



**JOHN CARMICHAEL**  
STATE REPRESENTATIVE

January 27, 2020

Hon. Fred Patton  
Chair, Kansas House Judiciary Committee  
Kansas State Capitol  
Topeka, Kansas 66612

Re: *Opponent Testimony, HB 2461 The Litigation "Coordination" Act*

Dear Chairman Patton:

I am here today to offer testimony in opposition to HB 2461.

We have all heard the wise admonition, "**Those who do not learn history are doomed to repeat it.**" Keeping that wise injunction in mind, I attach press clippings from my hometown newspaper, *The Wichita Eagle*, from February 2000 and an additional article of the same vintage from the *Topeka Capital Journal*.

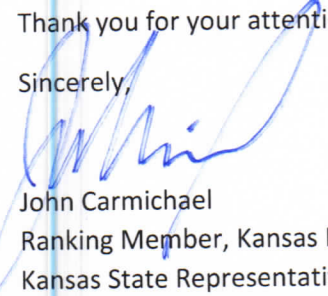
These newspaper clippings remind us why Kansas retains to counties, municipalities, and school boards the right to retain counsel to represent them, without interference by the attorney general. The attached articles recount the sorry circumstance where then attorney general, Carla Stovall, discontinued negotiations with a qualified law firm with the legal skill and resources to properly represent the state in tobacco litigation. Instead, Attorney General Stovall retained her former law firm, led by now Chief Deputy Attorney General for the Civil Division Jeff Chaney, to represent the state. As a result, the state of Kansas left perhaps a billion dollars or more on the table because, according to the press reports at the time, instead of hiring competent counsel to represent the state the Attorney General hired friends, campaign contributors, and political cronies for the job.

As to why our current Attorney General fails to remember the past and now seeks the sole discretion to hire his friends to represent cities, counties and school districts in major cases on a contingent fee basis, I can only speculate.

Kansas House of Representatives  
State Capitol, Room 451-S  
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[john.carmichael@house.ks.gov](mailto:john.carmichael@house.ks.gov)

Thank you for your attention to this valuable lesson from Kansas history.

Sincerely,



John Carmichael  
Ranking Member, Kansas House Judiciary Committee  
Kansas State Representative, District 92

enclosure:

JC/

The Wichita Eagle

## AG changed the deal and the firms

■ In shopping for lawyers to represent Kansas in the Big Tobacco lawsuit, Carla Stovall says changes on the national scene influenced her choice of law firms.

BY SCOTT ROTHSCHILD  
Eagle Topeka Bureau

TOPEKA — Two months before contracting with her former law

firm, Entz & Chanay, to represent Kansas in the tobacco lawsuit, Attorney General Carla Stovall had approved a draft contract with Wichita law firm Hutton & Hutton. Critics of Stovall's firing of Entz & Chanay say the differences in the two agreements are striking.

Under the June 5, 1996, draft with Hutton & Hutton, Stovall wanted the firm to advance the costs of the lawsuit and keep a log of how many hours its lawyers worked. Under the contract Stovall signed

Aug. 1, 1996, with her former firm, Entz & Chanay did not have to advance the costs of the lawsuit nor keep track of how many hours its lawyers worked. Entz & Chanay has been awarded \$27 million for its work in the



Stovall



Wagle

national lawsuit against major cigarette makers. "Is that not a sweetheart deal?" asked Rep. Susan Wagle, R-Wichita, who is conducting hearings on Stovall's hiring of Entz & Chanay. Stovall, appearing before Wagle's

"I was tired of messing around with them," she told the committee. She said Hutton & Hutton wanted to be the lead counsel in the case. "They didn't want to be second dog to Dick Scruggs," she said.

In a telephone interview from his Wichita office, Andrew Hutton called Stovall's assertions "absolutely false." He said his law firm was willing to work with other firms in the case, and in the role of second counsel.

The draft contracts with Hutton & Hutton said there would be other law firms in the case chosen by the attorney general. "There was absolutely no dispute regarding the division of labor with other law firms," Hutton said. He also said Stovall's statement that his firm wanted a guaranteed percentage of any award while Entz & Chanay did not was a ridiculous excuse.

### Searching for a law firm

In spring 1996, Stovall's office was negotiating with Hutton & Hutton to represent Kansas in the tobacco lawsuit because, she said, it was the only law firm willing to advance expenses in the case.

