

15 MR. MARK HUTTON: We're not going
16 to submit that bill.

17 MR. ANDY HUTTON: No.

18 REPRESENTATIVE AURAND: I'm
19 looking out for the taxpayers.

20 MR. ANDY HUTTON: The time
21 records go from when I first wrote my letter
22 to Ms. Stovall until --

23 REPRESENTATIVE AURAND: A number
24 of things in July then.

25 MR. ANDY HUTTON: Oh, yes, yeah,

0065

1 July, yes.

2 REPRESENTATIVE AURAND: Have you
3 seen we had it I guess the craw dad memo
4 where the attorney general wrote.

5 MR. MARK HUTTON: I heard about
6 it.

7 MR. ANDY HUTTON: I heard about
8 it in the newspaper.

9 REPRESENTATIVE AURAND: It was
10 dated I believe the 26th of June of when
11 they had decided to crawdad out of the
12 agreement with you.

13 MR. MARK HUTTON: Yeah.

14 MR. ANDY HUTTON: Yeah.

15 REPRESENTATIVE AURAND: Is it
16 only me that strikes completely strange it
17 took five or six weeks -- are crawdads that
18 slow?

19 MR. ANDY HUTTON: I was kind --

20 MR. MARK HUTTON: That's a good
21 question.

22 MR. ANDY HUTTON: That was a good
23 point. I was surprised, too.

24 REPRESENTATIVE AURAND: June 28th
25 is what we have that happened. You were at
0066

1 least under the impression there is enough
2 of an agreement there you continued to work
3 in July.

4 MR. ANDY HUTTON: We had an oral
5 commitment. You'll see the time records.
6 Oh, yes. In.

7 REPRESENTATIVE AURAND: That's
8 the part that strikes me the oddest about
9 the failure to inform you.

10 MR. ANDY HUTTON: And then
11 speaking of time records.

12 REPRESENTATIVE AURAND: One quick
13 thing, did you ask John Campbell in that
14 conversation you had in August when the
15 decision had been made.

16 MR. ANDY HUTTON: No. I was
17 shocked. I was speechless. When he said
18 about Entz and Chanay. But speaking of time
19 records, Miss Stovall testified under oath

20 that Ness Motley had no mechanism by which
21 they could keep time records. That is just
22 not true. And here is an example. Mark was
23 a member of a 15-member steering committee
24 to handle all the Norplant litigation in
25 America along with Ness Motley. In doing
0067

1 that, the federal judge from Corpus Christi.

2 MR. MARK HUTTON: Beaumont.

3 MR. ANDY HUTTON: Beaumont,

4 Texas, required all PSC's to keep time
5 records. Here is the protocol with Ness
6 Motley and Hutton and Hutton by which they
7 had to keep time records in the Norplant
8 litigation. So for her to say Ness Motley
9 had no mechanism just doesn't make sense
10 when we've seen time records with that same
11 firm in other cases.

12 MR. MARK HUTTON: I'm sure they
13 don't like to keep them.

14 MR. ANDY HUTTON: When you have
15 to you have to.

16 MR. MARK HUTTON: When you have
17 to you have to if you want paid.

18 MR. ANDY HUTTON: Yeah.

19 REPRESENTATIVE WAGLE:

20 Representative Gregory.

21 REPRESENTATIVE GREGORY: Thank
22 you, Madam Chairman. You read the testimony
23 that the Attorney General Stovall gave here
24 the other day in how she phrased the deal
25 she made with Entz and Chanay, the verbal

0068

1 agreement that she originally called them up
2 and asked them if they wanted to accept. My
3 question is this. If you had been called in
4 that same mode and offered the same exact
5 deal, would you gentlemen have taken that.

6 MR. ANDY HUTTON: Yes.

7 MR. MARK HUTTON: Oh, sure.

8 MR. ANDY HUTTON: Oh, yeah. And
9 speaking of that, I saw the contract that
10 Entz and Chanay and Ness Motley and Dickie
11 Skruggs signed with the State of Kansas. It
12 said that local counsel, Stu Entz, did not

13 have to finance litigation. What is so
14 surprising is the KBA ad that she sent out
15 after the case had settled said and here's
16 the ad, notice to civil litigators. This
17 litigation is complex and may require large
18 expenditure of time and money. Expenses
19 will need to be advanced by counsel. Why
20 did she say this in an advertisement, yet
21 she had signed a contract with Entz and
22 Chanay that they did not have to finance
23 litigation.

