

# **THE TOBACCO DEAL**

## **GUEST EDITORIAL THE MONTGOMERY ADVERTISER**

When finally the evil tobacco industry appeared to be down for the count, it now seems that big tobacco has won again! The tobacco industry came out of their secret negotiating with a select group of Attorneys General with a national settlement offer that has been accepted by all states. This was done with a very limited review time available to the states. A comparison of this most recent nationwide settlement to the original proposal that was ultimately defeated in Congress by the Tobacco companies indicates that the tobacco companies have won this battle. Under the first proposal, requiring Congressional approval, the pay-out by the industry to the states would have been \$368 Billion which obviously is much more than \$206 Billion. More importantly, the safeguards and restrictions built into the first proposal were much superior to those found in the current edition.

What has happened to make \$206 Billion look better than \$368 Billion, especially with the now weaker safeguards and restrictions? Tobacco companies spent \$50 Million in a successful media campaign designed to defeat the Congressional settlement and tremendous sums were donated through tobacco and tobacco-related PACs to political campaigns at the federal and state levels. Even being exposed on the tobacco donations by Public Citizen, hasn't slowed the tobacco train as it rolls along the track toward total immunity for an industry with a long history of intentional wrongdoing.

Tobacco companies spend more than \$5 Billion annually, which amounts to approximately \$13 Million per day, marketing cigarette sales. Tragically, their marketing efforts

have targeted children in large part. If Philip Morris loses its “young smoker market,” it will soon be out of customers.

Even if the respective amounts due the states were satisfactory, this agreement has major deficiencies. The tobacco industry is being allowed to pass on its total costs under the settlement to “smokers” rather than having to pay their obligations out of company assets. Cigarette prices have already been increased and the companies will actually be more profitable in the process.

Interestingly, the State of Alabama was given less than four days in which to evaluate a most complicated legal document. The tobacco companies made sure that no interested party would have time to properly evaluate the settlement before the Friday deadline. We now learn that Alabama is releasing from all past and future liability the tobacco holding companies, parent companies, and affiliate companies, as well as all officers and directors of all of the tobacco companies. None of these released parties can ever be held legally responsible for their past or future wrongdoing. The only companies that will be responsible to pay the settlement proceeds are the domestic manufacturing companies. The ability of these companies to sell cigarettes will determine their responsibility to pay the settlement amounts to the states. Once a company stops selling in the United States, its obligations to pay also end.

The greatest fear that the tobacco companies have is that the FDA will regulate tobacco. Unfortunately, for American citizens, FDA regulation was not a part of the settlement, nor will it occur in the future in my opinion. The tobacco companies have fought FDA regulation for years and now have clearly won this battle.

Alabama had an agreement with the tobacco companies through our Attorney General that would have required the companies to pay Alabama at least the same amount received by Mississippi, Minnesota, Texas, and Florida. Each of these states filed suit against the tobacco

companies and settled their respective cases either prior to or during trial. Mr. Pryor had a private agreement with the tobacco companies that would have required the companies to pay Alabama an amount “comparable” to the amounts received by the states that filed suits and subsequently settled their cases. This agreement was in return for Alabama agreeing not to file suit against the tobacco companies. When you consider that Mississippi received \$1,700 per person and Minnesota received \$1,300 per person in their respective settlements after filing suit, it is apparent that Alabama’s \$700 per person is woefully inadequate. How could Alabama sign away an additional \$3 Billion when all the State had to do was collect on the Attorney General’s contract?

The best part of the settlement is that the Children’s First Program will be properly funded. This is a definite step in the right direction for Alabama citizens.

Fortunately, the settlement agreement must be approved by Judge Charles Price, who has supervisory control, and that is good. Judge Price has been through the battles and is not afraid to face the tough challenges. There are a number of unanswered questions that should be asked and answered. Judge Price will be able to get some answers that we were never able to obtain from either the tobacco companies or the Attorney General.

Finally, I concur with the assessment of C. Everett Koop (former Surgeon General) and David Kessler (former Commissioner of the FDA) that the settlement was entered into prematurely by the Attorneys General and is a clear victory for the tobacco industry.