

NLWJC - Kagan

DPC - Box 043 - Folder 004

Tobacco-Settlement - Attorney Fees

Attorneys Fees Relating to Tobacco Settlements

All attorneys fees have been negotiated outside of the amounts settled by the states. Therefore, the attorneys fees already agreed to in MN, TX, FL, MS as well as any future fee awards will not directly affect state settlement amounts. However, the settlements cap industry annual payments at \$500 million annually, which means lawyers awarded fees in the future may have to wait for payments or have their settlement amortized over a number of years.

Minnesota: When Minnesota settled in May, 1998 the State had a contingency agreement with the law firm of Robins, Kaplan, Miller & Ciresi L.L.P for 25 percent of the settlement agreement. However, as part of the state settlement, the law firm released the State from the contingency contract and entered into a separate agreement with the tobacco industry for the payment of costs and attorneys fees. This was done so to separate the state settlement amount from the attorneys fees. The eventual consequence was that the legal team negotiated fees that were approximately 7 percent of the entire state settlement.

Texas, Florida, and Mississippi: On December 11, the Tobacco Fee Arbitration panel awarded \$8.2 billion in fees to attorneys representing Texas, Florida and Mississippi. The three-person panel awarded Florida's attorneys \$3.43 billion; Texas lawyers \$3.3 billion; and \$1.43 billion to Mississippi's attorneys. The tobacco industry will pay the legal fees in addition to the \$206 billion they agreed to pay in the November, 1998 settlement with 46 states. The awards will be paid out over 25 years, and the unpaid balance of the fees will be adjusted each year for inflation. However, because the state settlement agreements for the three states included provisions requiring legal fees be capped at a level eventually reached by a national settlement, the industry will pay out no more than \$500 million in legal fees annually, which also includes yet-undetermined fees in the 46 other states. The three states were effectively "forced" into arbitration after the states refused to honor contingency agreements made between the firms and the Attorney General's offices. In Florida, the state argued that the attorney general did not have the authority to enter into such a contract. In percentage terms, the awards exceeded what the Florida, Texas and Mississippi attorneys likely could have claimed under their state agreements.

46 State Settlement: Since the majority of states "piggy-backed" their claims on the basis of Florida, Texas, and Mississippi's work, their claims are expected to be smaller and adjudicated quickly. The November omnibus state settlement spells out a two-tier system intended to effectuate quick settlement:

- 1. Liquidated Fees --** Attorneys representing states could apply for reimbursement on a liquidated basis if they are able to settle with the industry. So far eight states (WA, VT, NV, MT, AL, AZ, OR, ID) have settled directly with industry for \$220 million to be paid out over a short period. With an overall limit of \$1.25 billion, liquidated fees are the likely course to be taken by the majority of the remaining states. Liquidated fees will allow the states to settle quickly and avoid the annual limits for arbitration awards. Still, there is a \$250 million annual cap on liquidated fees and they will only be paid through 2003.

2. Arbitration -- For states unable to agree with industry on a liquidated amount, arbitration is available. The three-person panel will be similar to the structure that decided the Texas, Florida, and Mississippi cases. The members of the arbitration panel will consist of a neutral party (agreed to by industry and attorneys), an industry representative, and a representative of the respective state. Arbitration decisions will probably be based of the same criteria used in the recent cases -- a flat 10 percent of what the state was awarded in the agreement, plus a "risk" or "difficulty" factor. However, because the remaining states provided little support, their "risk" multiplier will be extremely low.

Tobacco - attorneys fees



Cynthia A. Rice

06/16/98 03:15:41 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: Gorton amendment on Tobacco Lawyers Fees

The Senate just adopted the Gorton amendment on lawyers fees, 49-48, with two Senators voting "present."

Under the amendment, attorneys fees would not exceed:

\$4000 per hour for actions filed before 12/31/94

\$2000 per hour for actions filed between 12/31/94 and 4/1/97

\$1000 per hour for actions filed between 4/1/97 and 6/15/98

\$500 for actions filed after 6/15/98

The amendment sets the maximum fee per hour; the actual amount could be less, and would be set by the courts based on a set of a dozen criteria including novelty of legal issues, results obtained, expenses incurred, etc.

Our position on Gorton was the same as our position on all attorneys fees amendments:

Q. What is your position on the Gorton amendment on attorneys fees?

A. The President's overriding priority is ensuring that tobacco legislation promotes the public health. He does not view the issue of legal fees as central to this effort, and he has not made a specific proposal on how the legislation should handle legal fees. In general, he believes that the lawyers who brought the tobacco suits should be fairly compensated, but that they should not be paid out of proportion to the work they actually did and the risks they actually undertook.

