

INDUSTRY WATCH

The low tar lie

For perhaps the first time in history, the tobacco industry is having its own virulent smoke blown back in its face. Confronted with a continual onslaught of litigation, the nation's tobacco manufacturers are no longer able to cower behind the shelter of public relations and well nourished political connections. The industry's real history is now being told, but not in the sidestepping half truths that have characterised the industry's signature response to critical inquiry. This time, the story is told among millions of pages of once confidential industry documents made public through legal discovery. Rumours have become facts. Telltale is now truth. The tobacco industry is being forced to eat its own words.

One of the most compelling parts of this new history is the evolution of low tar and low nicotine cigarettes. While the tobacco industry publicly vowed to place the public's health above every other facet of its business, it privately acknowledged its inability to create a safe product. Supported by quotes pulled directly from the industry's own internal documents, the real history is now manifest.

The late 1950s brought growing internal industry concern and acknowledgement that smoking causes health problems

"...if we can eliminate or reduce the carcinogenic agent in smoke we will have made real progress."—1954, *Liggett*.¹

"Boy, wouldn't it be wonderful if our company was first to produce a cancer free cigarette? What we could do to the competition."—*Mid 1950s Hill & Knowlton (industry legal counsel) quoting an unnamed tobacco company research director*.²

"...the evidence is irrefutable that the companies were aware by 1954 of the early epidemiologic studies and the 1953 Wynder-Graham mouse skin painting study (linking cigarettes and lung cancer)."—*late 1980s attorney work product by industry legal counsel Jones, Day Reavis & Pogue for an industry client (possibly B&W)*.³

The industry has long known that this could effect profits . . .

"From a source of business standpoint, results from the 1976 study confirm the trend seen since the 1930s away from the brands perceived as most irritating and least responsive to the cigarette controversy towards low T/N [tar/nicotine] brands and menthols."—1976, *Lorillard*.⁴

. . . so it decided to capitalise on smoker's fears . . .

"I know this sounds like a wild program, but I'll bet that the first company to produce a cigarette claiming a substantial reduction in

tars and nicotine . . . will take the market."—1958, *Philip Morris*.⁵

"I share MCA's overall conclusion that the switching study confirms the rightness of our five year plan; focusing company effort against smokers' health concerns . . . Low T&N brands seem to be satisfying smokers' intellectual T&N concerns."—1976, *Lorillard*.⁶

. . . by assuring smokers that cigarettes are safe, and that the industry has the public's best interest in mind

"There is only one problem—confidence, and how to establish it; public assurance, and how to create it. . . And, most important, how to free millions of Americans from the guilty fear that is going to arise deep in their biological depths—regardless of any pooh poohing logic—every time they light a cigarette."—1953, *Hill & Knowlton*.²

"We accept an interest in people's health as a basic responsibility paramount to every other consideration in our business."

"We believe the products we make are not injurious to health."—1954 *industry advertisement*.⁷

Secretly, the industry began to explore ways to make a "safer" cigarette, recognising that there were some problems with this approach . . .

Lowering nicotine levels could allow smokers to wean themselves off the smoking habit:

"To reduce the nicotine per cigarette as much as possible and thus satisfy the trend of consumer demand . . . might end in destroying the nicotine habit in a large number of consumers and prevent it ever being acquired by new smokers."—1959, *BAT Co*.⁸

Promoting "safer" cigarettes implied that all other cigarettes were hazardous:

"When the health question was first raised we had to start by denying it at the PR level. But by continuing that policy we had got ourselves into a corner and left no room to manoeuvre. In other words, if we did get a breakthrough and were able to improve our product we should have to about face, and this was practically impossible at the PR level."—1962, *BAT Co*.⁹

. . . although some wondered aloud about the ethics of what they were attempting:

"The first is concerned with the ethical question: 'Is it morally permissible to develop a safe method for administering a habit forming drug when, in so doing, the number of addicts will increase?'"—1978, *Liggett*.¹⁰

Reducing carcinogens in smoke was discussed in an effort to create a “medically acceptable cigarette”

“...which will take 7–10 years because it will require a major research effort, because carcinogens are found in practically every class of compounds in smoke.”—1961, *Philip Morris*.¹¹

A variety of filtered cigarettes was developed, and reduced tar and nicotine levels were heavily promoted