But in June, Richard Scruggs of Pascagoula, Miss., one of the national lawyers in the case, agreed to front the expenses, she said.

Then, Stovall said, she dropped Hutton & Hutton and went with her former law firm, Entz and Chanay. She said she did not allow Hutton & Hutton to make a counteroffer.

hours but focused on getting the job done, putting their heart and soul into the case," he said. Rice, of the Ness, Motley law firm in Charleston, S.C., also praised Entz & Chanay for legal work in winning a lower court decision that would have divulged communications between the cigarette companies.

"Kansas is the only jurisdiction in the tobacco case that ruled that they (cigarette makers) did not have the joint defense privilege," Rice said. "Stu (Entz) and those people down there did come to us. They did carry that ball 100 percent."

### Fight over records

Meanwhile, Stovall and Wagle argued Tuesday over records that Wagle said she was trying to get from Stovall under the Kansas Open Records Act. Many of the documents

House Taxation Committee, said changes on the national scene in the tobacco litigation allowed her to make a different deal in August 1996 than she could have made in June. She denied she gave special treatment to friends.

And, she said, Entz & Chanay provided the best terms for Kansas. But that statement and others made by Stovall over the past two days have become subject to some dispute.

given to committee members by Wagle came from Hutton & Hutton.

But Stovall has told Wagle that she has provided everything Wagle has asked for, although some documents continue to be found in the attorney general's office.

Rep. Tony Powell, R-Wichita, who is pushing for a bill to tax 50 percent of the \$27 million award to Entz & Chanay, said it was unbelievable that Stovall has so few records on the negotiations between the state and law firms in this case.

"This is the biggest lawsuit in the history of this state, and she (Stovall) doesn't keep records. Come on," said Powell, a lawyer. "She didn't want to keep records."

Wagle asked Stovall to turn over her notes from her testimony to an arbitration panel that awarded Entz & Chanay the \$27 million. Stovall said she would, but that she would not appear again before the committee,

# The Wichita Eagle

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Editorial Page Editor

## OUR VIEW

# Ugly

## Stovall's story on tobacco lawsuit still keeps changing

**T**o many Kansans, the whoop-de-do over Attorney General Carla Stovall and the tobacco settlement has become a long-running media/political circus.

There's plenty of truth to that, though it's a circus with a serious side involving no-bid contracts and a state official who seemed oblivious to how her actions might appear to the public.

Last week, the main tent showcased "hearings" about Ms. Stovall's selection of her former law firm, Entz & Chanay, to represent Kansas in the Big Suit against Big Tobacco, a selection that rewarded the Topeka firm with \$27 million in legal fees.

Ms. Stovall appeared before the House Taxation Committee, chaired by Rep. Susan Wagle of Wichita, a fellow Republican but fierce critic of the attorney general.

One high — or low — point came Tuesday, when Ms. Stovall, insulted and angry about the hearings and having been placed under oath, delivered documents about the case.

Ms. Wagle asked if that was all the documents.

Ms. Stovall said yes.

Whereupon Ms. Wagle held up a "missing document" — a contract draft to give the case to the Wichita firm of Hutton & Hutton dated June 5, 1996, two months before Ms. Stovall made the deal with her former firm. It was a classic gotcha scene.

Three points here:

■ Yes, a lot of this is nasty political "theater," as Gov. Bill Graves suggested Thursday. Conservative Republicans such as Ms. Wagle and Rep. Tony Powell, both of

last week.

■ While lawmakers are correct to question Ms. Stovall and examine the case's documentation, talk of trying to impeach her is clearly going too far.

■ Ms. Stovall has brought most of this misery on herself.

From the beginning, since she, by her own words, decided to "crawdad" out of the deal with Hutton & Hutton and give it to Entz & Chanay, Ms. Stovall has frequently changed

her story. Although it's difficult to keep track of the various twists and turns, Ms. Stovall has said:

■ That no other law firm in Kansas was interested in the case. (Obviously not true.)

■ That Entz & Chanay was the most qualified firm to take the case. (Probably not true.)

Hutton & Hutton is generally considered the leading products-liability

firm in the state.)

■ That Entz & Chanay offered the best deal for Kansas. (Hutton & Hutton strongly disputes that; Andrew Hutton suggested last week that Entz & Chanay suggested last work the suit and that, as a result, Kansas taxpayers "probably lost a billion dollars because of the selection".)