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Tobacco -
attorneys fees



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Message Sent To: _____

AS MODIFIED

1

AMENDMENT NO. _____

Calendar No. _____

Purpose: To limit attorneys' fees.

IN THE SENATE OF THE UNITED STATES—105th Cong., 2d Sess.

S. 1415

To reform and restructure
distributed, to prevent t
of tobacco use, and for

AMENDMENT N^o 2705

marketed, and
health effects

By Gorton

R

Bill/Res. No. to Amend No. 2437

4 Page(s)

AMENDMENT intended

GPO: 1996 25-691 (mac)

_____) proposed

by _____

VIZ: At the end of the pending Amendment, add the following:

~~On page 427, strike lines 3 through 16.~~

~~On page 438, beginning with line 15, strike through line 4 on page 442, and insert the following:~~

SEC. ~~1415~~. LIMIT ON ATTORNEYS' FEES.

(a) FEES COVERED BY THIS SECTION.—Notwithstanding any other provision of law, or any arrangement, agreement, or contract regarding attorneys' fees, attorneys' fees for--

- (1) representation of a State, political subdivision of a state, or any other entity listed in subsection (a) of Section 1407 of this Act;
- (2) representation of a plaintiff or plaintiff class in the Castano Civil Actions described in subsection (9) of Section 701 of this Act;
- (3) representation of a plaintiff or plaintiff class in any "tobacco claim," as that term is defined in subsection (7) of Section 701 of this Act, that is settled or otherwise finally resolved after June 15, 1998;
- (4) efforts expended that in whole or in part resulted in or created a model for

programs in this Act,
shall be determined by this Section.

(b) ATTORNEYS' FEES.

(1) JURISDICTION.—Upon petition ~~by the attorney whose fees are covered by~~ *by any interested party* subsection (a), the attorneys' fees shall be determined by the last court in which the action was pending.

(2) CRITERIA.—In determining an attorney fee awarded for fees subject to this section, the court shall consider—

(A) The likelihood at the commencement of the representation that the claimant attorney would secure a favorable judgment or substantial settlement;

(B) The amount of time and labor that the claimant attorney reasonably believed at the commencement of the representation that he was likely to expend on the claim;

(C) The amount of productive time and labor that the claimant attorney actually invested in the representation as determined through an examination of contemporaneous or reconstructed time records;

(D) The obligations undertaken by the claimant attorney at the commencement of the representation including--

(i) whether the claimant attorney was obligated to proceed with the representation through its conclusion or was permitted to withdraw from the representation; and

(ii) whether the claimant attorney assumed an unconditional commitment for expenses incurred pursuant to the representation;

(E) The expenses actually incurred by the claimant attorney pursuant to the representation, including--

- (i) whether those expenses were reimbursable; and
- (ii) the likelihood on each occasion that expenses were advanced that the claimant attorney would secure a favorable judgment or settlement;

(F) The novelty of the legal issues before the claimant attorney and whether the legal work was innovative or modeled after the work of others or prior work of the claimant attorney;

(G) The skill required for the proper performance of the legal services rendered;

(H) The results obtained and whether those results were or are appreciably better than the results obtained by other lawyers representing comparable clients or similar claims;

(I) The reduced degree of risk borne by the claimant attorney in the representation and the increased likelihood that the claimant attorney would secure a favorable judgment or a substantial settlement based on the progression of relevant developments from the 1994 Williams document disclosures through the settlement negotiations and the eventual federal legislative process;

(J) Whether this Act or related changes in State laws increase the likelihood of the attorney's success;

(K) The fees paid to claimant attorneys that would be subject to this section but for the provisions of subsection (3);

(L) Such other factors as justice may require.

(3) EFFECTIVE DATE.—Notwithstanding any other provision of law, this section shall not apply to attorneys' fees actually remitted and received by an attorney before June 15, 1998.

(4) LIMITATION.—Notwithstanding any other provision of law, separate from the reimbursement of actual out-of-pocket expenses as approved by the court in such

action, any attorneys' fees shall not exceed a per hour rate of --

(A) \$4000 for actions filed before December 31, 1994;

(B) \$2000 for actions filed on or after December 31, 1994, but before April 1, 1997, or for efforts expended as described in subsection (a)(4) of this section which efforts are not covered by any other category in subsection (a);

(C) \$1000 for actions filed on or after April 1, 1997, but before June 15, 1998;

(D) \$500 for actions filed after June 15, 1998.