“Reduced tar brands have increased to 79% share of voice—with ULTs [ultra low tars] now accounting for 19% of the total. ULT advertising is growing at a faster rate than any other category.”—1980 *Lorillard report showing the increase in total industry advertising expenditures for reduced tar categories from 1974–79*.¹²

Unfortunately for the industry, smokers did not care much for the taste of reduced tar cigarettes and, as expected, the lower nicotine levels became a problem as well. Smokers were not receiving the same nicotine “satisfaction” and therefore began to compensate for the reduction in nicotine by smoking more cigarettes, thus increasing their health risk

“If, as claimed by some anti-tobacco critics, the alleged health hazard of smoking is directly related to the amount of ‘tar’ to which the smoker is exposed per day, and the smoker bases his consumption on nicotine, then a present ‘low tar, low nicotine’ cigarette offers zero advantage to the smoker over a ‘regular’ filter cigarette.”—1972, *RJ Reynolds*.¹³

“Those familiar with the physiological aspects of smoking have suggested that low ‘tar’ consumers are not satisfying their nicotine need. In addition, focus group work has shown that when smokers switch from a high ‘tar’ to a low ‘tar’ brand they claim to smoke more. This may be empirical evidence of a need to satisfy some physiological urge, perhaps nicotine.”—1978, *Brown & Williamson*.¹⁴

But at least one company never shared this information with smokers . . .

“I’m not aware that RJ Reynolds has ever warned consumers about the health effects of compensation.”—1998, *RJ Reynolds*.¹⁵

Nor did it reveal that filtering or reducing the tar in cigarettes does very little to reduce the hazards of smoking...

“From an historical perspective, the adoption of filters in the late 1940s and early 1950s was probably not animated by a desire to lower deliveries. Advertising claims to the contrary aside, earlier filtered cigarettes had deliveries equal to or in excess of their unfiltered cousins.”—late 1980s attorney work product by *Jones, Day, Reavis & Pogue for an industry client*.³

“We have been taking note of public health concerns by developing ‘lighter’ products, but we cannot promote these products as ‘safer’ cigarettes because we simply don’t have

sufficient understanding of all the chemical processes to do so.”—1997, *BAT Co*.¹⁶

“It has been argued for several years that low tar and ultra low tar cigarettes are not really what they are claimed to be . . . the argument can be constructed that ULT advertising is misleading to the smoker.”—1990, *RJ Reynolds*.¹⁷

. . . or that the tobacco industry is not really concerned about the health of smokers at all

“It has been stated that CTR is a program to find out about the ‘truth about smoking and health’ . . . Let’s face it. We are interested in evidence which we believe denies the allegations that cigarette smoking causes disease.”—1970, *Philip Morris*.¹⁸

Instead, the industry began exploring ways to increase the nicotine in reduced tar cigarettes so that smokers stay hooked

“Review the use of organic acids and nicotine salts in tobacco burning cigarettes, and recent attempts to develop an ultra low ‘tar’ cigarette with enhanced nicotine yield.”—1990, *RJ Reynolds*.¹⁹

“ . . . current research is directed toward increasing the nicotine levels while maintaining or marginally reducing the tar deliveries.”—1981, *Lorillard*.²⁰

It tried different blends of tobacco leaf..

“We did decide that we needed a little more oomph, a little more pizzazz, if you will, in an ultra low tar cigarette. So we manipulated the blend to raise the nicotine level slightly. . . . They didn’t care what the nicotine level was. They just wanted a consumer acceptable product that was ultra low tar.”—1998, *RJ Reynolds*.²¹

. . . genetically engineered tobacco (“Y1”) which doubled the amount of nicotine . . .

“ . . . increased nicotine content versus traditional tobaccos: Y1 = 6.5%. Conventional flue cured = 3.25–3.5%.—undated, *Brown & Williamson*.²²

. . . and even added ammonia to increase the “free” nicotine of the smoke and hence, the nicotine “kick” to the smoker.

“Philip Morris began using an ammoniated sheet material in 1965 and increased use of this sheet periodically from 1965 to 1974. This time period corresponds to the dramatic sales increase Philip Morris made from 1965 to 1974.”