24 MR. MARK HUTTON: That would
25 scare lawyers off.

0069

1 MR. ANDY HUTTON: This was done
2 to deter lawyers to apply for this job.
3 Here's copies.

4 REPRESENTATIVE WAGLE: We're
5 going to get copies of everything, right.

6 MR. ANDY HUTTON: Yes.

7 REPRESENTATIVE WAGLE:
8 Representative Vickery.

9 REPRESENTATIVE VICKERY: Were you
10 offered a contract that you could have
11 accepted.

12 MR. ANDY HUTTON: Yes. The
13 contract that we were going back and forth,
14 we would have signed it. We were just fine
15 tuning the details of it. That's the reason
16 we were still working on the Kansas case at
17 that time, because the contract they had
18 proposed did not deter us. We just wanted
19 to take any ambiguity out of the contract.

20 MR. MARK HUTTON: It was never
21 presented to us on a take it or leave it
22 basis. I keep saying this, but John said
23 you were the only game in town.

24 MR. ANDY HUTTON: We would have
25 worked on the same contract that was signed

0070

1 by Entz and Chanay.

2 REPRESENTATIVE VICKERY: I guess,
3 are you proponents of this bill.

4 MR. MARK HUTTON: This is where
5 you may get a different answer. I don't

6 know what to say.

7 MR. ANDY HUTTON: From what I
8 hear of the bill, I'm for it.

9 REPRESENTATIVE WAGLE: Do you
10 feel Entz and Chanay received a windfall
11 profit at \$27,000,000.

12 MR. ANDY HUTTON: Yes, yes.

13 MR. MARK HUTTON: Absolutely.

14 REPRESENTATIVE VICKERY: You
15 mentioned Mississippi. I understood they
16 were one of the first four states to enter
17 into the lawsuit.

18 MR. MARK HUTTON: Yes.

19 MR. ANDY HUTTON: Yes.

20 REPRESENTATIVE VICKERY: Would
21 that be maybe a reason that they received so
22 much more than we did.

23 MR. MARK HUTTON: That was one
24 factor. Kansas was one of the early states.
25 There was multiple factors. One factor when

0071

1 in the time line did you enter the
2 litigation. More importantly how far the
3 case was advanced, how far the case was
4 pushed. Did you advance the litigation
5 ball. Were your actions responsible for
6 bringing tobacco to the negotiating table.
7 And these Liggett documents that she 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 agreement.

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.

0072

1 REPRESENTATIVE WAGLE: When Judge
2 Jackson said -- when he ruled on the joint
3 defense did that make the national case come
4 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.

0073

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
0074

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:
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?

0075

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.

0076

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
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.

0077

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

0078

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 have more hair.

14 REPRESENTATIVE WILK: I won't
15 speak to that. I don't have. You mentioned
16 John Campbell called you on August 8th.

17 MR. ANDY HUTTON: Yes.

18 REPRESENTATIVE WILK: Your letter
19 is dated August 7th.

20 MR. ANDY HUTTON: I misspoke. I
21 said that before I looked -- yes.

22 REPRESENTATIVE WILK: He called

23 you on August 7th.

24 MR. ANDY HUTTON: Yes.

25 REPRESENTATIVE WILK: You stated

0079

1 you started working in April and through
2 August on the case. I'm a little confused
3 in regard to the work you've done because
4 you've done work for the Castillo case?

5 MR. ANDY HUTTON: Castano.

6 REPRESENTATIVE WILK: Were you
7 working for the state or working for Castano
8 or kind of one and the same.

9 MR. ANDY HUTTON: Very good
10 question. They were detailed separated time
11 sheets. These are -- this is the time
12 records only for the Kansas AG.

13 REPRESENTATIVE WILK: I'm not
14 interested in the time sheets. I'm
15 interested in the legal work.

16 MR. ANDY HUTTON: Yes. At the
17 same time I was doing some legal work on
18 behalf of the Castano cases and doing this
19 investigation on behalf of Kansas.

20 MR. MARK HUTTON: You have to
21 understand by doing one, it benefits the
22 other.

23 REPRESENTATIVE WILK: You can see
24 where I'm going. The work -- it's not like
25 you were working from April to August

0080

1 thinking you had a contract with the state
2 and it was just totally wasted. You had
3 some other things going on and exactly.
4 I was working on other tobacco litigation.
5 These time records only reflect the work on
6 the Kansas AG anticipated litigation.