(c) SEVERABILITY.—If any provision of this section or the application of such provision to any person or circumstance is held to be unconstitutional, the remainder of this section and the application of the provisions of such to any person or circumstance shall not be affected thereby.

VERSION 1: SIMPLE MCCAIN MARKUP; NO HOURLY CAP

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

SEC. 707. ATTORNEY'S FEES AND EXPENSES.

(a) ARBITRATION PANEL.--

(1) ESTABLISHMENT.--For the purpose of awarding of attorneys' fees and expenses relating to litigation affected by, or legal services that, in whole or in part, resulted in ~~or created a model for programs in~~, this Act, and with respect to which litigation or services the attorney involved is unable to agree with the plaintiff who employed that attorney with respect to any dispute that may arise between them regarding the fee agreement, the matter at issue shall be submitted to arbitration.

In any such arbitration, the arbitration panel shall consist of 3 persons, one of whom shall be chosen by the plaintiff, one of whom shall be chosen by the attorney, and one of whom shall be chosen jointly by those 2 arbitrators.

(2) OPERATION.--Not later than 30 days after the date on which all members of an arbitration panel are appointed under paragraph (1), the panel shall establish the procedures under which the panel will operate which shall include--

(A) a requirement that any finding by the arbitration panel must be in writing and supported by written reasons;

(B) procedures for the exchanging of exhibits and witness lists by the various claimants for awards;

(C) to the maximum extent practicable, requirements that proceedings before the panel be based on affidavits rather than live testimony; and

(D) a requirement that all claims be submitted to an arbitration panel not later than 3 months after the date of this Act and a determination made by the panel with respect to such claims not later than 7 months after such date of

enactment.

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

(4) CRITERIA.--In making any award under this section, an arbitration panel shall consider the following criteria:

- ~~(A) The time and labor required by the claimant.~~
- ~~(B) The novelty and difficulty of the questions involved in the action for which the claimant is making a claim.~~
- (A) The risk taken by the claimant and the novelty and difficulty of the questions involved in the action.
- ~~(C) (B) The skill requisite to perform the legal service involved properly.~~
- ~~(D) (C) The preclusion of other employment by the attorney due to acceptance of the action involved.~~
- ~~(E) (D) Whether the fee is fixed or a percentage.~~
- ~~(F) (E) Time limitations imposed by the client or the circumstances.~~
- ~~(G) (F) The amount involved and the results obtained.~~
- ~~(H) (G) The experience, reputation, and ability of the attorneys involved.~~
- ~~(I) (H) The undesirability of the action.~~
- ~~(J) (I) Such other factors as justice may require.~~

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

(6) LIABILITY ONLY FOR PARTICIPATING MANUFACTURERS--Manufacturers who elect to assume various burdens in exchange for liability protection shall be responsible for the payment of all attorneys' fees and expenses under this section. In no circumstance whatsoever should the federal government be liable for the payment of any attorneys' fees or expenses, and there shall be no remedy against the government for payment of damages on any claim related to this act.

~~(b) VALIDITY AND ENFORCEABILITY OF PRIVATE AGREEMENTS.--Notwithstanding any other provision of this Act, nothing in this section shall be construed to abrogate or restrict in any way the rights of any parties to mediate, negotiate, or settle any fee or expense disputes or issues to which this section applies, or to enter into private agreements with respect to the allocation or division of fees among the attorneys party to any such agreement.~~

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

(c) OFFSET FOR AMOUNTS ALREADY PAID.--In making a determination under this section with regard to a dispute between a State that pursued independent civil action against tobacco product manufacturers and its attorney, the arbitration panel shall take into account any amounts already paid by the State under the agreement in dispute.

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

VERSION 2: MCCAIN MARKUP, WITH HOURLY CAP

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

SEC. 707. ATTORNEY'S FEES AND EXPENSES.

(a) ARBITRATION PANEL.--

(1) ESTABLISHMENT.--For the purpose of awarding of attorneys' fees and expenses relating to litigation affected by, or legal services that, in whole or in part, resulted in ~~or created a model for programs in~~, this Act, and with respect to which litigation or services the attorney involved is unable to agree with the plaintiff who employed that attorney with respect to any dispute that may arise between them regarding the fee agreement, the matter at issue shall be submitted to arbitration.

In any such arbitration, the arbitration panel shall consist of 3 persons, one of whom shall be chosen by the plaintiff, one of whom shall be chosen by the attorney, and one of whom shall be chosen jointly by those 2 arbitrators.