“Ammoniated flue cured tobacco . . . product characteristics: milder smooth taste; higher smoke pH; cleaner taste with more free nicotine; stronger physiological impact with less harshness.”—undated (est 1980), *RJ Reynolds*.²³

“All US manufacturers except Liggett use some form of AT [ammonia technology] on some cigarette products.”—1989, *Brown & Williamson*.²⁴

The ammonia technology for increasing nicotine had the added benefit of being able to “fool” FTC tar machines

“The suspected relationship between free nicotine concentration and smoke impact implies that we could create an ultra low tar cigarette that produces much more impact than its delivery would suggest.”—1979, *Brown & Williamson*.²⁵

And again, the industry came to the conclusion that there really is no “safe” cigarette, anyway

“Because known carcinogens are produced from such a wide variety of organic materials during the process of pyrolysis, it is most unlikely that a completely safe form of tobacco smoking can be evolved.”—mid 1960s, *BAT Co.*²⁶

“The (smoking) habit can never be safe . . .”—1978, *Lorillard*.¹⁰

The industry relied instead, on consumer perception of the safety of its products to keep sales going . . .

“Cigarette brands have always offered consumers two basic benefits: (1) physical smoking satisfaction; (2) emotional (image/social) reinforcement. In the addition, various ‘rational’ benefits have been grafted on to these two basic benefits . . . diet, harshness reduction, clean teeth, health reassurance. . . . All these rational benefits have merely added new axes on which to position the core benefits. . . . Strategic priority three: develop/exploit existing/emerging rational benefits.”—1985, *Brown & Williamson*.²⁷

“ . . . to get a truer picture of the low tar category based on share trends and SDIs, NRD has come up with a suggested definition: ‘perceived’ low tar category. . . . It will include all brands perceived by consumers to be low tar . . . as well as all brands with ‘lights’ or ‘low tar’ in their name.”—1982, *Philip Morris*.²⁸

“Very few smokers claim to know the tar and nicotine levels of their brand. . . . On the other hand all smokers like to think of their brand as having no more than average levels and probably less. . . . However, the [i]mpression of ‘average or less’ is probably required for a successful [brand] entry.”—1976, *Lorillard*.⁴

. . . and encouraged this perception with advertising that contained explicit health claims . . .

“You can see why the Parliament Filter Mouthpiece gives you Maximum Protection. You’re So Smart to Smoke Parliaments.”—1953 ad for *Parliaments*, *American Tobacco Co.*²⁹

“Guard Against Throat Scratch . . . smoke Pall Mall the cigarette whose mildness you can measure. Outstanding . . . and they are mild!”—1946 ad for *Pall Mall*, *American Tobacco Co.*³⁰

. . . or implicit ones . . .

“Lucky Filters: you don’t even have to light it to like it . . . rolled tobacco and charcoal in the filter does it. Nourishes the taste . . .”—1968 ad for *Lucky Filters 100s*, *American Tobacco Co.*³¹



1953 ad for *Parliament* cigarettes from the *Richard W Pollay 20thc Cigarette Advertising Collection*.

“How do you make a better cigarette? Here’s how: Tareyton’s activated charcoal scrubs the smoke to smooth the taste the way no ordinary filter can.”—1970 ad for *Tareyton* cigarettes, *American Tobacco Co.*³²

“Dual filter does it! Filters as no single filter can for mildness . . . for taste.”—1985 ad for *Tareyton* cigarettes, *American Tobacco Co.*³³

“Ultra lights smokers: Can you get at least 50% less tar and nicotine and still get flavor in a cigarette? Now you can.”—1990 ad for *Now* cigarettes, *RJ Reynolds*.³⁴

“Cambridge Lowest only 1 mg.”—1992 ad for *Cambridge* cigarettes, *Philip Morris*.³⁵



1946 ad for *Pall Mall* cigarettes from the *Richard W Pollay 20thc Cigarette Advertising Collection*.



1990 ad for Now cigarettes from the Richard W Pollay 20th Cigarette Advertising Collection.



1992 ad for Cambridge cigarettes from the Richard W Pollay 20th Cigarette Advertising Collection.

. . . and of course, by continuously lying about the hazards of smoking

“We would like the public to be fully informed.”—1968, *Philip Morris*.³⁶

“No scientist has produced clinical or biological proof that cigarettes cause the diseases they are accused of causing. . . We are not going to knuckle under to the Times or anybody else who tries to force us to accept a theory which, in the opinion of men who should know, is half baked.”—1969, *American Tobacco Co.*³⁷

“Cigarettes have never been proven to be unsafe.”—1978, *Philip Morris*.³⁸

“Despite all the research going on, the simple and unfortunate fact is that scientists do not know the cause or causes of the chronic diseases reported to be associated with smoking. . . .”—1990, *RJ Reynolds*.³⁹

“It’s not scientifically established that smoking by itself causes disease.”—1998, *RJ Reynolds*.⁴⁰

Fortunately, despite the tobacco industry’s attempts to conceal what it knows about the “safety” of its products, the truth has been uncovered within the tobacco industry’s own internal files.