■ That Hutton & Hutton had a conflict of interest. (This is questionable, considering that the same conflict existed in other states.)

■ And finally last week came several new explanations, most offensive of which to taxpayers was that she hired her old law firm in part because they were fellow Republicans.

One good thing could — actually should — happen.

If this ugly mess doesn't convince lawmakers that competitive bidding should be

**From the beginning, since she, by her own words, decided to "crawdad" out of the deal with Hutton & Hutton and give it to her former employer, Entz & Chanay, Carla Stovall has frequently changed her story.**

# Stovall critics considering sanctions

Wichita  
Eagle  
2/17/00

■ Republican lawmakers are unhappy about how the attorney general has handled the hiring of her former employer and the fee paid to them for work on the lawsuit against the tobacco industry.

BY SCOTT ROTHSCHILD  
Eagle Topeka bureau

TOPEKA — Critics of Attorney General Carla Stovall are considering whether to attempt to sanction her.

But what form an official punishment would take — some lawmakers have privately discussed trying to impeach Stovall — remains to be seen.

Reps. Susan Wagle and Tony Powell, both Republicans from Wichita, are unhappy with Stovall's hiring of her former firm to represent Kansas in the tobacco lawsuit.

They say Stovall has misled lawmakers, thrown away key records and changed her story about hiring the law firm of Entz & Chanay.

"She was doing a favor for (her) political supporters," Powell said.

Stovall has denied any wrongdoing in hiring Entz & Chanay and said they did a great job for Kansas.

"She (Stovall) is telling the truth, the whole truth, and nothing but the truth," said Mary Tritsch, a spokeswoman for Stovall.

As local counsel in Kansas' lawsuit against the tobacco industry, Entz & Chanay was awarded \$27 million, possibly the largest lawyer's fees in state history.

During three days of hearings on the issue before the House Taxation Committee, Wagle has taken the unusual move of swearing in those who have testified, including Stovall.

House Judiciary Chairman Mike O'Neal, R-Hutchinson, also a lawyer, has reviewed Stovall's testimony and advised Wagle.

O'Neal, a harsh critic of Stovall, said he was simply doing Wagle a favor as the "statehouse attorney." But, he added, much of Stovall's testimony concerned him.



Stovall



Wagle

## Key events in tobacco litigation

■ **Early spring 1996** — Attorney General Carla Stovall's office talks with several law firms, including Hutton & Hutton of Wichita, about representing Kansas in a lawsuit against tobacco companies.

■ **April to June** — Discussions continue with Hutton & Hutton and draft contracts are considered.

■ **May** — Stovall announces Kansas will enter the lawsuit.

■ **June 28** — Stovall sends an e-mail to Deputy Attorney General John Campbell that says her former law firm, Entz & Chanay, will be the local counsel in the lawsuit. She tells Campbell to "crowdad out" of agreement with Hutton & Hutton.

■ **Aug. 1** — A contract is signed with Entz & Chanay and two national law firms.

■ **Aug. 7** — Deputy Attorney General Campbell notifies Hutton & Hutton that Entz & Chanay was selected.

■ **Aug. 20** — Stovall holds news conference announcing filing of lawsuit.

■ **October 1997** — A state audit of Stovall's office focuses on expenditures made in water rights litigation but also touches on the selection of Entz & Chanay in the tobacco lawsuit. The audit concludes that Stovall did not break any conflict of interest laws, but also noted that the attorney general's office had no formal procedures for awarding contracts to outside counsel.

■ **Nov. 23, 1998** — Stovall, along with attorneys general from 45 other states, signs \$206 billion settlement with tobacco companies. Kansas will receive about \$1.6 billion over 25 years.

■ **Jan. 31, 2000** — An arbitration panel awards \$54 million to lawyers who represented Kansas. Entz & Chanay will get \$27 million and the balance will go to out-of-state firms.

## STOVALL

From Page 9A

Wagle said any action she may try to take against Stovall depends on what the committee wants to do after today's testimony when attorneys from Hutton & Hutton of Wichita are scheduled to testify.

"I want to see what the committee says after they've heard from both sides," Wagle said.

Andrew and Mark Hutton have said previously that Stovall had hired them to join the lawsuit in 1996, but then she dumped them in favor of Entz & Chanay, her former employers.