(2) OPERATION.--Not later than 30 days after the date on which all members of an arbitration panel are appointed under paragraph (1), the panel shall establish the procedures under which the panel will operate which shall include--

(A) a requirement that any finding by the arbitration panel must be in writing and supported by written reasons;

(B) procedures for the exchanging of exhibits and witness lists by the various claimants for awards;

(C) to the maximum extent practicable, requirements that proceedings before the panel be based on affidavits rather than live testimony; and

(D) a requirement that all claims be submitted to an arbitration panel not later than 3 months after the date of this Act and a determination made by the panel with respect to such claims not later than 7 months after such date of

enactment.

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

(4) GENERAL LIMITATION.--Notwithstanding any other provision of law, any attorneys' fees paid under this section shall generally not exceed \$250 per hour, excluding any reimbursement of actual out-of-pocket expenses as approved by the arbitration panel.

~~(4) CRITERIA.--In making any award under this section, an arbitration panel shall consider the following criteria:~~

~~(A) The time and labor required by the claimant.~~

~~(B) The novelty and difficulty of the questions involved in the action for which the claimant is making a claim.~~

(5) CRITERIA.--In making any award pursuant to this section, the Arbitration Panel shall consider the following criteria in determining whether to award the general maximum fee of \$250 per hour or a lesser per-hour fee, or whether the circumstances are sufficiently unusual, when compared to petitions brought by other claimants, so that a departure from that amount for a higher fee award is justified:

(A) The risk taken by the claimant and the novelty and difficulty of the questions involved in the action.

~~(B)~~ (B) The skill requisite to perform the legal service involved properly.

~~(C)~~ (C) The preclusion of other employment by the attorney due to acceptance of the action involved.

~~(D)~~ (D) Whether the fee is fixed or a percentage.

~~(E)~~ (E) Time limitations imposed by the client or the circumstances.

~~(F)~~ (F) The amount involved and the results obtained.

~~(G)~~ (G) The experience, reputation, and ability of the attorneys involved.

~~(H)~~ (H) The undesirability of the action.

~~(I)~~ (I) Such other factors as justice may require.

~~(6)~~ (6) APPEAL AND ENFORCEMENT.--The findings of an arbitration panel shall be final, binding, nonappealable, and payable within 30 days after the date on which the finding is made public, except that if an award is to be paid in installments, the first installment shall be payable within such 30 day period and succeeding installments shall be paid annually thereafter.

~~(7) LIABILITY ONLY FOR PARTICIPATING MANUFACTURERS--
Manufacturers who elect to assume various burdens in exchange for liability~~

~~protection shall be responsible for the payment of all attorneys' fees and expenses under this section. In no circumstance whatsoever should the federal government be liable for the payment of any attorneys' fees or expenses, and there shall be no remedy against the government for payment of damages on any claim related to this act.~~

~~(b) VALIDITY AND ENFORCEABILITY OF PRIVATE AGREEMENTS.-- Notwithstanding any other provision of this Act, nothing in this section shall be construed to abrogate or restrict in any way the rights of any parties to mediate, negotiate, or settle any fee or expense disputes or issues to which this section applies, or to enter into private agreements with respect to the allocation or division of fees among the attorneys party to any such agreement.~~

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

~~(c) OFFSET FOR AMOUNTS ALREADY PAID.--In making a determination under this section with regard to a dispute between a State that pursued independent civil action against tobacco product manufacturers and its attorney, the arbitration panel shall take into account any amounts already paid by the State under the agreement in dispute.~~

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

VERSION 3: DOJ's WORKING GROUP POLICY PROPOSAL

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

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

(b) **GENERAL LIMITATION.**--Notwithstanding any other provision of law, any attorneys' fees paid in connection with the settlement of an action maintained by a State against 1 or more tobacco companies to recover tobacco-related Medicaid expenditures or for other causes of action involved in the tobacco settlement agreement, shall generally not exceed \$250 per hour, excluding any reimbursement of actual out-of-pocket expenses as approved by the arbitration panel established in section (c).

(c) **ARBITRATION PANEL.**--

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

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

(2) **OPERATION.**--

(A) ESTABLISHMENT.--The members of the Arbitration Panel shall be appointed not later than 30 days after the effective date of this Act.