“The intent and effect. . . [of] low tar, low gas, charcoal filters, all natural or ultra low tar cigarettes. . . was to derogate from the warning or awareness of the health hazard and to reassure the smoker in his decision to continue smoking.”—late 1980s attorney work product by *Jones, Day, Reavis & Pogue* for an industry client.⁴¹

NADINE-RAE LEAVELL

Department of Cancer Prevention, Epidemiology & Biostatistics

Roswell Park Cancer Institute

Buffalo, New York 14263

nleavell@sc3103.med.buffalo.edu

Full citations (including abstracts) for most industry documents cited may be accessed at <http://www.tobaccodocuments.org>. Document images will be available at this location by the end of August 1999. The following are temporary access points:

*May be accessed at: <http://www.mnbluecrosstobacco.com/toblit/trialnews/docs/search.asp> by searching on the exhibit number.

†May be accessed at: <http://www.tobaccoresolution.com> by searching by Bates number on the appropriate company site.

‡May be accessed at: <http://www.house.gov/commerce/TobaccoDocs/documents.html> by searching by Bates number.

- 1 Darkis F. Untitled. Minutes of a meeting of Liggett scientists, March 29, 1954. In: Kluger R. *Ashes to ashes*. New York, 1996:196.
- 2 Hill & Knowlton. Forwarding memorandum. Mid 1950s. MN trial exhibit 18,904.*
- 3 Abrams T, Crist P, Kaczynski S, et al for Jones, Day, Reavis & Pogue. Undated attorney work product. Brown & Williamson. Bates range: 681879254-681879715.‡
- 4 Marketing Corporation of America. Lorillard 1976 switching study summary. November 1976. Lorillard. Bates range: 03296484/03296544.†
- 5 Mace CV to DuPuis RN. Brief comments on a program to produce a low delivery filter cigarette with flavor. 1958. Philip Morris. Bates range: 1000305086.†
- 6 Smith RE to Ave JR. Re: 1976 switching study, as found in Lorillard 1976 switching study summary. November 1976. Lorillard. Bates range: 03296484/03296544.†
- 7 Industry advertisement entitled: “A frank statement to cigarette smokers”. 1954. 11309817 MN exhibit 14,145.*
- 8 RDW. Complexity of the PA 5A machine and variables pool. June 1959. British American Tobacco Co. MN trial exhibit 10,392.*
- 9 McCormick A. Smoking and health: policy on research, minutes of Southampton meeting, 1962. British American Tobacco Co.†
- 10 Conning DM. The concept of less hazardous cigarettes. May 15, 1978. Lorillard. Bates range: 01414847-01414853.†
- 11 Wakeham H. Tobacco and health R&D approach. November 15, 1961. Philip Morris. MN trial exhibit 10,300.*
- 12 Triumph planning seminar: competitive advertising. February 25, 1980. Lorillard. Bates range: 89923111-89923122.†
- 13 Teague C Jr. A gap in present cigarette product lines and an opportunity to market a new type of product. 1972. RJ Reynolds. MN trial exhibit 12,366.*
- 14 Matteson MM to Tighe PJ. First step in new product process for low “tar” satisfaction project. March 1, 1978. Brown & Williamson. MN trial exhibit 13,652.*
- 15 Townsend D, vice president of product development and assessment, RJ Reynolds. MN trial testimony, April 2, 1998.
- 16 Tunistra T. Speaking up. *Tobacco Reporter*. December 1997. British American Tobacco Co.