7 MR. MARK HUTTON: We made no
8 claim, make sure ---

9 MR. ANDY HUTTON: We're not
10 making any claim for a portion of the fee in
11 this case or anything.

12 REPRESENTATIVE WILK: Okay.
13 We've heard some talk about it being a
14 product liability versus Medicaid
15 reimbursement case. Which is it?

16 MR. MARK HUTTON: Let me explain.

17 MR. ANDY HUTTON: I saw this in

18 the testimony Mark start with the basics.

19 This is a civil case, not a criminal case.

20 Okay. Then you go down the ladder here.

21 It's a civil case that's a tort case. A

22 tort as opposed to a contract case. A tort

23 case as opposed to a domestic relations

24 case. It's a tort case. Once you have a

25 tort case, is it a medical negligence case,

0081

1 is it a slip and fall case or a products

2 liability case. This was a products

3 liability case involving a product, a

4 product that caused disease. I have read

5 comments this is not a products liability

6 case. This was a Medicaid reimbursement

7 subrogation case. Medicaid subrogation,

8 Medicaid reimbursement, those are the

9 damages. The products liability gets you

10 to.

11 REPRESENTATIVE WILK: We

12 established in your view it's a product

13 liability case.

14 MR. ANDY HUTTON: Yes.

15 MR. MARK HUTTON: It is.

16 MR. ANDY HUTTON: One of theories

17 of recovery is Medicaid reimbursement, but

18 there were other theories of recovery

19 sounding in products liability. This was a

20 dangerous and defective product.

21 REPRESENTATIVE WILK: Okay. Is

22 it not typical in a products liability case

23 if you take something to court, certainly

24 this big, why would the product remain on

25 the market today in basically the same form

0082

1 today that it was before the case was

2 settled. I thought in a products liability

3 case, you used an example of the successful

4 case where you actually had the product

5 completely removed from the product -- from

6 the marketplace. I guess making the

7 distinction if this was a products liability

8 case, I would think cigarettes would be off

9 the market.

10 MR. MARK HUTTON: Unfortunately,
11 even when we are successful in other
12 products liability cases it remains on the
13 market.

14 REPRESENTATIVE WILK: Doesn't it
15 get altered?

16 MR. MARK HUTTON: You hope.
17 Sometimes the warnings get better.

18 REPRESENTATIVE WILK: In my mind,
19 that's the reason why I thought this was
20 more about a medical reimbursement more than
21 products liability.

22 MR. MARK HUTTON: No. This is
23 products liability based upon many theories
24 of recovery, including Medicaid
25 reimbursement and the Medicaid expenditures
0083

1 was the element of damage which is how much
2 medicate money was attributed to smoking
3 health care related costs. That is a
4 computation that is done probably by SRS or
5 whoever is responsible for that.

6 MR. ANDY HUTTON: You're asking a
7 good question. In my letter dated April
8 10th, '96 to Ms. Stovall, I told her of
9 different statutory violations, different
10 causes of action that Kansas could have
11 proceeded against big tobacco.

12 REPRESENTATIVE WILK: My last
13 question, Madam Chair, on the joint defense
14 as I recall, I don't recall the General
15 claiming the Liggett documents were
16 confidential and they opened them up. I
17 thought she said Entz and Chanay through
18 making the joint defense argument, making
19 that successful then caused other documents
20 to be accessible in other states. And I
21 believe that the national counsel, there's
22 some record that says that decision was
23 paramount in breaking the whole case loose.
24 I'd like to hear your opinion.

25 MR. ANDY HUTTON: The national
0084

1 counsel is supporting a colleague, Entz and

2 Chanay. They are trying to help justify
3 this large fee for Entz and Chanay. These
4 documents were out there. We had them in
5 1997. The only issue --

6 REPRESENTATIVE WILK: I didn't
7 hear the argument those were sealed. I
8 heard they were used in part of the joint
9 defense strategy that made other documents
10 become available Mark there wasn't a
11 relationship between that court's ruling and
12 additional documents becoming available.