(B) PROCEDURES.--Not later than 30 days after the date on which all members of the Arbitration Panel are appointed under paragraph (1), the Panel shall establish the procedures under which the Panel will operate which shall include--

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

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

(4) CRITERIA.--In making any award pursuant to this section, the Arbitration Panel shall consider the following criteria in determining whether to award the general maximum fee of \$250 per hour or a lesser per-hour fee, or whether the circumstances are sufficiently unusual, when compared to petitions brought by other claimants, so that a departure from that amount for a higher fee award is justified:

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

(5) APPEAL AND ENFORCEMENT.--The findings of the Arbitration Panel

shall be final, binding, nonappealable, and payable within 30 days after the date on which the finding is made public, except that if an award is to be paid in installments, the first installment shall be payable within such 30 day period and succeeding installments shall be paid annually thereafter.

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

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

Attorneys' Fee Language Based on Lodestar Method

Notwithstanding any other provision of law, any attorneys' fees paid in connection with the settlement of an action maintained by a State against 1 or more tobacco companies to recover tobacco-related Medicaid expenditures or for other causes of action involved in the tobacco settlement agreement, shall be a reasonable fee.

Explanation:

Statutes containing a fee shifting provision generally only have the language above. Case law has developed a method for determining what a "reasonable fee" is. This method is called the lodestar method. A reasonable fee is determined by multiplying a reasonable hourly rate by the number of hours reasonably expended on the lawsuit.

Reasonable hourly rate- The reasonable hourly rate is the charge for legal services that prevails in the market for the relevant community. It will depend on a number of factors, including the attorney's level of skill, reputation in the community, experience in practice, and expertise in the subject matter; and the undesirability of the case.

Number of hours reasonably expended on the lawsuit- Generally, the hours reasonably required to handle a matter will vary according to the novelty of the legal theories, the difficulty of the legal and factual issues, the complexity of the case, and the nature of the opposition.

ATTORNEYS' FEES--HOURLY CAP PROPOSAL

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

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

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

(c) **ARBITRATION PANEL.**--

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

(A) the manufacturers;

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

(2) OPERATION.--

(A) ESTABLISHMENT.--The members of the Arbitration Panel shall be appointed not later than 30 days after the effective date of this Act.

(B) PROCEDURES.--Not later than 30 days after the date on which all members of the Arbitration Panel are appointed under paragraph (1), the Panel shall establish the procedures under which the Panel will operate which shall include--

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

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

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

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

attorneys involved.

(G) The undesirability of the action.

(H) Such other factors as justice may require.

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

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

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

Arb. can be used w/ other options -

can use ceilings (90% or #) / guidelines

should be some component that is ARIS

cap = anything you could politically

all will be too low.

cost

Attachment to the Statement of Joe Rice

Tob-set -
attorneys fees

TOBACCO FEE CONTRACTS BY STATE		
STATE	DATE COMPLAINT FILED	STATE FEE CONTRACTS
Mississippi	05/23/94	To be awarded by Court
Minnesota	08/17/94	25% plus cost
West Virginia	09/20/94	To be awarded by the Court
Florida	02/21/95	25% plus costs
Massachusetts	12/19/95	25%
Louisiana	03/13/96	No contingency fee contract. Counsel can pursue fees allowed by law-obtained from limited fund, if set up by Fed. Leg.
Texas	03/28/96	15% of total (state and federal)
Maryland	05/01/96	25% recovery
Washington State	06/05/96	15% of first \$100 million; 3% over \$100 million
Connecticut	07/18/96	25% contingency
San Francisco County	08/05/96	Unknown
Los Angeles County	08/05/96	25% upon settlement/verdict; 10% resolved by legislation before 5/1/97; 25% if later
Kansas	08/20/96	Not to exceed 25% per Kansas Statute 226
Michigan	08/21/96	8 factors/Lodestar
Oklahoma	08/22/96	15% of recovery
New Jersey	09/10/96	25% after costs
Utah	09/30/96	25%
Alabama	10/17/96	25% pretrial recovery; *
New York City	10/17/96	See attachment A
Arizona	08/20/96	18% plus expenses
Illinois	11/12/96	10% recovery
Iowa (Special Counsel)	11/27/96	To be determined by the Court
Eric County	01/14/97	See attachment B (4% if settled)
New York State	01/27/97	See attachment B (4% if settled)
Hawaii	01/31/97	20% recovery