- 17 Product differentiation group—the over-smoking issue (tar to nicotine ratio). 1990. RJ Reynolds. MN trial exhibit 13,139.*
- 18 Wakeham H, to Cullman J. “Best” program for CTR. December 8, 1970. Philip Morris. MN trial exhibit 11,586.*
- 19 Untitled report on Project GT. 1990. RJ Reynolds. MN trial exhibit 13,129.*
- 20 Spears A. Article presented to the 35th Tobacco Chemists Research Conference. 1981. Lorillard.†
- 21 Former RJ Reynolds manager of advanced product technologies, to the FDA, according to a transcript obtained by the 3/13/98 *New York Times*. <http://www.nty.com>
- 22 Y1 product. Brown & Williamson. MN trial exhibit 13,671.*
- 23 Technology: ammoniation. Undated, est 1980. RJ Reynolds. Bates range: 509018864-509018865A.†
- 24 Johnson RR. Ammonia Technology Conference minutes, Louisville, Kentucky, May 18-19, 1989. June 12, 1989. Brown & Williamson. MN trial exhibit 13,069.*
- 25 Schori TR. Free nicotine: its implications on smoking impact. October 22, 1979. Brown & Williamson. Bates range: 542001986-542001996.†
- 26 Roe FJC, Pike MC. Smoking and lung cancer. Undated (mid 60s?). British American Tobacco Co. MN trial exhibit 11,041.*
- 27 Sandefur TE Jr to Parrack ET Jr. Competitive strategy review. March 27, 1985. Brown & Williamson. Bates range: 512103102-512103106.†
- 28 Weinstein BSG. “Perceived” low tar category. February 25, 1982. Philip Morris. Bates range: 2042052149-2042052149.†
- 29 Advertisement for Parliaments cigarettes. 1953. American Tobacco Co. Bates range: 1002762253.†
- 30 Advertisement for Pall Mall cigarettes. 1946. American Tobacco Co.†
- 31 Advertisement for Lucky Filters 100s. 1968. American Tobacco Co.†
- 32 Advertisement for Tareyton cigarettes. 1970. American Tobacco Co.†
- 33 Advertisement for Tareyton cigarettes. 1985. Philip Morris. Bates range: 2042412224.†
- 34 Advertisement for Now cigarettes. 1990. RJ Reynolds. Bates range: 509231506.†
- 35 Advertisement for Cambridge cigarettes. 1992. Philip Morris. Bates range: 2041554335.†
- 36 Gilbert RS, Ruder & Finn Incorporated, for Philip Morris. Press release entitled: Major tobacco company says that “care, cooperation and confidence” will provide acceptable answers to smoking and health controversy. October 28, 1968. Philip Morris. Bates range: 1005110104-1005110108.†
- 37 Advertisement in the *New York Times* entitled, “Why we’re dropping the New York Times”. September 8, 1969. American Tobacco Co. Bates range: ATX040303547-ATX040303550.†
- 38 Facts about the smoking controversy. 1978. Philip Morris. Bates range: TIMN 005129-TIMN005135.†
- 39 Spach JF. Response letter to principal of Willow Ridge School of Amherst, New York. January 11, 1990. RJ Reynolds.
- 40 Townsend D, vice president of product development and assessment at RJ Reynolds Tobacco Co, Minneapolis-St Paul Star Tribune. April 2, 1998.
- 41 Wigand J. Cigarette testing methods, product design, and labeling: time to clean p the “negative baggage”. *Tobacco Control* 1998;7:336-7.

Giving 10% to gain eternity

After US Congress failed to enact legislation in the summer of 1998 that would have ratified the June 20, 1997 deal to settle lawsuits filed by state attorneys general (AGs) against tobacco companies, in November, 1998 the AGs agreed to a different Master Settlement Agreement (MSA) with tobacco companies that did not require Congressional approval (see <http://www.naag.org/glance.htm>). Just as had occurred with the first settlement, the AGs hailed the MSA as a major advancement for public health. However, the public health community once again criticised the new settlement’s unwarranted protection for the tobacco companies. Although some health advocates initiated court challenges to block the MSA, the majority of the public health community have been urging state legislatures to spend a portion of the settlement funds for tobacco control programmes. Both of these public health strategies seem to be failing, as most state courts have already approved the MSA, and only a few state legislatures have appropriated a significant amount of MSA funds for tobacco control programmes. With unprecedented future legal protection granted by the state AGs in exchange for money, it appears that the tobacco industry has emerged from the state lawsuits even more powerful.

While monitoring the settlement negotiations between the state AGs and the tobacco industry last summer and fall, and after analysing the MSA last November, many public health and civil justice advocates concluded that the MSA provides far greater benefits for tobacco manufacturers than for public health.

After failing to convince the AGs to oppose the deal, health advocates, hospitals, counties, and others went to court in many states to challenge the MSA. Of these, court challenges remain in nine states, with the only public health based challenge existing in Pennsylvania. Additionally, several federal lawsuits now challenge the MSA, and experts anticipate far more litigation in the future, some of which ultimately may unravel the MSA.