13 MR. ANDY HUTTON: No, no.

14 MR. MARK HUTTON: They were out
15 in the public domain and whether they were
16 admissible in Kansas.

17 REPRESENTATIVE WILK: Thank you.

18 REPRESENTATIVE WAGLE: We have a
19 number of questions. I'm not sure what we
20 want to do. We have to give the room over
21 to the senators. If Mark and Andy and Jerry
22 would be here, would you want to adjourn
23 until noon and get back together after the
24 house adjourns? Do you have more
25 questions. I've got three people here. I'm
0085

1 running out of time. Do you want to meet
2 again? Jenkins is quick.

3 REPRESENTATIVE SHARP: I'll ask
4 after we adjourn.

5 REPRESENTATIVE WAGLE: We'll be
6 quick. Representative Jenkins.

7 REPRESENTATIVE JENKINS: Thank
8 you. You indicated in a letter to the
9 General that you didn't want her to settle,
10 that we should take it to court.

11 MR. ANDY HUTTON: Yes.

12 REPRESENTATIVE JENKINS: You
13 indicated you have a lot of tobacco
14 experience. So I was just curious how much
15 money have you guys one going -- taking
16 tobacco cases to court.

17 MR. ANDY HUTTON: Well,
18 unfortunately, those are under confidential
19 orders that we can't disclose that amount.

20 REPRESENTATIVE JENKINS: How many

21 cases have you one.

22 MR. ANDY HUTTON: One myself
23 through Castano.

24 REPRESENTATIVE JENKINS: Out of
25 all the tobacco history you've done and it
0086

1 would be two cases.

2 REPRESENTATIVE JENKINS: That you
3 won.

4 MR. MARK HUTTON: Successfully
5 resolved.

6 REPRESENTATIVE JENKINS: How many
7 have gone to court and won?

8 MR. ANDY HUTTON: Zero.

9 MR. MARK HUTTON: In tobacco.

10 MR. ANDY HUTTON: Zero. We have
11 not had a case gone to trial yet. There's
12 been two successful out of court
13 settlements.

14 MR. MARK HUTTON: And we've been
15 told and told not to talk about those. I
16 wish we could tell you more, but they are
17 confidential.

18 REPRESENTATIVE WAGLE:
19 Representative Long.

20 REPRESENTATIVE LONG: Thank you.
21 I don't know if my is a question or
22 statement. I notice you guys keep pretty
23 detailed documentation of everything you do.
24 Is that pretty typical.

25 MR. ANDY HUTTON: Yes. But, you
0087

1 know, what also surprises me, is when I sent
2 a letter to Ms. Stovall and John Campbell, I
3 sent them a faxed copy and by regular mail.
4 They would have two copies of everything.
5 When I review the documents that Ms. Stovall
6 produced. She had maybe one-fourth of the
7 correspondence. She maintained she lost
8 them. I sent two copies of everything.

9 REPRESENTATIVE LONG: Do you feel
10 that is important or is that strategy for
11 shredding documents has a good purpose
12 because they said they didn't want it to
13 fall in the wrong hands or something.

14 MR. MARK HUTTON: I'm going to
15 answer that question. What she did or did
16 not do or, we better not speculate.

17 MR. ANDY HUTTON: Yeah. Most
18 people.

19 MR. MARK HUTTON: Don't speculate
20 what happened here and do most people --
21 I mean most lawyers keep track of letters
22 sent from other lawyers.

23 REPRESENTATIVE LONG: In a case
24 as important as the tobacco case, you would
25 see that keeping track of all of the paper
0088

1 would be pretty crucial.

2 MR. MARK HUTTON: That, it's
3 pretty routine. We could have a small car
4 wreck and we keep track of everything
5 because we may be sued. A client may not be
6 happy with the result. They have the right
7 to review the file. Clients -- these are
8 client papers. We're obligated to keep
9 custody and control of them, but the clients
10 have the right to read our papers.

11 REPRESENTATIVE LONG: It sounds
12 like you're very busy, too. You handle a
13 lot of different cases. Do you have a lot
14 of staff in your office.

15 REPRESENTATIVE WAGLE: We have to
16 adjourn we have to give the room to somebody
17 else. You're close friends of Jerry
18 Michaud.

19 MR. MARK HUTTON: Yes.

20 REPRESENTATIVE WAGLE: He lives
21 in my district. He holds fund-raisers
22 against me every other year. I imagine you
23 attend those for my opponent.

24 MR. ANDY HUTTON: Who is your
25 opponents.

0089

1 REPRESENTATIVE WAGLE: I have had
2 a number of opponents over the years.

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