TOBACCO FEE CONTRACTS BY STATE

STATE	DATE COMPLAINT FILED	STATE FEE CONTRACTS
Wisconsin	02/05/97	10% w/in 180 days of litigation; 15% from 180 to 360 days; 20% if settlement or judgment
Indiana	02/19/97	13.5% of first \$30 million net recovery; 10% of any remaining net recovery
Alaska	04/14/97	10% of judgment/settlement within 365 days; 12% after 365th day but before trial; 15% trial
Pennsylvania	04/22/97	The lesser of \$25 million on the 1st \$150 million of recovery; \$50 million on the 1st \$300 million of recovery or contingency fee if settled w/in one year
Montana	05/05/97	w/in 1st 90 days-hourly rate or flat \$100,000; after 90 days but w/in 365 days 10% of net recovery; 12% after 1st year; 15% after trial; 10% before 5/5/98 then 12%
Arkansas	05/05/97	Unknown
Ohio	05/08/97	Sliding scale: 4/28/97-8/1/97 the greater amount of \$150,000 or \$95 per hours; after 8/1/97 10% contingency fee; from 4/28/97 until 12/31/97 and if AG settles on or before 8/1/97 the greater of \$1 million or \$200 per hour
Missouri	05/10/97	No private counsel
South Carolina	05/12/97	25% gross recovery
Nevada	05/21/97	w/in 90 days-hourly rate or flat \$100,000; 10% after 90 days; 12% after 365 days before trial; 15% after trial begins
New Mexico	05/27/97	To be determined by the Court
Vermont	05/29/97	Flat fee of \$100,000 (w/in 180 days); 10% during first year; 12% after 180 days, but before trial; 15% after trial begins
New Hampshire	06/04/97	No private counsel
Colorado	06/05/97	No private counsel
Idaho	6/5/97	Sliding scale: (1) global resolution or judgment 80 days; \$100,000-\$250,000 if between 1st 90 and 180 days; *

Oregon	06/09/97	Fees prescribed by federal legislation, or contingency fee after expenses on sliding scale: 25% of 1st \$20 million; 20% of 2nd \$20 million; 15% of 3rd \$20 million; 10% over \$60 million up to \$100 million; 3% over \$100 million (in no event more than \$25 million if resolution occurs on or before 3/5/99, or \$50 million after 3/5/99.
California	06/12/97	No private counsel
Puerto Rico	06/16/97	25% except if settled within 180 days, then 10%; after 180 days and up to pre-trial conference, 15%; 20% up in trial; then 25% plus costs
Maine	06/18/97	Hourly with cap of 13% of recovery
Rhode Island	06/18/97	Contract Under Negotiation
Georgia	08/29/97	No private counsel

* Fees vary depending on what stage litigation is completed.

3-20 Attys Fees

Anti-wipeout or anti-windfall?

↳ serious takey's probs
drafted to try to avoid -
may mean some Ks not covered.

hourly approach as given in arb process
better than Goage

① Findings

- Ⓐ not just result of attys
- ↳ attys did do something
- payment by ind - like June 20
- fed gov not liable

\$250 per hr excluding costs

as a benchmark = see Sec 4 criteria
risk + unrelty

012

not wedded to this figure
(same as in current law
for future medicaid cases)

gives arb some
guidance

but...
maybe
not to have
a #

lodestar idea - from civ rts law

what lawyers generally get

Section 6 - not apply if
vested K vt -
no fed. liab

didn't do Goage - bec unclear
Goage of what - and #s
get big fast
+ not such trad model
for shakita

- o **Clinton Tours Revitalized South Bronx.** President Clinton was in the Charlotte Gardens neighborhood in New York's South Bronx this morning, saying the area has been revitalized through a local public-private partnership. Clinton told residents: "Look at where the Bronx was when President Carter came here in despair. Look at where the Bronx was when President Reagan came here and compared it to London in the Blitz. And look at the Bronx today. If you can do it, everybody else can do it. And we are determined to see that it be done."
- o **Albright Calls For New Government In Sudan.** Secretary of State Madeleine Albright's trip to Africa continued today as she met in Uganda with President Yoweri Museveni, and later with Sudanese rebel leader John Garang. After her talks with the Ugandan president, Albright told reporters, "Our two countries, as well as others, are deeply concerned with the situation in the Sudan. I will be meeting with the leaders of Sudan's National Democratic Alliance. Its members not only oppose the (governing) National Islamic Front, but are also trying to lay the groundwork for a new Sudan in which people of all faiths and cultures can focus on rebuilding their country." Albright also announced a package of \$2 million in additional non-lethal military aide for Uganda.
- o **Hearing To Consider Limiting Lawyer Fees In Tobacco Deal.** As the House prepares for its third hearing this week on the proposed tobacco settlement, GOP Rep. Scott McInnis plans to call for a limit on the fees to be collected by lawyers involved in the deal. Although several versions of settlement legislation have been proposed in the Senate, House lawmakers have delayed drafts until after hearings, which have long been planned to take place during the current recess. Aides have said that House members are using the hearings to determine their role in the settlement, which requires congressional approval.