In a June 28, 1996, e-mail, Stovall told her senior deputy assistant, John Campbell, that she was giving the contract to Entz & Chanay and that her office had to "crowdad out" of a deal with Hutton & Hutton.

Wagle said what has irked her the most is that Stovall has either dragged her feet or not complied with Wagle's requests for records under the Kansas Open Records Act.

"I feel like there are documents we have not received that are essential to determine whether the attorney fees should be taxed," Wagle said. A bill by Powell before her committee would tax the fees received by Entz & Chanay by 50 percent.

"We should not be hiding documents from the public view," she said. Many documents on contract negotiations between the attorney general's office and Hutton & Hutton have been provided by Hutton & Hutton. Stovall has said her office probably threw out its copies.

And Wagle said that what Stovall said to an arbitration panel that awarded Entz & Chanay the \$27 million is critical in determining whether Stovall acted properly.

Wagle has asked Stovall for her notes from her phoned-in testimony to the arbitration panel and a transcript of the hearing.

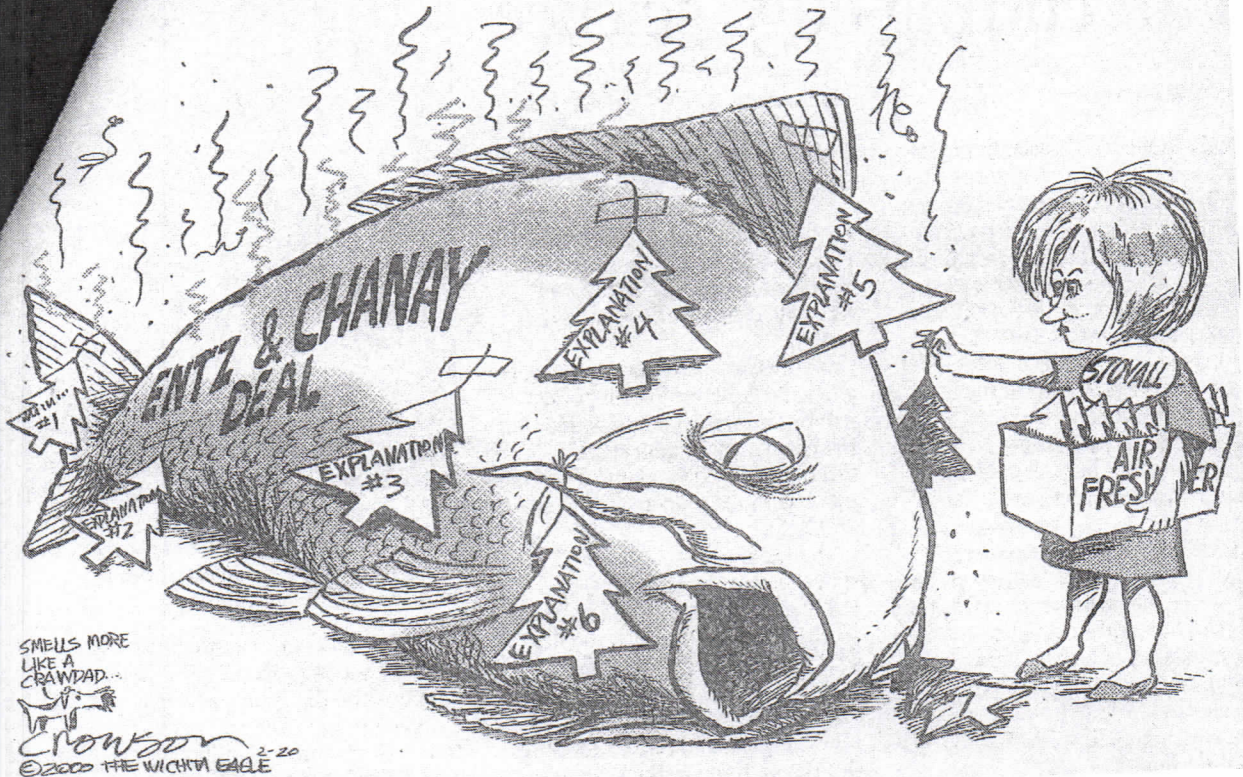
Stovall has said she told the arbitration panel about the Kansas case, that Entz & Chanay did a good job and were instrumental in winning a lower court judicial ruling against the tobacco companies.