During this past year, many AGs have greatly exaggerated the MSA’s public benefits while not even acknowledging its tobacco industry protection provisions; Congress (at the request of the National Governor’s

Association, the National Association of Attorneys General, and the National Conference of State Legislatures) gave away the federal share of Medicaid settlement funds to the states with no conditional requirements for tobacco control programmes; courts in most states have politically rubber stamped the MSA without evaluating its merits or its many legal precedents and contradictions; more tobacco industry protection loopholes have been discovered in the MSA; violations of the MSA have gone unenforced; and only a few states have allocated an adequate amount of settlement funds for tobacco control programmes.

That said, the MSA did contain public health benefits, chief among them is the \$0.40 per pack price hike by the cigarette companies to more than cover the costs of payments to the states. Reports filed by cigarette makers in the first and second quarters of this year state that domestic cigarette sales dropped by slightly

greater than 10% in the past year, much of which was a result of the MSA.

Building on Mike Pertschuk's soundbite that "the tobacco industry will give an inch to gain a decade", it appears that in settling with the states "the tobacco industry gave 10% to gain eternity", as the unprecedented and extensive liability release and offset provisions in the MSA, unless struck down by the courts, will extend in perpetuity.

The MSA's advertising restrictions have eliminated tens of thousands of large outdoor billboards, but these have already been replaced by hundreds of thousands of smaller cigarette billboards located outside nearly every retailer—right at children's eye level. While the MSA eliminates nearly all small scale brand sponsorships, tobacco companies are likely to increase overall sponsorship budgets by greatly expanding national level brand sponsorships like the Winston Cup.

MSA loopholes

The MSA's lobbying limitations on tobacco companies, corporate culture commitments, prohibitions on material misrepresentations, and many other clauses that purportedly protect public health, contain so many loopholes as to render them moot. For example, nothing in the MSA prohibits the National Smokers Alliance, chambers of commerce, manufacturers associations, restaurant associations, tobacco retailer groups, anti-tax organisations, and others who receive tobacco industry funding from continuing many of these same practices that the manufacturers are now prohibited from doing.

Even when the tobacco companies violate provisions in the MSA, only the AGs are permitted to take enforcement action against the violations. The Pennsylvania activists who correctly accused Philip Morris of violating the MSA in May by sponsoring more than 100 Marlboro billboards with the Wawa convenience store chain are still waiting for the state's AG Mike Fisher to initiate enforcement action against Philip Morris. While these billboards were ultimately removed as a result of public pressure and media scrutiny, Philip Morris has continued claiming these billboards did not violate the MSA.

The lesson here for the public health community is that enforcing even blatant violations of the MSA by tobacco companies will require citizen watchdogs and political pressure on the AGs.

Payments to states

While the \$246 billion payments to states over 25 years appears in much testimony and press releases, the MSA's volume adjustment provision will reduce tobacco industry payments at nearly the same rate as the drop in domestic cigarettes sales. For example, the overall decrease in domestic cigarette sales of 12% during the past two years will result in about a 12% decrease in payments to states next year and every year thereafter. And if cigarette sales continue to drop at the almost 2% annual rate they have over the past two

decades, all states will receive a total of about \$160 billion, instead of \$246 billion, over the next 25 years.

If the federal Department of Justice files suit against the tobacco industry and settles for about \$125 billion over the next 25 years, which many Wall Street tobacco stock analysts and tobacco litigation experts think will occur, the ensuing cigarette price hike will further reduce domestic cigarette sales and corresponding industry payments to states. Similarly, an enormous damage award in the Engle class action suit in Florida and/or other court verdicts against the tobacco industry will further increase cigarette prices, which will reduce cigarette sales and industry payments to the states. And we must never forget that the Engle case would not have gone to court had the AGs' June 20, 1997 global bailout been enacted by Congress.

Absent the federal government conceding unwarranted liability releases and offsets to the tobacco industry in settling its anticipated lawsuit, and I expect public health and civil justice advocates to oppose vigorously such immunity, continued litigation against the tobacco industry should bring about additional cigarette price hikes, reduced domestic cigarette sales, and reduced industry payments to states. This is the course that appears to hold the most promise for sharply reducing tobacco addiction in this country and throughout the world.