An aide said McInnis has proposed a limit of \$150 per hour, plus reasonable expenses, for lawyers involved in the tobacco cases. Under McInnis' bill, lawyers would also be required to fully disclose billing records to Congress. The aide said that combining McInnis' language with an overall settlement bill is "something the various chairmen of the committees [with jurisdiction over tobacco] will look at," adding: "The leadership and the chairmen are supportive, although, clearly the attorneys are mad as hell at us."

In addition to McInnis, several attorneys are scheduled to testify in today's hearing of the Judiciary subcommittee on courts and intellectual property. Mississippi Attorney General Mike Moore, whose state is involved in a settlement of its tobacco case, is also expected to testify.

A lawyer for the advocacy organization Public Citizen is expected to testify that the proposed fee limits are unconstitutional. "There is an argument that Congress doesn't have the authority to act" in the matter of fees "because the contract was already existing," McInnis' aide said. "However, the tobacco companies are coming to us for Federal immunity, they're asking us to ratify the agreement. So, we are now party to the negotiation. We say that would include the rate of compensation for those involved."

Earlier this week, hearings on the tobacco settlement were held in the House Commerce subcommittee on health and the environment.
- o **Administration To Fund Expanded Treatment For Drug Offenders.** The head of the Clinton Administration's anti-drug office, retired Gen. Barry McCaffrey, today announced that his office will fund a new National Drug Court Institute. McCaffrey said his Office Of National Drug Control Policy (ONDCP) is giving the National Association of Drug Court Professionals (NADCP) a grant of \$339,000 to start the institute. "Maintaining the integrity of the drug court movement will take continuous monitoring, evaluation and information dissemination," McCaffrey said, describing drug courts as "one of the most monumental positive changes in the US judicial system, relating to drug offenders, since World War II."

According to an ONDCP press release, the new institute "will provide training, certification, education and research for the more than 300 drug courts now in operation, and help develop new drug courts." ONDCP estimates that 1,000 drug courts will exist by the year 2000, the release said, adding that in cases with non-violent drug-related convictions, drug courts "offer...an effective solution" through "comprehensive supervision, drug testing, and treatment." According to a Justice Department official,

Tobacco - settlement - new legislation

and

Tobacco - settlement - attorney's fees

BR/ELK/JM

FYI.

Tom

> 10

1 of 1 items

CQ's WASHINGTON ALERT 11/03/97

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

MEASURE: HR2740

SPONSOR: McInnis (R-CO)

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

QUICK REFERENCE: Limit attorneys' fees in global tobacco settlement

INTRODUCED: 10/24/97

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

COMMITTEES: House Judiciary

CQ BILLWATCH BRIEF:

By Pherabe Kolb, CQ Staff Writer

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

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

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

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

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

CQ BILLWATCH INSIGHT:

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

LEGISLATIVE ACTION:

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

> 11

1 of 1 items

CQ's WASHINGTON ALERT 11/03/97

HR2740

McInnis (R-CO)
Introduced in House

10/24/97

(112 lines)

To limit attorneys' fees in the tobacco settlement.

Special typefaces used in this bill version:

// \\ Italic
!! !! Bold roman

Item Key: 6802

105TH CONGRESS
1ST SESSION

H. R. 2740

To limit attorneys' fees in the tobacco settlement.

=====
IN THE HOUSE OF REPRESENTATIVES

October 24, 1997

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

=====
A BILL

To limit attorneys' fees in the tobacco settlement.

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

!!SECTION 1. FINDINGS!!

Congress makes the following findings:

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

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

health programs.

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

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

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

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

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

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

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

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

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

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

- (1) provided to the Congress a detailed time accounting

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

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

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

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

There are no more items to read.

Results: 1 items in BILLTEXT

Search criteria used:

RESEARCH BILL:HR2740

Results are:

Sorted by bill number with version in ascending order

SEARCH/DISPLAY OPTIONS

- | | |
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| 3 SORT retrieved versions | 9 BROWSE peruse terms in context |
| 4 SAVE bill numbers in a list | 10 EXCERPT continuous context display |
| 5 GRAPH relevance ranking | 11 READ for text of bill version(s) |
| 6 SCAN for list of bill versions | 12 RESEARCH Bills in other databases |

Enter a number or a command, BACK, HELP or STOP

>

1 of 1 items

CQ's WASHINGTON ALERT 11/03/97

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

MEASURE: HConRes140

SPONSOR: McInnis (R-CO)

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

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

INTRODUCED: 07/31/97

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

COMMITTEES: House Judiciary

CQ BILLWATCH BRIEF:

By Emily Pierce, CQ Staff Writer

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

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

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

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

CQ BILLWATCH INSIGHT:

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

CRS DIGEST:

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

CRS SUBJECT INDEX TERMS:

Law
Actions and defenses
Agriculture
Business
Congress
Consumers
Government and business
Legal fees
Legislation
Medical care
Medicine
Politics and government
Products liability
Tobacco
Tobacco industry
Tobacco settlement

LEGISLATIVE ACTION:

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

There are no more items to display.