Meanwhile, Powell's proposal to tax Entz & Chanay's award by 50 percent got a rough hearing from some lawmakers who said it would prompt a lawsuit and hurt Kansas if the state wanted to participate in any future national lawsuits.

Powell said he may back off the bill and just seek to have the amount of fees awarded to Entz & Chanay reviewed by a state judicial officer to determine if they are reasonable.

Please see **STOVALL**, Page 11A

CROWSON'S VIEW

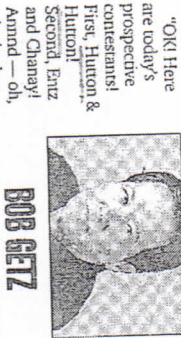


# Welcome to Carla Stovall's 'Who Wants to be a Multimillionaire?'

WICHTH 89916 1/28/00 WICHTH 89916 1/28/00

**W**ello, hello, everybody!  
Welcome to the thrilling maybe  
even chilling new game show  
that has the whole state talking

—'Who Wants to be a Multimillionaire?'  
—'I am your hostess, Carla Stovall, and, oh,  
are we going to have some fun today!  
'For those of you who are watching our  
show for the first time, this is how it works:  
'First, we choose a contestant. The selec-  
tion will be based on — well, I don't think I  
need to bother going into that. Just let me say  
to those whiners and pointers who don't get  
picked, hey, get over it! Hahahaha! Aren't I the  
funny one? Please, Kansans, feel free to laugh  
appreciatively!  
'Anyway, after we choose our lucky con-  
testant, they then have the opportunity to win  
the jackpot of as much as \$200 million, pro-  
vided by our seriously court-squeezed spon-  
sor, the tobacco industry!



**BOB GETZ**

"OK! Here  
are today's  
prospective  
contestants!  
First, Hutton &  
Hutton!  
Second, Enz  
and Chanay!  
Annnd — oh,  
why bother  
looking any  
further. Time  
for me to make my pick. Why, it's Enz and  
Chanay! Welcome, Enz and Chanay!  
'Thank you, Carla. This was very sweet of  
you."  
'Hey! What are game show hosts for, I  
always say! Now tell us a little about yourself,  
Enz and Chanay."  
'Well, we're a law firm located here in  
Topeka.

"How nice. Anything else?"  
'Well, Carla, you used to work for us in the  
early '90s, until you moved on to your pres-  
tigious, powerful position as hostess of 'Who  
Wants to be a Multimillionaire?'"  
'Do tell! What a condescendence!"  
'Yes. And we, of course, donated some  
\$4,000 to your efforts to get this job. And  
remember? You used our offices as your  
headquarters."  
'My goodness gracious! And now, here you  
are on my show! Small world, isn't it? But  
enough chat-chat! Let's play! Ready?"  
'Ready."  
'OK, first question! For 50 cents! Which of  
the following is a color of U.S. currency —  
Fahrenheit, (a) Tin, (b) 32 degrees  
(d) Green.  
'Uhh — d', green."  
'Is that your final answer?"

"Hmmm. Yes!"  
'And you're right! Next question! For \$1 mil-  
lion! Ready? What is more delightful than  
making a ton of money for an ounce of work?  
(a) Getting punned by a mob of outaged  
taxpayers, (b) Getting pestered by a bunch of  
crazy legislators, (c) Getting a person's face  
pastered on a post office. Wanted! poster for  
suspicion of pulling off one of a state's greatest  
rip-offs, (d) Absolutely nothing."  
'Carla, that would be 'd' again. Absolutely  
nothing!"  
'Wow! Are you on a roll! And now, our  
final question for roughly \$200 million! What  
city is the capital of Kansas? (a) Topeka, (b)  
Maul, (c) Kuala Lumpur, (d) Derby."  
'Well, Carla, although geography was  
never my strongest subject, and although  
many more years than I care to confess have  
gone by since I studied state capitals in  
school, I am fairly confident I know that one.