The tobacco industry fully agrees with this scenario, which is why it will insist upon massive immunity in any settlement with the federal government, and why it will continue stepping up tort reform lobbying efforts at the federal and state levels. And with settlement payments to states dependent upon cigarette sales volume, governors and state legislatures will become ever more vulnerable to the specious argument that immunising the tobacco industry from lawsuits is in the states' best financial interests.

Several weeks ago, five tobacco state governors advocated that very argument (and cited a study funded by Philip Morris) in a letter to other governors urging them to oppose a federal lawsuit against the tobacco industry.

To prevail over this economic sophistry, public health and civil justice advocates must redouble their efforts to conduct more research and educate state and federal government officials that the \$6–7 billion in annual settlement payments to the states are only a fraction of the tens of billions of dollars spent annually by the states, local governments, public entities and other releasing parties in the MSA to pay for the many damages caused by tobacco products.

Grey market cigarettes

A recently discovered tobacco industry protection loophole in the MSA that you will hear a lot about in the future is referred to by tobacco companies as "grey market cigarettes", by importers as "repatriated cigarettes", but what is really "cigarette dumping into developing countries".

By considering only domestically sold cigarettes in determining MSA payments to

states, and by lobbying for federal and state laws to ban so called grey market cigarettes in the USA, tobacco companies are trying to preserve their predatory marketing practices in developing nations where they sell tobacco at below cost in order to increase smoking rates and market share. At the same time, these same below cost cigarettes that importers ship back to the USA are exempted from tobacco industry payments to states. Either way, tobacco companies win.

If Philip Morris, British American Tobacco, and RJ Reynolds truly wanted to eliminate this growing problem that they masterminded, they would simply raise the price of cigarettes intended for export to match the prices of cigarettes they sell in the USA, as that would protect public health in the third world and preserve settlement payments to the states. But do not expect this to occur.

Grey market tobacco industry protection bills, along with the model statute (exhibit T in the MSA) legislation to protect participating manufacturers from price competition by non-participating manufacturers, present opportunities for tobacco control advocates to expose these scams and to amend these bills with effective public health provisions as they travel through state legislatures.

Youth

In negotiating the MSA, tobacco companies also inserted provisions that recognise, and that appear to provide incentives for the enactment of, state laws to criminalise youth for the purchase or possession of cigarettes. Over the past five years, tobacco manufacturers and retailers have aggressively lobbied for these laws to preserve their ability to market cigarettes to youth, as these laws shift criminal and civil liability away from the adults in the tobacco industry and onto their youthful prey. These laws have never proven effective in reducing youth smoking, and instead appear to increase the youths' desire to experiment with the forbidden fruit. I strongly urge public health advocates to continue opposing these bills that scapegoat youth for the outrageous behaviour of the tobacco industry.

Big tobacco also continues pushing pre-emption bills, like those now pending in Wisconsin and Michigan. Health advocates must be prepared to take time out of their

campaigns to secure settlement funds to fight the tobacco industry on these and other legislative fronts.

In creating the American Legacy Foundation, the MSA prohibits its programmes from criticising the tobacco industry, which has proven a most effective method of tobacco control education and counter advertising. The MSA also requires the foundation to address other drugs of abuse in its programmes. Will these requirements turn the American Legacy Foundation into another DARE programme or Partnership for a Drug Free America, whose programmes make politicians and the public feel good, but are not effective in reducing drug addictions?

Many health advocates have been betrayed by their governors and legislatures, who diverted settlement funds to programmes which have nothing to do with tobacco. We cannot allow this to continue. Stan Glantz was right at last year's conference when he said "politicians understand two things, money and pain". Tobacco companies are giving the politicians huge amounts of money, and health advocates must be willing to criticise the politicians who attempt to divert settlement funds away from tobacco control programmes.

Also, expect to see more government funded programmes that are called tobacco control, but which are really corporate welfare, public relations, and/or ineffective programmes. As the California experience has taught us, eternal vigilance is essential for keeping tobacco control programmes adequately funded and effective.

Finally, in carrying out these many important activities in this time of opportunities and threats, health advocates must put aside self interests and truly collaborate, as we cannot allow the tobacco industry to prevail.

Plenary presentation delivered to the Fifth Annual National Tobacco Control Conference, Orlando Florida 24 August 1999.

WILLIAM T GODSHALL

*Executive Director, SmokeFree Pennsylvania
PO Box 81570
Pittsburgh, PA 15217, USA
+412-421-0500
Fax +412-351-5881
bill@smokescreen.org
or
smokefree@compuserve.com*