Results: 1 items in BILLTRACK

Search criteria used:

BILL:HCONRES140

Results are: Bill number as entered

SEARCH/DISPLAY OPTIONS

1 NARROW your search 13 DETAIL action, amendments, speeches
2 REFINE your search on prime topic 14 ACTI

> 1

1 of 1 items

CQ's WASHINGTON ALERT 11/03/97

HCONRES140 McInnis (R-CO)
Introduced in House

07/31/97 (50 lines)

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

Special typefaces used in this bill version:

// \\ Italic

Item Key: 5446

105TH CONGRESS
1ST SESSION

H. CON. RES. 140

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

=====
IN THE HOUSE OF REPRESENTATIVES

July 31, 1997

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

=====
CONCURRENT RESOLUTION

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

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

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

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

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

Whereas : Now, therefore, be it

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

There are no more items to read.

Enter one or more numbers or ALL to display item(s),
Enter another display command and one or more numbers or ALL,
Enter MARK or SAVE and one or more numbers to limit or save your set,
Enter SMARTMATCH and a number to find comparable items,
Or enter BACK, HELP, or STOP

>

Bills w/ attorney fees : tobacco

> 6

✓ 1 HConRes140 McInnis (R-CO) 07/31/97
 Concurrent resolution expressing the sense of Congress that before
 the consideration of any legislation regarding the comprehensive
 tobacco settlement each plaintiff attorney shall fully disclo
 se
 the attorney's anticipated fees as a result of such settlemen
 t
 agreement.
 (BILLTRACK; BillWatch 08/28/97; CRS 10/06/97 -- digest 26 lines)
 Item Key: 4098

 2 HR2264 Porter (R-IL) 07/25/97
 A bill making appropriations for the departments of Labor, Health
 and Human Services, and Education, and related agencies for the
 fiscal year ending Sept. 30, 1998, and for other purposes.
 (BILLTRACK; BillWatch 09/25/97; CRS 10/22/97 -- digest 656 lines)
 Item Key: 3931

 3 S1061 Specter (R-PA) 07/24/97
 An original bill making appropriations for the Departments of
 Labor, Health and Human Services, and Education, for the fiscal
 year ending Sept. 30, 1998, and for other purposes.
 (BILLTRACK; BillWatch 09/24/97; CRS 10/22/97 -- digest 626 lines)
 Item Key: 3885

✓ 4 HR2740 McInnis (R-CO) 10/24/97
 A bill to limit attorneys' fees in the tobacco settl
 ement.
 (BILLTRACK; BillWatch 10/31/97; no CRS information available)
 Item Key: 4867

 Enter one or more numbers or ALL to display item(s),
 Enter another display command and one or more numbers or ALL,
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 Enter SMARTMATCH and a number to find comparable items,
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 >

Tobacco - attorneys fees

JOSHUA
GOTBAUM
09/25/97 04:06:37 PM



Bruce -
Do you know
about this? Weird.
E.

Record Type: Non-Record

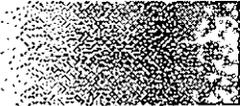
To: Elena Kagan/OPD/EOP

cc:

Subject: FYI: Limit on Tobacco Litigation Attorneys Fees

Just in case no one's mentioned to you.

----- Forwarded by Joshua Gotbaum/OMB/EOP on 09/25/97 04:04 PM -----



Rosalyn J. Rettman

09/25/97 03:11:28 PM

Record Type: Record

To: Joshua Gotbaum/OMB/EOP@EOP

cc: Richard J. Turman/OMB/EOP@EOP, Jim R. Esquea/OMB/EOP@EOP

Subject: Tobacco litigation

This is a "heads-up" on a provision in the Senate Labor/HHS bill involving the tobacco litigation. Specifically, section 519 would limit attorneys' fees for tobacco-related litigation to a maximum rate of \$250 per hour and a total of \$5 million. The provision is unclear in a number of aspects, including whether it would apply to agreements already in existence. If so read, Justice Department advises that this would create a "takings" problem.