It is 'd' — Topeka."  
'Woooooo! Wow! Congratulations, Enz and  
Chanay! You're right! And you are now a  
multimillionaire! How do you feel?"  
'Gosh, Carla. Hahbergasted! Ecstatic! Very  
grateful. And frankly, getting \$200 million  
from the tobacco people for the little we did  
here almost seems unfair. Like we don't  
deserve a fraction of that, especially when  
there are so many needy agencies in Kansas.  
Not that, of course, we'll turn down a penny  
of the booty, hahaha!"  
'Hey, don't sweat it! This is how the game  
is played!"  
'Golly! How can we ever repay you for  
picking us, Carla?"  
'Shhh! Not here. Now now. Hey, just kid-  
ding, folks. Just kidding. Hahahaha!"  
**Bob Getz can be reached at 268-6594 or  
bgetz@wichtlaeagle.com.**

# The Wichita Eagle

Established 1872  
Incorporating The Wichita Beacon

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President & Publisher

**Richard W. Thames**  
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**Randy Brown**  
Editorial Page Editor

## OUR VIEW

# Meddle

### Legislators should reduce big payoff for tobacco legal work

**K**ansas Attorney General Carla Stovall still deserves praise for shepherding Kansas into the multistate lawsuit against the tobacco industry, which could bring \$1.6 billion to the state over 25 years for children's programs and other purposes.

But, as Wichita lawmakers Susan Wagle and Tony Powell are rightly arguing in the Legislature, under no circumstances does Ms. Stovall's former law firm, Entz and Chanay of Topeka, deserve to bank a secret multimillion-dollar fee for its minimal work on a case that turned on the research and filings of national counsel.

To those who would counter that a contract is a contract, and that Entz and Chanay is entitled to whatever spoils its state contract allows, we say: Not in the current budget environment, and not with the ethical cloud persisting over this contract.

As the conservative Mr. Powell persuasively has suggested — admittedly as part of a pattern of criticism of the moderate Republican attorney general — Ms. Stovall's actions on the case have the appearance of a political payoff to former colleagues. Entz and Chanay has made more than \$4,000 in campaign contributions to Ms. Stovall, and its office doubled as her campaign headquarters in 1994.

It's a shame that the matter has had to

land in the Legislature, with Ms. Wagle and Mr. Powell vowing to launch an investigation and to pass legislation that would tax Entz and Chanay's windfall by 50 percent and similarly cut into legal fees in other kinds of state suits.

But Ms. Stovall brought on this legislative scrutiny and meddling herself. She offered

contradictory explanations of her actions on the Entz and Chanay contract, variously saying she chose the firm without a bidding process because:

- No other qualified Kansas firm wanted the suit in August 1996.

- Of the two other firms that wanted the case, including the nationally known products-liability firm of Hutton and Hutton in Wichita, one had a conflict of interest and the other demanded unacceptable terms.

- Entz and Chanay had experience with Medicaid cases (but none with product liability, critics say).

- The firm was located in Topeka and its attorneys were familiar with local judges.

Which was it? Or was it all of the above? The Legislature is right to find out, as well as to try to slice into the unreasonable fee — variously reported to be \$25 million to \$200 million — that Entz and Chanay will pocket. If the matter is left up to Ms. Stovall, Kansans will be left to wonder.

**Under no circumstances does Carla Stovall's former law firm deserve to bank a secret multimillion-dollar fee for its minimal work on the tobacco lawsuit.**

— For the board, Rhonda Holman



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Last modified at 12:18 a.m. on Friday, February 18, 2000

## Wichita firm: Snub cost \$1 billion

By JIM McLEAN  
The Capital-Journal



A pair of Wichita trial lawyers said Thursday that Kansas' settlement in the tobacco lawsuit would have been at least \$1 billion more if they had been hired to represent the state.

Andrew and Mark Hutton, partners in the firm of Hutton & Hutton, were the latest witnesses to offer sworn testimony to a Kansas

House committee investigating Attorney General Carla Stovall's 1996 decision to hire her former law firm -- Entz & Chanay of Topeka -- to help two out-of-state firms with the case.

Wichita lawyers Andrew Hutton, left, and Mark Hutton testified before the House Taxation Committee on Thursday. The pair said they were led to believe their firm would represent the state in litigation against the tobacco companies.

*Chris Ochsner/The Capital-Journal*

Kansas' legal team won a settlement of nearly \$1.8 billion, but Andrew Hutton said his firm, which specializes in large product liability cases, could have done better.

"We can say with confidence that the taxpayers lost \$1 billion because Carla Stovall selected Entz & Chanay," Andrew Hutton told members of the House Taxation Committee.

Standing at his twin brother's side, Mark Hutton said the two national firms Stovall hired were experienced in tobacco litigation and worked hard. But he said the Topeka firm didn't have the experience to press the case in Kansas.